

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Case No: 2007-CP-12-0559

Case Tracking Number: 2009-146186

RECEIVED

OCT 30 2012

S.C. Supreme Court

HSBC as Trustee, for the registered holders of Normura Homes

Equity Home Loans, Inc., Asset-Backed.

Respondents

VS

Nathaniel McMickens

Glenda L. McMickens

Appellants

Pro-Se

PETITION FOR WRIT OF CERTIORARI AND APPENDIX

The reason for this petition is there a conflict within HSBC Bank we have documents to show no mortgager and we have documentation showing that the mortgage is paid in full. We are including all the documentation. The letters included is confirmation for account number#008560641 of HSBC paid in full. The other letter is confirmation for the account#007186466 of Coastal Capital Corporation which is paid in full. We are also including two affidavit of the debt that HSBC and Coastal Capital Corporation is paid in full. Also included are documents I received from Korn Law Firm stating that HSBC is the holder of the note and the mortgage. I received a letter from the Executive office which states they act as trustee for certain loan securitization. They didn't state they were the holder of our mortgage loan. This is a conflict between what Korn Law Firm has stated and the letter that I have received. We are asking the Supreme Court to grant us the opportunity to present our case. Thank you advance for your time and patience in this matter.

October 25,2012

Mr. and Mrs. Nathaniel and Glenda L. McMickens

2834 James F. Wherry Road

Chester, South Carolina 29706

803-581-8700

Appellants

Signed:

Nathaniel & Glenda McMickens

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Case No: 2007-CP-12-0559

Case Tracking Number: 2009-146186

HSBC as Trustee, for the registered holders of Normura Homes

Equity Home Loans, Inc., Asset-Backed.

Respondents

VS

Nathaniel McMickens

Glenda L. McMickens

Appellants

Pro-se

PROOF OF SERVICE

PETITION FOR WRIT OF CERTIORARI AND APPENDIX

I, certify that I have served the Petition for Writ of Certiorari and Appendix to South Carolina Supreme Court 1231 Gervais Street Columbia, South Carolina 29201, South Carolina Court of Appeals 1015 Sumter Street, Columbia, SC 29201, and HSBC Bank as Trustee represented by Korn Law Firm 1300 Pickens Street P.O. Box 12369 Columbia, South Carolina 29211-2369. Thank you in advance for your time and patience in this matter.

October 25, 2012

Mr. and Mrs. Nathaniel and Glenda L. McMickens

28344 James F. Wherry Road

Chester, South Carolina 29706

803-581-8700

Appellants

Signed: Nathaniel & Glenda McMickens



HFC/Beneficial
Member HSBC Group
961 Weigel Drive
Elmhurst, IL 60126

July 30, 2012

Nathaniel McMickens
Glenda McMickens
2834 James F. Wherry Rd.
Chester, SC 29706

RE: Account # 008560641

Dear Mr. and Mrs. McMickens:

This letter is in response to your recent inquiry with our Executive Services Department regarding the above referenced account.

You may use this letter as confirmation that the account referenced above has been paid in full, effective May 04, 2006. You now have a zero balance.

If you have any questions regarding this response, you can reach our Customer Resolution Department at (888) 892-9506.

Sincerely,

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

Marcos Sierra
Customer Resolution Department

SM^{CM}



September 5, 2012

Nathaniel McMickens
Glenda McMickens
2834 James F. Wherry Road
Chester, SC 29706

Dear Mr. and Mrs. McMickens:

Your correspondence dated August 5, 2012 was received in the Executive Office of HSBC Bank USA, N.A. Thank you for taking the time to speak with me on September 5, 2012. I appreciate the opportunity to respond.

As discussed, HSBC Bank U.S.A. acts as a trustee for certain loan securitization trusts in connection with the issuance of mortgage backed securities. As trustee, the bank has only a nominal role with the respect to the properties owned by the trust. Under the agreements that establish the trusts, other companies are designated as the servicers of the loans and those servicers handle matters such as mortgage foreclosures, loan modifications, evictions and sales of foreclosed trust properties.

I am sorry we couldn't be of more assistance; however, it is important we supply contact information for the organization who can address your needs directly. Should you require any additional information, please contact the loan servicer, Ocwen Loan Servicing. Ocwen's Customer Service Department may be reached at 1-800-746-2936.

Yours sincerely,

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

Christina Sittniewski
Executive Office

October 18, 2012

Name: Evangelist Gail L. McCullough

Occupation: Teacher

1. I, Evangelist Gail L. McCullough, affirm that I saw papers held by Glenda L. McMickens and sent from Coastal Capital stating that her loan was paid off.
2. I, Evangelist Gail L. McCullough, affirm that I saw a letter written by HSBC Bank stating that Nathaniel and Glenda L. McMickens that their loan was paid off and their names were no longer in the system.

Yours Truly,

Evangelist Gail L. McCullough

Evangelist Gail L. McCullough

STATE OF SOUTH CAROLINA COUNTY OF CHESTER

I, the undersigned Notary Public, do hereby affirm that Gail McCullough personally appeared before me on the ____ day of October 2012, and signed the above Affidavit as her free and voluntary act and deed

X Mona J. Caldwell Jr.

Notary Public

Dated 10-18-2012

AFFIDAVIT OF DEBT PAID OFF

Name: Glenda L. McMickens, swear or affirm:

1. That I am the Owner of the home at 2834 James F. Wherry Road Chester, South Carolina 29706.
2. That on April 28, 2006 I had two people to come to my home to write up a mortgage with Coastal Capital Corporation in 2 Paragon Way Freehold, New Jersey 07728.
3. The loan was for \$92,000 the account number #007186466 but something happened with the loan and I decided not to go through with it and I had 10 days to close out on this deal.
4. So the first week of May 2006 I called and stopped the process of the loan with Coastal Capital Corporation. I did not receive any money from the loan.
5. At that time Coastal Capital Corporation said that they cancel the debt and will send me the proper documentation regarding the closure of the loan.
6. In July 2006 I received papers in the mail stating that the loan had been closed. The copy of the document and the envelope is included with this affidavit.

Further affiant saith not.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

10/05/2012

Date

Glenda L. McMickens

Glenda L. McMickens

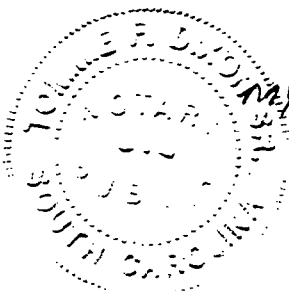
STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

I, the undersigned Notary Public, do hereby affirm that Glenda L. McMickens personally appeared before me on the ___ day of October 2012, and signed the above Affidavit as her free and voluntary act and deed.

Tommy F. Dyer, Sr.

Notary Public of S.C.





June 30, 2006

NATHANIEL MCMICKENS
GLENDA MCMICKENS
2834 JAMES F. WHERRY ROAD
CHESTER, SC 29706

Re: NOTICE OF LOAN SATISFACTION
ACCOUNT LOAN #: 007186466
PROPERTY ADDRESS: 2834 JAMES F. WHERRY ROAD CHESTER, SC 29706

Dear Mortgagor(s):

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, has been paid in full accordingly, effective July 17, 2006 to Coastal Capital Corporation and will not accept payments. If you have any questions regarding this response, you can reach customer service at 888-840-2227 Monday through Friday 9AM-5PM EST.

Sincerely,

Coastal Capital Corporation

Contact Information:
Customer Service: (888) 840-2227
Fax: (877) 679-2627
2740 N. Dallas Parkway, Suite 100, Plano, TX 75093

FILED
2012 OCT -5 1 A 9:14
CLERK OF COURT
CHESTER CO S.C.

CLERK OF COURT
CHESTER CO S.C.

2012 OCT -5 A 9:14

FILED



COASTAL CAPITAL CORP.

The Mortgage Wave of the Future

2740 North Dallas Parkway, Suite 100
Plano, TX 75093

NORTH TEXAS F&DC

TX 750 2 T

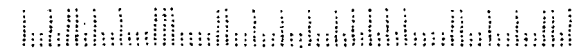
01 JUL 2006 4 PM U.S. POSTAGE

1435 \$00.39 JUN 30 2006

3582 MAIL FROM ZIP CODE

75093

25706+8453



KORN LAW FIRM, P.A.

ATTORNEYS AND COUNSELORS AT LAW
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

Peter D. Korn
John S. Kay
Dean A. Hayes
Alan M. Stewart*
H. Guyton Murrell

**Also Admitted in North Carolina*

MAILING ADDRESS
POST OFFICE BOX 12369
COLUMBIA, SOUTH CAROLINA 29211-2369
(803) 252-5817
FACSIMILE (803) 231-2060

John B. Kelchner
Suzannah Hayes
Meredith S. Lee
Ashley Zarratt
Wylie W. Clarkson
Christopher Truluck

2
August 1, 2012

Chester County Clerk of Court
Post Office Drawer 580
Chester, SC 29706

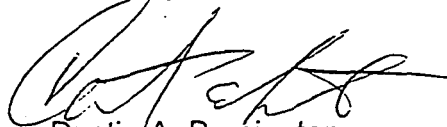
RE: HSBC Bank, et al. v. Nathaniel McMickens, et al.
C/A No.: 2007-CP-12-0559
Our File No.: F27-03230

Dear Sir or Madam:

Enclosed, please find the original and a copy of the Affidavit of Debt in connection with the above referenced action. Please file these for record and return a copy to me in the self-addressed, stamped envelope provided.

Feel free to contact me with any questions or concerns.

Sincerely,



Dustin A. Brasington
Litigation Paralegal

/dab
Enc. (as stated)

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

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

HSBC Bank as Trustee for the registered
holders of Nomura Home Equity Home Loan,
Inc., Asset-Backed Certificates, Series 2007-2,

PLAINTIFF,

vs.

Nathaniel McMickens, Glenda McMickens and
Robert Cooke,

DEFENDANT(S).

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Robert Cooke,

PLAINTIFF,

vs.

Glenda McMickens, Nathaniel McMickens and
Mortgage Electronic Registration Systems, Inc.
as nominee for Coastal Capital Corp.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2007-CP-12-0559

IN THE COURT OF COMMON PLEAS

C/A NO: 2007-CP-12-034

AFFIDAVIT OF DEBT

F27-03230

The undersigned, being duly sworn, states that he/she, Donovan L. Pitterson, is an employee of Ocwen Loan Servicing, LLC as Attorney In Fact Under a Limited Power of Attorney for HSBC Bank which, in its regular course of business, keeps records of all loans held by it, including the loan at issue in this case and that he/she is employed as Contract Manager with Ocwen Loan Servicing, LLC, and in that position has access to and personal knowledge of the information contained in the loan records maintained by it.

The undersigned further states that HSBC Bank is the holder of the note and mortgage entered into by Nathaniel McMickens and Glenda McMickens; that copies of the note and mortgage are attached as Exhibits A and B, respectfully; and that the mortgagor is in default for failing to make the monthly payments on the note.

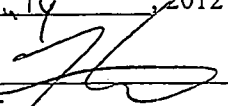
The undersigned further states that the following amounts, exclusive of attorney's fees and costs are due on this loan as follows:

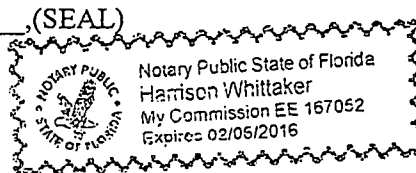
Principal	\$91,524.77
Interest Accrued (June 1, 2007 through July 24, 2012 at 10.75%)	\$50,209.32
Escrow Advances	\$3,566.86
Fees	
Late Charges	\$321.95
Less Suspense Balance	(\$252.14)
 TOTAL AMOUNT DUE:	 \$145,370.76

OCWEN LOAN SERVICING, LLC, *its ATTORNEY-IN-FACT.*


By: Donovan L. Pitterson
Its: Contract Manager

SWORN to before me this
31 day of July, 2012

Notary Public for 
My Commission expires _____



The South Carolina Court of Appeals

HSBC Bank as Trustee for the registered holders of
Nomura Home Equity Home Loan, Inc. Asset-Backed
Certificates, Series 2007-2, Respondent,

v.

Nathaniel McMickens, Glenda McMickens, and Robert
Cooke, Defendants.

Of Whom Nathaniel McMickens and Glenda McMickens
are the Appellants.

Robert Cooke, Plaintiff,

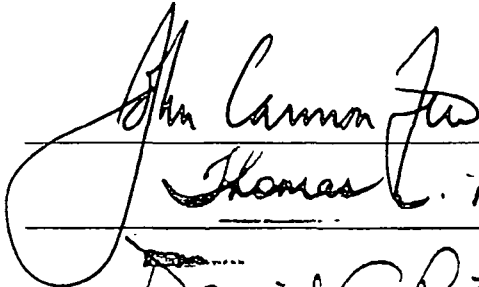
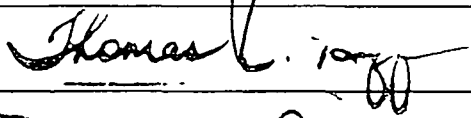
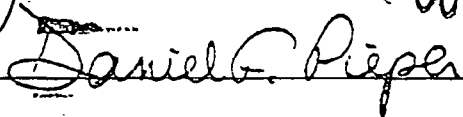
v.

Glenda McMickens, Nathaniel McMickens, and
Mortgage Electronic Registration Systems, Inc. as
nominee for Coastal Capital Corp., Defendants.

Appellate Case No. 2009-146186

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Nathaniel and Glenda McMickens

Henry Guyton Murrell

James C. Alexander

FILED

September 25, 2012

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD
NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY
PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

HSBC Bank as Trustee, for the
registered holders of Nomura
Home Equity Home Loan, Inc.
Asset-Backed Certificates,
Series 2007-2, Respondent,

v.

Nathaniel McMickens, Glenda
McMickens, and Robert Cooke, Defendants,

Of whom Nathaniel
McMickens and Glenda
McMickens are the Appellants.

Robert Cooke, Plaintiff,

v.

Glenda McMickens, Nathaniel
McMickens, and Mortgage
Electronic Registration
Systems, Inc. as nominee for
Coastal Capital Corp., Defendants.

Appeal From Chester County
Lamar H. Kelsey, III, Special Referee

Unpublished Opinion No. 2012-UP-417
Submitted June 1, 2012 – Filed July 11, 2012

AFFIRMED

Glenda and Nathaniel McMickens, of Chester, pro se.

H. Guyton Murrell, of Columbia, for Respondent.

PER CURIAM: Nathaniel and Glenda McMickens, pro se, appeal the special referee's order granting summary judgment in favor of HSBC Bank. We affirm.¹

The McMickens argue the special referee erred in failing to sustain their objection to the admission of the proof of claim as evidence of the debt at the hearing. We disagree. Although the McMickens initially objected to the proof of claim, the McMickens agreed to its admission providing that HSBC Bank submitted an affidavit attesting that it was filed with the bankruptcy court. HSBC Bank submitted an affidavit and the McMickens did not file a Rule 59(e), SCRPC, motion challenging its admission. Therefore, we find this issue is not preserved for our review. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review").

Moreover, we find the special referee did not err in granting HSBC Bank's summary judgment motion. Even in viewing the evidence in the light

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

most favorable to the McMickens, no genuine issue as to any material fact existed and HSBC bank was entitled to a judgment as a matter of law. See Rule 56(c), SCRCP (providing summary judgment is appropriate when "no genuine issue as to any material fact" exists and "the moving party is entitled to a judgment as a matter of law"); see also Klippel v. Mid-Carolina Oil, Inc., 303 S.C. 127, 129, 399 S.E.2d 163, 164 (Ct. App. 1990) ("Under Rule 56, SCRCP, when a party makes a motion for summary judgment and supports it by affidavits the adverse party may not rest on the allegations of his pleadings but must respond by affidavits or other evidence demonstrating a genuine issue of material fact.").

AFFIRMED.

FEW, C.J., and HUFF and PIEPER, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Lamar Kelsey, III Special Referee

Case No.: 2007-CP-12-0559

Case No.: 2006-CP-12-034

HSBC Bank as Trustee, for the registered
holders of Nomura Home Equity Home Loan,
Inc. Asset-Backed Certificates, Series 2007-2,
v.

Respondent,

Nathaniel McMickens, Glenda McMickens
and Robert Cooke,

Defendant.

Of Whom Nathaniel McMickens and Glenda
McMickens,

Appellants.

Robert Cooke,

v.

Plaintiff,

Glenda McMickens; Nathaniel McMickens and
Mortgage Electronic Registration Systems, Inc.
as nominee for Coastal Capital Corp.,

Defendant.

