

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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MAY 11 2016

Dale E. Van Slambrook Master of Equity

SC Court of Appeals

Case No. 2010-CP 08-3514

Appellate Case No. 2016-000292

Branch Banking and Trust Company -----Respondent,
v.

Wilton H. Cain: Cassandra M. Cain-----Appellants

BRIEF OF APPELLANT

Wilton H. Cain Cassandra M. Cain
Wilton And Cassandra Cain Appellants

6476 N. Highway 17

Awendaw, SC

8439913198 May 8 2016

Appellant

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PROFESSIONAL PARK LLC CASE # 2014-000915

STATUTES

S.C CODE OF LAW TITLE 29 SECTION 29-3-10 THRU 750

S.C. CODE OF LAW TITLE 38 SECTION 38-12 - 70

S.C. CODE OF LAW TITLE 38 SECTION 38- 71-190

S.C. CODE OF LAW TITLE 15 SECTION 15-39-610 THRU 760

EQUITABLE SUBROGATION LAW UNDER S.C. CODE OF LAW

S.C. RULES OF CIVIL PROCEDURES RULES 59 , 71, 225

STATEMENT OF ISSUES ON APPEAL

1. What is the exact amount of insurance paid by the PMI insurer Republic Mortgage insurance company to BB&T.
2. **The correct amount of deficiency judgment owed after appraisal, before insurance payment.**
3. Does Attorney have legal authorization from mortgage company to represent BB&T or is case closed and they represent a third party.
4. Does pmi insurance payment reduce the loss of the plaintiff and or amount owed in a foreclosure as this case.
5. Does BB&T represent the insurer RMIC.
6. Does the mortgage have a right under SC CODE OF LAW to enrichment in a foreclosure case.
7. Is the Mortgage company (BB&T) required under SC CODE OF LAW to give proper and timely notice to defendant that they represent the insurer a third party in a Subrogation action and is notice in Jan 2016 proper and timely on this case filed in 2010.
8. Is a foreclosure action under SC CODE OF LAW a tort action is there a injury as cover under collateral resource rule is the default considered and accident and defendant a wrong doer.
9. Is PMI wholly independent of appellant who paid premiums and was a part of loan agreement.
10. Did Court Err in not dismissing deficiency judgment against Appellant in regards to BB&T mortgage co who received PMI payment to reduce lost.

STATEMENT OF THE CASE

This matter came before Hon. Dale E. Van Slambrook on January 14, 2016. The Defendants appeal the order denying the Dismissal, Alter, Amend or Reconsider of deficiency judgment also Order Granting Plaintiff a personal judgment of 37,393.82 against Defendants.

The plaintiff stated the judgment of foreclosure sale was the amount of 201,660.89 that value would indicate that if there is a remaining balance it would be $201,660.89 - 168,000 = 33,660.89$ not 37,393.82. Defendants ask value be corrected.

In reporter report the Plaintiff argument in court is clear line 1-19 referring to collateral Source Rule is a TORT action which a foreclosure is not a TORT action, there was no accident or injury involved there there is no wrong doer as outlined in a TORT action as well as the Statute is clearly made on behalf of wrong doer who is **TOTALLY INDEPENDENT OF INSURANCE PAYMENT**, defendant is not wholly independent of insurance a play of words by plaintiff, fact is insurance preimuim was paid by defendant.

Further appellant argument on page 3 line 22 insurance based on home loan contract with appellant and lender where under agreement and SC CODE OF LAW PMI could be canceled by appellant.

Plaintiff argument on page 21-22 that PMI insurance is a fatal error.

Fact appellant received a letter from BB&T on March 29, 2011 stating that the only agreement that they have with RMIC (PMI) company Quote ; the only agreement we have with the pmi companies is that they will insure our loans as long as we pay the premiums;, ther is no mention in fact it denies there is a subragation agreement with BB&T.

Fact SC CODE OF LAW 29-3-740-750 states if the value returned after deduction there from of the amount of the price at which the property was sold under direction of the court be equal to or exceed the amount of deficiency remaining upon the judgment after application of net proceeds of sale the judgment shall be there upon extinguished and cancelled of record by clerk. The SC law does not allow enrichment in foreclosure action. In fact any amount over judgment is returned to court for a decision.

Further this case started on Oct 4, 2010 and not until 2016 was there any mention that BB&T represented RMIC, no notice to defendant or the court. The timeliness of the notice is over five years therefore untimely. Also there has been no contact by RMIC with defendants or court.

Plaintiff received payment from PMI therefore have no loss and any payment to BB&T would be enrichment, BB&T are the first party and RMIC would be the third party in this suit.

The Master of Equity did error in His decision to apply the Collateral Source Rule to a foreclosure procedure which resulted in a balance of the deficiency Judgment against Defendants by not counting and even ruling that no payment by a third party specifically PMI insurer should or will be considered in reducing lost which occurred to Plaintiff BB&T servicer for Lender in a foreclosure procedure. The Master erred by not considering the insurer payment to reduce Plaintiff lost by providing and giving the opportunity for Enrichment (profit), which is not allowed under Title 29 Code of Law, the Law allows payment of debt not damages for a default on a loan.

Sec 29-3-10 Provide Mortgagee is entitled to recover lost for money lent not profit or be enriched.

Collateral Resource Rule is a TORT! Tort is a civil wrong someone suffers a harm by a legally recognizable cause of harm, a Tort (direct invasion of some legal right of the individual, the infraction of some public duty by which special damage occurs to the individual or violation of some private obligation by which like damage occurs to the individual)! The plaintiff failed to show how they suffered an injury by default of the defendants to pay a loan. In the State of South Carolina there is no Law that imprisons or were damages is awarded for failure to pay a loan.

In each of the cited cases by the Plaintiff filing December 2015 intended to prove the third party payment by PMI Insurer should not be considered in reducing deficiency judgment actually show that payment must be included. The collateral source rule provides that compensation received by an injured party from a source wholly independent of wrongdoer will not reduce the amount of damages owed by the wrongdoer. Cases cited (Rattenni v. grainger, 298 S.C.276, 379 S>E>2d 890 {1989}, Young v. Warr, 252 S.C. 179, 165 S.E. 2d 797 {1969, Powers v. Temple, 250 S.C. 149, 156 S.E. 2d 759 {1967}, Mount v. Sea Pines Co. 337, S.C. 355, 357, 523 S.E. 464, 465 }Ct. App. 1999, Johnston v. Aiken Auto Parts, 311 S.C. 285, 287, 428 S.E. 2d 737, 738 Ct. App 1993) just to quote a few , each case state for insurance not to reduce amount owed MUST be Wholly independent of the wrongdoer in this case the Defendants, where as this PMI insurance fails to be entirely separable of the Defendants, facts PMI insurance is paid based on defendants default, default is when defendants fail to pay loan, defendants secured the loan in reference, PMI insurance can be canceled under HUD act by Defendants, PMI insurance was issued as a result of Defendants not meeting a 20% down payment, the PMI insurance was paid for monthly by Defendants by agreement with lender and Defendants. Further the alleged Master Policy submitted by Plaintiff is proof PMI insurance is not Wholly Independent of Defendants Reference items 1.16, 1.17, 1.25, 2.4(2b), 4.1, 5.1 page 173 borrower shall pay for (mortgage insurance) Therefore Collateral resource rule fail to apply in this case and must not be used. Insurance payment must be considered a part of lost reduction.

