

THE STATE OF SOUTH CAROLINA
In The South Carolina Court of Appeals

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APPEAL FROM YORK COUNTY
Court of Common Pleas

SC Court of Appeals

Hon. S. Jackson Kimball III
Master in Equity

Case no. 2011-CP-46-4278
Appellant No.: 2015-001857

Bank of America, N.A., as successor by merger to BAC Home Loans
Servicing, LP, f/k/a/ Countrywide Home Loans Servicing.....RESPONDENT

vs.

Michelle Minardi and Ameris Bank,
of whom Michelle Minardi is the APPELLANT

AMENDED RECORD ON APPEAL

June 30, 2016

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THE STATE OF SOUTH CAROLINA
In The South Carolina Court of Appeals

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Hon. S. Jackson Kimball III
Master in Equity

Case no. 2011-CP-46-4278
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Bank of America, N.A., as successor by merger to BAC Home Loans
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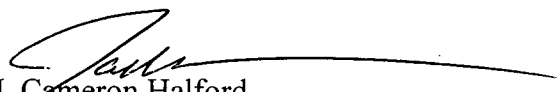
vs.

Michelle Minardi and Ameris Bank,
of whom Michelle Minardi is the APPELLANT

CERTIFICATION OF APPELLANT COUNSEL

Pursuant to SCACR 201(g), the undersigned here certifies that the Amended
Record on Appeal contains all material proposed to be included by any of the parties and
no other materials.

June 30, 2016


J. Cameron Halford
Halford, Niemiec & Freeman, LLP
238 Rockmont Drive
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803-547-6638 (fax)

THE STATE OF SOUTH CAROLINA
In The South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Hon. S. Jackson Kimball III
Master in Equity

Case no. 2011-CP-46-4278
Appellant Case No.: 2015-001857

Bank of America, N.A., as successor by merger to BAC Home Loans
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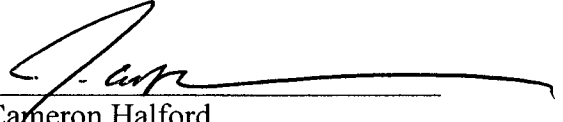
vs.

Michelle Minardi and Ameris Bank,
of whom Michelle Minardi is the APPELLANT

PROOF OF SERVICE

I certify that I am the attorney for the Appellant in the above-captioned matter and that I did on June 30, 2016 serve one copy of the Amended Record on Appeal and SCACR 201(g) Certification of Appellant Counsel on counsel for the party listed below by depositing the same in the United States mail, postage prepaid, and addressed as follows:

Brian Calub, Esquire
McGuire Woods, LLP
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Attorney for Respondent



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803-547-6638 fax
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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to BAC Home
Loans Servicing, LP FKA Countrywide Home Loans
Servicing, LP.

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANT(S).

F11-05497

IN THE COURT OF COMMON PLEAS

NOTICE OF FORECLOSURE
INTERVENTION

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2011CP4604278

DEFICIENCY WAIVED

FILED-RECEIVED
2011 NOV 11 AM 10:14
DAVID HAMILTON
C.C.P. & S.
YORK COUNTY, SC

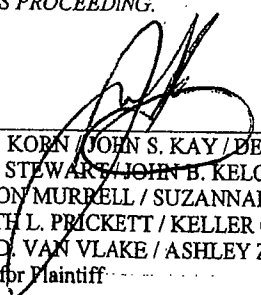
TO: Michelle Minardi:

PLEASE TAKE NOTICE THAT pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01, (hereinafter "Order"), you may have a right to Foreclosure Intervention. PLEASE BE ADVISED THAT THE TERMS AND CONDITION OF THIS ORDER ONLY APPLY TO MORTGAGE FORECLOSURE PROCEEDINGS CONCERNING OWNER-OCCUPIED DWELLINGS, WHICH IS DEFINED BY THE ORDER AS REAL PROPERTY THAT IS THE PRINCIPAL RESIDENCE OF ANY MORTGAGOR.

To be considered for any available Foreclosure Intervention, you may communicate with and otherwise deal with the Plaintiff through its law firm, KORN LAW FIRM, P.A., P. O. Box 11264, 1300 Pickens Street, Columbia, SC 29201 or call (803) 252-5817. KORN LAW FIRM, P.A., represents the Plaintiff in this action and does not represent you. Under our ethical rules, we are prohibited from giving you any legal advice.

You must submit any requests for Foreclosure Intervention consideration within 30 days from the date of this Notice. Attached is a request form for your use. **IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION, YOUR MORTGAGE COMPANY/AGENT MAY PROCEED WITH A FORECLOSURE ACTION.** If you have already pursued loss mitigation with the Plaintiff, this Notice does not guarantee the availability of loss mitigation options or further review of your qualifications.

IF THIS MORTGAGE FORECLOSURE PROCEEDING CONCERNS A NON-OWNER OCCUPIED DWELLING, THE TERMS AND CONDITIONS OF THE ORDER DO NOT APPLY TO THIS PROCEEDING.

BY: 
PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KELLER C. FOSTER
TERESA D. VAN VLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

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

Dated 11/10, 2011

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.

Request for Foreclosure Intervention
File No.: F11-05497

This document is exchanged exclusively for the purpose of foreclosure intervention pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01.

Property Address: 1808 Sam Smith Road, Fort Mill, South Carolina 29715

_____ I am the owner but do not occupy the property.

_____ I am the owner of and occupy the property.

Is this street address correct? ☐ Yes ☐ No

If Yes, please include proof of occupancy such as a utility bill, military orders, voter registration card, etc.

If No, what is the correct street address: _____

_____ I am actively working with the mortgage company to resolve my mortgage account's delinquency and last spoke with the mortgage company on _____.

_____ I submitted a complete loss mitigation package to the mortgage company on _____.

I am interested in the following type(s) of loss mitigation (please note that you may not qualify for any or all of these foreclosure intervention options):

_____ Reinstatement

_____ Loan Modification

_____ Payoff

_____ Deed in Lieu

_____ Payment Plan

_____ Short Sale

_____ Forbearance Agreement

_____ Other: _____

PLEASE NOTE THAT YOU MAY NOT QUALIFY FOR ALL THE OPTIONS LISTED ABOVE. NO REPRESENTATION OF ANY KIND IS BEING MADE REGARDING THE AVAILABILITY OF ANY LOSS MITIGATION OPTION OR YOUR QUALIFICATION FOR ANY OPTION.

_____ I elect not to participate in any Foreclosure Intervention.

☐ I am represented by counsel in this foreclosure action.

My attorney's name, address, and phone number is: _____

Contact #'s:

Home: _____

Work: _____

Cellular: _____

Other: _____

May we leave a phone message? At home ☐ Yes ☐ No

On your cellular phone: ☐ Yes ☐ No At work ☐ Yes ☐ No

May we call your cell phone? ☐ Yes ☐ No

May we send you an e-mail message? ☐ Yes ☐ No

Email: _____

PRINT NAME: _____

_____ (Signature) Date: _____

Please note, if you are represented by counsel in the foreclosure action KORN LAW FIRM, P.A., will only communicate with you through your counsel.

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 YORK

Bank of America, N.A., successor by merger to BAC Home Loans
Servicing, LP FKA Countrywide Home Loans Servicing, LP,

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANT(S).

F11-05497

IN THE COURT OF COMMON PLEAS

LIS PENDENS

(2011CP4601605)
(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2011CP4604278

DEFICIENCY WAIVED

FILED-RECEIVED
2011 NOV 11 AM 10:14

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this court upon Complaint of the above-named Plaintiff against the above-named Defendant for foreclosure of a certain mortgage of real estate given by Michelle Minardi to Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Bank, FSB, its successors and assigns, in the amount of Two Hundred Eighty-Six Thousand And 00/100 (\$ 286,000.00) Dollars, dated June 11, 2008, and recorded June 12, 2008 in the Office of the Clerk of Court for York County in Book 10112 at Page 62.

Thereafter, by virtue of an assignment dated September 7, 2011, recorded September 16, 2011, in Mortgage Book 12161 at Page 87, Mortgage Electronic Registration Systems, Inc. assigned said mortgage unto Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP making Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP the present lien holder and Plaintiff herein.