RECORD ON APPEAL

Glenda and Nathaniel McMickens
2834 James F. Wherry Road
Chester, SC 29706
803-581-8700
Pro Se Appellants

ATTORNEYS FOR RESPONDENTS
Henry Guyton Murrell, Esquire
Korn Law Firm, PA
P.O. Box 11264
Columbia, SC 29211
803-252-5817

James C. Alexander, Esquire
Alexander Law Firm
P.O. Box 618
Pickens, SC 29671
864-898-3208

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

HSBC Bank as Trustee, for the registered holders
of Nomura Home Equity Home Loan, Inc. Asset-
Backed Certificates, Series 2007-2,

PLAINTIFF,

vs.

Nathaniel McMickens , Glenda L. McMickens
and Robert Cooke,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

SUMMONS

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

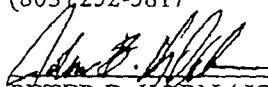
DEFICIENCY REQUESTED

F27-03230

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P.O. Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817


PETER D. KORN / JOHN S. KAY
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL
Attorneys for Plaintiff

Columbia, South Carolina
November 5, 2007

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

HSBC Bank as Trustee, for the registered holders of Nomura Home Equity Home Loan, Inc. Asset-Backed Certificates, Series 2007-2,

PLAINTIFF,

vs.

Nathaniel McMickens , Glenda L. McMickens and Robert Cooke,

DEFENDANT(S).

F27-03230

IN THE COURT OF COMMON PLEAS

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

DEFICIENCY REQUESTED

2007 NOV - 8 P 2

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Delaware; and that the Defendant(s) Nathaniel McMickens, Glenda L. McMickens and Robert Cooke, are upon information and belief, citizen(s) and resident(s) of the County of Chester, State of South Carolina.

2. Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Laws (1976) as amended.

3. That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Chester, State of South Carolina.

4. That on or about April 28, 2006, for value received, Glenda L. McMickens and Nathaniel McMickens, did execute and deliver to Coastal Capital Corp., a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Glenda L. McMickens and Nathaniel McMickens promised to pay to Coastal Capital Corp. the sum of Ninety-Two Thousand And 00/100 Dollars (\$92,000.00), together with interest thereon at an adjustable rate per terms as set out in said Note.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Glenda L. McMickens and Nathaniel McMickens, did execute and deliver on April 28, 2006 unto Mortgage Electronic Registration Systems, Inc. solely as

nominee for Coastal Capital Corp., its successors and assigns, a mortgage covering the following described property:

Legal description and property address:

The following described property, all that piece, parcel or lot of land, with any and all improvements thereon, lying and being situate in the County of Chester, State of South Carolina, fronting on Road S-12-191 leading to S.C. Highway 72, containing 1.03 acres, more or less and having such courses and distances, metes and bounds as will appear on a plat of same prepared by Fred J. Hager dated June 23, 1969, recorded in Deed Book 442 at Page 141, Office of the Clerk of Court for Chester County; and being the identical premises conveyed to Jessie McMickens and Nathaniel McMickens by deed recorded March 19, 1993 in Deed Book 636, Page 92, Jessie McMickens is conveying all of his interest in this property, which is a one-half (1/2) interest to the grantee.

This being the same property conveyed to Jessie McMickens and Nathaniel McMickens by Deed of Robert M. Thompson, dated March 19, 1993 and recorded on March 19, 1993 in the Clerk of Court's Office for Chester County, South Carolina in Book 636 at page 92. Thereafter, Jessie McMickens conveyed his one-half (1/2) interest to Glenda L. McMickens by deed dated June 16, 1994 and recorded on June 27, 1994 in the Clerk of Court's Office for Chester County, South Carolina in Book 660 at page 129.

2834 James F. Wherry Road, Chester, SC 29706
TMS# 095-00-00-041

6. Thereafter said mortgage was recorded in Book 1293 at page 193 on May 31, 2006 in the office of the Register of Deeds of Chester County.

7. Thereafter, by virtue of an assignment dated July 23, 2007, recorded September 13, 2007, in Mortgage Book 1370 at page 147, Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Coastal Capital Corp. assigned said mortgage unto HSBC Bank as Trustee, for the registered holders of Nomura Home Equity Home Loan, Inc. Asset-Backed Certificates, Series 2007-2 making HSBC Bank as Trustee, for the registered holders of Nomura Home Equity Home Loan, Inc. Asset-Backed Certificates, Series 2007-2 the present lien holder and Plaintiff herein.

8. The above referenced instrument constitutes a first lien priority mortgage.

9. That the Defendant, Robert Cooke, is made a party by virtue of the following:

(a) Mortgage given to Robert Cooke by Glenda McMickens and Nathaniel McMickens, dated September 1, 2005, and recorded June 6, 2006, in Book 1294 at Page 153 in the amount of Twenty-Six Thousand And 00/100 (\$26,000.00).

(b) that certain Lis Pendens, recorded on December 7, 2006 in the Court of Common Pleas for Chester County, South Carolina in Book 10 at page 64.

10. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

11. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

12. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

13. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

14. The monthly payments due on said note and mortgage are in default since April 1, 2007, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of April 1, 2007 the sum of Ninety-One Thousand Six Hundred

Thirty-Nine And 38/100 Dollars (\$91,639.38), together with interest at an adjustable rate per terms as set out in said Note from March 1, 2007 and also for the costs and disbursements of this action, including attorney's fees.

15. That the Plaintiff does not waive but specifically demands judgment against the Defendant(s), Glenda L. McMickens and Nathaniel McMickens, for the full amount found to be due to Plaintiff on the note and mortgage held by plaintiff, with the right to enter personal judgment against the Defendant(s), Glenda L. McMickens and Nathaniel McMickens, for any deficiency in this action remaining after sale of the mortgaged premises.

16. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

17. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and the foreclosure of the mortgage have been performed or have occurred.

WHEREFORE, having fully set forth its complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and:

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

(2) That the said Plaintiff's mortgage be declared a first lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale.

Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with attorney's fees as aforesaid, and

Third, the surplus, if any, be distributed according to law.

Fourth, Plaintiff have judgment against the Defendant Glenda L. McMickens and Nathaniel McMickens for the full amount found to be due Plaintiff on the note and mortgage, with right to enter personal judgment against the Defendant Glenda L. McMickens and Nathaniel McMickens for any deficiency in this action remaining after sale of the mortgaged premises.

(4) For an Order directing and empowering the Sheriff of Chester County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

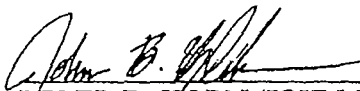
(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

(6) For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(7) For such other and further relief as may be just and proper.

(8) For an order satisfying any prior liens that may be of record, but have been paid in full.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817


PETER D. KORN / JOHN S. KAY
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL
Attorneys for Plaintiff

Columbia, South Carolina
November 5, 2007

NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1601 As Amended

1. The amount of the debt is stated in paragraph 14 of the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. The debt as described in the Complaint attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor(s), within thirty (30) days after the receipt of this notice, disputed, in within, the validity of the debt or some portion thereof.
4. If the debtor(s) notify the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor(s) by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor(s) make a written request to the creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor(s) by the creditor's law firm.

Written requests should be addressed to Korn Law Firm, P.A., Post Office Box 11264, Columbia, South Carolina 29211-1264.

Prepared by: MUTHU KUMAR
Ocwen Loan Servicing, LLC
1661 Worthington Road, Suite 100
West Palm Beach, Florida, 33409
Loan Number: 6355630
Attorney Code: 00113

FILED, RECORDED, INDEXED
09/13/2007 11:44:03AM
Rec Fee: 7.00 St Fee: 0.00
Co Fee: 0.00 Pages: 2
Clerk of Court, Chester County, SC
Sue K. Carpenter

ASSIGNMENT OF MORTGAGE
SOUTH CAROLINA

K27-02049

This ASSIGNMENT OF DEED OF TRUST is made and entered into as of the 23rd DAY OF JULY, 2007, from MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., whose address is 3300 SW 34 Avenue, Suite 101, Ocala, FL 34474, its successors and assigns, as nominee for COASTAL CAPITAL CORP., its successors and assigns, ("Assignor") to HSBC BANK AS TRUSTEE, FOR THE REGISTERED HOLDERS OF NOMURA HOME EQUITY HOME LOAN, INC. ASSET-BACKED CERTIFICATES, SERIES 2007-2, whose address is c/o Ocwen Loan Servicing, LLC, 1661 Worthington Road, Suite 100, West Palm Beach, Florida, 33409, all its rights, title and interest in and to a certain mortgage duly recorded in the Office of the County Recorder of CHESTER County, State of SOUTH CAROLINA, as follows:

Mortgagor: GLENDA L. MCMICKENS NATHANIEL MCMICKENS
Mortgagee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR COASTAL CAPITAL CORP.
Document Date: APRIL 28, 2006
Recording Date: May 31, 2006
Book/Volume/Docket/Liber: 1293
Page/Folio: 193
Property address: 2834 JAMES F. WHERRY ROAD, CHESTER, SC
Property described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Together with any and all notes and obligations therein described or referred to, the debt respectively secured hereby and all sums of money due and to become due thereon, with interest thereon, and attorney's fees and all other charges.

This Assignment is made without recourse, representation or warranty.

DATED: JULY 23, 2007
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
ACTING SOLELY AS NOMINEE FOR COASTAL CAPITAL CORP.

BY: _____

NAME: Scott Anderson
TITLE: Vice President

Signed, sealed and delivered in
the presence of:

(1) L. Arias
Name: Leticia Arias

(2) D. Moore
Name: Dana Moore

STATE OF FLORIDA)
COUNTY OF PALM BEACH) SS.

The foregoing instrument was acknowledged before me this 23rd DAY OF JULY, 2007, by Scott Anderson, the Vice President of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR COASTAL CAPITAL CORP. He is personally known to me.

MIN: 100103100071864666

Notary Public
MERS Ph.#: (888) 679 - 6377

NOTARY PUBLIC STATE OF FLORIDA
Doris Chapman
Commission # DB518204
Expires: FEB. 14, 2010
Bonded Thru Atlantic Bonding Co., Inc.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 4436
CONNECTION TEL 18039804825
SUBADDRESS
CONNECTION ID
ST. TIME 11/23 12:19
USAGE T 02'01
PGS. SENT 10
RESULT OK

FACSIMILE COVER SHEET

This FAX is being sent from the Public Fax at the
CHESTER COUNTY LIBRARY
Chester, South Carolina

Phone #: (803) 377-8145

Fax #: (803) 377-8146

SEND TO Huckabee Law Firm	From Glenda Mc Mickens
Attention H. Jones	Date 11-23-09
Fax # (803) 980-4825	Home Phone # 803-581-8700

☐ Urgent ☐ Reply ASAP ☐ Please Comment ☐ Please Review ☐ FYI

Total pages, including cover sheet: 10

COMMENTS

This is what they have put in

Mortgage book 1370 at page 147 i

Just went too look.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

HSBC Bank as Trustee, for the
registered holders of Nomura Home
Equity Home Loan, Inc. Asset-
Backed Certificates, Series 2007-2,

Plaintiff,

v.

Nathaniel McMickens, Glenda
McMickens and Robert Cooke,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No. 2007-CP-12-0559

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Robert Cooke,

Plaintiff,

v.

Glenda McMickens, Nathaniel
McMickens and Mortgage Electronic
Registration Systems, Inc. as nominee
for Coastal Capital Corp.,

Defendant

IN THE COURT OF COMMON PLEAS

C/A No. 2007-CP-12-034

**NOTICE OF MOTION AND MOTION
TO CONSOLIDATE CASES, SUBSTITUTE
PARTY AND FOR ORDER OF REFERENCE**

YOU WILL PLEASE TAKE NOTICE that the attorney for the plaintiff will move before the Court on the tenth (10th) day after service of this motion, or as soon thereafter as counsel may be heard, move before the Court for an Order consolidating the two above-noted cases.

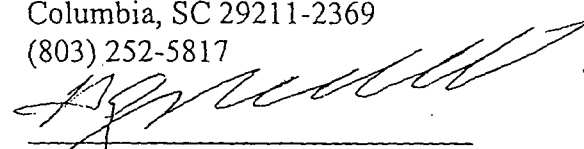
This Motion is made on the grounds that the cases are two (2) foreclosure actions on the identical real property located in Chester County, South Carolina. Plaintiff would

argue that the consolidation would serve the purpose of judicial economy and avoid potentially conflicting adjudications if the matters are tried separately.

YOU WILL ALSO PLEASE TAKE NOTICE that the attorney for the plaintiff will move before the Court on the tenth (10th) day after service of this motion, or as soon thereafter as counsel may be heard, move before the Court for an Order substituting HSBC Bank as Trustee, for the registered holders of Nomura Home Equity Home Loan, Inc. Asset-Backed Certificates, Series 2007-2 in place of Mortgage Electronic Registration Systems, Inc. as nominee for Coastal Capital Corp. in case No.2007-CP-12-034 pursuant to an the Assignment of Mortgage filed September 13, 2007 in Book 1370 at Page 147 in the Office of the Chester County Clerk of Court.

YOU WILL ALSO PLEASE TAKE NOTICE that the attorney for the plaintiff will move before the Court on the tenth (10th) day after service of this motion, or as soon thereafter as counsel may be heard, move before the Court for an Order referring case No. 2007-CP-12-0559 to Lamar Kelsey as Special Referee. Plaintiff would show Lamar Kelsey is qualified to serve as Special Referee in this matter. Plaintiff would further show that Lamar Kelsey has already been appointed as Special Referee in case no. 2007-CP-12-034.

Korn Law Firm, P.A.
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817



H. Guyton Murrell, Esq.
Attorney for Plaintiff

January 2, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

HSBC Bank as Trustee, for the registered
holders of Nomura Home Equity Home Loan,
Inc. Asset-Backed Certificates, Series 2007-2,

Plaintiff,

v.

Nathaniel McMickens, Glenda McMickens and
Robert Cooke,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Robert Cooke,

Plaintiff,

v.

Glenda McMickens, Nathaniel McMickens and
Mortgage Electronic Registration Systems, Inc.
as nominee for Coastal Capital Corp.,

Defendants

IN THE COURT OF COMMON PLEAS

C/A No. 2007-CP-12-0559

IN THE COURT OF COMMON PLEAS

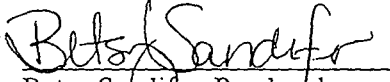
C/A No. 2007-CP-12-034

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 5, 2009, she served one copy of
Motion to Consolidate, substitute and refer upon the following by depositing a copy of same in
the United States Mail, postage prepaid, and addressed as follows:

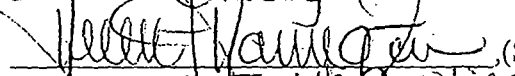
James Alexander, Esquire
P.O. Box 618
Pickens, SC 29671

Glenda & Nathaniel McMickens
2834 James F. Wherry Road
Chester, SC 29706


Betsy Sandifer, Paralegal

SWORN to before me this

5th Day of January, 2009

 (SEAL)

Notary Public for South Carolina

My Commission Expires 10/11/2009

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

HSBC Bank as Trustee, for the
registered holders of Nomura Home
Equity Home Loan, Inc. Asset-
Backed Certificates, Series 2007-2,

Plaintiff,

v.

Nathaniel McMickens, Glenda
McMickens and Robert Cooke,

Defendant.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Robert Cooke,

Plaintiff,

v.

Glenda McMickens, Nathaniel
McMickens and Mortgage Electronic
Registration Systems, Inc. as nominee
for Coastal Capital Corp.,

Defendant

IN THE COURT OF COMMON PLEAS

C/A No. 2007-CP-12-0559

IN THE COURT OF COMMON PLEAS

C/A No. 2006-CP-12-034

ORDER TO CONSOLIDATE CASES
AND ORDER OF REFERENCE

FILED

2009 JUN - 8 A 8:11

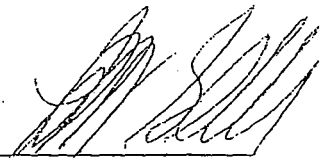
CLERK OF COURT
CHESTER CO. S.C.

The above noted cases are two (2) foreclosure actions on the identical real property located in Chester County, South Carolina. The matter came before the court on May 20, 2009 upon the motion of HSBC Bank. Appearing at the hearing were Plaintiff's counsel, H. Guyton Murrell and the pro se Defendant Glenda McMickens. The attorney for Robert Cooke has confirmed his consent to the motion as noted on the

correspondence attached hereto and incorporated herein by reference. The pro se Defendant Glenda McMickens objected to the motion. The court finds that the two (2) cases are related and judicial economy and efficiency would be served by consolidating the cases and having the cases heard by the same judge. Consolidation would also avoid the potential of different judges making opposing findings and rulings.