The Defendants further proof that PMI insurance is for the purpose of Plaintiff to reduce or offset there loses in case of default, as stated in Plaintiff owe letter dated March 29, 2011 to Defendants quote " PMI coverage provides BB&T with the option of filing a claim to offset our losses" exb 1 further Plaintiff also notified Defendants quote "Private mortgage insurance carrier has been notified that the loan is delinquent and in default" Letter attached exb 2, please see attached payment schedule of mortgage insurance payment by Defendants of \$97.70 on a monthly bases. Exb 3

Defendants further claim private mortgage insurance is for Default and is a RISK insurance under S.C Code of Law 38-12-70, further Defendants claim a mortgage represent a security for a obligation but not full payment "Perptul Bldg and Loan Association of Anderson v. Braun 270 S.C.S.C. 338, 340 therefore Defendants further contend Tort does not apply and PMI payment must reduce lose and that reduction must be considered in determination of Deficiency Judgment against Defendants.

DEFENDANTS fail to see where in the mortgage contract where it is clear Defendant are not a party to PMI only that Defendant do not receive payment in event of their default as stated by Plaintiff.

The Plaintiff in their filing has affirmatively stated that the plaintiff (Freddie Mac) or more specifically mortgagee has a Subrogation agreement with subrogation rights, plaintiff have made that agreement an issue by quoting it in their action therefore do to the fact that Defendants are affected by that agreement, defendant demand Court Order Plaintiff supply Defendants with a signed, copy of said agreement.

Further Defendants request the Court to issue an Order preventing the PMI Company from suing Defendants under Equitable Subrogation Laws under South Carolina Code of Laws or any Court rule for any payment to Plaintiff.

The Defendants further state the Plaintiff nor any other party has ever notified defendants or this Court in over 5 years in fact since the beginning of this action that Plaintiff also represent third party insurer RMIC. That also bring to question has there been proper and timely notice under South Carolina Court Rules and Laws. To bring a subrogation action against Defendants.

Equitable Subrogation is covered by SC Code of Laws and is under proper condition a right of third party (insurer) question is as a matter of Law are those right transferable to a servicer of a loan or lender Defendants believe they are not transferable therefore Plaintiff have no right to bring suit for Insurer being RMIC under subrogation.

Defendants are concerned this alleged agreement (subrogation) might be an attempt to bypass Court Rules to allow a subrogation suit, which has not been mention or filed at any time during this case.

Also of major concern to Defendants is Defendants executed mortgage with CTX Mortgage Company September 19, 2007 said was recorded September 20, 2007 book 6868 at page 186 PMI agreement was included in loan agreement, Loan was not assigned to Branch Banking & Trust until June 13, 2011 over three years nine month later. Seems impossible for BB&T to have a subrogation agreement with PMI insurer signed over three years earlier, Defendant again request Court to order Plaintiff to produce original document showing said agreement that was apart of Defendants loan.

Further how do defendants know that the exhibit of Master Policy dated 02/08/1991 applies to Defendants?

Defendants request the Court to Order Plaintiff to present and supply defendants and this Court with the exact amount of PMI paid Plaintiff in this action and as a result foreclosure. There are a number of reason for the need to know to determine if Plaintiff received more than entitled more than loss, they received payment before appraisal results which reduced loss by \$46,500 dollars, further reason to know the amount paid by insurer is Plaintiff sold property for the sum of 154,000m dollars on 10/03/2012 exb attached. Also any subrogation rights would be affected by payment, to insure any surplus is handled under rule 71 for S.C. rules of Civil Procedures.

Further BB&T sued under SC Code of Law as first party (lender), requested and received payment from insurer of PMI and therefore are not entitled under Equitable Subrogation SC Code of Laws title 15-39-610-760, 38-71-190, 29-3-310-740 cases Calvert Fire Ins. Co. v. James 236 SC 431-435 S.E. 2d 832, 834 (1960) SC Supreme Court National Bank v. Buncombe Professional Park LLC case # 2014-000915 BB&T received payment from insurer as result of default and foreclosure.

Further fact and reason PMI payment must be included in considering plaintiff loss and Defendants deficiency is during a foreclosure hearing the Honorable Judge Watson the original Master of Equity hearing case requested plaintiff in court how much of the loan was covered by PMI the plaintiff response was 25% Judge Watson Noted it in his file, during hearing before Judge Dale E. Van Slambrook mention the 25% was mention in court file. The loan was 174,988.00 therefore 25% would come to 43,747.00, the Defendants have requested from RMIC representative Teresa Roberts the sum only to be referred to BB&T with no results

Defendants are deeply concerned about is this case properly before this Court reason all personal inquiries to lender Freddie Mac and BB&T each state the case is inactive and closed and in achieve defendants concern is who has directed Attorney to pursue action are they acting alone?

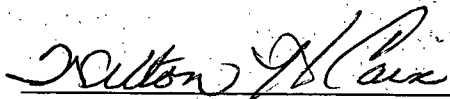
Based on foregoing and the arguments of Defendants and PMI payment to Plaintiff that Defendants deficiency Judgment is reduced by the amount paid Plaintiff by

RMIC (PMI) the insurer, if sufficient cancel and dismiss Deficiency Judgment Plaintiff has no loss.

Further ordered that Foreclosure action is not a tort action, that default on a mortgage loan does not require or permit damages as allowed under tort action.

Further it is ordered that under Rule 225a SCACR any and all collection effort by Plaintiff against Defendant are placed on hold during appeal.

Furthered that personal judgment against Defendants is canceled.