The premises covered and affected by the said mortgage as by the foreclosure thereof, were, at the time of the making thereof, and at the time of the filing of this Notice, described as follows:

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

All that certain piece, parcel or lot of land, lying and being situate on the northern side of Sam Smith Road, about two (2) miles east of Fort Mill, in York County, South Carolina, and being shown and designated as that middle or center lot containing 0.520 acres, more or less, on Boundary Survey for Elkins Company, Inc., by Alfred B. Crouch, SCRLS, dated November 5, 2005, revised March 29, 2006 to divide property into three (3) lots, and recorded in Plat Book D141 at Page 5 in the Office of the Clerk of Court for York County, South Carolina, reference to which plat is hereby made for a more particular description.

This being the same property conveyed to Michelle Minardi by deed of Godfrey Builders, LLC, dated June 11, 2008 and recorded June 12, 2008 in Book 10112 at Page 57 in the Office of the Register of Deeds for York County, South Carolina.

1808 Sam Smith Road, Fort Mill, South Carolina 29715

TMS # 657-00-00-018

KORN LAW FIRM, P.A.
1300 Pickens Street.
P.O. Box 11264
Columbia, SC 29211-1264

PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KELLER C. FOSTER
TERESA D. VAN LAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Columbia, South Carolina
November 8, 2011

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP FKA Countrywide
Home Loans Servicing, LP

PLAINTIFF,

vs.

Michelle Minardi, et al

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

FILED-RECEIVED
2011 NOV 11 AM 10:14

CIVIL ACTION COVERSHEET

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

C/A NO: 2011CP4604278

F11-05497

Submitted By: John S. Kay, (Bar #7914); John B. Kelchner, (Bar #13589); Alan M. Stewart, (Bar #15576)

Korn Law Firm, P.A.

Telephone #: 803.252.5817

Address:

1300 Pickens Street

Fax #:

Columbia, SC 29201

Email:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299)

Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
☐ Condemnation (410)
☒ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

Inmate Petitions

- ☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements

- ☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Other (799)

Administrative Law/Relief

- ☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

Appeals

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☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission
(990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)

- ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an
Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature:

Date:

Note: Frivolous civil proceedings may be subject to sanctions pursuant to S.C.P. Rule 11, and the South Carolina Act, S.C. Code Ann. §15-36-10 et. seq.

Frivolous Civil Proceedings Sanctions

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing, LP

PLAINTIFF,

vs.

Michelle Minardi, et al

DEFENDANT(S).

IN THE CIRCUIT COURT FOR THE
SIXTEENTH JUDICIAL CIRCUIT

(NON-JURY MORTGAGE FORECLOSURE)

CERTIFICATE OF EXEMPTION
FROM ADR

C/A NO: 2011CP4604278

DEFICIENCY WAIVED

DAVID HAMILTON
C.C.P. & S.
YORK COUNTY, SC

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F11-05497

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☒ this is a case involving a mortgage foreclosure;
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

Plaintiff/Attorney(s) for Plaintiff(s)

PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KELLER C. FOSTER
TERESA D. VANVLAKE / ASHLEY ZARRETT

Defendant/Attorney(s) for Defendant(s)

Date: 11/10/11

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to BAC Home Loans
Servicing, LP FKA Countrywide Home Loans Servicing, LP,

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANT(S).

F11-05497

IN THE COURT OF COMMON PLEAS

SUMMONS

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2011CP4604278

DEFICIENCY WAIVED

FILED-RECEIVED

2011 NOV 11 AM 10:14

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

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.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-in-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

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 / DEAN HAYES
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MEREDITH L. PRICKETT / KELLER C. FOSTER
TERESA D. VAN FLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Columbia, South Carolina
November 8, 2011

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing, LP,

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2011CP4604278

DEFICIENCY WAIVED

FILED-RECEIVED
2011 NOV 11 AM 10:14
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

F11-05497

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

1. That the Plaintiff is a corporation/limited liability company organized and existing under and by virtue of the laws of The United States of America; and that the Defendant Michelle Minardi, is upon information and belief, a citizen and resident of the State of South Carolina. That the Defendant, Ameris Bank, is upon information and belief a bank organized and existing under the laws of Georgia.

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 York, State of South Carolina.

4. That on or about June 11, 2008, for value received, Michelle Minardi, did execute and deliver to Countrywide Bank, FSB, a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Michelle Minardi promised to pay to Countrywide Bank, FSB, the sum of Two Hundred Eighty-Six Thousand And 00/100 Dollars (\$286,000.00), together with interest thereon at the rate of Six And 00/100 per cent (6.00%) per annum.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Michelle Minardi, did execute and deliver on June 11, 2008 unto Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Bank, FSB, its successors and assigns, a mortgage covering the following described property:

Legal description and property address:

All that certain piece, parcel or lot of land, lying and being situate on the northern side of Sam Smith Road, about two (2) miles east of Fort Mill, in York County, South Carolina, and being shown and designated as that middle or center lot containing 0.520 acres, more or less, on Boundary Survey for Elkins Company, Inc., by Alfred B. Crouch, SCRLS, dated November 5, 2005, revised March 29, 2006 to divide property into three (3) lots, and recorded in Plat Book D141 at Page 5 in the Office of the Clerk of Court for York County, South Carolina, reference to which plat is hereby made for a more particular description.

This being the same property conveyed to Michelle Minardi by deed of Godfrey Builders, LLC, dated June 11, 2008 and recorded June 12, 2008 in Book 10112 at Page 57 in the Office of the Register of Deeds for York County, South Carolina.

1808 Sam Smith Road, Fort Mill, South Carolina 29715
TMS# 657-00-00-018

6. Thereafter said mortgage was recorded in Book 10112 at Page 62 on June 12, 2008 in the Office of the Clerk of Court of York County.

7. Thereafter, by virtue of an assignment dated September 7, 2011, recorded September 16, 2011, in Mortgage Book 12161 at Page 87, Mortgage Electronic Registration Systems, Inc. assigned said mortgage unto Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP making Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP the present lien holder and Plaintiff herein.

8. The above referenced instrument constitutes a first mortgage lien and is a purchase money mortgage with the proceeds of the loan being used to purchase the property above described.

9. That the Defendant, Ameris Bank, is made a party by virtue of a Mortgage dated June 16, 2008 and recorded June 23, 2008 in Book 10131 at Page 206 given by Michelle Minardi in the amount of Twenty-Five Thousand and 00/100 (\$25,000.00) dollars.

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 May 1, 2010, 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 May 1, 2010 the sum of Two Hundred Seventy-Nine Thousand Six Hundred Ninety-Eight And 99/100 Dollars (\$279,698.99), together with interest at the rate of Six and 00/100 per cent (6.00 %) per annum from April 1, 2010 and also for the costs and disbursements of this action, including attorney's fees.

15. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

16. That the servicer is participating in the Home Affordable Modification Program (HMP). The HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification because the borrower defaulted on the terms of the HMP Trial Plan.

17. 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.

18. 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 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 purchase money mortgage 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.

(4) For an Order directing and empowering the Sheriff of York 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 / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KELLER C. FOSTER
TERESA D. VAN VLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Columbia, South Carolina
November 8, 2011

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, disputes 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) makes 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.
6. Written requests should be addressed to Korn Law Firm, P.A., Post Office Box 11264, Columbia, South Carolina 29211-1264.
7. This notice should NOT be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

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.

LAW OFFICES

HALFORD NIEMIEC & FREEMAN LLP

*A Registered South Carolina Professional Association Including
Limited Liability Companies*

238 ROCKMONT DRIVE

FORT MILL, SOUTH CAROLINA 29708

TELEPHONE: 803-547-6618

FACSIMILE: 803-547-6638

J. Cameron Halford, LLC ^

Matthew R. Niemiec, LLC

P. John Freeman, LLC

January 10, 2012

York County Clerk of Court
Common Pleas Division
Post Office Drawer 649
York, South Carolina 29745

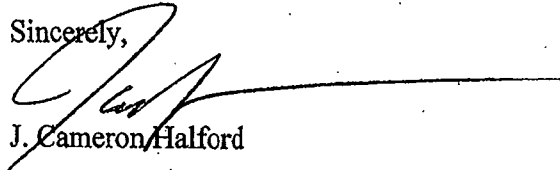
Re: Case No. 2011-CP-46-4278 Bank of America v. Minardi, et al.

Dear Clerk's Offices:

Please find enclosed for filing the Objection to Reference, Answer and Counterclaims by Defendant in the above captioned case along with my certificate of mailing to Plaintiff counsel. Please clock the original and return a clocked copy to me in the envelope provided. Please contact me with any questions or concerns, thank you.