THEREFORE, IT IS HEREBY ORDERED that the above cases are hereby consolidated,

IT IS FURTHER ORDERED this case be referred to Lamar Kelsey as Special Referee for Chester County, to direct entry of final judgment in this action under Rule 53 (b), SCRCF. Any appeal from the final judgment entered by the Special Referee shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.


The Honorable Brooks Goldsmith
Presiding Judge 6th Judicial Circuit

May 27, 2009
Lucas, SC

FILED

2009 JUN - 8 A 8:11

CLERK OF COURT
CHESTER CO S.C.

ALEXANDER LAW FIRM

107 E. Main Street
Post Office Box 618
Pickens, SC 29671

F27-032

James C. Alexander
Steven L. Alexander

(864) 898-3208 T
(864) 898-3408 F

February 27, 2009

Mr. H. Guyton Murrell
Attorney at Law
Korn Law Firm
P.O. Box 12369
Columbia, SC 29211-2369

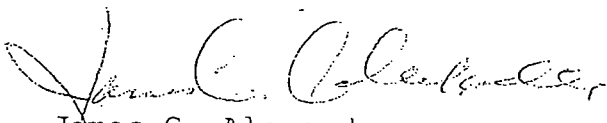
RE : HSBC Bank vs. McMickens and Cooke
Case No. : 2007-CP-12-34

Dear Mr. Murrell:

Your Motion to consolidate is scheduled to be heard on March 18. I do not object to the consolidation of the cases and will not appear at the hearing. You may present this letter to the Judge to indicate my consent.

Sincerely yours,

ALEXANDER LAW FIRM


James C. Alexander

cc: Ms. Sue K. Carpenter
Clerk Of Court
PO Drawer 580
Chester, S.C. 29706

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

HSBC Bank as Trustee, for the registered
holders of Nomura Home Equity Home Loan,
Inc. Asset-Backed Certificates, Series 2007-2,
Plaintiff,

v.

Nathaniel McMickens, Glenda McMickens and
Robert Cooke,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No. 2007-CP-12-0559

CERTIFICATE OF MAILING

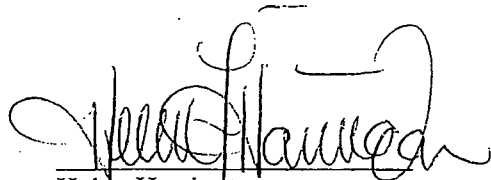
F27-3230

The undersigned hereby certifies that June 15, 2009, she served a copy of Order to Consolidate Cases and Order of Reference upon the person below listed by depositing a copy in the United States Mail, postage prepaid, and addressed as follows:

James Alexander, Esquire
P.O. Box 618
Pickens, SC 29671

Glenda McMickens
2834 James F. Wherry Road
Chester, SC 29706

Nathaniel McMickens
2834 James F. Wherry Road
Chester, SC 29706



Helen Harrington
Paralegal to H. Guyton Murrell, Esq.

June 15, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER) C/A No. 2007-CP-12-0559

HSBC Bank as Trustee,
for the registered
holders of Nomura Home
Equity Home Loan, Inc.
Asset-Backed
Certificates, Series
2007-2,

Plaintiff,

vs.

Nathaniel McMickens,
Glenda McMickens and
Robert Cooke,

Defendant .

RECEIVED

NOV 19 2009

SC Court of Appeals

RECEIVED

NOV 19 2009

SC Court of Appeals

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER) C/A No. 2006-CP-12-034

Robert Cooke,

Plaintiff,

vs.

Glenda McMickens,
Nathaniel McMickens
and Mortgage Electronic
Registration Systems,
Inc. as nominee for
Coastal Capital Corp.,

Defendant.

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT

This matter is before the Court on Motions of
plaintiffs, HSBC Bank as Trustee and Robert Cooke, for
summary judgment of foreclosure and sale of the subject real
property owned by the defendants Glenda McMickens and
Nathaniel McMickens.

The defendants, McMickens, object to the motions by
plaintiffs on the grounds that the motions were not served
on a timely manner as provided by court rule. The motions

were not served as provided by court rule. Plaintiffs ask that the motions be heard on the basis that the defendants, McMikens, are not surprised by the motions and the evidence presented in support of the motions. After considering the arguments of counsel, I find that the motions for summary judgment are proper. The defendants are not surprised by the motions and the evidence in the form of documentation presented in support of the motions should be well known to the defendants. The defendants are not prejudiced by the motions at this time.

The Court grants the motions of the plaintiffs for foreclosure and sale of the subject real property. It is agreed by the parties, and the Court so finds, that the plaintiff HSBC Bank as Trustee holds a first mortgage lien and the plaintiff Robert Cook holds a second mortgage lien on the subject real property. The amounts due on said mortgages are past due and the mortgage lien holders are entitled to foreclosure and sale in the usual fashion with the payment of all amounts due, including fees, expenses, and attorney fees.

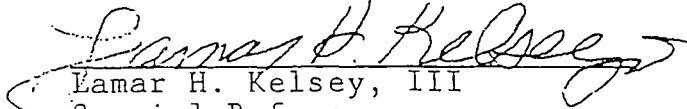
The fact of the mortgage liens and amounts due have been well established in prior court proceedings, which evidence has been properly admitted in these proceedings.

NOW THEREFORE, IT IS ORDERED that the motions for summary judgment are granted and the attorney for plaintiff HSBC Bank as Trustee is directed to prepare an order of foreclosure and sale in the usual fashion, in consultation

with the attorney for plaintiff Robert Cooke for the provisions required for the second mortgage.

IT IS FURTHER ORDERED that no further hearings will be required in this matter.

AND IT IS SO ORDERED


Lamar H. Kelsey, III
Special Referee
Chester County

November 6, 2009

Chester, SC

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264,
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

May 20, 2009

Glenda McMickens
2834 James F. Wherry Road
Chester, SC 29706

RE: HSBC Bank v. Nathaniel McMickens, et al
Case No.2007-CP-12-559
File No.F27-03230

Robert Cooke v. Nathaniel McMickens, et al
Case No.2006-CP-12-034
File No.K27-03230

Dear Ms. McMickens:

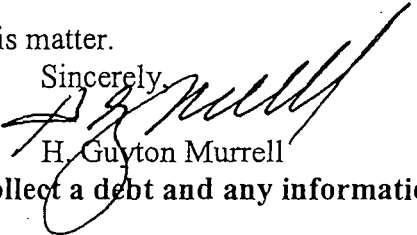
Per your request that I provide documents regarding the mortgage held by HSBC Bank, I have enclosed the following:

Note
Mortgage
Assignment
Proof of claim
Letter dated 3/19/09

I do not understand your confusion over this mortgage debt as you listed it in your Chapter 13 plan in Bankruptcy Case #07-07099-jw. I have enclosed the proof of claim filed by Ocwen in the Bankruptcy as the servicing agent for HSBC. As you had denied receiving the letter from Kirk Abernathy dated March 19, 2009 confirming that you have a mortgage account with HSBC, I have enclosed a copy of that letter as well.

Thank you for your attention in this matter.

Sincerely,


H. Guyton Murrell

This communication is an attempt to collect a debt and any information gained will be used for that purpose.

cc:

Chester County Clerk of Court
P.O. Drawer 580
Chester, SC 29706

F27.03230

Loan No.: 7186466

ADJUSTABLE RATE NOTE

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

MIN: 1001031-0007186466-6

MERS TELEPHONE: (888) 679-6377

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

April 28, 2006
[Date]

CHESTER
[City]

SOUTH CAROLINA
[State]

2834 JAMES F. WHERRY ROAD, CHESTER, SOUTH CAROLINA 29706
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 92,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is COASTAL CAPITAL CORP.. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 10.750%. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payments on the FIRST day of each month beginning on June 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on May 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 2740 NORTH DALLAS PKWY, SUITE 100, PLANO, TEXAS 75093 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 858.80. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the FIRST day of May, 2008, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

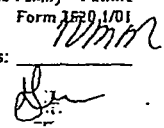
(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street*

MULTISTATE ADJUSTABLE RATE NOTE - LIBOR SIX -MONTH INDEX (AS PUBLISHED IN *THE WALL STREET JOURNAL*) -Single Family - Fannie Mae UNIFORM INSTRUMENT

Page 1 of 4

Form 1520 1/01

Initials: 

note3520

Journal. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Seven and One Half percentage points (7.500%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 13.750% or less than 10.750%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than one and one half percentage points (1.500%) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 17.750%, nor less than 10.750%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be five percent (5.00%) of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is

acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

<u>Nathaniel M. Mickens</u> 4-28-66	<u>Glenda McMickens</u>
(Seal)	(Seal)
NATHANIEL MCMICKENS	GLEND A MCMICKENS
-Borrower	-Borrower
Social Security No.: 248-96-9824	Social Security No.: 250-41-7268

_____ (Seal)	_____ (Seal)
-Borrower	-Borrower

[Sign Original Only]

ALLONGE

This allonge is attached and made a part of that certain
Promissory Note dated April 28, 2006
In the amount of \$92,000
Covering premises known as:

2834 James F. Wherry Road, Chester, SC 29706

and executed by

Nathaniel & Glenda McMickens

PAY TO THE ORDER OF

Without Recourse

Coastal Capital Corp.



Robert Tucker, Vice President

000043347 BK : 01293 P : 00193

FILED, RECORDED, INDEXED
05/31/2006 10:13:57AM
Rec Fee: 27.00 St Fee: 0.00
Co Fee: 0.00 Pages: 21
Clerk of Court, Chester County, SC
Sue K. Carpenter

Return To:
COASTAL CAPITAL CORP.
1 PARAGON WAY
FREEHOLD, NEW JERSEY 07728
Attn: SHIPPING DEPT./DOC. CONTROL
Prepared By:
ROBERT TUCKER

(Space Above This Line For Recording Data)

MORTGAGE

MTN 1001031-8087186466-6
MERS TELEPHONE: (888) 679-6377

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 28, 2006, together with all Riders to this document.

(B) "Borrower" is GLENDA L. MCMICKENS AND NATHANIEL MCMICKENS. Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48301-2026, tel. (888) 679-MERS.

(D) "Lender" is COASTAL CAPITAL CORP.. Lender is a corporation organized and existing under the laws of the State of NEW YORK. Lender's address is 2740 NORTH DALLAS PKWY, SUITE 100, PLANO, TEXAS 75093.

(E) "Note" means the promissory note signed by Borrower and dated April 28, 2006. The Note states that Borrower owes Lender Ninety Two Thousand And 00/100 Dollars (U.S. \$ 92,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than May 1, 2036.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 17

accmcrtd

Form 1001 1/01
Initials: *[Signature]*
[Signature]

000043347 Bk: 01293 P#: 00194

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

☒ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) (specify)

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Commonality Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor to Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

SOUTH CAROLINA - Single Family - Female Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERG

Page 2 of 17

Form 1041 1/01

Initials: *MM*

000043347 Bk: 01293 P: 00195

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County (Type of Recording Jurisdiction) of CHESTER (Name of Recording Jurisdiction):

LEGAL DESCRIPTION ATTACHED

Parcel ID Number: 95-06-00-041

which currently has the address of

2834 JAMES F. WHERRY ROAD

(Street)

CHESTER (City), South Carolina 29706 (Zip Code) ("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns,) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title in the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and cancelling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

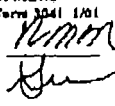
THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

SOUTH CAROLINA - Single Family - Passive Mac/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 3 of 17

Form 3041 1/01

Initials: 

000043347 Bk: 01293 Ps: 00196

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentally, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it becomes due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 4 of 17

Form 3041 1/01

Initials: *MM*
BM

30

000043347 Bk: 01293 P: 00197

amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay in Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

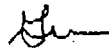
If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the

NORTH CAROLINA - Single Family - Female Moe/Fredde Mae UNIFORM INSTRUMENT WITH MERS

Page 5 of 17

Form 3041 (0)

Initials:



000043347 Blk: 01293 P# 00198

amount necessary to make up the delinquency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges/Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only as long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3041 1/01

Page 6 of 17

Initials: *VMH*
HL

000043347 BK: 01293 P: 00199

Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

AOUTH CAROLINA - Ringle Family - Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 7 of 17

Form 3041 1/01

Initials:

000043347 BK: 01293 P: 00200

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may obtain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect his interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

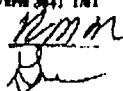
Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

SOUTH CAROLINA - Single Family - Freddie Mac/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3041 1/01

Page 8 of 17

Initials:



000043347 BK: 01293 Pg: 00201

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage Insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the

SOUTH CAROLINA - Single Family - Female Max/Fredrick Max UNIFORM INSTRUMENT WITH MERS

Page 9 of 17

Form 304 1/01
Initials: *mm*

mm

000043347 Bk: 01293 P: 00202

amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreement will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowner's Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 10 of 17

Form 3041 1/01
Initials: *[Signature]*

[Signature]

56

000043347 BK: 01293 P: 00203

Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees in such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such

WMM
Be

000043347 Bk: 01293 P: 00204

fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

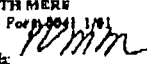
As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

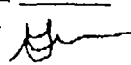
17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed,

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERG

Page 12 of 17

Form 3041 1/01
Initials: 

Initials: 

000043347 Bk: 01293 P: 00205

installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

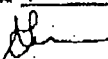
20. **Sale of Note; Change of Loan Servicer; Notice of Covenance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects periodic payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 13 of 17

Form 3046 1/01

Initialed:



000043347 BK: 01293 P# 00206

in a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined in any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

SOUTH CAROLINA - Single Family - Freddie Mac/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 14 of 17

Initials: *MM*
DM

000043347 Bk: 01293 Ps: 00207

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Homestead Waiver.** Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

000043347 BK: 01293 P: 00208

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained
in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Julie [Signature] Nathaniel M. McKens (Seal) 4-28-86
NATHANIEL MCKICKENS -Borrower

Jimmy C. Wood Glenda McKens (Seal)
GLENDA MCKICKENS -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3041 1/01

Page 15 of 17

42

000043347 BK: 01293 Pa: 00209

STATE OF SOUTH CAROLINA,
County of

Personally appeared before me Julie S. Woods and
made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed,
deliver the within written Mortgage; and that he/she with Jeremy C. Woods
witnessed the execution thereof.

Sworn to before me this 20 day of April 2006

My Commission Expires:

Jeremy C. Woods
Notary Public for South Carolina

JEREMY C. WOODS
Notary Public For South Carolina
My Commission Expires 8-01-13

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERB

Form 3441 1/05

Page 17 of 17

Initials: JMWB

000043347 BK: 01293 P# 00210

ADJUSTABLE RATE RIDER(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Cap)

THIS ADJUSTABLE RATE RIDER is made this twenty-eighth day of April, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to COASTAL CAPITAL CORP. ("Lender") of the same date and covering the property described in the Security Instrument and located at:

2834 JAMES F. WHERRY ROAD, CHESTER, SOUTH CAROLINA 29706
(Property Address)

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 10.750%. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of May, 2008, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Seven and One Half percentage points (7.500%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

MULTISTATE ADJUSTABLE RATE RIDER - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL - Single Family - Florida MISC Uniform Instrument)
Form 3118 (01)

160320

Page 1 of 3

Initials

000043347 Bk: 01293 P#: 00211

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 13.750% or less than 10.750%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One and One Half percentage points (1.500%) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 17.750%, nor less than 10.750%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

MINNISTATE ADJUSTABLE RATE RIDER - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) - Single Family - Private Use Uniform Instrument
Form 311B 1/01

000043347 BK: 01293 Ps: 00212

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

Nathaniel M. Mickens 428-66 *Glenda McMickens*
(Seal) (Seal)
NATHANIEL MCMICKENS - Borrower GLENDA MCMICKENS - Borrower

(Seal) (Seal)
- Borrower - Borrower

MULTISTATE ADJUSTABLE RATE RIDER - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL - Single Family - Fannie Mae Uniform Instrument
Form 2128 1/01

Page 3 of 3

46

000043347 Bk: 01293 Pg: 00213

SCHEDULE "A"

THE FOLLOWING DESCRIBED PROPERTY, ALL THAT PIECE, PARCEL OR LOT OF LAND, WITH ANY AND ALL IMPROVEMENTS THEREON, LYING AND BEING SITUATE IN THE COUNTY OF CHESTER, STATE OF SOUTH CAROLINA, FRONTING ON ROAD S-12-191 LEADING TO S.C. HIGHWAY 72, CONTAINING 1.03 ACRES, MORE OR LESS, AND HAVING SUCH COURSES AND DISTANCES, METES AND BOUNDS AS WILL APPEAR ON A PLAT OF SAME PREPARED BY FRED J. HAGER DATED JUNE 23, 1969, RECORDED IN DEED BOOK 442 AT PAGE 141, OFFICE OF THE CLERK OF COURT FOR CHESTER COUNTY; AND BEING THE IDENTICAL PREMISES CONVEYED TO JESSIE MCMICKENS AND NATHANIAL MCMICKENS BY DEED RECORDED MARCH 19, 1993 IN DEED BOOK 636, PAGE 92, JESSIE MCMICKENS IS CONVEYING ALL OF HIS INTEREST IN THIS PROPERTY, WHICH IS A ONE-HALF (1/2) INTEREST TO THE GRANTEE.