Wilton H. Cain and Cassandra Cain
6476 North Highway 17
Awendaw, SC 29429
Feb 15, 2016



March 29, 2011

Mortgage
P.O. Box 2027
Greenville, SC 29602-2027
(800) 827-3722
Fax (864) 242-9533

WILTON H CAIN
CASSANDRA M DURRAH CAIN
2886 PALMER DR
CHARLESTON SC 29414

RE: Mortgage Loan Number 6991389936
Property Address 259 CLAYBURNE DR, GOOSE CREEK SC 29445

Dear Wilton Cain and Cassandra Cain

In response to your recent inquiry to waive the PMI Insurance for your loan please note the following: BBT never received a 'qualified written request' for PMI deletion on this account. If one had been received however, a denial would have been the result, due to the loan-to-value ratio (92.6% Loan To Original Value/99.3 Loan To Current Value) and loan delinquency (due for 11/109 pmt).

PMI coverage provides BB&T with the option of filing a claim to offset our losses. This loan is also owned by Freddie Mac, who would expect this loan to remain insured due to its present delinquency.

There are no agreements in SC or otherwise with PMI companies not to waive PMI coverage when qualified. The only agreement we have with the PMI Companies is that they will insure our loans as long as we pay the premiums. Furthermore, we are bound by the requirements of the Homeowner's Protection Act to remove PMI when the Homeowner is qualified. Even under the act, PMI does not have to be deleted until the loan payments are current.

On July 20, 2010 Branch Banking and Trust sent a Vacant Property Notice to your attention. Please see enclosed letter. Please review section 9 of your Mortgage concerning Property preservation. A copy of the mortgage is enclosed also.

Sincerely,

Yolanda Young
Yolanda Young

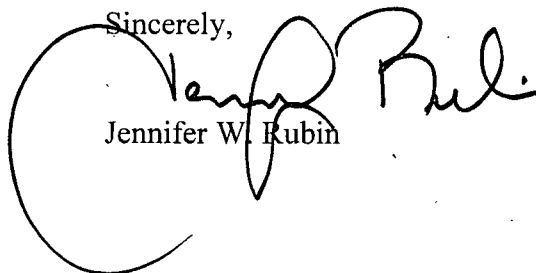
BB&T Mortgage
Non-Performing Assets
1-800-827-3722 ext.28790

EXB 2

1. Branch Banking and Trust Company is the holder of the Note.
2. The amount owed on the subject loan as of August 19, 2010 is \$182,527.89.
3. The loan does indeed have private mortgage insurance coverage as required.
4. Private mortgage insurance only covers the creditor for a loss under specific circumstances. It does not reimburse you in any way.
5. Private mortgage insurance carrier has been notified that the loan is delinquent and in default.
6. Private mortgage insurance only pays a creditor when a loss is suffered. Your obligations are set forth pursuant to the Note and Mortgage you signed (see attached).
7. Private mortgage insurance only pays a creditor when a loss is suffered. Please see the Validation of Debt in respect to your dispute. Assuming you resolve this delinquency, the mortgage insurer would owe nothing under the policy.

In Response to all Requests: Please find enclosed a copy of the Note, Mortgage, Validation of Debt and Payment History.

Sincerely,



Jennifer W. Rubin

JWR/tsm
Enclosures

**THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE.**

EXB 2

MLH452

CUSTOMER HISTORY STATEMENT AS OF: 12/31/08

LOAN # ██████████
WILTON H CAIN
CASSANDRA M DURRAH CAIN
259 CLAYBURNE DR
GOOSE CREEK SC 29445

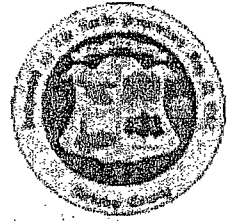
PROPERTY ADDRESS: 259 CLAYBURNE DR
GOOSE CREEK SC 29445

ACTIVITY FROM 01/01/08 TO 12/31/08

PROC DTE	DUE DTE PD	TRAN	DESCRIPTION	L-C AMT	SUSPENSE AMT	OTHER AMT
TRANSACTION AMT	PRINCIPAL AMT PRINCIPAL BAL	INTEREST AMT	ESCROW AMOUNT ESCROW BALANCE			
09/18/08	08/08	310	MORTGAGE INSURANCE DISBURSEMENT			
97.70-	.00	.00	97.70-	.00	.00	.00 PAYEE: 011
	173113.21		332.36			
09/04/08	09/08	171	PAYMENT			
1264.50	174.90	902.54	187.06	.00	.00	.00
	173113.21		430.06			
08/19/08	09/08	351	HAZARD DISBURSEMENT			
740.00-	.00	.00	740.00-	.00	.00	.00 PAYEE: 70909
	173288.11		243.00			
08/15/08	07/08	310	MORTGAGE INSURANCE DISBURSEMENT			
97.70-	.00	.00	97.70-	.00	.00	.00 PAYEE: 011
	173288.11		983.00			
08/04/08	08/08	171	PAYMENT			
1264.50	173.99	903.45	187.06	.00	.00	.00
	173288.11		1080.70			
07/16/08	06/08	310	MORTGAGE INSURANCE DISBURSEMENT			
97.70-	.00	.00	97.70-	.00	.00	.00 PAYEE: 011
	173462.10		893.64			
07/07/08	07/08	171	PAYMENT			
1264.50	173.09	904.35	187.06	.00	.00	.00
	173462.10		991.34			
06/20/08	05/08	310	MORTGAGE INSURANCE DISBURSEMENT			
97.70-	.00	.00	97.70-	.00	.00	.00 PAYEE: 011
	173635.19		804.28			
06/04/08	06/08	171	PAYMENT			
1264.50	172.19	905.25	187.06	.00	.00	.00
	173635.19		901.98			
05/15/08	04/08	310	MORTGAGE INSURANCE DISBURSEMENT			
97.70-	.00	.00	97.70-	.00	.00	.00 PAYEE: 011
	173807.38		714.92			
05/05/08	03/08	310	MORTGAGE INSURANCE DISBURSEMENT			
97.70-	.00	.00	97.70-	.00	.00	.00 PAYEE: 011
	173807.38		812.62			
05/05/08	05/08	171	PAYMENT			
1264.50	171.30	906.14	187.06	.00	.00	.00
	173807.38		910.32			
04/04/08	04/08	171	PAYMENT			
1264.50	170.41	907.03	187.06	.00	.00	.00
	173978.68		723.26			
03/14/08	02/08	310	MORTGAGE INSURANCE DISBURSEMENT			

EXB 3

Unofficial Berkeley County Property Card



Summary Information:

TMS: 2440304016	Council District: C3	Neighborhood: S049 - MULBERRY PARK (LIBERTY HALL TRAC
Parent TMS: 235-00-00-047	Fire District: F18	Appraiser ID: DR
Owner Information:	Tax District: T18	Lot: 704 Block: Section: 10A
BAKER JOSEPH & NANETTE MARIE	TIS Zone: 9	Zoning: Goose Creek - PD
259 Clayburne Dr	Jurisdiction: 1P	Homestead Exempt: No
Goose Creek, SC 29445-3484	Acres: 0.00	Notes:
	Lots: 1.0	ADD NEW RES PER SALE 9/07
		SALE NO CHANGE 10/07
		1-2-08