With regards, I am

Sincerely,


J. Cameron Halford

JCH:ae

cc: Dean Hayes, Esq.

cc: Michelle Minardi (via email)

^ ARBITRATOR & MEDIATOR

* LICENSED IN SOUTH CAROLINA & NORTH CAROLINA

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LEGAL SOLUTIONS FOR BUSINESS AND LIFE. ®

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
)

Bank of America, N.A., successor
By merger to BAC Home Loans
Servicing, LP, f/k/a Countrywide
Home Loans Servicing, LP,

CASE NO. 2011-CP-46-4278

ANSWER AND COUNTERCLAIMS

vs.

Michelle Minardi, and Ameris Bank,
Defendants.

[JURY TRIAL DEMANDED]

In Answer to the Complaint of the Plaintiff, mortgagor and defendant Michelle Minardi would respectfully show the following by way of Answer and Counterclaims:

FOR A FIRST DEFENSE
(Qualified General Denial)

1. Defendant Minardi would admit the allegations of paragraphs (1), (3), (4), (5), (6), (8), (9), (12), (13), (15).
2. Defendant Minardi would deny as stated the allegations of paragraphs (2), (7), (10), (11), (14), (16), (17), and (18) and demand strict proof of these allegations.
3. Further responding to paragraph (2), this Defendant is without sufficient information to admit or deny, and denies the same on this basis demanding strict proof of said allegations.
4. Further responding to paragraph (7), this Defendant is without sufficient information to admit or deny, and denies the same on this basis demanding strict proof of said allegations, incorporating
5. Defendant would admit as qualified paragraph (10), in that the loan documents speak for themselves. Defendant would deny the remainder allegations of paragraph ten, including the remedy of acceleration, and demand strict proof of the allegations.
6. Further responding to paragraph (11), Defendant would admit as qualified paragraph (11) in that the loan documents speak for themselves, but would deny and demand strict proof of all further conclusory allegations of additional sums claimed due and owing by Plaintiff under this paragraph.

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7. Responding further to paragraph (14), Defendant Minardi would deny the allegations of said paragraph incorporating by reference the allegations of defendant's First through Tenth defenses and counterclaims, below.
8. Responding further to paragraph (16), Defendant would show and allege by way of its Second through Tenth defenses and counterclaim below that Plaintiff, a HMP participating financial institution, considered Defendant for a Bank of America in-house modification and not a modification under the HMP program guidelines and supplemental directives.
9. Defendant is informed and believes that the conduct of Plaintiff described in paragraph (8) resulting in modification denial alleged to be a HMP trial modification, which never occurred. Defendant instead evaluated Defendant under an alternative Bank of America modification.
10. Responding further to paragraph (17), Defendant Minardi occupies the home as her primary residence and is without information to admit or deny, is unaware of any inspection or security costs incurred by Plaintiff, and denies same demanding strict proof of any such charges, if any.
11. Responding further to paragraph (18), Defendant Minardi denies that all conditions precedent to acceleration of said debt have occurred prior to Plaintiff instituting this foreclosure, and demands strict proof. Specifically, Defendant is informed and believes that Plaintiff has sought to foreclose a HMP eligible loan prior to properly evaluating Defendant Minardi specifically for a HMP modification under HMP guidelines and supplemental directives.

FOR A SECOND DEFENSE
FIRST AFFIRMATIVE DEFENSE
[FAILURE TO STATE A CLAIM – SCRCP 12(B)(6)]

12. The above allegations and defenses are re-stated and incorporated by reference as if set forth verbatim.
13. Plaintiff's Complaint violates the Administrative Order of the Supreme Court 2011-05-02-01 of May 2, 2011 and on information and belief Plaintiff has failed to consider Plaintiff for HMP modification and other loss mitigation options prior to commencing this foreclosure in violation of said administrative order.
14. Plaintiff's Complaint fails to state a cause of action for which relief can be granted under applicable law, and should be summarily dismissed pursuant to SCRCP 12(b)(6).

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FOR A THIRD DEFENSE
SECOND AFFIRMATIVE DEFENSE
(Failure to Mitigate)

15. The above defensive allegations are re-stated and incorporated by reference as if set forth verbatim.
16. Plaintiff has failed to mitigate damages as required by law prior to commencing this foreclosure action and by rejecting successive trial modification program payments wherein Defendant demonstrated and complied with modification payment terms.

FOR A FOURTH DEFENSE
THIRD AFFIRMATIVE DEFENSE
(Waiver, Estoppel, Laches and Release)

17. The above defensive allegations are restated and incorporated by reference as if having been set forth verbatim.
18. Plaintiff's claims are or may be barred by the legal doctrines of *waiver, estoppel, laches, and/or release* as Defendant successfully complied with trial modification payments under HMP guidelines, yet Plaintiff denied Defendant a HMP modification due to investor rejection and interference and despite Defendant's successful compliance with modification terms involving twelve (12) successive payments.

FOR A FIFTH DEFENSE
FOURTH AFFIRMATIVE DEFENSE
(Acceptance, Novation, Accord & Satisfaction)

19. The above defensive allegations are restated and incorporated by reference as if set forth verbatim.
20. Plaintiff offered and accepted a loan modification after Defendant successfully making thirteen (13) trial modification payments, and is now barred and should be estopped from asserting foreclosure of the mortgage due to the modification and novation.
21. Plaintiff's claims against Defendant are barred by the legal doctrines of accord and satisfaction and/or compromise and settlement, due to acceptance of twelve (12) trial modification payments.

FOR A SIXTH DEFENSE
(Breach of Contract – Mortgagor Successful Compliance with Trial Modification Terms and Lender Rejection of Trial Payments)

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FIRST LEGAL COUNTERCLAIM

22. The above allegations are restated here and incorporated by reference as if set forth verbatim.
23. That at all relevant times, Plaintiff is the owner, holder and was acting as a debt collector in communication with and acceptance from Defendant trial modification payments prior to Plaintiff commencing this foreclosure.
24. That for valuable consideration received, Plaintiff offered, and Defendant Accepted, a loan modification whereunder Defendant successfully made trial modification payments twelve times. Plaintiff rejected trial payments in July, 2011 returning monies to Defendant. Plaintiff then improperly declared Defendant in default after rejecting trial payments and returning same to Defendant.
25. That Defendant demonstrated financial ability to pay under a modified loan terms, but Plaintiff has nonetheless denied Defendant a loan modification under the HMP program guidelines.
26. That Plaintiff has improperly denied Defendant a HMP loan modification, and has alleged borrower default upon a HMP modification trial plan in breach of the parties' loan modification agreement.
27. That the ceasing of payments by Defendant arises out of debt collection practices and conduct of the Plaintiff in rejecting payments being sent by the Defendant under a trial modification terms.
28. That as a result, Defendant has incurred damages and been forced to engage the services of an attorney to defend this foreclosure and her home.
29. Defendant is informed and believes that Defendant is entitled to an award of damages as against Plaintiff for plaintiff's Breach of Contract, attorney's fees and costs exceeding \$7,500 to be proven at trial of this matter.

FOR A SEVENTH DEFENSE

FIFTH AFFIRMATIVE DEFENSE AND

(Negligence of Bank of America, N.A. loan personnel – Loan HMP Eligible)

SECOND LEGAL COUNTERCLAIM

30. The above defensive allegations are restated and incorporated by reference as if set forth verbatim.
31. Responding to paragraph (16) of the Complaint, on information and belief, Plaintiff is participating in the Home Affordable Modification program (HMP), but the HMP modification process specified by the guidelines or supplemental directives has **not** been completed properly by Plaintiff or its agents who have



rejected and returned payments to Defendant after Defendant successfully made twelve (12) of thirteen (13) trial payments.

32. On information and belief, the Plaintiff has improperly declared Defendant in default of a HMP modification and seeks to accelerate after failing to properly evaluate Defendant for loan modification under the HMP Making Homes Affordable Program ("HMP") prior to commencing this foreclosure action.
33. Defendant is informed and believes that Plaintiff, its servicer, agents, loan personnel, and employees were willful, wanton, negligent and careless by failing to consider Defendant for HMP loan modification options, and instead enrolling Defendant in loan modification options specifically offered through Bank of America, N.A. instead of a modification under HMP guidelines.
34. That Plaintiff's HMP review and analysis is therefore negligent, careless, willful, wanton and reckless wherein it failed to properly evaluate Defendant for the HMP program as set forth by the Making Homes Affordable Modification Program.
35. That Plaintiff was negligent, willful, wanton and reckless by rejecting and mailing back to Defendant trial modification payment instead of properly applying said payments to the subject loan and by declaring Defendant in default of HMP modification options after rejecting payments sent by Defendant to Plaintiff.
36. That as a direct and proximate result, Defendant has incurred damages exceeding \$7,500 to be proven at trial of this matter, and has been forced to engage the services of an attorney.
37. Defendant is informed and believes that Defendant is entitled to an award as against Plaintiff for all damages, actual, punitive, and attorneys fees and costs.