BEING THE SAME PROPERTY CONVEYED TO GLENDA L. MCMICKENS AND NATHANIEL MCMICKENS BY DEED FROM JESSIE MCMICKENS RECORDED 06/27/1994 IN DEED BOOK PAGE , IN THE R.M.C. OFFICE OF CHESTER COUNTY, SOUTH CAROLINA.

FOR INFORMATIONAL PURPOSES ONLY: THE APN IS SHOWN BY THE COUNTY ASSESSOR AS 095-00-00-041; SOURCE OF TITLE IS BOOK 660, PAGE 129 (RECORDED 06/27/94)

000051208 Bk: 01370 Ps: 00147

Prepared by: MUTHU KUMAR
 Cowan Loan Servicing, LLC
 1881 Worthington Road, Suite 100
 West Palm Beach, Florida, 33409
 Loan Number: 6355630
 Attorney Code: 00113

FILED, RECORDED, INDEXED
 09/13/2007 11:44:03AM
 Rec Fee: 7.00 St Fee: 0.00
 Co Fee: 0.00 Page: 2
 Clerk of Court, Chester County, SC
 Sue K. Carpenter

ASSIGNMENT OF MORTGAGE
 SOUTH CAROLINA

K27-02049

This ASSIGNMENT OF DEED OF TRUST is made and entered into as of the 23rd DAY OF JULY, 2007, from MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., whose address is 3300 SW 34 Avenue, Suite 101, Ocala, FL 34474, its successors and assigns, as nominee for COASTAL CAPITAL CORP., its successors and assigns, ("Assignor") to HSBC BANK AS TRUSTEE, FOR THE REGISTERED HOLDERS OF NOMURA HOME EQUITY HOME LOAN, INC. ASSET-BACKED CERTIFICATES, SERIES 2007-2, whose address is c/o Cowan Loan Servicing, LLC, 1881 Worthington Road, Suite 100, West Palm Beach, Florida, 33409, all its rights, title and interest in and to a certain mortgage duly recorded in the Office of the County Recorder of CHESTER County, State of SOUTH CAROLINA, as follows:

Mortgagor: GLENDA L. MCMICKENS NATHANIEL MCMICKENS
 Mortgagee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR COASTAL CAPITAL CORP.
 Document Date: APRIL 28, 2006
 Recording Date: May 31, 2006
 Book/Volume/Docket/Liber: 1293
 Page/Folio: 193
 Property address: 2834 JAMES F. WHERRY ROAD, CHESTER, SC
 Property described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Together with any and all notes and obligations therein described or referred to, the debt respectively secured thereby and all sums of money due and to become due thereon, with interest thereon, and attorney's fees and all other charges.

This Assignment is made without recourse, representation or warranty.

DATED: JULY 23, 2007

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
 ACTING SOLELY AS NOMINEE FOR COASTAL CAPITAL CORP.

BY: _____

NAME: Scott Anderson
 TITLE: Vice President

STATE OF FLORIDA)

) ss.

COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 23rd DAY OF JULY, 2007, by Scott Anderson, the Vice President of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR COASTAL CAPITAL CORP. He is personally known to me.

Signed, sealed and delivered in the presence of:

(1) P. Aron
 Name: Leticia Aron

(2) D. Moore
 Name: Dana Moore

MIN: 100103100071864686

Notary Public
 MERS Ph.#: (888) 678 - 8377

NOTARY PUBLIC-STATE OF FLORIDA
 Doris Chapman
 Commission # DDS18204
 Expires: FEB. 14, 2010
 Bonded Third Atlantic Bonding Co., Inc.

000051208 Bk: 01370 Pg: 00148

Loan Number: 8355830

EXHIBIT A

THE FOLLOWING DESCRIBED PROPERTY. ALL THAT PIECE, PARCEL OR LOT OF LAND, WITH ANY AND ALL IMPROVEMENTS THEREON, LYING AND BEING SITUATE IN THE COUNTY OF CHESTER, STATE OF SOUTH CAROLINA, FRONTING ON ROAD 6-12-191 LEADING TO S.C. HIGHWAY 72, CONTAINING 1.03 ACRES, MORE OR LESS, AND HAVING SUCH COURSES AND DISTANCES, METES AND BOUNDS AS WILL APPEAR ON A PLAT OF SAME PREPARED BY FRED J. HAGER DATED JUNE 23, 1989, RECORDED IN DEED BOOK 442 AT PAGE 141, OFFICE OF THE CLERK OF COURT FOR CHESTER COUNTY; AND BEING THE IDENTICAL PREMISES CONVEYED TO JESSIE MCNICKENS AND NATHANIEL MCNICKENS BY DEED RECORDED MARCH 19, 1993 IN DEED BOOK 636, PAGE 92, JESSIE MCNICKENS IS CONVEYING ALL OF HIS INTEREST IN THIS PROPERTY, WHICH IS A ONE-HALF (1/2) INTEREST TO THE GRANTEE, BEING THE SAME PROPERTY CONVEYED TO GLENDA L. MCNICKENS AND NATHANIEL MCNICKENS BY DEED FROM JESSIE MCNICKENS RECORDED 06/27/1994 IN DEED BOOK PAGE , IN THE R.M.C. OFFICE OF CHESTER COUNTY, SOUTH CAROLINA.

FOR INFORMATIONAL PURPOSES ONLY: THE APN IS SHOWN BY THE COUNTY ASSESSOR AS 088-00-00-041; SOURCE OF TITLE IS BOOK 660, PAGE 129 (RECORDED 06/27/94)

UNITED STATES BANKRUPTCY COURT <u>ALL</u>		DISTRICT OF <u>SOUTH CAROLINA</u>	PROOF OF CLAIM
Name of Debtor: <u>McMickens, Nathaniel</u> <u>Glenda, McMickens</u>		Case Number: <u>07-07099</u>	
<i>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. Sec. 503.</i>			
Name of Creditor (the person or other entity to whom the debtor owes money or property): <u>HSBC Bank USA, National Association, as Trustee, for the registered holders of Nomura Home Equity Home Loan, Inc. Asset-Backed Certificates, Series 2007-2</u>		☐ Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: <i>(If known)</i> Filed on:	
Name and address where notices should be sent <u>OCWEN</u> <u>ATTN: Bankruptcy Department</u> <u>12650 Ingenuity Drive</u> <u>Orlando, FL 32826</u> Telephone Number:		☐ Check Box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. ☐ Check this box if you are the debtor or trustee in this case.	
Name and address where notices should be sent <u>OCWEN</u> <u>ATTN: Bankruptcy Department</u> <u>12650 Ingenuity Drive</u> <u>Orlando, FL 32826</u> Telephone Number:			
1. Amount of Claim as of Date Case Filed: <u>\$101814.14</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. ☒ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. Sec 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. ☐ Domestic support obligations under 11 U.S.C. Sec 507(a)(1)(A) or (a)(1)(B). ☐ Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier 11 U.S.C. Sec 507 (a)(4). ☐ Contributions to an employee benefit plan 11 U.S.C. Sec 507 (a)(5). ☐ Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use 11 U.S.C. Sec 507 (a)(7). ☐ Taxes or penalties owed to governmental units 11 U.S.C. Sec 507 (a)(8). ☐ Other Specify applicable paragraph of 11 U.S.C. Sec 507 (a)(). Amount entitled to priority:	
2. Basis for Claim: <u>Money loaned</u> (See instruction #2 on reverse side.)		5 *Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
3. Last four digits of any number by which creditor identifies debtor: <u>9824</u> 3a. Debtor may have scheduled account as: <u>6355630</u> (See instruction #2 on reverse side.)			
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: ☒ Real Estate ☐ Motor Vehicle ☐ Other Describe: Value of Property: <u>\$121000.0</u> Annual Interest Rate <u>10.75000%</u> Amount of arrearage and other charges as of time case filed included in secured claim, if any: <u>\$10528.00</u> Basis for perfection: <u>Secured</u> Amount of Secured Claim: <u>\$101814.14</u> Amount Unsecured: <u>\$0</u>			
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of redacted on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:			
Date: <u>01/03/08</u> Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. /s/Michele Rice Bankruptcy Supervisor		FOR COURT USE ONLY	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. Secs. 152 and 3571.

30

EXHIBIT "A"
ITEMIZATION OF CLAIM

Date of Filing: 12/22/2007

Case Number: 07-07099

Debtor: McMickens, Nathaniel

Creditor: HSBC Bank USA, National Association, as Trustee, for the registered holders of Nomura Home Equity Home Loan, Inc. Asset-Backed Certificates, Series 2007-2

Arrearage:

Monthly Payments:	\$	7729.20
Late Charges:	\$	343.2
Non Sufficient Fund Charges:	\$	25.0
Escrow Advances:	\$	677.22
Fees, Costs & Property Preservation Expenses:	\$	2005.52
Securitized Interest Arrearage:	\$	0.0
Interest on Claim:	\$	0.0
POC Fee:	\$	0.0
(Forbearance Suspense):	\$ (	0.0)
(Miscellaneous Suspense):	\$ (	0.0)
(Pre-Pet Suspense):	\$ (	252.14)
TOTAL ARREARAGE:	\$	10528.0

*Post-Petition payment amount (including escrow if any) is \$ 966.34

Applicable in states where the trustee is required to make post-petition payments on debtors behalf

Subject to change according to terms of your note and mortgage

P&I Schedule:

From	To	%Rate	Days	P&I
04/01/2007	04/30/2007	10.75000	30	858.8
05/01/2007	05/31/2007	10.75000	30	858.8
06/01/2007	06/30/2007	10.75000	30	858.8
07/01/2007	07/31/2007	10.75000	30	858.8
08/01/2007	08/31/2007	10.75000	30	858.8
09/01/2007	09/30/2007	10.75000	30	858.8
10/01/2007	10/31/2007	10.75000	30	858.8
11/01/2007	11/30/2007	10.75000	30	858.8
12/01/2007	12/31/2007	10.75000	30	858.8

EXHIBIT "B"
Payoff Information

Unpaid Principal Balance:	\$	91639.38
Interest From: 04/01/2007 to 12/31/2007	\$	7375.96
Late Charges:	\$	343.2
Non Sufficient Fund Charges:	\$	25.0
Escrow Advances:	\$	677.22
Fees, Costs & Property Preservation Expenses:	\$	2005.52
Securitized Interest Arrearage:	\$	0.0
Interest On Claim:	\$	0.0
POC Fee:	\$	0.0
(Miscellaneous Suspense):	\$ (	0.0)
(Forbearance Suspense):	\$ (	0.0)
(Pre-Pet Suspense):	\$ (	252.14)
Payoff as of: 12/22/2007	\$	101814.14
Per Diem Amount:	\$	27.36

Exhibit C

Pre-Petition Fee, Costs & Property Preservation Expenses Breakdown

Name:	Nathaniel McMickens
Loan Number:	6355630
Case Number:	07-07099

Description	Amount
Property Inspection Fee	\$10.50
Foreclosure Fee	\$262.50
Foreclosure Cost	\$22.00
Property Inspection Fee	\$10.50
Property Valuation Fee - BPO	\$121.00
Title Report Fee	\$300.00
Foreclosure Fee	\$15.00
Certified Mail Cost	\$5.21
Certified Mail Cost	\$5.21
Certified Mail Cost	\$5.21
Certified Mail Cost	\$5.21
Certified Mail Cost	\$2.51
Certified Mail Cost	\$4.67
Property Valuation Fee - BPO	\$121.00
Oustanding FC Fees and Cost	\$1,115.00
Total	\$2,005.52

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER) IN THE COURT OF COMMON PLEAS

COPY

HSBC Bank as Trustee, for)
the Registered Holders of)
Nomura Home Equity Home)
Loan Inc., Asset-Backed)
Certificates, Series)
2007-2,)

Plaintiff,) Case No. 2007-CP-12-0559

-vs-)

Nathaniel McMickens, Glenda)
McMickens and Robert Cooke,)
Defendants.)

Robert Cooke,)

Plaintiff,) Case No. 2006-CP-12-034

-vs-)

Glenda McMickens, Nathaniel)
McMickens and Mortgage)
Electronic Registration)
Systems, Inc., as nominee)
for Coastal Capital Corp.,)
Defendants.)

RECEIVED

APR 20 2010

SC Court of Appeals

SUMMARY JUDGMENT MOTION HEARING

Friday, October 23rd, 2009
11:07 a.m. - 12:14 p.m.

The Summary Judgment Motion Hearing before the Honorable Lamar Kelsey, III, Special Referee, was held at the Chester County Courthouse, Chester, South Carolina, on the 23rd day of October, 2009, before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

H. Guyton Murrell, Esquire.
Korn Law Firm
1300 Pickens Street
Columbia, South Carolina 29201
Attorney for the Plaintiff (HSBC Bank)

James C. Alexander, Esquire.
The Alexander Law Firm
107 E. Main Street
Pickens, South Carolina 29671
Attorney for the Plaintiff/Defendant (Robert
Cooke)

John "Martin" Foster, Esquire.
Attorney at Law
P. O. Box 106
Rock Hill, South Carolina 29731
Attorney for the Defendants (Nathaniel and
Glenda McMickens)

Also Present:

Robert Cooke (Plaintiff/Defendant)

Glenda McMickens (Defendant)
Nathaniel McMickens (Defendant)

INDEX:

	<u>Page</u>
Statement by Mr. Murrell	4
Statement by Mr. Alexander	25
Certificate of Reporter	42

EXHIBITS:PagePlaintiff's Exhibits:

1.	Pacer Report	6
2.	Schedule D	7
3.	Schedule B-9	7
4.	Letter dated 5/20/09 with attached documents	13
5.	Group of documents filed 2/25/08	15
6.	Statement of Debt	19

Defendant's Exhibits:

1.	Bankruptcy Court Plan	29
2.	Proof of Claim	30
3.	Modification Plan	30
4.	Order of Bankruptcy Dismissal	31
5.	Request for Admissions	31
6.	Check	35

(ALL EXHIBITS WERE RETAINED BY THE COURT.)

1 THE COURT: Go ahead on your
2 motion, Mr. Murrell.

3 MR. MURRELL: All right, Your
4 Honor. If it please the Court. This is a
5 foreclosure action as to certain real
6 property located in Chester County. It is
7 a contested case, but the main point of
8 contention was between the competing lien
9 holders, my client and Mr. Alexander. I
10 believe we have resolved that issue both in
11 terms of discovery and because of the
12 bankruptcy filings, so I do want to be
13 upfront by stating that many of the things
14 that I'm going to state, I believe are also
15 applicable to his lien interest, as well.

16 MR. FOSTER: And what do you mean
17 by that, you've resolved the issues?

18 MR. MURRELL: Well, what I mean by
19 that is, when we had a chance to sit down
20 and talk with his client being present, and
21 again, I've provided notice to everybody
22 and was disappointed I didn't have more of
23 an attendance at the deposition of Mr.
24 Cooke. We went through the bankruptcy
25 documents, and it was conceded -- the

1 argument that I'm making today was
2 basically conceded, and that is as follows.
3 Ms. McMickens filed a bankruptcy action ---

4 MR. ALEXANDER: I'm going to -- on
5 behalf of Mr. Cooke, we acknowledge that
6 Mr. Murrell's mortgage has first priority
7 in its entirety based on the bankruptcy
8 filings, and I believe we agree that my
9 client would be second to his \$92,000.00
10 mortgage. I would like to state my
11 position for the record when I get my
12 opportunity, but -- put the reasons down,
13 because I would like the reasons to be in
14 the order.

15 MR. MURRELL: And I don't want to
16 misstate something, so certainly, anything
17 he has to correct or to advise ...

18 THE COURT: Okay. Go ahead, then,
19 Mr. Murrell.

20 MR. MURRELL: I would submit a
21 copy of the Pacer Statement reflecting all
22 the filings in Ms. McMickens' bankruptcy
23 case. It was a joint filing by Nathaniel
24 McMickens and Glenda McMickens which was
25 filed on 12/22 of 2007, Bankruptcy

1 Petition, 2007-07-099-HB, and I would like
2 to submit a copy of that into evidence.

3 THE COURT: For the purpose of
4 this motion, do you have any objection?

5 MR. FOSTER: No, sir.

6 THE COURT: Without objection,
7 that would be entered as Plaintiff's
8 Exhibit Number 1.

9 (Pacer Report marked as Plaintiff's Exhibit
10 Number 1 for identification.)