Site addresses:		
259 CLAYBURNE DR		
GOOSE CREEK, SC 29445, Unit/Lot:		

Previous Owner History:

Owner: FEDERAL HOME LOAN MORTGAGE CORPORATION	Sale Date: 10/03/2012	Sale Price: \$154,000.00	Deed Book-Page: 9782 - 342	Plat:
Owner: CAIN WILTON H & CASSANDRA M DURRAH SURVIVORSHIP(MASTER DEED)	Sale Date: 09/02/2011	Sale Price: \$121,500.00	Deed Book-Page: 9111 - 192	Plat:
Owner: CENTEX HOMES	Sale Date: 09/19/2007	Sale Price: \$184,468.00	Deed Book-Page: 6868 - 0155	Plat: CAB R - 243A

Sales Information:

Last Sale Date: 10/03/2012	Plat Information:	Sales Validity: 0A
Recording Date: 11/08/2012	Deed Book: 9782	Validity Other:
Sale Price: \$154000	Deed Page: 342	

Valuation Information:

Building Market: 110,000	Building Taxable (4% Res): 110,000	Land Taxable (4% Res): 43,000
Land Market: 43,000	Building Taxable (6% Other): 0	Land Taxable (6% Other): 0
	Building Taxable (4% Ag): 0	Land Taxable (4% Ag): 0
	Building Taxable (6% Ag): 0	Land Taxable (6% Ag): 0
	Total Taxable Value: 153,000	Total Assessment: 6,120

Fee Summary:

Fee Name	Fee Amount
Goose Creek Sanitation Fee	135
Land Fill Fee	75

EXB 4



Berkeley County Government

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Ownership	Tax Info	Map Info	Property Card
---------------------------	--------------------------	--------------------------	-------------------------------

Ownership & Location Information

Parcel #:	2440304016
Location:	259 CLAYBURNE DRIVE
Legal Description:	LOT 704 BLK
On Tax Books As:	BAKER JOSEPH & NANETTE MARIE
Deed Book/Page:	9782 /342
Plat Book/Page:	/
Present Owner:	BAKER JOSEPH & NANETTE MARIE
Lender Name:	NONE ON FILE
Tax District:	18
Neighborhood:	S049 /MULBERRY PARK (LIBERTY HALL TRAC
Deed Recorded Date:	11/08/2012
# Of Buildings:	1
Current Taxable Value:	153,000.00
Current Taxable Value may reflect CAP or Market Value:	FUTURE USE

Property Card is from AssessPro -- Non standard html port # 91 is used to deliver the property card

- Print current page's data

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ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200
COLUMBIA, SOUTH CAROLINA 29202
P 803.771.7900 F 803 343-7017
W RTT-LAW.COM

Erica G. Lybrand
Erica.Lybrand@RTT-LAW.COM
P 803.744-5289
LICENSED IN SOUTH CAROLINA

Karissa Richardson
Paralegal for Erica G. Lybrand
Karissa.Richardson@RTT-LAW.COM
P: 803-744-5323



February 8, 2016

The Honorable Mary P. Brown
Clerk of Court for Berkeley County
P.O. Box 219
Moncks Corner, SC 29461

RE: *Branch Banking and Trust Company v. Wilton H. Cain; Cassandra M. Durrah-Cain; Liberty Hall Residential Property Owners Association, Inc.*
C/A # 2010-CP-08-03514
RTT File # 504335-02111

Dear Ms. Brown:

Enclosed are an original and one copy of a Certificate of Service for the above referenced matter. Please file the original document and return the clocked copy to me in the envelope provided for the Court's convenience.

With kind regards, I remain

Cordially yours,

A handwritten signature in black ink, appearing to read "KR", is written over a horizontal line.

Karissa Richardson
Paralegal for Erica G. Lybrand

Enclosures

cc:

Joseph E. DaPore, Esquire
PO Box 993
Charleston, SC 29402

ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210
P. 803.771.7900 F. 803.343-7017
W. RTT-LAW.COM

Erica G. Lybrand
Erica.Lybrand@RTT-LAW.COM
P. 803.744-5289
LICENSED IN SOUTH CAROLINA

Karissa Richardson
Paralegal for Erica G. Lybrand
Karissa.Richardson@RTT-LAW.COM
P. 803-744-5323



January 5, 2016

VIA U.S. MAIL AND EMAIL

The Honorable Mary P. Brown
Clerk of Court for Berkeley County
P.O. Box 219
Moncks Corner, SC 29461

RE: *Branch Banking and Trust Company v. Wilton H. Cain; Cassandra M. Durrah-Cain; Liberty Hall Residential Property Owners Association, Inc.*
C/A # 2010-CP-08-03514
RTT File # 504335-02111

Dear Ms. Brown:

Enclosed are an original and one copy of the Plaintiff's Brief Regarding Deficiency Judgment and Certificate of Service for the above referenced matter. Please file the original document and return the clocked copy to me in the envelope provided for the Court's convenience.

With kind regards, I remain

Cordially yours,

A handwritten signature in black ink, appearing to read "K. Richardson", is written over a horizontal line.

Karissa Richardson
Paralegal for Erica G. Lybrand

Enclosures

cc:

Joseph E. DaPore, Esquire
PO Box 993
Charleston, SC 29402

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook Master of Equity

Case No. 2010-CP 08-3514


Appellate Case No. 2016-000292

Branch Banking and Trust Company -----Respondent,
v.

Wilton H. Cain: Cassandra M. Cain-----Appellants

PROOF OF SERVICE

I Wilton and Cassandra Cain certify that we have served a copy of the Brief Of Appeal to Branch Banking and Trust at P.O Box 2027 Greenville, SC 29602-2027 and Roger Townsend & Thomas, PC at 220 Executive Center Drive P.O. Box 100200 (29202) by placing same in first class US MAIL on this date May 6,2016


Wilton And Cassandra Cain Appellants
6476 N. Highway 17
Awendaw, SC
8439913198
Appellant

State of South Carolina)	
)	
County of Berkeley)	
)	
Branch Banking and Trust Company,)	10-CP-08-03514
)	
Plaintiff,)	Transcript
)	
v.)	of
)	
Wilton H. Cain, et al,)	Hearing
)	
Defendants.)	

Date: January 14, 2016

Time: 11:04 a.m.