FOR AN EIGHTH DEFENSE

(FDCPA VIOLATION - 28 U.S.C. 1692(E) §807(2), Et.Seq.)

THIRD LEGAL COUNTERCLAIM

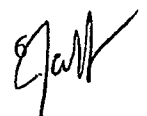
38. The above defensive allegations are re-stated here and incorporated by reference as if having been set forth verbatim.
39. Defendant is informed and believes that Plaintiff has, in violation of §807(2) of 28 U.S.C. 1692(e) *materially misrepresented the nature, character, and amounts due* of the debt as set forth in its complaint, specifically paragraph (16).
40. That at all relevant times, including the acceptance of trial modification payments, Plaintiff was communication with Defendant and acting within the course and scope of a debt collector and was servicing Defendant's mortgage note as a debt collector for its investor.



41. That at all relevant times, including service of the Complaint, Plaintiff was communicating with Defendant and acting within the course and scope of a debt collector and was servicing Defendant's mortgage for its investor.

42. That Plaintiff has misrepresented the nature and character of this debt pursuant to paragraph (16) of its Complaint, in violation of the FDCPA and the Administrative Order of the South Carolina Supreme Court 2011-05-02-01, to wit:

- a. By falsely representing to the court that a proper HMP modification has been undertaken on the subject loan wherein the mortgagor defaulted, when in fact Plaintiff rejected payments.
- b. By rejecting in-progress loan modification payments from Defendant and returning monies to Defendant in June, 2011 creating default while Plaintiff acted as a debt collector.
- c. By misapplying trial modification payments prior to declaring Defendant in default of a HMP modification.
- d. By falsely representing that Plaintiff has incurred fees and costs to secure and inspect the property, knowing Defendant resides at the premises as her primary home.
- e. By falsely placing Defendant into an in-house Bank of America modification and not a proper HMP modification.
- f. By failing to properly advise its investor that Defendant has successfully complied with over twelve (12) modification payments prior to instituting foreclosure.
- g. By requiring twelve successive trial payments of Defendant, then rejecting Defendant for modification in June, 2011 and returning monies to Plaintiff.
- h. By instituting Defendant default by return of monies that Plaintiff has previously accepted from Defendant, namely twelve (12) successive payments.
- i. By failing to properly modify Defendant's loan pursuant to HMP guidelines and supplemental directives prior to commencing this foreclosure action.
- j. By knowingly instituting this foreclosure in violation of the Administrative Order of the Supreme Court, 2011-05-02-01.



43. Defendant is informed and believes that due to Plaintiff's conduct described above, Defendant is entitled to an award of all fines, penalties, attorneys fees and cost available to the Defendant pursuant to the FDCPA.

FOR A NINTH DEFENSE
SIXTH AFFIRMATIVE DEFENSE
(Unclean Hands Defense- Motion for Stay)

44. That Plaintiff seeks to foreclose Defendant's mortgage after falsely representing to the court in paragraph (16) of the Complaint that Defendant has been considered for HMP loan modification, then defaulted under HMP trial payments.
45. That said representations are *materially false*, because Plaintiff unilaterally rejected in-progress trial modification payments in July, 2011 and mailed them back to Defendant. Despite accepting twelve (12) trial payments, Plaintiff unilaterally declared HMP default as against Plaintiff.
46. That Defendant is informed and believes that Defendant has not been properly considered or evaluated for a HMP modification by Plaintiff due to investor interference, or that Plaintiff has improperly performed a HMP evaluation for loan modification and/or in-house Bank of America modification loss mitigation programs.
47. That said representations are materially false as Defendant successfully made twelve (12) consecutive trial modification payments prior to Plaintiff rejecting Defendants' payments in July, 2011 and commencing this foreclosure.
48. That Plaintiff's conduct in declaring that a HMP modification has occurred and that the Defendant has defaulted under a HMP modification are inequitable, false, and designed to circumvent the provisions of the Administrative Order of the Supreme Court 2011-05-02-01 to inappropriately conclude a foreclosure wherein HMP modification options have not been provided to the Defendant/Mortgagor.
49. That Plaintiff's causes of action are or may be barred by the legal doctrine of unclean hands due to Plaintiffs' own inequitable conduct.
50. That this action should be stayed or dismissed pending Plaintiff's compliance with the provisions of the Administrative Order of the Supreme Court 2011-05-02-01.

FOR A TENTH DEFENSE
SEVENTH AFFIRMATIVE DEFENSE
(Spoilation of Material Evidence Barring Plaintiff's Claims)

51. The above defensive allegations are restated and incorporated by reference as if set forth verbatim.



52. The Plaintiff's claims are or may be barred by the Plaintiff's spoliation of evidence, Plaintiff or Plaintiff's Investor having knowingly failed to preserve evidence material to the claims and defenses in this action.

FOR AN ELEVENTH DEFENSE
**EXPRESS RESERVATION AND NON-WAIVER OF DEFENSES
AND CLAIMS**

53. The above allegations are re-stated and incorporated by reference as if set forth verbatim.
54. This Defendant expressly reserves, and does not waive, any additional defenses or claims as may become available or apparent in the course of discovery or otherwise in this action, including, but not limited to, Attorney Client Preference violations, RESPA violations, and/or TILA violations, if any, associated with Countrywide's origination and closing of said loan, if applicable.

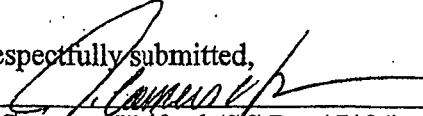
WHEREFORE, Michelle Minardi having set forth her Answer to the Complaint, and having set forth Counterclaims as against the Plaintiff, Defendant Minardi prays that the following relief be granted by the court:

1. For notice and a right to be heard prior to entry of any Rule 53 Order of Reference.
2. For trial by jury of the aforementioned matters pursuant to SCRCP 39 and pursuant to Defendant's legal counterclaims, above.
3. That Plaintiff's Complaint be dismissed with costs and attorneys fees taxed as against Plaintiff pursuant to SCRCP 12(b)(6)
4. For Stay of this action pursuant to Administrative Order 2011-05-02-01 pending Plaintiff's compliance with said Administrative Order.
5. That the amounts due and owing upon said note and mortgage be ascertained and determined under the direction of the court.
6. That the court deny relief sought by Plaintiff's Complaint in paragraphs (2) through (8) of the Plaintiff's prayer for relief as set forth in the Complaint pursuant to Defendants' first through eleventh defenses.
7. For judgement as against Plaintiff on Defendant Minardi's first through third counterclaims, above.



8. For such other and further relief which the court deems just and proper under the circumstances.

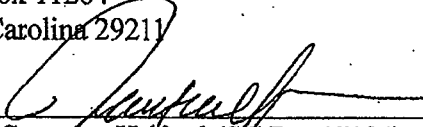
Respectfully submitted,

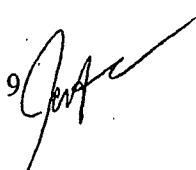

J. Cameron Halford (SC Bar 17184)
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax
cam@fortmilllaw.com

CERTIFICATE OF MAILING

I hereby certify that I am the attorney for the Defendant Michelle Minardi in the above captioned case and that I did on January 10, 2012 serve a copy of the foregoing ANSWER AND COUNTERCLAIMS on the attorney for the Plaintiff as identified below by depositing a copy of the same in the United States mail, postage prepaid, and addressed as follows:

John S. Kay, Esq.
Korn Law Firm, P.A.
Post Office Box 11264
Columbia, South Carolina 29211


J. Cameron Halford (SC Bar 17184)
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax
cam@fortmilllaw.com

9 

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor
By merger to BAC Home Loans
Servicing, LP, f/k/a Countrywide
Home Loans Servicing, LP,

vs.