11 MR. MURRELL: As part of the
12 bankruptcy filing, the debtors set forth
13 their scheduled debts, and those were
14 divided into a creditor's holding, secured
15 claim and unsecured claim. So, I submit
16 into evidence Schedule D of the same case
17 which reflects the first mortgage on this
18 property being fully secured. It reflects
19 the second mortgage to Robert Cooke as
20 being valued through the plan, but it does
21 reflect it as a second mortgage. I would
22 submit that into evidence.

23 THE COURT: Any objection to that
24 document?

25 MR. FOSTER: No, sir.

1 THE COURT: Without objection,
2 then, that would be entered as Plaintiff's
3 Exhibit Number 2.

4 (Schedule D marked as Plaintiff's Exhibit Number
5 2 for identification.)

6 MR. MURRELL: Ms. McMickens also
7 submitted into evidence as Schedule B a
8 statement of any personal property she
9 would be required to declare as assets, and
10 I would submit a note, Item 21, of Schedule
11 B which requires a statement as to other
12 contingent and unliquidated claims of every
13 nature, including tax refunds,
14 counter-claims of the debtor and rights to
15 set off claims, and give an estimate value
16 of each. And that is marked as 9, and I
17 would submit a copy of that into evidence.

18 THE COURT: Any objection?

19 MR. FOSTER: I have none.

20 THE COURT: That will be entered
21 into evidence.

22 (Schedule B-9 marked as Plaintiff's Exhibit
23 Number 3 for identification.)

24 MR. MURRELL: The next document is
25 part of the court record and was provided

1 to Ms. McMickens by letter dated May 20th
2 of 2009, as she is filing much of her
3 correspondence in the court, and as a pro
4 se debtor, I thought it advisable to file
5 mine, as well. So, it is part of the court
6 record in that respect. I would also note
7 it also being part of the public record in
8 that the May 20th letter, as I say, which
9 was sent to her in response to her
10 attendance at one of the motion hearings
11 where she requested proof of the debt, and
12 I provided her a copy of the Note, a copy
13 of the Mortgage, a copy of the filed
14 assignment, as well as a copy of proof of
15 claim, and all those referenced documents
16 were part of the proof of claim in this
17 bankruptcy case. There was also a letter
18 from my client that she had requested
19 confirming that she did, in fact, have an
20 account with them. So, I would submit that
21 into evidence as well.

22 THE COURT: Any objection to that
23 group of pages?

24 MR. FOSTER: I would respond in
25 this fashion. Insofar as this is a Motion

1 for Summary Judgment, and again, repeating
2 myself that I have no objection to anything
3 that's in the Bankruptcy Court records,
4 what we're being handed here, I'm sure as a
5 matter of fact is what it says it is, but
6 it is not a part of the records. Now, if
7 counsel has Proof of Claim that was filed
8 ...

9 MR. MURRELL: That document has
10 been filed with the Clerk of Court, Your
11 Honor. However, for the most part, I think
12 the Note and Mortgage, the Assignment and
13 Proof of Claim were all part of the Proof
14 of Claim that were filed in bankruptcy. I
15 don't think the cover letter or the back
16 letter that it references are particularly
17 relevant, so I don't have any problems with
18 it being restricted to the Proof of Claim.
19 It was provided to them in the bankruptcy,
20 and I provided it to them a second time.
21 Actually, I think it was third time we
22 provided it to them.

23 MR. FOSTER: Do you have a copy of
24 the Proof of Claim?

25 MR. MURRELL: The Proof of Claim

1 THE COURT: Without objection,
2 then, that would be entered as Plaintiff's
3 Exhibit Number 2.

4 (Schedule D marked as Plaintiff's Exhibit Number
5 2 for identification.)

6 MR. MURRELL: Ms. McMickens also
7 submitted into evidence as Schedule B a
8 statement of any personal property she
9 would be required to declare as assets, and
10 I would submit a note, Item 21, of Schedule
11 B which requires a statement as to other
12 contingent and unliquidated claims of every
13 nature, including tax refunds,
14 counter-claims of the debtor and rights to
15 set off claims, and give an estimate value
16 of each. And that is marked as 9, and I
17 would submit a copy of that into evidence.

18 THE COURT: Any objection?

19 MR. FOSTER: I have none.

20 THE COURT: That will be entered
21 into evidence.

22 (Schedule B-9 marked as Plaintiff's Exhibit
23 Number 3 for identification.)

24 MR. MURRELL: The next document is
25 part of the court record and was provided

1 to Ms. McMickens by letter dated May 20th
2 of 2009, as she is filing much of her
3 correspondence in the court, and as a pro
4 se debtor, I thought it advisable to file
5 mine, as well. So, it is part of the court
6 record in that respect. I would also note
7 it also being part of the public record in
8 that the May 20th letter, as I say, which
9 was sent to her in response to her
10 attendance at one of the motion hearings
11 where she requested proof of the debt, and
12 I provided her a copy of the Note, a copy
13 of the Mortgage, a copy of the filed
14 assignment, as well as a copy of proof of
15 claim, and all those referenced documents
16 were part of the proof of claim in this
17 bankruptcy case. There was also a letter
18 from my client that she had requested
19 confirming that she did, in fact, have an
20 account with them. So, I would submit that
21 into evidence as well.

22 THE COURT: Any objection to that
23 group of pages?

24 MR. FOSTER: I would respond in
25 this fashion. Insofar as this is a Motion

1 for Summary Judgment, and again, repeating
2 myself that I have no objection to anything
3 that's in the Bankruptcy Court records,
4 what we're being handed here, I'm sure as a
5 matter of fact is what it says it is, but
6 it is not a part of the records. Now, if
7 counsel has Proof of Claim that was filed
8 ...

9 MR. MURRELL: That document has
10 been filed with the Clerk of Court, Your
11 Honor. However, for the most part, I think
12 the Note and Mortgage, the Assignment and
13 Proof of Claim were all part of the Proof
14 of Claim that were filed in bankruptcy. I
15 don't think the cover letter or the back
16 letter that it references are particularly
17 relevant, so I don't have any problems with
18 it being restricted to the Proof of Claim.
19 It was provided to them in the bankruptcy,
20 and I provided it to them a second time.
21 Actually, I think it was third time we
22 provided it to them.

23 MR. FOSTER: Do you have a copy of
24 the Proof of Claim?

25 MR. MURRELL: The Proof of Claim

1 is attached to that document.

2 THE COURT: Now, you're talking
3 about the Proof of Claim by your mortgage
4 broker?

5 MR. MURRELL: Yes, sir, Your
6 Honor. That's the cover of the Proof
7 of Claim. The Note and Mortgage are
8 attached to that. All I did was switch
9 the order a little bit and make the Note,
10 the Mortgage and the Assignment first and
11 then the Proof of Claim. But in the
12 bankruptcy filing, the Proof of Claim was
13 on the cover sheet followed by the Note and
14 Mortgage.

15 MR. FOSTER: So, it's possible
16 that -- I'm trying to read this relatively
17 quickly, but I do not see immediately
18 anywhere on the Proof of Claim indicating
19 that the pages were included. Perhaps, you
20 can direct me.

21 MR. MURRELL: When it's filed with
22 the Bankruptcy Court, it's required to have
23 the Proof of Security instruments attached
24 to it. So, if you pull it up, that should
25 -- the Mortgage and Assignment are also a

1 matter of public record within the county.

2 MR. FOSTER: Let me put it this
3 way, if it has been filed with the
4 Bankruptcy Court, and if that can be
5 confirmed, I presume it can be confirmed by
6 the Court by going to the Pacer and
7 looking. Obviously, the Court can take
8 judicial notice of that. I don't believe
9 what we have here is proof that it was
10 filed in the court. So, to that extent ...

11 MR. MURRELL: I'll be happy to
12 supplement it with an Affidavit that the
13 document in its entirety has been filed
14 with the Bankruptcy Court, if that's in
15 question. I mean, the Trustee's Office and
16 the Bankruptcy Court require you to provide
17 proof that you own the debt that you're
18 submitting a Proof of Claim on behalf of,
19 but I can have our bankruptcy attorney
20 confirm that it was filed as part of the
21 documents with the Bankruptcy Court,
22 because given the fact that the majority
23 of our Bankruptcy Court filings now are
24 electronic and on-line. So, you do not
25 have a hard copy that has a stamped file on

1 it. It's extremely rare if you have that,
2 and they only do that with a few pro se
3 debtors. Typically, I believe they'll
4 only have a copy of the Proof of Claim,
5 because to have every document attached to
6 it also as part of the Pacer takes up a lot
7 of valuable space, and it's an electronic
8 system that's on-line, and actually, this
9 is probably about the third or fourth best
10 Bankruptcy Court in the nation.

11 THE COURT: Okay. I'm going to
12 note that objection, and I'm going to enter
13 this group of documents as Plaintiff's
14 Exhibit, whatever number it is, and I'm
15 going to allow Mr. Murrell to supplement
16 this exhibit with the proof that he claims
17 he can have about that and direct that he
18 send that to Mr. Foster.

19 MR. MURRELL: And the address I
20 have for you is still correct?

21 MR. FOSTER: Tell me what it is,
22 since it was a problem.

23 MR. MURRELL: No. I want to make
24 sure that we're all correct, because I had
25 put it -- because since you had appeared at

1 the hearing, I put it in the proposed order
2 to make sure that I had it correctly, and
3 if there was any mistake, that that would
4 ...

5 MR. FOSTER: We received the
6 mailing.

7 MR. MURRELL: The address that I
8 had is P. O. Box 106, Rock Hill, South
9 Carolina, 29731.

10 MR. FOSTER: Yes.

11 THE COURT: Then, that group of
12 material as explained and with the
13 objection and ruling will be entered as
14 Plaintiff's Exhibit 4.

15 (Letter dated 5/20/09 with attached documents
16 marked as Plaintiff's Exhibit Number 4 for
17 identification.)

18 THE COURT: Okay. Go ahead.

19 MR. MURRELL: Your Honor, the
20 Proof of Claim sets forth not only the
21 debt that is owed, but also provides a
22 minute and itemized breakdown of all the
23 fees, costs, expenses and everything
24 incurred up to that date. The Trustee's
25 web site also confirmed that there were no

1 payments made to my client by the Trustee
2 on behalf of the Debtor. It appears from
3 the Pacer readout that her case was
4 dismissed about three-and-a-half months
5 after it was filed, so I don't believe that
6 was -- given the problems with Mr. -- or
7 the issues with Mr. Alexander's client, Mr.
8 Cooke and the bankruptcy and the litigation
9 that they have regarding that, I don't
10 believe the plan ever got on track to where
11 the Trustee collected on it and made any
12 payments.

13 I would also submit into evidence
14 this document that was filed on February
15 25th of 2008 in the McMickens' case which
16 noticed a modification before the
17 confirmation that, at least as it pertains
18 today, to the issues before us today,
19 treated his client -- Mr. Cooke as a fully
20 secured second mortgage, and I would like
21 to submit a copy of that into evidence.

22 THE COURT: Any objection to that?

23 MR. MURRELL: And I believe that
24 document and all the other documents I've
25 referenced, with the exception of the Proof

1 of Claim, are noted on the Pacer Statement.

2 MR. FOSTER: No objection.

3 THE COURT: Without objection,
4 that group of documents will be entered as
5 Plaintiff's Exhibit Number 5.

6 (Group of documents filed 2/25/08 marked as
7 Plaintiff's Exhibit Number 5 for identification.)

8 MR. MURRELL: As I say, I fully
9 concede that I would have preferred we have
10 had more time and had more thorough
11 affidavits, but given the timing of this,
12 I've tried to give the best notice that I
13 could, as quickly as I could, and it's also
14 based upon documents that have been
15 provided to Ms. McMickens previously,
16 either through the bankruptcy or directly
17 as a courtesy.

18 There were no payments made during the
19 bankruptcy by the Trustee's office. There
20 were limited payments that were made
21 post-petition, but I would ask to submit an
22 Affidavit of Debt that would confirm and
23 give credit for those limited payments,
24 but they were of a very limited nature, and
25 I believe about two or three payments. And

1 I've got a printed Debt statement that I'm
2 awaiting an Affidavit of Debt from my
3 client on, but I would ask the Court to
4 submit that.

5 And rules to the side, if they have any
6 proof of payments that they can provide,
7 whether they're barred under the rules,
8 or not, I would ask them to provide them to
9 me, because not only do I have a duty to
10 make sure that the accurate debt is set
11 forth, but that's one of the specific
12 duties, to make sure that the debt has been
13 confirmed and that all proper credits have
14 been provided.

15 Again, this is a case where there has
16 been counsel involved from the beginning
17 where we would have sent out the
18 interrogatories and the requests for
19 production for the payments that were
20 allegedly made, to please provide copies of
21 receipts and that type of thing, but
22 unfortunately, her attorney didn't get
23 involved until the tail end of this case,
24 which I can appreciate his position, and as
I say, I have no objection whatsoever to

1 them providing me proof of payments or
2 anything else within ten days.

3 This is the Statement of Debt, and I
4 would ask to supplement it with a Sworn
5 Affidavit by my client to confirm that.

6 THE COURT: This is the amount
7 due?

8 MR. MURRELL: Yes, Your Honor, and
9 I have compared it to the referral and the
10 debt set forth in my complaint, because it
11 did reflect that there was a small
12 reduction in the principal balance that was
13 due that's attributable to the few number
14 of post-petition payments that were made.

15 THE COURT: Any objection to that
16 statement coming in?

17 MR. FOSTER: I assume correctly
18 that this information is dated 10/20. I
19 haven't looked at the last page yet, but I
20 assume that it was signed no later than
21 10/20.

22 MR. MURRELL: My office, I
23 believe, to the best of my recollection,
24 and I've been on the road continuously for
 a couple of weeks, but it was run by my

1 client 10/20. I either received it, I
2 believe, 10/20 or the next day, and it's
3 good through today's date. I would have to
4 look at my calendar, but I believe --
5 what's today, Friday -- I believe I
6 received it either Tuesday or Wednesday. I
7 did attempt to try to get a proper
8 Affidavit of Debt, but was unable to do so
9 prior to the hearing.

10 MR. FOSTER: Your Honor, I'm
11 obliged to say insofar as the Summary
12 Judgment Motion, affidavits can be served
13 at least as of the time of the hearing. We
14 don't even have an affidavit. One of the
15 elements of his proof, he's asking for a
16 judgment against my clients in the event
17 the house is sold, would be a proof of
18 amount. So, I object to that extent, and I
19 believe the proof fails to that extent.

20 THE COURT: What would you require
21 as proof of the amount due?

22 MR. FOSTER: I am merely reciting
23 the rules as to what I understand Summary
24 Judgment requires.

THE COURT: I'm going to note that

1 objection and for the purposes of this
2 motion, I'm going to allow this Debt
3 Statement with the understanding that Mr.
4 Murrell will provide an Affidavit as to the
5 amount due by his client, and I would ask
6 that you, of course, send that to counsel,
7 both counsel of record.

8 MR. MURRELL: Well, and as I say,
9 Your Honor, I have absolutely no objection
0 and will so state that on the record that
1 if they have any proof of payments, I have
2 no objection whatsoever to those being put
3 into the record and determine whether or
4 not there are any further credits that need
5 to be provided.

6 THE COURT: Then I'm going to
enter that, then, as Plaintiff's Exhibit
Number 6.

(Statement of Debt marked as Plaintiff's Exhibit
Number 6 for identification.)

MR. MURRELL: And my client has
asked for attorney's fees costs. I don't
know what those are until I know what the
status of the case is, but I would ask to
submit an Affidavit as to the attorney's

1 fees and costs, and certainly, they can
2 question those, if they so desire.

3 MR. FOSTER: I believe that would
4 be the proper procedure, presuming we have
5 a proper Summary Judgment in this case, but
6 I think it's quite proper to submit an
7 Affidavit thereafter.

8 MR. MURRELL: And most times,
9 that's a two-step process where, if you
10 granted the motion, then you can go ahead
11 and determine the attorney's fees, and if
12 not, then you'd hold that until the merits
13 trial.

14 THE COURT: Okay. Then, we'll
15 allow that, to submit that Affidavit on
16 behalf of Mr. Murrell.

17 MR. FOSTER: Do we have a deadline
18 on that?

19 THE COURT: Well, we would like to
20 get everything in plenty of time for
21 everybody to look at, and so, I would say
22 ten days.