Location: Berkeley County Courthouse, Courtroom B
300-B California Avenue, Moncks Corner, South Carolina
29461

Reported by
Diane M. Hendricks

APPEARANCES

Presiding: The Honorable Dale E. Van Slambrook,
Master-in-Equity for Berkeley County

For the Plaintiff:

Erica G. Lybrand, Esq.
Rogers Townsend & Thomas, PC
220 Executive Center Drive
Columbia, South Carolina 29210

Pro-se Defendant:

Wilton H. Cain
6476 North Highway 17
Awendaw, South Carolina 29429

INDEX

Proceeding:

3

EXHIBITS

(There were no exhibits proffered.)

1 PROCEEDINGS:

2 THE COURT: All right. And we are here -- it's the
3 BB&T and Wilton Cain. And Mr. Cain is here
4 with us.

5 Good morning, Mr. Cain.

6 MR. CAIN: Good morning, Your Honor.

7 THE COURT: 2010-CP-08-03514. And this is relative
8 to an objection, I believe. I'm not sure
9 the -- the -- I want to make sure I -- I frame
10 it properly, relative to the valuation on the
11 property; is that correct?

12 MS. LYBRAND: I believe so, Your Honor. You had
13 entered an order reducing the deficiency
14 judgment based on the appraisal process that
15 was completed in this case. And I objected. I
16 think Mr. Cain objected to the deficiency order
17 that was entered, and I said, well, I would
18 rather this not be conducted via email. Any
19 kind of objections need to be made in writing
20 or by motion.

21 And then you asked us to go ahead and brief the
22 issue. Mr. Cain then filed a motion to dismiss
23 the deficiency, late 2015, so I think it was
24 like July 29th -- I mean, December 29th or 30th
25 of 2015, and I then -- I'm submitting my brief

1 in opposition to a reduction in the deficiency
2 judgment based upon his objections.

3 THE COURT: Okay. Yeah. That -- that tracks my
4 understanding that, pursuant to the statute we
5 went through, there were the appraisals that
6 were obtained, I issued an order setting the
7 value, I think it was \$168,000 ---

8 MR. CAIN: Sixty-eight.

9 THE COURT: And then -- then there's some
10 entitlement under the statute to allow for some
11 objection to that. There's the objection by
12 Mr. Cain ---

13 MR. CAIN: No. No, Your Honor.

14 THE COURT: Well, okay. If -- if -- if you don't
15 object, then we're done.

16 MR. CAIN: I never objected to the 168,000 ---

17 THE COURT: Okay. Well, you -- you -- you objected
18 to the deficiency amount that resulted from
19 that determination ---

20 MR. CAIN: Yes ---

21 THE COURT: --- right?

22 MR. CAIN: --- that.

23 THE COURT: And then you entered an objection as to
24 the ultimate order, that after the subtraction
25 in the numbers, and yours was as to an

1 application of mortgage insurance; is that
2 right?

3 MR. CAIN: Absolutely, sir.

4 THE COURT: Okay. So no objection as to the
5 168,000?

6 MR. CAIN: No.

7 THE COURT: Merely the objection or issue that
8 you've taken and -- and want to bring to my
9 attention relative to the mortgage insurance?

10 MR. CAIN: PMI. Yes, sir.

11 THE COURT: Okay.

12 MR. CAIN: Yes, Your Honor.

13 THE COURT: Okay. I just want to make sure I
14 framed it, framed it properly.

15 MR. CAIN: Yes. Yes, Your Honor.

16 THE COURT: I thought for some reason you were
17 telling me that -- that we were all okay ---

18 MS. LYBRAND: Uh-uh.

19 THE COURT: --- and we're all in agreement. I just
20 want to make sure that -- that -- that I didn't
21 misunderstand.

22 MR. CAIN: Okay.

23 THE COURT: I don't want to put words in anybody's
24 mouth. I just want to make sure I've got it
25 straight in my head.

1 MR. CAIN: Yes, sir.

2 THE COURT: So, my position or my -- I guess
3 the -- the way we're dealing with it is, is
4 that -- that this calculation is a continuation
5 of the appraisal process bringing it to its
6 conclusion as to a final determination; is that
7 correct?

8 MR. CAIN: I -- I guess that's fair.

9 THE COURT: Okay. Okay.

10 MS. LYBRAND: My -- my position on that would be
11 your order reducing the deficiency would have
12 been your final order, and that this is some
13 kind of motion to alter, amend, or otherwise
14 alter your final order, because he filed a
15 motion to dismiss your deficient -- your -- the
16 deficiency judgment.

17 THE COURT: Okay. Is there any -- is there any
18 objection from the plaintiff as to
19 the -- either the appropriateness of the filing
20 of -- of -- of that or the treatment as a
21 motion to alter or amend that order?

22 MS. LYBRAND: I'm happy to have the Court treat it
23 however you see ---

24 THE COURT: Okay.

25 MS. LYBRAND: --- fit. I -- I think, you know, you

1 filed the order reducing the deficiency
2 judgment. And then he filed his motion to
3 dismiss the deficiency judgment. I -- I'm not
4 sure in terms of like this -- you know,
5 post-foreclosure, post-sale motions, how that
6 should be treated, but I was kind of thinking
7 along the lines of a motion to alter or amend
8 your order entering the reduced deficiency
9 judgment.

10 THE COURT: All right. So, I -- I think what we'll
11 probably do, and -- and I think it's a valid
12 point. I want to make sure that procedurally
13 it's -- it's properly explained, so that if
14 there's an issue after today with the results,
15 that it's appropriate, that y'all can take
16 whatever steps following that. I don't want to
17 create any confusion that would inhibit either
18 one or both from -- from -- from continuing to
19 exercise your -- your rights. So, I'll hear,
20 relative to the positions that I think that
21 we'll treat today as exactly that: A motion to
22 alter or amend, or, in the alternative, a
23 conclusion relative to the appraisal process,
24 to envelope all of it, so that there isn't any
25 question that -- and that's it's timely -- that

1 it was timely filed, it's appropriately heard,
2 no procedural objection, so that the issuance
3 resulting from today would be the final order
4 after the motion to alter or amend, so that
5 there wouldn't have to be any other motions or
6 wouldn't necessarily require any additional
7 motions, not that there wouldn't be any. That
8 would be up to y'all. So -- all right. Sorry
9 for boring and confusing y'all on that. I just
10 wanted to make sure that that was -- that
11 was -- that we're all on the same page relative
12 to the positions.

13 Mr. Cain, you've -- you've -- you're in essence the
14 moving party on this.

15 MR. CAIN: Yes.

16 THE COURT: And you've provided me some written
17 explanation of -- of -- of your position. Tell
18 me again what you want me to do and why you
19 want me to do it.