Michelle Minardi, and Ameris Bank,

Defendants.

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
)

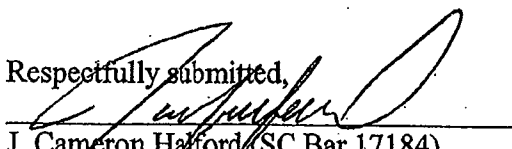
CASE NO. 2011-CP-46-4278

) OBJECTION TO REFERENCE WITHOUT
) NOTICE AND OPPORTUNITY TO BE HEARD
)

[JURY TRIAL DEMANDED]

Defendant Michelle Minardi hereby files Defendant's Objection to Reference in this case and respectfully requests Notice and an Opportunity to be Heard by the Presiding Judge of the Court of Common Pleas prior to entry of any Rule 53 Form Order of Reference in this case.

Respectfully submitted,


J. Cameron Halford (SC Bar 17184)

238 Rockmont Drive

Fort Mill, South Carolina 29708

803-547-6618

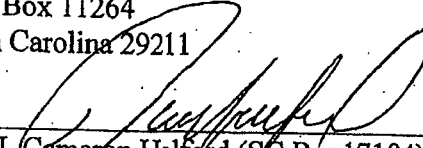
803-547-6638 fax

cam@fortmilllaw.com

CERTIFICATE OF MAILING

I hereby certify that I am the attorney for the Defendant Michelle Minardi in the above captioned case and that I did on January 10, 2012 serve a copy of the foregoing OBJECTION TO REFERENCE on the attorney for the Plaintiff as identified below by depositing a copy of the same in the United States mail, postage prepaid, and addressed as follows:

John S. Kay, Esq.
Korn Law Firm, P.A.
Post Office Box 11264
Columbia, South Carolina 29211



J. Cameron Halford (SC Bar 17184)
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax
cam@fortmilllaw.com

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by
merger to BAC Home Loans Servicing,
LP f/k/a Countrywide Home Loans
Servicing, LP,

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2011-CP-46-4278

**PLAINTIFF'S REPLY TO DEFENDANT
MICHELLE MINARDI'S ANSWER AND
COUNTERCLAIMS**

FILED-RECEIVED
2012 FEB 10 PM 12:39
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

TO: J. CAMERON HALFORD, ATTORNEY FOR DEFENDANT MICHELLE MINARDI:

Plaintiff, responding to Defendant Michelle Minardi's Answer and Counterclaims, alleges that:

1. Each allegation of Defendant's Answer and Counterclaims not specifically admitted is denied.
2. No response is required to the allegations contained in paragraphs 1 through 21 and paragraphs 44 through 54 of Defendant's Answer and Counterclaims. To the extent a response is required, Plaintiff denies any wrongdoing.

AS A FIRST DEFENSE TO DEFENDANT'S FIRST COUNTERCLAIM

**Breach of Contract – Mortgagor Successful Compliance with Trial Modification Terms
and Lender Rejection of Trial Payments**
(General Denial)

3. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.
4. No response is required to the allegation contained in paragraph 22 of Defendant's Answer and Counterclaims. To the extent a response is required, Plaintiff denies any wrongdoing.

5. Plaintiff admits the allegations contained in paragraph 23 of Defendant's Answer and Counterclaims.

6. Plaintiff admits the allegations contained in paragraph 24 of Defendant's Answer and Counterclaims to the extent that Defendant entered into a loan modification. Plaintiff denies the remaining allegations contained in paragraph 24 of Defendant's Answer and Counterclaims.

7. Plaintiff denies the allegations contained in paragraphs 25 through 29 of Defendant's Answer and Counterclaims.

AS A FIRST DEFENSE TO DEFENDANT'S SECOND COUNTERCLAIM

Negligence of Bank of America, N.A. loan personnel – Loan HMP Eligible

(General Denial)

8. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

9. No response is required to the allegation contained in paragraph 30 of Defendant's Answer and Counterclaims. To the extent a response is required, Plaintiff denies any wrongdoing.

10. Plaintiff admits the allegations contained in paragraph 31 of Defendant's Answer and Counterclaims to the extent that Plaintiff participates in the Home Affordable Modification program (HMP). Plaintiff denies the remaining allegations contained in paragraph 31 of Defendant's Answer and Counterclaims.

11. Plaintiff denies the allegations contained in paragraphs 32 through 37 of Defendant's Answer and Counterclaims.

AS A FIRST DEFENSE TO DEFENDANT'S THIRD COUNTERCLAIM

FDCPA Violation – 28 U.S.C. 1692(e) §807(2), et seq.

(General Denial)

12. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

13. No response is required to the allegation contained in paragraph 38 of Defendant's Answer and Counterclaims. To the extent a response is required, Plaintiff denies any wrongdoing.

14. Plaintiff admits the allegations contained in paragraph 40 of Defendant's Answer and Counterclaims to the extent that Plaintiff was acting within the course and scope of a debt collector and Plaintiff was servicing Defendant's mortgage note. Plaintiff denies the remaining allegations of paragraph 40 of Defendant's Answer and Counterclaims.

~~15. Plaintiff admits the allegations contained in paragraph 41 of Defendant's Answer and Counterclaims to the extent that Plaintiff was acting within the course and scope of a debt collector and Plaintiff was servicing Defendant's mortgage note. Plaintiff denies the remaining allegations of paragraph 40 of Defendant's Answer and Counterclaims.~~

16. Plaintiff denies the allegation of paragraph 42, including sections a through j, of Defendant's Answer and Counterclaims.

17. Plaintiff denies the allegations contained in paragraph 43 of Defendant's Answer and Counterclaims.

AS A SECOND DEFENSE TO DEFENDANT'S COUNTERCLAIMS

(Dismissal pursuant to SCRPC 12(b)(6))

18. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

19. That the Defendant has failed to state facts sufficient to constitute causes of action, therefore, the Defendant's counterclaims should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

20. That further, by pleading this 12(b)(6) dismissal in its reply herein, the Plaintiff does not intend to waive any right to have the Court hear a motion for dismissal. The dismissal herein is included for notice purposes and to preserve the Plaintiff's right to move for a dismissal at anytime hereafter and up until trial.

AS A THIRD DEFENSE TO DEFENDANT'S COUNTERCLAIMS

(Failure to Mitigate Damages)

21. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

22. Defendant has failed to mitigate his alleged damages. Therefore, Defendant's claims against Plaintiff should be reduced accordingly.

AS A FOURTH DEFENSE TO DEFENDANT'S COUNTERCLAIMS

(Waiver)

23. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

24. Defendant's claims are barred in whole or part by the doctrine of waiver based on Defendant's failure to comply with the agreement, including Defendant's failure to make timely payments under the terms of the note and mortgage.

AS A FIFTH DEFENSE TO DEFENDANT'S COUNTERCLAIMS

(Estoppel)

25. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

26. Defendant's claims are barred in whole or part by the doctrine of estoppel based on Defendant's failure to comply with the agreement, including Defendant's failure to make timely payments under the terms of the note and mortgage.

AS A SIXTH DEFENSE TO DEFENDANT'S COUNTERCLAIMS

(Set-Off / Offset / Recoupment)

27. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

28. If the Plaintiff is found liable to Defendant, then any damages should be reduced by the doctrines of set-off, offset, or recoupment.

AS A SEVENTH DEFENSE TO DEFENDANT'S COUNTERCLAIMS

(Laches)

29. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

30. Defendant's claims are barred in whole or part by the doctrine of laches.

AS AN EIGHTH DEFENSE TO DEFENDANT'S COUNTERCLAIMS

(Unclean Hands)

31. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

32. Defendant's claims are barred in whole or part by the doctrine of unclean hands.

AS AN NINTH DEFENSE TO DEFENDANT'S COUNTERCLAIMS

(Statute of Limitations)

33. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

34. Defendant's claims are barred in whole or part by the statute of limitations.

AS A TENTH DEFENSE TO DEFENDANT'S COUNTERCLAIMS

(Statute of Frauds)

35. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

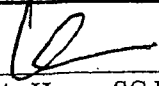
36. Defendant's claims are barred in whole or part by the statute of frauds.

WHEREFORE, having fully responded to the allegations contained in Defendant's Answer and Counterclaims, the Plaintiff prays for the following:

(a) That the Defendant's counterclaim be dismissed with costs;

- (b) That the Plaintiff be granted the relief requested in the complaint; and
- (c) For such other and further relief as the court may determine to be just and proper.