23 MR. MURRELL: I will try to have
24 that done within a week.

25 THE COURT: And supply Mr. Foster

1 with that information.

2 MR. MURRELL: Mr. Foster, can you
3 provide me with your phone number?

4 MR. FOSTER: I may have given you
5 my name as Martin, which is the name I go
6 by, but it's actually John Martin. It's
7 324-8100.

8 MR. MURRELL: That may be where
9 the confusion came from.

10 MR. FOSTER: Do you know the
11 Fax Number?

12 MR. MURRELL: No, sir, you can
13 give me the Fax, also.

14 MR. FOSTER: 324-8109. That's
15 803.

16 MR. MURRELL: And your Email?

17 MR. FOSTER: jmfoster@comporium.net.

18 THE COURT: Is there anything
19 else, Mr. Murrell?

20 MR. MURRELL: No, Your Honor,
21 that's my motion.

22 MR. FOSTER: And so you're asking
23 that the Court find in Summary Judgment
24 that your client has a first mortgage on
the real property owned by Mr. and

1 Ms. McMickens?

2 MR. MURRELL: Correct, Your Honor.

3 THE COURT: And the amount due, as
4 you provided there, plus an affidavit and
5 plus costs and attorney's fees that you
6 will provide, and that the real property
7 will be put up and sold in the normal
8 course of the foreclosure action.

9 MR. MURRELL: The next available
10 sales date, Your Honor.

11 THE COURT: And you say you are
12 asking for a deficiency?

13 MR. MURRELL: My client has
14 reserved it at this time, although most
15 banks will reserve a deficiency unless
16 there's a reason why they're required to
17 maintain that such as PMI coverage, but
18 certainly they reserve it.

19 THE COURT: Anything else?

20 MR. MURRELL: Nothing further,
21 Your Honor.

22 MR. FOSTER: I need to state this
23 on the record and hope I say this properly.
24 I'm tending to remember a case in the Court
25 of Appeals that did not reach this issue,

1 but which I looked up. My belief is that
2 the question of deficiency has to be
3 decided as of the time of the order, at
4 least. I'm aware of the practice of banks
5 of preferring to wait until the sales date.
6 So, I need to put in that point here that
7 it may be a possible problem that will
8 never arise.

9 THE COURT: Just to state that
10 again, the bank intends to wait until the
11 sales date, you consider that an appealable
12 issue.

13 MR. MURRELL: In all honesty and
14 without prejudicing my client, as a
15 statewide practice, almost every court
16 allows you to waive it up until sale.
17 There are a couple of courts that will not
18 allow you to do so after the order. I
19 think Judge Curry in Dillon who is retired
20 now took that stand, and there may have
21 been one other. So, there is a division on
22 it, but the vast majority will allow you to
23 waive it, but that's my -- I don't know
24 that there is a specific statutory or case
law requirement, but that's the practice.

1 And again, I just wanted to offer that to
2 the Court in complete honesty that most of
3 them do it that way, but a couple ...

4 THE COURT: We'll note that
5 motion about the deficiency issue. Okay.
6 Anything else, Mr. Murrell?

7 MR. MURRELL: Just one other
8 thing, Your Honor. If that is a strong
9 issue with them, I can try to get my client
10 to determine whether or not they're going
11 to waive it by the time of the order.

12 MR. FOSTER: At this point, it's
13 only a potential issue, because it hasn't
14 come up yet. I'm merely stating down the
15 line ...

16 MR. MURRELL: I understand. The
17 issue of deficiency typically is something
18 that you deal with kind of early on in the
19 case to try to avoid some of the fees and
20 costs, but unfortunately, it's something
21 we're dealing with at this late date.

22 THE COURT: Anything else, Mr.
23 Murrell?

24 MR. MURRELL: No, Your Honor.

THE COURT: Then, Mr. Alexander,

1 we'll hear your motion.

2 MR. ALEXANDER: Judge, could I
3 speak in relation to Mr. Murrell's motion
4 briefly?

5 THE COURT: Yes.

6 MR. ALEXANDER: Originally, Mr.
7 Cooke asserted that he had priority of that
8 mortgage, and I'll be very brief, but I do
9 want to state my position for the record
10 for purposes of the order. Originally,
11 Ms. McMickens had a mortgage with a payoff
12 of a tad over \$48,000.00. At that point,
13 the \$26,000.00 Cooke mortgage was signed
14 and executed, but not recorded. Mr. and
15 Ms. McMickens refinanced and paid off right
16 at \$48,000.00 on the first mortgage. Mr.
17 Cooke's mortgage was not paid off. And
18 that's when Mr. Murrell's client comes in
19 with a \$92,000.00. We asserted that the
20 mortgage broker knew of the unrecorded
21 mortgage of Mr. Cooke, and therefore, we
22 should have priority completely to start
23 with, but at least as far as any amount
24 over the payoff on the then existing
25 mortgage. And those we've modified our

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 pleadings and amended them to take those
2 positions.

3 Based on two factors, we acknowledge
4 that Mr. Murrell's client mortgage in its
5 entirety has first priority. Those two
6 bases are, first of all, the bankruptcy
7 filings. I believe they establish -- and
8 in fact, I have submitted an Affidavit on
9 my client's Motion for Summary Judgment.
10 He actually got one check of \$259.00, so
11 somebody paid some money somewhere, but we
12 believe that the filings in the Bankruptcy
13 Court establish the HSBC Bank Mortgage as
14 first priority.

15 The second basis is while I believe we
16 can show that the mortgage broker knew of
17 my client's unrecorded mortgage, we have
18 not been able to establish any evidence
19 that the actual bank knew of it, and I
20 don't believe we can establish that the
21 mortgage broker was an agent from a
22 principal agent's standpoint where his
23 actions would bind the bank.

24 So, based on those two factors, we did
25 not want to -- judicial economy, we believe

1 that the HSBC mortgage, therefore, has
2 first priority, and at most, we come in on
3 second priority after that. And it's on
4 those two bases -- and I would like the
5 order to state those two bases.

6 MR. MURRELL: And Your Honor,
7 on that particular point, we did limited
8 discovery. I don't think we did the
9 standard discovery of naming witnesses. I
10 had spoken and was potentiality going
11 to employ an expert witness who can provide
12 a written opinion that would have been his
13 testimony that, absent an expressed
14 agreement to the contrary, a mortgage
15 broker is not the agent for lender, which I
16 believe is the specific point. And quite
17 frankly, I don't have a dog in his fight,
18 but I don't want to prejudice his client's
19 rights in any other potential or pending
20 litigation.

21 THE COURT: And then, if you need
22 to establish the amount due ...

23 MR. ALEXANDER: Yes, sir, and if I
24 could speak to my motion for summary
25 judgment, then. What we did, we filed our

1 motion asking that we be treated as a
2 second mortgage in this case and that
3 foreclosure be granted on our mortgage
4 by way of summary judgment. I actually
5 sent an Affidavit by Mr. Cooke with
6 attachments and my requests for admissions
7 that's already been referred to, and they
8 should be downstairs in the Clerk's office.
9 I sent copies for filing, and I sent Mr.
10 Foster copies and Mr. Murrell's copies.
11 And based on what I heard from Mr. Murrell,
12 we weren't sure we had Mr. Foster's right
13 address, so I think I may have even sent
14 Mr. McMickens them just to make sure
15 everybody got everything, and I hope Mr.
16 Foster got my copies.

17 MR. FOSTER: I did.

18 MR. ALEXANDER: Okay. Our
19 position is, if the Affidavit itself from
20 Mr. Cooke attaches bankruptcy documents --
21 and what I'd like to do, I'd like to take
22 my copy of the exhibits that were attached
23 to that and supplement the exhibits that
24 were presented in Mr. Murrell's case. The
first one's the original Chapter 13 Plan

1 which is dated December 20th, 2007, which I
2 believe attempts to treat my client as
3 an unperfected second mortgage. I would
4 offer this ...

5 THE COURT: Any objection to that
6 information?

7 MR. FOSTER: Insofar as it's the
8 record of the Bankruptcy Court, no, sir.

9 THE COURT: Then, I'm going to
10 enter that document as described as
11 Defendant Cooke's Exhibit Number 1.
12 (Bankruptcy Court Plan marked as Defendant's
13 Exhibit Number 1 for identification.)

14 MR. ALEXANDER: The next document
15 which was attached to my client's Affidavit
16 is his actual Proof of Claim, and this was
17 filed by an attorney in Columbia by
18 name of John Butler who represented Mr.
19 Cooke in the bankruptcy.

20 THE COURT: Any objection?

21 MR. FOSTER: Insofar as they're
22 records of the Bankruptcy Court, no, sir.

23 THE COURT: Then I'll enter those
24 three pages as Defendant Cooke's Exhibit
7 Number 2.

1 (Proof of Claim marked as Defendant's Exhibit
2 Number 2 for identification.)

3 MR. ALEXANDER: Mr. Murrell has
4 already entered the Modification Plan, and
5 I will not re-enter it again, but I would
6 rely on that exhibit since it was already
7 before you, but we would have relied on
8 that.

9 The next document is an actual order of
10 the Bankruptcy Court which confirms the
11 Modified Plan that the Trustee recommended.

12 THE COURT: Any objection?

13 MR. FOSTER: No objection.

14 THE COURT: Without objection,
15 that will be entered as Defendant Cooke's
16 Exhibit Number 3.

17 (Modification Plan marked as Defendant's Exhibit
18 Number 3 for identification.)

19 MR. ALEXANDER: And then we have
20 the order of the Court which actually
21 dismisses the bankruptcy, and this order is
22 dated 5/9/08.

23 THE COURT: Any objection?

24 MR. FOSTER: No objection.

25 THE COURT: Without objection,

1 that will be entered as Defendant Cooke's
2 next exhibit.

3 (Order of Bankruptcy Dismissal marked as
4 Defendant's Exhibit Number 4 for identification.)

5 MR. ALEXANDER: I also submitted
6 as part of the package the Request for
7 Admissions that was served on November
8 20th, 2007 that deals with my client's
9 mortgage and the HUD Form and other
10 documents and believe also deals with Mr.
11 Murrell's -- some of Mr. Murrell's claims,
12 as well. And again, I filed this, and I
13 would offer this as a package.

14 THE COURT: Any objection to that
15 group of pages?

16 MR. FOSTER: Just to clarify, this
17 is a Request for Admissions backed by the
18 original attachments?

19 MR. ALEXANDER: That is correct.

20 MR. FOSTER: To this, I have no
21 objection.

22 THE COURT: Without objection,
23 that will be entered as Defendant Cooke's
24 next exhibit.

25 (Request for Admissions marked as Defendant's

Exhibit Number 5 for identification.)

MR. ALEXANDER: For purposes of my motion -- and then there is an Affidavit, and it is frankly down in the Clerk's office. I believe Mr. Foster, I sent him a copy along -- when I sent the copy of the discovery, I also sent an Affidavit from Mr. Cooke.

MR. FOSTER: I have the Affidavit.

MR. ALEXANDER: Judge, my client, we believe has a second mortgage executed by Mr. And Ms. McMickens. Looking at these documents when you get -- when you look at my Request for Admissions -- and Mr. Foster made a point that maybe I had to serve them over after the bankruptcy was dismissed, and we do not believe that that is correct. The case was properly restored to the roster after the bankruptcy was dismissed, and we believe the stay ended, and they were served on November 20th. It's my understanding the bankruptcy was filed on December 20th. I believe that's the date it was filed. But we believe, regardless, once the case was placed back on the

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

39

1 docket, that it just starts again, the
2 stay is gone. She did not respond to
3 the admissions. Under the rules, they are
4 deemed admitted.

5 An exhibit under that Request for
6 Admissions, Exhibit B, is the HUD that
7 Ms. McMickens signed and the Admissions
8 Request that she admits that that is the
9 document, and she signed it. They're
10 deemed admitted.

11 Exhibit C is the mortgage which is
12 properly recorded. We asked, "Is that the
13 mortgage", and "Did you and your husband
14 sign it", and she did not respond. That is
15 deemed admitted.

16 The Note is Exhibit D, and the reason
17 we did an Affidavit for Mr. Cooke is the
18 Note says "Amount due, Investments, Inc.".
19 That's a mistake. It should have been Bob
20 Cooke. But the Request for Admissions,
21 that was the exact document that was used
22 for purposes of this mortgage, and it's
23 deemed admitted, and "Did you sign it",
24 deemed admitted.

25 And then there are some other documents

1 in here, the payoffs, but that doesn't
2 really apply. Those are the documents
3 that apply.

4 So, what we have is, my client's
5 mortgage was properly recorded. It is a
6 second. Also, an admission by Mr. And Ms.
7 McMickens is, Did you get the money", as
8 far as that loan. That is Request for
9 Admission Number 12. "Did you receive the
10 proceeds by check from the law firm of
11 Moore, Harwich, Snyder, net proceeds", and
12 deemed admitted that she in fact got the
13 money. So, she got the money.

14 The bankruptcy action, the original
15 plan actually treats my client as just an
16 unsecured, unperfected mortgage. The
17 modified plan changes that. They signed
18 -- they submitted -- that changes it to a
19 perfected second mortgage with a mortgage
20 on real estate, and we believe they are
21 bound by that. Just as we are bound to be
22 second to Mr. Murrell's first, they are
23 bound that our client -- that it is a
24 proper second.

25 The Proof of Claim filed indicates the

1 amount due, \$26,000.00. There was a charge
2 of \$1,000.00 per week in it for \$4,000.00
3 that Mr. Butler put in attorney's fees, and
4 I acknowledge here, they're not required
5 to pay Mr. Butler's attorney's fees. So,
6 we believe that \$30,000.00 is due on our
7 second mortgage, and the only payment
8 received that we're aware of and attached
9 to his Affidavit -- and I will put it in to
10 make the record complete. He got a check
11 for \$259.00 from William K. Stevenson who
12 was the Trustee. That was not cashed. The
13 original check was attached to the
14 Affidavit that has been filed with the
15 Clerk's office. So, that money is there,
16 and I will -- just to make the record
17 complete will offer that to show that that
18 payment was tendered by Mr. Stevenson.

19 MR. FOSTER: No objection.

20 THE COURT: Without objection,
21 that will be entered as Defendant Cooke's
22 next exhibit.

23 (Check marked as Defendant's Exhibit Number 6 for
24 identification.)

25 MR. ALEXANDER: And the real

1 reason we didn't cash this is because the
2 order dismissing the bankruptcy was in May
3 of '08, and this wasn't issued until July
4 of '08, so we didn't know what to do with
5 it, so we didn't do anything with it.

6 But as far as -- we have not received
7 any payments in the total amount of
8 \$30,000.00 that we're due. And again,
9 depending on what the Court does here, we
10 would ask for the right -- if the Note does
11 allow attorney's fees and costs, we would
12 ask for the right to submit an Affidavit to
13 that, as well, once we know what the Court
14 is going to do.

15 THE COURT: Would it be necessary
16 to deal with your mortgage in the
17 foreclosure order other than to say it's a
18 second mortgage lien?

19 MR. ALEXANDER: I think we can do
20 -- depending on what happens in Mr.
21 Murrell's case, if the Summary Judgment is
22 granted, I think that order could reflect
23 that ours is a proper second and second in
24 priority to Mr. Murrell's.

25 THE COURT: And any surplus funds

1 would be held over the first mortgage?

2 MR. MURRELL: I think, under the
3 rules, we would be required to give notice
4 to anyone who has appeared so they could
5 file a claim and appear again in
6 determination of that.

7 THE COURT: Is it necessary to
8 deal with the figure -- with the second
9 mortgage at this time?

10 MR. MURRELL: And again, this is
11 just speaking off of my experience having
12 done surplus funds, and I do serve as
13 guardian a good bit on cases and
14 religiously submit claims. Unless you're
15 foreclosing on your debt, you typically
16 don't have to establish your debt unless
17 and until the issue comes up of surplus
18 funds case. That's the purpose of the
19 affidavits most of the time.

20 THE COURT: But he is foreclosing.

21 MR. ALEXANDER: We're foreclosing
22 now. We would ask that you grant our
23 motion -- I would ask that you prepare an
24 order foreclosing on it, but establishing
25 it as a second to Mr. Murrell's.

1 MR. MURRELL: As a matter of
2 mechanics, I don't know that you want the
3 first and the second coming up, because if
4 you sell the second and somebody bids on it
5 and then you sell the first, well, they've
6 just wasted their bid. Most of the times,
7 unless there's a collateral -- it's got
8 different collaterals to it and they
9 overlap, most of the time, if they're
10 proceeding at the same time, the first will
11 go to sale, and then the second will either
12 claim any funds, or the first will -- I
13 mean, the second will outbid the first and
14 preserve their interest and deem it a
15 second order, but as a practical matter,
16 the second -- I can't imagine someone is
17 going to knowingly and competently bid on
18 it if the first is also up. So, I just
19 don't know that it would be worth his time
20 or effort, but if he wants to proceed in
21 that fashion, he can.