20 MR. CAIN: Yes, Your Honor. Well, here's my
21 concern, Your Honor: And I'm not an attorney.
22 But, as I read the code of law, I find that the
23 insurance company, RMI, under equitable
24 subrogation, can possibly come back with
25 respect to the deficiency judgment. Any money

1 that they paid BB&T as a result of the default,
2 for the foreclosure, they can come back, under
3 the code of law, and sue me for what they paid,
4 what the insurance company paid BB&T or the
5 financing company, which was Freddie Mac. I've
6 seen a number of cases in South Carolina where
7 they are the third party, they may have that
8 right if they timely or whatever, you know,
9 situation is. But they would have that
10 specific right. So, here's my concern: My
11 concern is, is that if Freddie Mac, and when I
12 talked to Freddie Mac for the last two weeks,
13 they said the case is closed; BB&T tells me the
14 case is closed. Freddie Mac sold the house and
15 was paying the insurance, the -- as a result of
16 the default. So, if I'm going to have a
17 default with BB&T, that means twice. That
18 means the insurance company can come back on
19 that equitable subrogation, and sue me.
20 Whether they are successful or not, they do
21 have that right under the code of the law, and
22 then now, I'm faced with two deficiency
23 judgments: One with BB&T and one with them.
24 And my meaning of it is that BB&T
25 received -- not BB&T. The financing, their

1 service company. That Freddie Mac done
2 received what they lost. So they're not faced
3 with a loss. BB&T has been fully paid. In
4 fact, I think they've been paid more than what
5 the foreclosure required. They indicated to
6 Judge Watson that it was 25 percent insurance
7 on that; that comes to \$43,000. If the
8 deficiency judgment that is remaining, this
9 \$37,000, that leaves an additional \$6,000.
10 And, in all the cases I've read, if they
11 received more than what the judgment was, those
12 funds should be turned over to the Court for
13 the Court's discretion. And my concern is, is
14 that BB&T has been paid, then -- then they do
15 not have a right to be a part of the deficiency
16 judgment against them. It needs to be
17 dismissed as far as them. If the insurance
18 company wants to come back at me, fine. We'll
19 deal with that if they do. That's what I'm --
20 where I'm at.

21 THE COURT: Okay. All right. Thank you.

22 Yes, ma'am.

23 MS. LYBRAND: Your Honor, the insurance company has
24 an agreement with BB&T, as the mortgage
25 insurance company, by a subrogation agreement.

1 In order for the insurance company or BB&T to
2 seek to collect the -- the debt owed by
3 Mr. Cain, there would have to be a judgment in
4 order to collect. And that's what we're trying
5 to establish here, that there's a \$37,000
6 judgment that is owed by Mr. Cain as a result
7 of his default, as a result of the fact that
8 the property was sold for less than the
9 judgment amount, and that resulted after
10 the -- the -- the appraisal process and the
11 \$37,000 judgment. BB&T can seek to collect
12 that judgment or it can assign its right to
13 collection of that judgment to the mortgage
14 insurance company based upon any payments that
15 were made by the mortgage insurance company.
16 But, in order for that to happen, a judgment
17 has to exist. And that's what we're trying to
18 establish for the record today, Your Honor, is,
19 is that this judgment is owed by Mr. Cain; this
20 amount, this \$37,000, is the result of his
21 default on this mortgage loan. We went through
22 the appraisal process, he was given his rights
23 to the appraisal process, the appraisal process
24 did result in a reduction of the deficiency
25 judgment to the -- I think it was originally

1 like eighty -- \$83,000, and now it's \$37,000
2 based upon that appraisal process. But, we
3 have to establish that judgment amount in order
4 for anyone to have the rights to come back and
5 seek to collect that from Mr. Cain. In my
6 brief, you'll see, and I don't know if you've
7 had a chance to review it yet, that -- and
8 there's two points on this matter: One is the
9 statute itself, the appraisal statute, which
10 doesn't provide for any reduction of the
11 deficiency judgment other than by and through
12 the appraisal process, the value of the -- of
13 the property. It doesn't say that the -- the
14 deficiency judgment can subsequently be -- be
15 reduced by other considerations like mortgage
16 insurance or other payments made by third
17 parties. It strictly gives this process for a
18 reduction of the deficiency judgment in the
19 event that the appraisal comes back at an
20 amount higher than what's bid in at the
21 foreclosure sale.

22 Secondarily, I use the collateral source rule here
23 in South Carolina as a means to illustrate the
24 equitable position that plaintiff is taking in
25 this matter. There's no point -- you know,

1 collateral source rules are used mostly in tort
2 actions here in South Carolina where, after a
3 party, insurance carrier pays out a benefit to
4 the insured, and oftentimes, the third party
5 who caused the accident or whatever tort that's
6 being sued upon, seeks to have that judgment
7 reduced by the amount that the insurance
8 company pays for. The law's pretty clear in
9 South Carolina that you can't reduce a debt
10 that's owed or an amount that's owed by that
11 party due to the payment of insurance funds in
12 a situation where that payment's made by a
13 source wholly independent of the wrongdoer. In
14 this -- and it's for the specific reason, the
15 subrogation reason, in those cases, which is,
16 that that insurance carrier should be able to
17 go after that party for the judgment amount,
18 just like the -- the original person who's
19 injured. And so what -- what we have here
20 today, Your Honor, is a situation where
21 plaintiff is simply trying to establish that
22 this is the judgment amount, this is the amount
23 due by Mr. Cain. Mr. Cain should not get the
24 benefit of insurance being paid to reduce the
25 debt that he legitimately owes, and that's been

1 established by both the foreclosure and now the
2 appraisal process post foreclosure. And that
3 we need to be able to establish this debt for
4 it to be able to be collected from Mr. Cain in
5 the -- in the event that that happens down the
6 road.

7 MR. CAIN: (Rises.)

8 THE COURT: And I'll -- I'll -- I'll come back to
9 you, Mr. Cain. I just want to make sure I
10 understand.

11 And -- and I've -- and you've given me a different
12 way to look at it, and thank you. In essence,
13 you -- the argument, the first argument or
14 position is none of this stuff that -- that Mr.
15 Cain has raised matters. I've calculated the
16 amount based upon the appraisal, entered a
17 judgment figure, and what he is essentially
18 arguing is some sort of a credit or offset that
19 is not relevant to or not a part of the -- the
20 appraisal statute process. Is that right?

21 MS. LYBRAND: Correct.

22 THE COURT: How would you anticipate that, if there
23 was some other source, if there was some matter
24 outside the realm of -- of mortgage insurance
25 that reduced this amount, how would he seek to

1 have that -- how would he seek to have that
2 judgment figure changed?