KORN LAW FIRM, P.A.


Dean A. Hayes, SC Bar No: 66066

Keller C. Foster, SC Bar No: 79640

1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817
Facsimile: (803) 231-2060
dean.hayes@kornlawfirm.com
keller.foster@kornlawfirm.com
ATTORNEYS FOR PLAINTIFF

February 9, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger
to BAC Home Loans Servicing, LP f/k/a
Countrywide Home Loans Servicing, LP,

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-46-4278

CERTIFICATE OF SERVICE

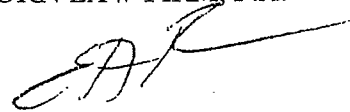
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FEB 10 PM 12:39
DAVID HARRINGTON
C.C.P. & G.S.
YORK COUNTY, SC

I, Elizabeth A. Perkins, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S REPLY TO DEFENDANT'S ANSWER AND COUNTERCLAIMS** was served on counsel for Defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

J. Cameron Halford, Esquire
Law Office of Halford Niemiec & Freeman, LLP
238 Rockmont Drive
Fort Mill, South Carolina 29708
ATTORNEY FOR DEFENDANT MICHELLE MINARDI

this 9th day of February, 2012.

KORN LAW FIRM, P.A.



Elizabeth A. Perkins
Paralegal to Dean A. Hayes and
Keller C. Foster

Columbia, South Carolina
N:\PDA\F11-05497

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing, LP

CASE NO. 2011-CP-46-4278

FILED-RECEIVED
2012 AUG 16 PM 12:57
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

[X] Plaintiff

v.

Michelle Minardi, et al,
[] Defendants.

MOTION AND ORDER INFORMATION

FORM AND COVER SHEET

<u>name, SC Bar no. and address of plaintiff's attorney</u> Dean A. Hayes, SC Bar No. 66066 Chris S. Truluck, SC Bar No. 77829 Post Office Box 12369 Columbia, SC 29211 telephone: (803) 252-5817 fax: (803) 231-2060 e-mail: dhayes@kornlawfirm.com, chris.truluck@kornlawfirm.com		<u>name, SC Bar no. and address of defendants' attorney</u> J. Cameron Halford, Esq. 238 Rockmont Drive Fort Mill, SC 29708 Attorney for Defendant Michelle Minardi	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Order of Reference Estimated Time Needed: 30 Minutes Court Reporter Needed: YES ☒ NO ☐			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order: I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for Plaintiff ☒ Defendant ☐ 8/14, 2012 Date Submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect (check reason) ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: <u>S. Miles</u> (print name) ☒ MOTION FEE COLLECTED: \$25 ☐ CONTESTED - AMOUNT DUE: Date Filed: 8-16-12			

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing, LP

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-46-4278

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR ORDER
OF REFERENCE**

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

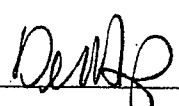
DEFENDANT(S).

L11-05497

FILED-RECEIVED
2012 AUG 16 PM 12:57
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

TO: J. Cameron Halford, Esquire:

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, the undersigned, as attorneys for the Plaintiff, will ten (10) days from the service of this Notice of Motion and Motion, or as soon thereafter as counsel may be heard, move before the above-referenced Court for an Order referring this foreclosure action to the Honorable S. Jackson Kimball, Master-In-Equity for York County.



Dean A. Hayes, SC Bar No: 66066
Chris S. Truluck, SC Bar No: 77829
Korn Law Firm, P.A.
1300 Pickens Street
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817
Attorneys for the Plaintiff

August 14, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing, LP

IN THE COURT OF COMMON
PLEAS

AFFIDAVIT OF DEFAULT

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANT(S).

C/A No.: 2011-CP-46-4278

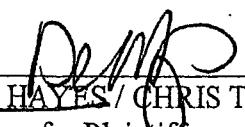
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2012 AUG 16 PM 12:57
DAVID HAMILTON
C.C.C.P. & G.S. SC
YORK COUNTY, SC

L11-05497

PERSONALLY appeared before me, the undersigned, who first being duly sworn, deposes and says:

That he is one of the attorneys for the Plaintiff above named; that a Lis Pendens, and Summons and Complaint was served upon the Defendants Michelle Minardi and Ameris Bank, and that more than Thirty (30) days have expired since such service during which time the Defendants Ameris Bank, has failed to answer, appear or otherwise plead in this case and, consequently, said Defendant is now in default.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817

BY: 
DEAN HAYES / CHRIS TRULUCK
Attorneys for Plaintiff

SWORN to before me this

11th day of August, 2012

Elizabeth Kojanek (SEAL)

Notary Public for South Carolina

My Commission Expires: 4/7/18

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing, LP

**AFFIDAVIT OF
NON-MILITARY SERVICE**

PLAINTIFF,

C/A NO. 2011-CP-46-4278

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANT(S).

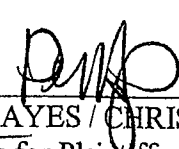
L11-05497

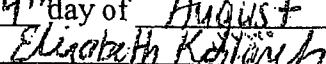
PERSONALLY appeared before me the undersigned attorney, who first being duly sworn, deposes and says:

That he is familiar with the provisions of 50 App. Section 520, Civil Relief Act of 1940, represents to the Court that from his file in this matter, and on information and belief based on the hereinafter enumerated facts, that Michelle Minardi is not in the Military Service of the United States and is not entitled to the protection of the Civil Relief Act of 1940 and Amendments thereto.

The source of information on which I base my belief is as follows: Research made by the KORN LAW FIRM, P.A. and Bank of America, N.A., Plaintiff herein.

KORN LAW FIRM, P.A.
P.O. Box 12369
1300 Pickens Street
Columbia, South Carolina 29211-2369
(803) 252-5817

BY: 
DEAN HAYES / CHRIS TRULUCK
Attorneys for Plaintiff

SWORN to before me this
14th day of August, 2012
 (SEAL)
Notary Public for South Carolina
My Commission Expires: 4/7/18

FILED-RECEIVED
2012 AUG 16 PM 12:57
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to BAC
Home Loans Servicing, LP FKA Countrywide Home
Loans Servicing, LP

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-46-4278

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANT(S).

CERTIFICATE OF MAILING

L11-05497

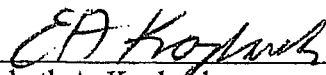
I, Elizabeth A. Kozlarek, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AN ORDER OF REFERENCE, AFFIDAVIT OF DEFAULT AND AFFIDAVIT OF NON-MILITARY SERVICE** were served on Susan Ingles, Esquire by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

J. Cameron Halford, Esquire
238 Rockmont Drive
Fort Mill, SC 29708
Attorney for Defendant
Michelle Minardi

this 14th day of August, 2012.

FILED-RECEIVED
2012 AUG 16 PM 12:58
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

KORN LAW FIRM, P.A.


Elizabeth A. Kozlarek
Paralegal to Dean A. Hayes and Chris S.
Truluck

Columbia, South Carolina
File No.: L11-05497

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Bank of America, N.A. as successor)
By merger to BAC Home Loans)
Servicing, LP FKA Countrywide)
Home Loans Servicing, LP)
C/A NO: 2011-CP-46-4278

Plaintiff,

vs.

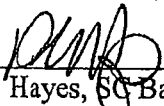
Michelle Minardi and Ameris Bank,
Defendants.

NOTICE OF HEARING

L11-05497

YOU WILL PLEASE TAKE NOTICE that a hearing on Plaintiff's Motion for an Order of Reference in the above-captioned foreclosure action has been scheduled for Thursday, September 6, 2012 at 3:30 p.m. at the York County Agriculture Building, Council Chambers, 6 S. Congress Street, York, South Carolina, before The Honorable Lee S. Alford. Please be prepared to argue all outstanding motions at that time.

KORN LAW FIRM, P.A.


Dean A. Hayes, SC Bar No: 66066
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817
Facsimile: (803) 231-2060

ATTORNEYS FOR PLAINTIFF

August 21, 2012
Columbia, South Carolina
NAPDL11-05497

FILED - RECEIVED
2012 AUG 27 AM 9:11
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to BAC
Home Loans Servicing, LP FKA Countrywide Home
Loans Servicing, LP

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-46-4278

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANT(S).