22 MR. ALEXANDER: Well, we don't
23 object to an order stating that, if there
24 are surplus funds, then we can proceed on
25 our mortgage, whatever is the proper way to

1 do it. We do waive a deficiency judgment
2 for the record.

3 THE COURT: Anything else?

4 MR. ALEXANDER: No, sir.

5 THE COURT: Mr. Foster?

6 MR. FOSTER: I've made my
7 objections.

8 THE COURT: Do you have anything
9 beside the procedural matter?

10 MR. FOSTER: No.

11 MR. MURRELL: And again, Your
12 Honor, I don't have any objection to any
13 proof of payments be provided within a ten
14 day period.

15 MR. FOSTER: I'd like to say
16 again, I believe the Court is capable of
17 going to Pacer and checking himself, and
18 it's something of which you can take
19 judicial notice if it is.

20 THE COURT: Is there anything else
21 that we need to do today?

22 MR. MURRELL: Well, we could
23 either -- although we're going to
24 supplement the record, I could prepare a
25 proposed order or we could wait for

1 findings by the Court and either designate
2 someone to do a proposed order, or we can
3 also submit proposed orders, although I'd
4 hate to see everyone put the effort in on
5 that. At least when I did Family Court, I
6 found that led to a winner take all type of
7 thing rather than having some parameters in
8 which to draft an order.

9 THE COURT: Within ten days,
10 you're going to submit some information to
11 Mr. Foster?

12 MR. MURRELL: Correct.

13 THE COURT: And then we will do
14 that, and then I'll direct about an order
15 to be prepared.

16 MR. FOSTER: As I understand it,
17 we'll also be receiving an actual affidavit
18 as to amount in ten days?

19 MR. MURRELL: Yes. That's the
20 main point of my supplementing is going to
21 be an affidavit from my client, but I'll
22 also provide an affidavit that the Note and
23 security instruments were attached to the
24 plan and filed in the Bankruptcy Court. My
25 office did submit that proof of claim.

1 THE COURT: Anything else?

2 MR. FOSTER: No, sir.

3 MR. ALEXANDER: Nothing from Mr.
4 Cooke.

5 THE COURT: Then, I will adjourn
6 this hearing.

7 (Whereupon, the Motion for Summary Judgment
8 Hearing concluded at 12:14 o'clock p.m.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)

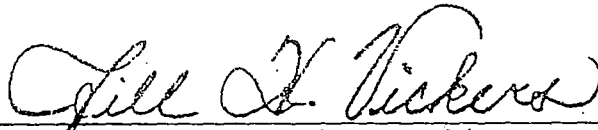
: C-E-R-T-I-F-I-C-A-T-E

COUNTY OF RICHLAND)

I, Jill H. Vickers, Certified Court Reporter and Notary Public, certify that I did have the Motion for Summary Judgment Hearing before me at 11:07 a.m., on Friday, October 23rd, 2009, at the Chester County Courthouse, Chester, South Carolina; that the foregoing pages constitute a true and accurate transcript of the proceedings held at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 12th day of March, 2010.



Notary Public for South Carolina.
My commission expires July 5th, 2016.

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Lamar Kelsey, III, Special Referee

HSBC Bank as Trustee, for the Registered Holders of
Nourma Home Equity Home Loan, Inc., Asset – Backed
Certificates, Series 2007 – 2,.....Respondents,

v.

Glenda McMickens and Nathaniel McMickens,.....Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Record of Appeal complies with Rules 210 and 267, SCACR.

September 25, 2010

Glenda McMickens Nathaniel McMickens
Glenda and Nathaniel McMickens
2834 James F. Wherry Road
Chester, South Carolina 29706
Pro Se

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHESTER COUNTY

Court of Common Pleas

Case No: 2007-CP-12-0559

Case No: 2006-CP-12-034

Case No: 2009146186

RECEIVED

NOV 04 2010

SC Court of Appeals

HSBC Bank as Trustee, for the registered

Holders of Normura Homes Equity

Home Loan, Inc. Asset-Backed

Certificates, Series 2007-2

Respondents,

V.

Nathaniel McMickens and Glenda L. McMickens

Appellants

PROOF OF SERVICE

I, certify that I have served the Order of Records on appeal to Korn Law Firm P.O. Box 11264 Columbia, South Carolina 29211 and James C. Alexander Alexander Law Firm P.O. Box 618 Pickens, SC 29671. Thank you in advance for your time and patience in this matter.

September 27, 2010

Nathaniel and Glenda McMickens

2834 James F. Wherry Road

Chester, SC 29706

803-581-8700

Appellants

Signed

Mr. & Mrs. Nathaniel McMickens

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Case No: 2007-CP-12-0559

Case No.: 2006-CP-12-034

HSBC Bank of Trustee, for the registered
Holders of Normura Homes Equity
Home Loan, Inc. Asset-Backed
Certificates, Series 2007-2

Respondents,

V.

Defendant

Nathaniel McMickens and Glenda L. McMickens,
and Robert Cooke,
Of Whom Nathaniel McMickens and Glenda McMickens

Appellants

Robert Cooke,

Plaintiff

V.

Glenda McMickens are, Nathaniel McMickens and Mortgage
Electronic Registration Systems, Inc. as nominee for Coastal Capital Corp.,

Defendant.

Glenda McMickens and Nathaniel McMickens,

Appellants.

FINAL BRIEF OF APPELLANTS

Glenda and Nathaniel McMickens
2834 James F. Wherry Road
Chester, South Carolina 29706
Pro Se

FINAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Lamar Kelsey, III, Special Referee

Case No: 2007-CP-12-0559
Case No: 2006-CP-12-034

HSBC Bank as Trustee, for the Registered Holders of
Nourma Home Equity Home Loan, Inc., Asset - Backed
Certificates, Series 2007 - 2,

Respondent,

v.

Glenda McMickens and Nathaniel McMickens,

Appellants.

RECEIVED

NOV 18 2010

SC Court of Appeals

FINAL BRIEF OF APPELLANTS

Glenda and Nathaniel McMickens
2834 James F. Wherry Road
Chester, South Carolina 29706
Pro Se

TABLE OF CONTENTS

Tables of Authorities.....	ii
Statement of Issue on Appeal.....	1
Statement of Case.....	1
Facts.....	1
Arguments	
I. BECAUSE THE APPELLANT OBJECTED TO RESPONDENT'S FAILURE TO PROVIDE PROOF OF CLAIM AND A MATERIAL FACT EXISTED	2
Conclusion.....	3

CASES

1. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, (2000).....2
2. *Adamson v. Richland County Sch. Dist. One*, 503 S.E.2d 752,
(Ct. App. 753) (1998).....2
3. *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997).....2
4. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 240, 672 S.E.2d 799, 802
(Ct. App. 2009).....2
5. *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321-22, 548 S.E.2d 854, 857 (2001)....2
6. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537,
543 (1991).....2
7. *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 456,
684 S.E.2d 756, 758 (2009).....2
8. *Soil Remediation Co. v. Nu-Way Envtl., Inc.*, 325 S.C. 231, 234,
482 S.E.2d 554, 555 (1997).....3

OTHER AUTHORITY

1. Rule 56(c), SCRCF.....3

STATEMENT OF ISSUE ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO SUSTAIN THE APPELLANT'S OBJECTION THAT PROOF OF CLAIM WAS NOT PROVIDED?

STATEMENT OF THE CASE

On December 22, 2007, HSBC Bank, Trustee for Nomura Homes Equity Home Loans, in and through their counsel, Korn Law Firm, filed a motion for summary judgment against the Appellant, alleging mortgage payments were more than three months behind and seeking the home.

The motion for summary judgment was heard by a Special Referee as Chester County has no Master in Equity on October 23, 2009. Lamar Kelsey, III served as Special Referee in this matter. Mr. Kelsey granted the Respondent's request for summary judgment and Appellants have filed this appeal.

FACTS

This case stems from a motion for summary judgment filed by the Respondents, Korn Law Firm. Additional Respondents were named as they claim an interest in the subject property and held on October 23, 2009 before the Honorable Lamar Kelsey, III, Special Referee. In addition to the underlying motion for summary judgment, the Appellant also had filed for bankruptcy with that case pending. At the motion for summary judgment hearing, Mr. Murrell of the Korn Law Firm, informed Special Referee Kelsey of the pending bankruptcy hearing and submitted evidence of the same during the motion hearing (transcript, p. 2). These documents included (1) proof of the first mortgage, (2) the second mortgage, statement of the Appellant's assets (transcript p. 2).

Attorney for the Respondent, Mr. Murrell also stated to the Special Referee the Appellant was provided with proof of claim (transcript p. 3). Mr. Murrell also stated the proof of claim was provided to Appellants counsel prior to the hearing, which it was not (transcript p. 3). Appellants' attorney objected and stated that affidavits (Proof of Service) can be served at least as of the time of the hearing, but Respondent's attorney failed to do so (transcript p. 5). Without sufficient proof the Appellants were in receipt of the Affidavit stating how much Appellants actually owed. Without such proof, the motion hearing should not have continued. Special Referee Kelsey noted the Appellants objection and proceeded with the hearing, eventually granting the Respondent's summary judgment.

II. BECAUSE THE APPELLANT OBJECTED TO RESPONDENT'S FAILURE TO PROVIDE PROOF OF CLAIM AND A MATERIAL FACT EXISTED.

The Appellants seek to have the ruling by Special Referee, Kelsey, granting Respondent's summary judgment set aside as the Respondent's failed to provide Claim of Proof, notifying the Appellant of the amount owed on their outstanding mortgage.

On appeal from the grant of a summary judgment motion, this Court applies the same standard as that required for the circuit court under Rule 56(c), SCRCP. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). "Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Adamson v. Richland County Sch. Dist. One*, 331 S.C. 121, 124, 503 S.E.2d 752, 753 (Ct. App. 1998) (quoting *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997)).

"Summary judgment should be granted when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 240, 672 S.E.2d 799, 802 (Ct. App. 2009). "However, summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of law." *Id.* "Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321-22, 548 S.E.2d 854, 857 (2001) (citing *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)).

"In determining whether any triable issues of fact exist, the evidence and all inferences must be viewed in the light most favorable to the non-moving party." *Pee Dee*, 381 S.C. at 240, 672 S.E.2d at 802. "Thus, the appellate court reviews all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party." *Id.* Further, "[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 456, 684 S.E.2d 756, 758 (2009) (quoting *Brockbank v. Best Capital Corp.*, 341 S.C. at 378, 534 S.E.2d at 692 (2000)).

"Summary judgment is improper when there is an issue as to the construction of a written contract and the contract is ambiguous because the intent of the parties cannot be gathered from the four corners of the instrument." *Pee Dee*, 381 S.C. at 241, 672 S.E.2d at 802. "The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed." *Id.* "Construction of an ambiguous contract is a question of fact to be decided by the trier of fact." *Id.* (citing *Soil Remediation Co. v. Nu-Way Envtl., Inc.*, 325 S.C. 231, 234, 482 S.E.2d 554, 555 (1997)).

A summary judgment issuance of summary judgment can be based only upon the court's finding that (1) there are no issues of "material" fact requiring a trial for their resolution, and (2) in applying the law to the undisputed facts, one party is clearly entitled to judgment. Under the facts of this case, there existed an issue of material facts, the Claim of Proof stating the amount owed by the Appellants. As the Respondent's failed to timely inform the Appellants and their counsel of the amount owed, a material fact existed.

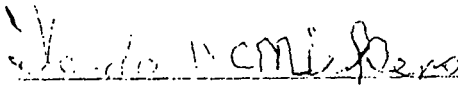
CONCLUSION

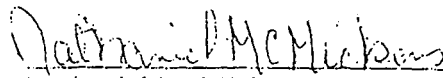
As noted above, the Appellants seek to have this case remanded and reheard so as to properly prepare a defense in preserving their home. The Respondent were required to prove two elements to prevail on summary judgment, that no issues of material fact existed and in applying the law to the undisputed facts, one party is clearly entitled to judgment. Because the Respondent's failed to produce Proof of Claim prior to the hearing, the granting of their summary judgment was inappropriate and should be overturned as a matter of law.

Respectfully submitted,

October 22, 2010

Glenda and Nathaniel McMickens
2834 James F. Wherry Road
Chester, South Carolina 29706
Pro Se


Glenda McMickens


Nathaniel McMickens

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Lamar Kelsey, III, Special Referee

HSBC Bank as Trustee, for the Registered Holders of
Nourma Home Equity Home Loan, Inc., Asset - Backed
Certificates, Series 2007 - 2,.....Respondents,

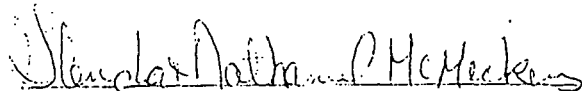
v.

Glenda McMickens and Nathaniel McMickens,.....Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Record of Appeal complies with Rules 211 SCACR.

October 22, 2010


Glenda and Nathaniel McMickens
2834 James F. Wherry Road
Chester, South Carolina 29706
Pro Se

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Lamar Kelsey, III, Special Referee

HSBC Bank as Trustee, for the Registered Holders of
Nourma Home Equity Home Loan, Inc., Asset - Backed
Certificates, Series 2007 - 2, ... Respondents,

v.

Glenda McMickens and Nathaniel McMickens, ... Appellants.

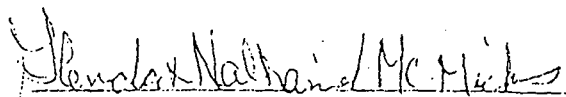
PROOF OF SERVICE

The undersigned certified that this Record of Appeal complies with Rules 211 SCACR and a copy of the
Final Brief was duly served upon the following individuals:

H. Guyton Murrell
Korn Law Firm
P.O. Box 12369
Columbia, South Carolina 29211
803-252-5817
Attorney for Respondent

James C. Alexander
Attorney at Law
P.O. Box 618
Pickens, South Carolina 29671
864-898-3208
Attorney for Respondent

October 22, 2010


Glenda and Nathaniel McMickens
2834 James F. Wherry Road
Chester, South Carolina 29706
Pro Se

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Lamar H. Kelsey, III, Special Referee

Case No. 2007-CP-12-559

HSBC Bank as Trustee, for the registered
holders of Nomura Home Equity Loan, Inc.
Asset-Backed Certificates, Series 2007-2

Respondent,

Nathaniel McMickens,
Glenda L. McMickens and Robert Cooke,
of whom

Nathaniel McMickens and Glenda L. McMickens are

Appellants.

Case No. 2007-CP-12-0034

Robert Cooke,

Nathaniel McMickens, Glenda L. McMickens
and Mortgage Electronic Registration Systems,
Inc. as nominee for Coastal Capital Corp.,
of whom

Nathaniel McMickens and Glenda L. McMickens are
and

Appellants,

HSBC Bank as Trustee as successor
in interest to Mortgage Electronic Registration Systems,
Inc. as nominee for Coastal Capital Corp. is

Respondent.