3 MS. LYBRAND: Well, to be honest, Your Honor, I
4 think at the point that we're at in -- in this
5 particular process, that there is not -- unless
6 he pays some portion of that judgment, once
7 the ---

8 THE COURT: Well ---

9 MS. LYBRAND: --- judgment is -- is determined that
10 that amount is what he owes, and unless he pays
11 it, there shouldn't be anything that reduces
12 it.

13 THE COURT: Let's say -- let's say he pays it, he
14 pays \$10,000?

15 MS. LYBRAND: Then, I would think, in the event
16 that the amount, the full amount, the 37. So
17 let's say he pays \$10,000, and the full amount
18 of the 37, if it's sought -- if the plaintiff
19 or the mortgage insurance carrier seeks to
20 collect the entire 37 down the road, he would
21 have a challenge at that point saying, "Listen,
22 I paid you \$10,000 in 2015 ---

23 THE COURT: Okay.

24 MS. LYBRAND: --- at the -- you know, I don't owe
25 you the full 37." Of course, then he'd still

1 be subject to post-judgment interest, so
2 it -- the -- all of these amounts, you know,
3 come into play at that point. But, in -- in
4 the event that he pays something towards that
5 judgment and they try to collect more than what
6 he owes, at that point when they try to collect
7 it would be where he would have this ability
8 to -- to argue that he doesn't owe that amount.
9 I don't think that it's appropriate at this
10 stage, once the order is entered providing the
11 amount that he owes pursuant to this judgment,
12 that unless he makes some kind of payment, that
13 there be any other considerations in the amount
14 that he owes.

15 THE COURT: If he -- if he had paid money in the
16 meantime, if last year before this thing had
17 finalized, he paid the \$10,000, wouldn't it be
18 appropriate for me to consider that?

19 MS. LYBRAND: You mean like if the judgment
20 amount -- because there was a judgment that was
21 entered in the amount of \$83,000. If he had
22 paid \$10,000, certainly at that point his
23 payment would be considered a reduction of that
24 original \$83,000, which you would have had to
25 take into consideration in the amount that you

1 would finally enter. But, I think it would be
2 a separate consideration. I don't think you'd
3 say, "I'm going to reduce the judgment in whole
4 by these amounts and here's the final judgment
5 amount." I think you'd say, "Here's the final
6 judgment amount. But he's also paid \$10,000,
7 so the actual amount owed at this time is 27."

8 THE COURT: Okay.

9 MS. LYBRAND: I think that a payment by Mr. Cain
10 would have to be a separate consideration in
11 this process, and not, according to statute,
12 not part of the actual determination of the
13 debt owed.

14 THE COURT: Okay. Thank you.

15 Mr. Cain?

16 MR. CAIN: You Honor, bear with me, Your Honor.

17 With reference -- first, with reference to the
18 statutes in the State of South Carolina, in all
19 foreclosure actions, the plaintiff is only
20 allowed to collect that which is due. In other
21 words, a foreclosure value. That's all they're
22 allowed to collect. Anything over that comes
23 into the Court's jurisdiction. That's number
24 one.

25 Number two, the insurance company is a third party.

1 This foreclosure deal is with no one but
2 Freddie Mac who -- who is the lender, and BB&T
3 who is the servicer. Freddie Mac is the one
4 who my responsibility to pay back is through
5 them, not BB&T. Freddie Mac. If Freddie Mac
6 has received the income or the money that was
7 due, they no longer have a claim. So we need
8 to separate them. The insurance company
9 themselves is a third party. They're only
10 involved in this if they pay money as a result
11 of a default. That's where the -- the
12 subrogation comes in at, okay? They can -- and
13 they don't need them and their authorization to
14 sue. According to their own paperwork that
15 they sent me, and the loan papers itself, it
16 separates the insurance company on the PMI
17 authority to sue. And it says specifically
18 that they have the right to sue for the money
19 that they paid in -- in regards to any default,
20 not authorization from the plaintiff, then they
21 can sue. They have a specific right under
22 their agreement to sue. It's on Page 123 of
23 their paperwork.

24 That also, to get back to the collateral source,
25 it's totally irrelevant for the simple reason,

1 every case on collateral source in the State of
2 South Carolina has a clause in it. And that
3 clause says that it is independent of the
4 plaintiff -- I mean, the defendant. Mortgage
5 insurance is not independent of me. Number
6 one, it's based on my contract with the lender.
7 Number two, I paid for the mortgage insurance.
8 Number three, the mortgage insurance, I could have
9 it canceled if certain conditions aren't met.
10 It's not totally independent of me.
11 So it has nothing to do with collateral source.
12 Collateral source is involving personal
13 injuries as well. There was an attempt
14 to -- to relate them in some of their cases,
15 but they've never been related in South
16 Carolina. These are two different things.
17 BB&T and the -- I mean, the lender is one
18 thing, and the insurance is another thing. We
19 should not be putting them together.
20 BB&T -- the insurance company does not need an
21 order from BB&T saying the default exists.
22 They can come back and sue under equitable
23 subrogation with the money that they paid
24 strictly to the mortgage company.
25 THE COURT: Isn't the -- the mortgage insurance

1 company subrogated to the rights of the
2 original lender?

3 MR. CAIN: I -- you -- you lost me. Let me say
4 what -- what I think you're trying to say to
5 me. Their agreement with the PMI, Republic
6 Mortgage, is that if there's a default, they
7 have in their agreement that Republic Mortgage
8 has a right to sue. Is that what you're
9 saying?

10 THE COURT: I'm asking you. If -- under the
11 language of the -- of the agreement between the
12 mortgage insurance company and the -- and the
13 lender, doesn't the mortgage insurance company,
14 aren't they subrogated to the rights of the
15 lender?

16 MR. CAIN: If there's a default.

17 THE COURT: No. It -- I mean, if -- are -- are
18 they or aren't they?

19 MR. CAIN: I -- I'm -- I'm not understanding what
20 you're -- what you're trying to get me to say.
21 When you say are they subrogated to them, you
22 mean are they dependent upon them?