CERTIFICATE OF MAILING

L11-05497

I, Elizabeth A. Kozlarek, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that a **NOTICE OF HEARING on Plaintiff's Motion for Order of Reference** was served on parties to this action by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

J. Cameron Halford, Esquire
238 Rockmont Drive
Fort Mill, SC 29708
Attorney for Defendant
Michelle Minardi

FILED - RECEIVED
2012 AUG 27 AM 9:11
DAVID HAMILTON
C.J. CP & GS
YORK COUNTY, SC

this 13rd day of August, 2012.

KORN LAW FIRM, P.A.

EA Kozlarek
Elizabeth A. Kozlarek
Paralegal to Dean A. Hayes and Chris S.
Truluck

Columbia, South Carolina
File No.: L11-05497

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

Bank of America, N.A., successor)
By merger to BAC Home Loans)
Servicing, LP, f/k/a Countrywide)
Home Loans Servicing, LP,)

CASE NO. 2011-CP-46-4278

AFFIDAVIT OF GEORGE HUNTER

vs.)

Michelle Minardi, and Ameris Bank,)

Defendants.)

FILED-RECEIVED
2012 SEP -5 PM 2:33
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

My name is George Hunter. I am employed as a Default Manager. I have worked in the field of loss mitigation for over twenty two years. My personal experience involves mortgage originations, loss mitigation including modifications, short sales, deed in lieu transactions, collections, and customer service. I am over eighteen years of age, and make this affidavit of my own personal knowledge and research involving the mortgage loan which is the subject of this foreclosure action. I make the following findings after interviewing the mortgagor and performing a preliminary audit of the loan documents, excluding the assignments of record in this case. At the request of defense counsel I have also reviewed the Administrative Order of the South Carolina Supreme Court 2011-05-02-01. My preliminary research to date reveals that the Defendant has *twice* been reviewed by the lender under the Making Homes Affordable Program ("HAMP").

At the request of the mortgagor Michelle Minardi, I have reviewed the two denials of a HAMP modification issued by Bank of America, N.A. issued in year 2010 and year 2012. The last denial was on July 6, 2012 attached as Exhibit A. I have conducted personal research into the payment history as submitted by the lender in

discovery, and I have consulted the note and mortgage signed by the mortgagor on June 11, 2008. I have also reviewed the mortgagor's payment history under the first Home Affordable Modification Trial Period plan dated April 1, 2010. I have been asked to opine on the loss mitigation evaluation conducted by the Plaintiff and opine on the eligibility of the loan for loss mitigation options, including a permanent HAMP modification.

My research indicates that Bank of America, N.A. is participating in the Making Homes Affordable Modification program, as evidenced by the attached Exhibit A. This mortgage loan was originated on June 11, 2008 by Countrywide Home Loans Servicing, LP. My research indicates that Bank of America acquired Countrywide Home Loans Servicing, Inc. and is successor to this entity by way of merger. Bank of America would have acquired the subject mortgage loan as part of this merger.

The original loan amount for the above referenced foreclosure was \$ 286,000.00. In order to be eligible for a modification under the Making Homes Affordable Program ("HAMP"), the following criteria must be met:

1. The mortgage loan must be less than \$729,750.00 dollars.
2. The subject property must be occupied by the mortgagor as a primary residence.
3. The home owner must have taken the mortgage on or before January 1, 2009.
4. The mortgagor must not have been convicted within the last ten years of any crime or felony involving larceny, theft, fraud, forgery, money laundering, or tax evasion in connection with a mortgage or real estate transaction.

5. The mortgagor must have suffered a financial hardship and either be delinquent or in danger of falling behind on the subject mortgage.

My preliminary research indicates that the subject mortgage meets the above listed criteria. As a threshold matter, a mortgagor in any HAMP trial period typically must complete a three (3) month trial period to demonstrate that they can meet reduced payments and to do a permanent modification of their loan. The mortgagor in this case successfully undertook, at the request of the mortgage lender, to make thirteen (13) trial payments. My interview with the mortgagor indicates that the payments were received prior to this foreclosure being instituted. My review of the payment history indicates that payment #13 was rejected by the lender and submitted back to the borrower. Payments ceased after this credit. My review indicates that the payments were submitted under a HAMP modification review. The mortgagor was then, again, denied for loss mitigation on July 6, 2012. The grounds cited by the Plaintiff in this case for denial is that the loan is not eligible for a modification because the lender cannot create an affordable payment without changing the terms of the loan beyond the limits of the Making Homes Affordable Program.

In order to confirm the methods and practices utilized by the lender are in error, further discovery is required. I need to review all documentation received by the lender or servicer at the time of both HAMP evaluations to understand why this plan was not made permanent after receipt of the first three (3) trial payments, why late fees were charged during the process, or how the additional nine (9) trial payments were credited to the borrower's account. However, based on my preliminary review of this matter in reference to the five above cited conditions, it is my opinion that the mortgage is, in fact, subject to

loss mitigation pursuant to HAMP guidelines and supplemental directives for the following reasons:

The Defendant in this case appears to have on numerous occasions provided all documentation and successful paid more than three (3) trial payments on or before the due date assigned by the lender. Additionally, the mortgagor actually paid nine (9) additional payments that were accepted by the lender prior to the first HAMP denial letter being sent to the Defendant. Additionally, the Defendant appears to have demonstrated a willingness to submit, on her own accord, higher payments that dictated by the lender in the HAMP trial modification process.

My preliminary findings are based upon the fact that the subject property is the owner occupied residence of the Defendant Michelle Minardi; (2) the mortgage loan was undertaken on June 11, 2008 (well prior to January 1, 2009), and (3) The face amount of the mortgage loan was \$286,000.00. These elements would satisfy the first three requirements of HAMP requirements discussed above. Additionally, it appears that the mortgagor in fact suffered a financial hardship and entered into a April 10, 2010 trial program with the lender. The mortgagor appears to have completed that trial modification program successfully prior to the *second* July 6, 2012 HAMP denial. Under the initial review, the mortgagor successfully committed thirteen (13) total payments to the lender. Without further information from the lender on how these payments were credited, I cannot offer an opinion on why the mortgage was not modified successfully in year 2010 or 2012. However, it appears from preliminary review of the 2012 modification review that the Plaintiffs' loss mitigation staff has erred by not *promptly converting* the trial plan to a permanent modification after lender receipt of

three (3) trial payments. Instead, the mortgagor continued to submit trial modification payments thirteen (13) times. Without further information, my observation is that payments ceased when the lender credited and returned payment #13 to the borrower. The borrower's payment history indicates that the Defendant was not only capable of making payments, but continued to cooperate with the lender until refund of payment #13. It also appears that the borrower, on their own, attempted submission of higher than proposed trial payments.

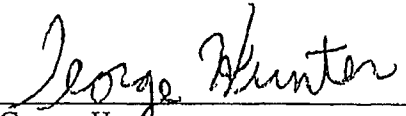
In short, the initial trial modification and the current modification denial appears to indicate that the lender did not accurately follow modification steps under the program. While modified payment terms were permitted by the lender, it does not appear that the modified payments created a lowered payment decreasing the mortgage payments to no greater than thirty one percent (31%) front-end debt to income (DTI) by reducing the interest rate or payment low enough. Additionally, the payment history indicates that the lender was charging late fees during the HAMP modification review.

Without further investigation I cannot ascertain whether Bank of America has received from the HAMP program matching reductions where the mortgagor should have been offered a payment not greater than thirty one (31%) DTI. I cannot ascertain without review of the process utilized by the lender whether an amortization period of greater than three hundred sixty (360) months was considered by the lender in evaluation of the modification. Nor can I ascertain whether the lender has or has not voluntarily deferred principal payments to reach the 31% DTI goal identified above, or whether the lender has waived unpaid late fees such that the home owner did not incur late fees while

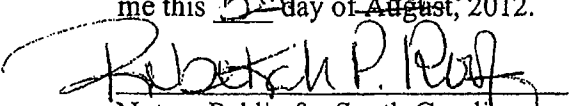
participating in the initial modification effort, or the HAMP modification which was recently denied in year 2012. (Exhibit A).

It is my opinion that if the lender did not undertake the above listed steps, including promptly converting the trial plan into a permanent modification after three (3) payments, that their evaluation of the borrower under HAMP guidelines and supplemental directives may be in error. If the modification is in error, then it is my opinion the subject loan would be eligible for loss mitigation efforts per the Administrative Order of the South Carolina Supreme Court 2011-05-02-01.

Further, affiant sayeth not.