RESPONDENT HSBC BANK'S FINAL BRIEF

H. Guyton Murrell
P.O. Box 11264
Columbia, SC 29211
(803) 231-2042
Attorney for Respondent HSBC Bank

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Standard of Review.....	2
Arguments	
I. THE TRIAL COURT DID NOT ABUSE IT DISCRETION IN PERMITTING DOCUMENTS FROM APPELLANT'S BANKRUPTCY TO BE ADMITTED INTO EVIDENCE	2
II. THE APPELLANTS LACKED A MERITORIOUS DEFENSE	6
Conclusion.....	8

TABLE OF AUTHORITIES

CASES

<u>Adamson v. Richland County Sch. Dist. One</u> , 332 S.C. 121, 503 S.E.2d 752 (Ct. App. 1988)	2
<u>Brockbank v. Best Capital Corp.</u> , 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000)	2
<u>Colleton Reg. Hosp. V. MRS Med. Rev. Syst.</u> , 866 F. Supp 896 (D.S.C. 1994)	7
<u>Elledge v. Richland/Lexington School Dist. Five</u> , 352 S.C. 179, 573 S.E.2d 789 (2002)	3
<u>Ellis v. Davidson</u> , 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004)	6
<u>Fields v. J. Haynes Water Builders, Inc.</u> , 376 S.C. 545, 658 S.E.2d 80 (2008)	5, 6
<u>Gamble v. Int'l Paper Realty Corp. of South Carolina</u> , 323 S.C. 367, 474 S.E.2d 438 (1996)	3
<u>Hayne Federal Credit Union v. Bailey</u> , 327 S.C. 242, 489 S.E.2d 472 (1997)	7
<u>Hofer v. St. Clair</u> , 298 S.C. 503, 381 S.E.2d 736 (1989)	3
<u>Peterson v. West American Ins. Co.</u> , 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999)	6
<u>R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.</u> , 343 S.C. 424, 540 S.E.2d 113 (Ct.App.2000)	3
<u>Regions Bank v. Schmauch</u> , 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)	6
<u>S.C. Prop. & Cas. Guar. Ass'n v. Yensen</u> , 345 S.C. 512, 548 S.E.2d 880 (Ct.App.1995)	3
<u>Steven v. Allen</u> , 336 S.C. 439, 520 S.E.2d 625 (Ct.App.1999)	3
<u>Timmons v. South Carolina Tricentennial Comm'n</u> , 254 S.C. 378, 175 S.E.2d 805 (1970)	3
<u>Tupper v. Dorchester County</u> , 326 S.C. 318, 487 S.E.2d 187 (1997)	2
<u>Whaley v. CSX Transp., Inc.</u> , 362 S.C. 456, 609 S.E.2d 286 (2005)	3
<u>Zimmerman v. Central Union Bank</u> , 194 S.C. 518, 8 S.E.2d 359 (1940)	7

SOUTH CAROLINA RULES OF CIVIL PROCEDURE

Rule 56(c), SCRCP 6

OTHER AUTHORITIES

31 C.J.S. *Estoppel & Waiver* Section 139 (1996) 7

STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ABUSE ITS DISCRETION IN PERMITTING DOCUMENTS FROM APPELLANT'S BANKRUPTCY TO BE ADMITTED INTO EVIDENCE?
- II. DID THE APPELLANTS EVER OFFER A MERITORIOUS DEFENSE?

STATEMENT OF THE CASE

This is a foreclosure action as to property in Chester County, South Carolina. The case on appeal consolidated two (2) separate actions by competing mortgage holders. The action by respondent HSBC Bank was filed on November 8, 2007. The case was stayed by a Chapter 13 Bankruptcy filed by appellants Nathaniel McMickens and Glenda McMickens on December 22, 2007 as Case No. 07-07099-jw. The appellants' bankruptcy case was dismissed on May 5, 2008. The two (2) foreclosure actions were consolidated and referred to a special referee by order filed June 8, 2009. The appellants filed a letter on June 23, 2009 requesting proof of the debt that respondent's counsel treated as a pro se responsive pleading.

A status conference was held September 15, 2009 attended by all parties. The subsequent scheduling order provided for pre-trial motions to be heard on October 23, 2009 and any subsequent merits hearing scheduled for November 20, 2009. Respondent served a motion for summary judgment on October 9, 2009. By Order dated November 6, 2009, the special referee granted the motion for summary judgment. The order made a finding that respondent was entitled to foreclosure but deferred specific findings as to the debt.

STANDARD OF REVIEW

On appeal from the grant of a summary judgment motion, the appellate court applies the same standard as that required for the circuit court under Rule 56(c), SCRCP, Brockbank v. Best Capital Corp., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). "Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Adamson v. Richland County Sch. Dist. One, 332 S.C. 121, 124, 503 S.E.2d 752, 753 (Ct. App. 1988) (quoting Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997)).

ARGUMENTS

I THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN PERMITTING DOCUMENTS FROM APPELLANT'S BANKRUPTCY TO BE ADMITTED INTO EVIDENCE.

In the case presently before this Court, the issue on appeal as stated in appellants' brief is whether the trial judge committed reversible error in permitting a copy of the proof of claim from the appellants' Chapter 13 Bankruptcy to be submitted into evidence. The motion for summary judgment specifically referenced the motion as being based upon the filings in the appellants' bankruptcy case. The bankruptcy documents in question are part of the public record and were either filed by the appellants in the bankruptcy or submitted by creditors and incorporated into the appellants' Chapter 13 Plan. Furthermore, the record reflects the documents were voluntarily provided to the pro se appellants well in advance of the motion hearing with a copy filed in the Chester County Clerk of Court. The appellant is bound by the filings and admissions made in their prior bankruptcy. The documents from the bankruptcy case clearly established there was no genuine issue of material fact and respondent was entitled to summary judgment as a matter of law.

As a general rule, the admission of evidence is a matter addressed to the sound discretion of the trial court. Gamble v. Int'l Paper Realty Corp. of South Carolina, 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996); Hofer v. St. Clair, 298 S.C. 503, 513, 381 S.E.2d 736, 742 (1989); R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct.App.2000). An appellate court will not disturb a trial court's evidentiary rulings absent a clear abuse of discretion. *Id.* At 439, 540 S.E.2d at 121; Elledge v. Richland/Lexington School Dist. Five, 352 S.C. 179, 185, 573 S.E.2d 789, 792 (2002); *see also* Whaley v. CSX Transp., Inc., 362 S.C. 456, 483, 609 S.E.2d 286, 300 (2005)(observing admission of evidence will not be reversed absent an abuse of discretion). The trial judge's decision will not be reversed on appeal unless it appears he clearly abused his discretion and the objecting party was prejudiced by the decision. S.C. Prop. & Cas. Guar. Ass'n v. Yensen, 345 S.C. 512, 548 S.E.2d 880 (Ct.App.1995). "For this court to reverse a case based on admission of evidence, both error and prejudice must be shown." Steven v. Allen, 336 S.C. 439, 448, 520 S.E.2d 625, 629 (Ct.App.1999) (citing Timmons v. South Carolina Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970)).

The Appellants incorrectly state in their brief that they had "filed for bankruptcy with that case pending" at the time of the motion for summary judgment held October 23, 2009. The appellants further incorrectly state that the special referee was informed "of the pending bankruptcy hearing". (Appellant's Initial & Final Brief, Page 1, Paragraph 1 of "Facts"). A summary from the United States Bankruptcy Court's PACER system of the appellants' Chapter 13 Bankruptcy case was admitted into evidence without objection by the appellants at the motion hearing. (Record on Appeal received October 7, 2010 p. 59, line 20 – p. 60, line 10; Supplemental Record filed January 7, 2011 p.10). The pacer statement from the appellants'

previous Chapter 13 case confirmed that the appellants Nathaniel McMickens and Glenda McMickens filed Chapter 13 Bankruptcy as case no. 07-07099-jw on December 22, 2007 with the case being subsequently dismissed on May 8, 2008. Despite the appellants' contention that their bankruptcy case was pending at the time of the motion hearing, the bankruptcy had been dismissed almost a full six months prior to the motion hearing.

A letter filed by the appellants denied the existence of the mortgage debt. (Supplemental Record on Appeal filed December 10, 2010 p. 13). The appellants did not object to Schedule D and Schedule B from their Chapter 13 Petition being admitted into evidence. (Record on Appeal received October 7, 2010 p. 60, line 11 – P. 61, line 23; Supplemental Record filed January 7, 2011 pp. 11 & 12). Yet Schedule D of the appellant's bankruptcy petition confirmed the existence of the mortgage debt and provided for payments to be made to respondent's servicing agent. Schedule B of the appellants' bankruptcy petition confirmed that no counterclaims or rights to set off existed.

The appellants further denied having been provided a copy of any documents confirming the mortgage debt and, specifically, denied having been previously provided a copy of the proof of claim filed in the bankruptcy for the mortgage debt. The record reflects that the appellants were provided the relevant documents related to the mortgage account, including the proof of claim, on multiple occasions prior to the motion hearing. Respondent's counsel provided a copy of the note, mortgage, assignment and the proof of claim to the appellants by letter dated May 20, 2009. (Record on Appeal received October 7, 2010 pp. 21 – 54; Supplemental Record filed December 10, 2010 at unnumbered p. 99). The appellants were again provided a copy of the proof of claim by letter dated June 30, 2009. (Supplemental Record filed January 7, 2011 p. 98).

Due to the appellants filing their correspondence with the Chester County Clerk of Court, respondent's counsel also filed these letters and attachments with the clerk.

The appeal is based upon the contention that the trial court erred in failing to sustain an objection to the admission of the proof of claim. The PACER report and Schedule D & Schedule B, admitted into evidence without objection, were more than sufficient to establish that the appellants were in default on the subject loan. However, the objection to the proof of claim was based upon the document not bearing a stamp on its face as having been filed. Respondent's counsel pointed out that the United States Bankruptcy Court requires documents to be filed online and as such the document would not have a traditional filed stamp on its face. Respondent's counsel suggested supplementing the record with an affidavit verifying the proof of claim as accurate. (Record on Appeal received October 7, 2010 p. 64, line 24 – p. 70, line 17). An affidavit was subsequently filed verifying the proof of claim as an accurate copy of the document filed in the bankruptcy. (Supplemental Record filed January 7, 2011 pp. 56 - 99). The documents filed in the appellants' bankruptcy case are part of the public record. Although the granting of summary judgment did not hinge upon the admission or exclusion of the proof of claim, the special referee was clearly within his discretion to permit any further supplementing of the court record to verify the proof of claim as an accurate document filed in the bankruptcy action and incorporated into the Chapter 13 Plan.

The caselaw as applied to the facts of this case establishes that the trial court properly exercised its discretion in permitting documents from appellants' prior bankruptcy case to be admitted into evidence. Therefore, the appellant has failed to demonstrate that the trial court committed error. Even a finding of an abuse of discretion does not end the analysis, however, "because to warrant reversal based on the admission or exclusion of evidence, the appealing

party must show both the error of the ruling and the prejudice.” Fields v. J. Haynes Water Builders, Inc., 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008). The appellant has not shown any prejudice resulting from the admission of the bankruptcy documents into evidence. Prejudice is a reasonable probability that the fact-finder’s determination was influenced by the challenged evidence or the lack thereof. *Id.* As set forth above, all of the documents had been provided to the appellants well in advance of the motion hearing. It should also be noted that the proof of claim was filed in the bankruptcy case in accordance with the appellants listing the mortgage debt in their bankruptcy petition and providing for the pre-petition arrearage to be brought current pursuant to the provisions of the Chapter 13 plan.

B. THE APPELLANTS LACKED A MERITORIOUS DEFENSE

The appellants did not respond to the specific allegations of the complaint. After the dismissal of their Chapter 13 Bankruptcy, the appellants filed a letter in the foreclosure action making a general denial of the existence of the mortgage debt. The appellants did not present any evidence showing that the documents submitted by respondent’s counsel were not accurate filings from the appellants’ Chapter 13 Bankruptcy case. In fact, the appellants did not submit any evidence in opposition to the summary judgment motion. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRPC.

The bankruptcy petition submitted by this debtor, as with all bankruptcy debtors, is submitted under oath and under penalty of perjury. A person who knowingly and fraudulently conceals any of his property or assets in a bankruptcy case is subject to fine, imprisonment of not more than 5 years or both.

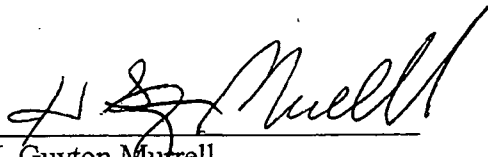
Judicial estoppel precludes a party from adopting a position in conflict with one taken in the same or related litigation. See Colleton Reg. Hosp. V. MRS Med. Rev. Syst., 866 F. Supp 896 (D.S.C. 1994). The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of the courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. 31 C.J.S. *Estoppel & Waiver* Section 139, at 593 (1996). See also Zimmerman v. Central Union Bank, 194 S.C. 518, 532, 8 S.E.2d 359, 365 (1940) ("Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position."). See also Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E.2d 472 (1997) ("Although parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him").

The appellants never pled a formal defense. Their general denial of the existence of the mortgage debt was in direct contradiction with their sworn statements in their Chapter 13 Bankruptcy case. The establishment of the United States Bankruptcy Court is provided for in the United States Constitution. The bankruptcy court performs a valuable function in permitting debtors to obtain a fresh start after financial difficulties. The United States Bankruptcy Court is not a mere matter of convenience to be used by a debtor for delay. The sworn statements by the

appellants as debtors in their bankruptcy case are binding on the appellants in the later foreclosure action. The relief sought by the appellants in this appeal would directly denigrate the dignity of both the United States Bankruptcy Court and this court by encouraging dilatory tactics and perjury.

CONCLUSION

The appeal should be denied and the order granting summary judgment affirmed because the special referee properly acted within his discretion by admitting a copy of the proof of claim into evidence. Even if the admission of the proof of claim was error, it would not constitute reversible error because the granting of summary judgment was not wholly dependent upon the admission of the proof of claim. Furthermore, the special referee required respondent's counsel to submit a confirmation that the proof of claim had been filed in the bankruptcy case. The appellants cannot show prejudice because all of the documents except the proof of claim were admitted into evidence without objection and the proof of claim offered was an accurate copy of the document submitted in the bankruptcy.


H. Guyton Murrell
Korn Law Firm
Attorney for Respondent
HSBC Bank
1300 Pickens Street
PO Box 12369
Columbia, SC 29211-2369
803-252-5817

1 April, 2011
Columbia, South Carolina

The South Carolina Court of Appeals

HSBC Bank as Trustee for the registered holders of
Nomura Home Equity Home Loan, Inc. Asset-Backed
Certificates, Series 2007-2, Respondent,

v.

Nathaniel McMickens, Glenda McMickens, and Robert
Cooke, Defendants.

Of Whom Nathaniel McMickens and Glenda McMickens
are the Appellants.

Robert Cooke, Plaintiff,

v.

Glenda McMickens, Nathaniel McMickens, and
Mortgage Electronic Registration Systems, Inc. as
nominee for Coastal Capital Corp., Defendants.

Appellate Case No. 2009-146186

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

John Cannon Jr C.J.
Thomas C. Mayo J.
Daniel G. Pieper J.

Columbia, South Carolina

cc:

Nathaniel and Glenda McMickens

Henry Guyton Murrell

James C. Alexander

FILED

September 25, 2012

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

HSBC Bank as Trustee, for the
registered holders of Nomura
Home Equity Home Loan, Inc.
Asset-Backed Certificates,
Series 2007-2, Respondent,

v.

Nathaniel McMickens, Glenda
McMickens, and Robert Cooke, Defendants,

Of whom Nathaniel
McMickens and Glenda
McMickens are the Appellants.

Robert Cooke, Plaintiff,

v.

Glenda McMickens, Nathaniel
McMickens, and Mortgage
Electronic Registration
Systems, Inc. as nominee for
Coastal Capital Corp., Defendants.

Appeal From Chester County
Lamar H. Kelsey, III, Special Referee

Unpublished Opinion No. 2012-UP-417
Submitted June 1, 2012 – Filed July 11, 2012

AFFIRMED

Glenda and Nathaniel McMickens, of Chester, pro se.

H. Guyton Murrell, of Columbia, for Respondent.

PER CURIAM: Nathaniel and Glenda McMickens, pro se, appeal the special referee's order granting summary judgment in favor of HSBC Bank. We affirm.¹

The McMickens argue the special referee erred in failing to sustain their objection to the admission of the proof of claim as evidence of the debt at the hearing. We disagree. Although the McMickens initially objected to the proof of claim, the McMickens agreed to its admission providing that HSBC Bank submitted an affidavit attesting that it was filed with the bankruptcy court. HSBC Bank submitted an affidavit and the McMickens did not file a Rule 59(e), SCRPC, motion challenging its admission. Therefore, we find this issue is not preserved for our review. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review").

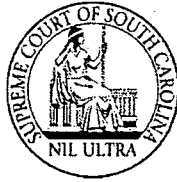
Moreover, we find the special referee did not err in granting HSBC Bank's summary judgment motion. Even in viewing the evidence in the light

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

most favorable to the McMickens, no genuine issue as to any material fact existed and HSBC bank was entitled to a judgment as a matter of law. See Rule 56(c), SCRCF (providing summary judgment is appropriate when "no genuine issue as to any material fact" exists and "the moving party is entitled to a judgment as a matter of law"); see also Klippel v. Mid-Carolina Oil, Inc., 303 S.C. 127, 129, 399 S.E.2d 163, 164 (Ct. App. 1990) ("Under Rule 56, SCRCF, when a party makes a motion for summary judgment and supports it by affidavits the adverse party may not rest on the allegations of his pleadings but must respond by affidavits or other evidence demonstrating a genuine issue of material fact.").

AFFIRMED.

FEW, C.J., and HUFF and PIEPER, JJ., concur.



The Supreme Court of South Carolina

Glenda L. McMickens

10/30/2012

RECEIPT #66064

Fee Type:	Case Initiation Fee
Amount:	\$100.00
Payment Type:	Money Order
Reference No:	20504012938
Check/Money Order Date:	10/20/2012
Comments:	HSBC v. Nathaniel McMickens