23 THE COURT: Are they subrogated.

24 MR. CAIN: No. I would say no, then. If ---

25 THE COURT: Okay.

1 MR. CAIN: If that's what you're asking me.

2 THE COURT: Okay.

3 MS. LYBRAND: Your -- Your Honor, if I might
4 respond. Mr. Cain is making my point for me in
5 that there has to be a judgment in order for
6 the mortgage insurance company to be able to
7 come back and collect against Mr. Cain. In
8 this case, as a third party, the mortgage
9 insurance company can't step in and enter a
10 judgment in this case. BB&T is the original
11 plaintiff, the one who was originally
12 the -- the loss payee essentially, the -- the
13 one who made -- who had originally had the loss
14 in this case, and has established this debt
15 owed by Mr. Cain; it has to establish that
16 amount. And then, pursuant to the subrogation
17 rights, yes, the mortgage insurance carrier
18 subrogated to the rights of -- of BB&T to this
19 judgment amount. And so, in the event that
20 there is an ability to collect this amount,
21 this judgment has to be established to do so.
22 The mortgage insurance carrier can't just
23 willy-nilly sue Mr. Cain, especially if this
24 deficiency is extinguished, can't just come in
25 to court and say, "Mr. Cain owes us this

1 money," when there's been no debt -- debt
2 established by the Court. And so that's what
3 I'm trying to say in -- in this -- in this
4 case, Your Honor, is that there has to be a
5 debt established in order for anyone to have a
6 right to sue Mr. Cain to collect it. And so
7 that's where we're -- we are in this case. And
8 that -- and that -- I would also mention for
9 the record that there's been no official
10 testimony or evidence presented or anything of
11 that nature as part of any prior proceedings
12 with regard to the actual amount of deficiency,
13 whether or not deficient -- or mortgage
14 insurance, and whether or not mortgage
15 insurance was actually paid in this case. And
16 so we're talking about a whole lot of what-ifs,
17 and that is normally not even a problem,
18 because, like I said, the deficiency judgment
19 is entered in favor of the original plaintiff,
20 then the mortgage insurance company has that
21 right of subrogation to collect that judgment
22 pursuant to its rights under the mortgage
23 insurance contract, which I have attached to my
24 brief for your -- for your review as well.
25 And -- and the subrogation rights are explained

1 as part of .7.3 in that contract, which
2 specifically says that the company shall be
3 subrogated pro rata to the full extent
4 permitted by law to all the insurance recovery
5 rights with respect to a loan upon a payment of
6 a claim.

7 So -- and this -- this contract requires the
8 plaintiff, the mortgage -- the company
9 to -- mortgage company to pursue its deficiency
10 rights in the event that they can in order to
11 obtain a judgment that can later be collected
12 upon pursuant to the subrogation rights of the
13 company. So I would just ask Your Honor that
14 you confirm the entry of your order reducing
15 the deficiency judgment to an amount of I
16 believe it was \$37,393.82 pursuant to -- to
17 that. And I could -- I could speak on the
18 issues of the collateral source rule that he
19 was mentioning, if you want. If -- if you want
20 me to.

21 THE COURT: No. No. You ---

22 MR. CAIN: Okay.

23 THE COURT: You've argued sufficiently on that.

24 MS. LYBRAND: Okay.

25 THE COURT: Mr. Cain, in support of your position

1 and -- and -- and motion, did you have any
2 affidavits, any documents, or testimony, other
3 than ---

4 MR. CAIN: Well ---

5 THE COURT: --- the arguments that you presented in
6 those documents?

7 MR. CAIN: Well, Your Honor, the only thing -- the
8 only thing that I have with reference to
9 Republic Mortgage is my personal conversation
10 with Republic Mortgage, a representative. And,
11 in September in 2010, the question came up
12 about the mortgage insurance.

13 THE COURT: Uh-huh.

14 MR. CAIN: And BB&T's representative notified the
15 Court that it was 25 percent, okay?

16 THE COURT: Okay. But, as far -- as far as today,
17 did you have any documentation, letters,
18 affidavits, paperwork that you want to submit
19 as -- that would be evidence or testimony
20 today, other than your -- than your argument?

21 MR. CAIN: Well, not -- not here. No. No, Your
22 Honor. I would only ask that -- well, my
23 question would be, is BB&T alleging that no
24 default was paid, and ---

25 THE COURT: Well, my -- my question is do you have

1 anything that you're going to give to me that
2 you want me to consider as far as evidence,
3 other than what you've already submitted to me?

4 MR. CAIN: Well, Your Honor, no, Your Honor,
5 because this is just a -- a response from the
6 plaintiff on some questions that was asked in
7 September as to the amount ---

8 THE COURT: I'm talking about today.

9 MR. CAIN: No. No, Your Honor.

10 THE COURT: Okay.

11 MR. CAIN: No, Your Honor.

12 THE COURT: Okay. All right.

13 MR. CAIN: I have one other thing to say, Your
14 Honor. In reference to -- to this, according
15 to the contract that they have, if the
16 foreclosure was judged on, and it was
17 foreclosed, that gives them the -- the mortgage
18 company a right to come back and sue me. They
19 don't need any special judgment on that. Just
20 that the foreclosure was foreclosed and that it
21 was defaulted, and then they can come back and
22 sue for the amount that they paid in reference
23 to a default. They don't need a special
24 judgment on that.

25 THE COURT: You're talking about the mortgage

1 insurance company?

2 MR. CAIN: The mortgage insurance. They don't need
3 a special judgment on it. They've already got
4 enough judgments that they spent their money
5 and it was defaulted, Your Honor.

6 THE COURT: And you have -- you haven't been sued
7 by any mortgage insurance company?

8 MR. CAIN: Not at this point. No, Your Honor.

9 THE COURT: Have you been contacted by them
10 requesting any money?

11 MR. CAIN: No, Your Honor.

12 THE COURT: Okay. All right.

13 Okay. I thank y'all. I -- I appreciate it,

14 the -- the arguments and the -- the
15 presentation on it. What I'll probably do is
16 re-read the documentation, and briefs which
17 y'all provided, and consider what y'all have
18 said today, and issue an order.

19 And -- and -- what I'll do is I'll either issue
20 the order myself or request one or both to
21 submit proposed orders. If I request a
22 proposed order, that's not the order; that's
23 just a request from the order. It's not an
24 order until it's signed on there. I can change
25 it out and I can change it all the way around.

1 Just so -- and if -- if -- if I request that,
2 that's not an invitation to discuss or continue
3 the argument, okay? I know that's the ---

4 MR. CAIN: (Nods head.)

5 THE COURT: The natural tendency to it. I
6 just -- I just want to clarify that because I
7 don't want to get to the -- to the -- going
8 back and forth on the -- on the email.

9 MR. CAIN: Yes, Your Honor.

10 THE COURT: Kind of, it started before. So, if I
11 request that, then I'll --- we'll -- we'll do
12 that. And then whatever or as a result of the
13 issuance of any order, then y'all can take
14 whatever steps you want to take. Okay?

15 MR. CAIN: Yes, Your Honor.

16 MS. LYBRAND: Thank you, Your Honor.

17 THERE BEING NOTHING FURTHER.

18 (WHEREUPON, the within hearing adjourned at 11:33 a.m.)


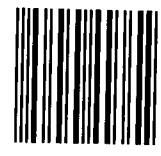
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