George Hunter

Sworn to and subscribed before
me this 5th day of September, 2012.


Notary Public for South Carolina

My Commission Expires: 4/8/2013

Important information about foreclosure

Please call us as soon as possible to determine if you qualify for one of the options listed above. We are now returning your loan to normal collection activity, which could include referral to foreclosure and a foreclosure sale. **Do not ignore any legal notices about your home.** We may be able to postpone foreclosure proceedings; however, foreclosure postponement is not guaranteed and you will need to respond to all notices to protect your legal rights.

If you have any questions about the collection or foreclosure process, please call us. If you do not understand the legal consequences of foreclosure, we encourage you to contact an attorney or housing counselor for assistance.

We're here to help you

As a reminder we will call you in 10 days to let you know what other options are available to you and the next steps you need to take. **Please call 1.800.669.6650 if you have questions about these options.**

You can also seek assistance at no charge from U.S. Department of Housing and Urban Development-approved housing counselors by calling the HOPE Hotline Number (1.888.995.HOPE). Assistance in understanding this notice is available through the HOPE Hotline by asking for MHA HELP.

Rayquel Branch
Home Loan Team
Bank of America, N.A.

Bank of America  Home Loans

If you are currently in a bankruptcy proceeding, or have previously obtained a discharge of this debt under applicable bankruptcy law, this notice is for information only and is not an attempt to collect the debt, a demand for payment, or an attempt to impose personal liability for that debt. You are not obligated to discuss your home loan with us or enter into a loan modification or other loan-assistance program. You should consult with your bankruptcy attorney or other advisor about your legal rights and options.

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector. However, the purpose of this communication is to let you know about your potential eligibility for programs that may help you avoid a foreclosure sale of your property.

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Required disclosures

Bank of America, N.A. is required by law to inform you that we are unable to fulfill your request for a loan modification and the Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is The Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010-9050.

Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information. If you have any questions regarding this notice, you should contact us at:

Bank of America, N.A.
5401 N. Beach Street
Mail Stop: TX2-977-01-34
Fort Worth, TX 76137

1 STATE OF SOUTH CAROLINA

2 -----x

3 BANK OF AMERICA, NA

4 Plaintiff,

5 Case No.

6 -against- 2011CP4604274

7 MICHELLE MINARDI,

8 Defendant.

9 -----x

10 September 5, 2012

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE LEE ALFORD, Judge.

15

16 A P P E A R A N C E S:

17 CHRIS TRULUCK, Esquire

18 Attorney for the Plaintiff

19

20 J. CAMERON HALFORD, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

1 THE COURT: Is this something we can do in about
2 ten minutes, I am kidding.

3 What have you got?

4 MR. HALFORD: I am not the moving party.

5 THE COURT: Where is the moving party?

6 MR. TRULUCK: I am sorry. I didn't know the case
7 was called.

8 THE COURT: This is Bank of America, versus
9 Michelle Minardi.

10 MR. TRULUCK: On behalf of the plaintiff, Your
11 Honor.

12 I beg the Court's indulgence.

13 Your Honor, respectfully we are asking the matter
14 be referred to Master-in-Equity. I will have to do a
15 little bit of explaining for that I realize, and I
16 have to make a couple assumptions that Mr. Halford and
17 myself will share certain ideas about his Answer and
18 Counterclaim but certainly not all.

19 First Your Honor, we are asking that it be referred
20 because I believe that according to Wells Fargo v
21 Michael Smith which I believe you heard argument a
22 little built earlier today although Mr. Halford and I
23 haven't had a --I assume is Mr. Halford -- that he did
24 request a jury trial in his Answer, and the first step
25 has been met. However, the next two steps require in

1 an equitable action either that the counterclaim be
2 legal and compulsory and in Wells Fargo v Smith -- if
3 Your Honor would like a copy I also have a copy for
4 you.

5 THE COURT: Thirty days ago.

6 MR. TRULUCK: It was ninety days ago, June
7 13th.

8 THE COURT: I probably have it in the office.

9 MR. TRULUCK: Permission to approach.

10 THE COURT: Yes.

11 (WHEREUPON, document was handed to the Court).

12 MR. TRULUCK: Your Honor, I have to rely on the
13 case exclusively to meet my argument. However I do
14 agree that the offered reference would be appropriate.
15 The primary contention -- and Mr. Halford may disagree
16 with me at least in part of this -- in his
17 counterclaim is failure of the plaintiff to offer a
18 HAMP modification.

19 That generally, Your Honor, I have to say there is
20 no cause of action for a failure to comply with the
21 administrative order. I understand the necessity to
22 proceed forward with the case, but there is no cause
23 of action for that.

24 Now Mr. Halford has tied the alleged failure of
25 my client to do the HAMP modification into other

1 causes of action, so I will address those Your Honor.

2 First, anywhere that it says we failed to do a
3 HAMP modification, obviously I will not go into the
4 facts of that, but I would again reiterate that is not
5 a cause of action. It is not a counterclaim that
6 would entitle Mr. Halford's client to a jury trial.

7 Moving on to the first counterclaim; negligence,
8 loan HAMP eligibility. I do believe Your Honor -- and
9 of course I expect Mr. Halford to respond that the
10 entire counterclaim is HAMP modification, which again
11 is not contractual obligation. It is procedure.

12 Second, Your Honor, and this is where I admit it
13 gets a little bit trickier is FDC violation, federal
14 statute.. In this it appears as though he is alleging
15 that there is a mischaracterization of the debt and
16 that almost exclusively that complaint comes from
17 failure to properly do HAMP modification. Which again
18 the complainant is not obligated to do pursuant to the
19 contract.. It is required to do, to proceed with the
20 action. So again, he is basically basing that --

21 THE COURT: Where are we status wise? The Court
22 can proceed on it pursuant to administrative order as
23 far as foreclosure and accept that if it is in the
24 proper posture, and I don't know whether we are in the
25 proper posture or not.

1 There was a denial of loan modification it looks as
2 though it would have been mailed out on August 19th.

3 MR. TRULUCK: Excuse me. My understanding, I
4 believe, it was signed, the notice of -- notice of
5 loan modification denial, and that was based on from
6 what I can glean for the reason was the calculation
7 didn't add up according to their review.

8 MR. HALFORD: Your Honor, she had been denied
9 based on their calculations and of course if he wants
10 to address that matter more fully I respectfully
11 submit it is not at this time because we have
12 submitted the required letter to the Court.

13 MR. TRULUCK: Your Honor, with regard to the
14 counterclaim it appears that, I believe, with the
15 exception of Section D of that counterclaim that all
16 relates back to the failure to properly qualify under
17 the HAMP modification.

18 With regard to the Section D by falsely
19 representing that the plaintiff has incurred fees and
20 costs to secure and inspect the property, knowing the
21 defendant resides at her primary home. That appears
22 to be accounting error. If he is again asserting that
23 under the federal statute, and if it does provide for
24 it, I admit I am not familiar that statute.

25 I would say also, Your Honor, that there is another

1 requirement that has to be met according to Smith and
2 that is not only is it a legal counterclaim in as
3 much as it seeks damages, it must be compulsory.

4 Before this case I would have been more hesitant to
5 make this motion, however I do believe this case has
6 taken a step further. Referring this case to that
7 case it says that compulsory for foreclosure action
8 would be the enforceability of the note. That is what
9 makes it legal. That it goes back -- excuse me --
10 that is what it makes it compulsory. Otherwise it is
11 permissive. I believe that the subject matter is very
12 related. I just can't get away from that. The
13 federal statute says that you can effectuate the
14 enforceability of the note.

15 The Smith case still requires that you look at
16 the body of the Complaint and that you look for the
17 prayer of relief and in his prayer of relief is no
18 mention of rescission -- or -- or bears no logical
19 relationship to the enforceability of the note. Even
20 in that logic I still submit that legally based
21 counterclaim is not compulsory in that it does not --
22 or if it does -- he didn't seek that nature of remedy
23 in his Complaint and he is seeking damages beyond the
24 enforceability of the note.

25 Moving on. I think that is actually the bulk of

1 them. I think the rest of them are essentially very
2 well plead; affirmative defenses, and I think he may
3 agree with me. I say that with hesitation of course.
4 And either solely based on HAMP modification which I
5 submit is not grounds for a cause of action or they
6 are not compulsory and according to the Smith case
7 which I agree it is in the plaintiff's favor because
8 it has made it more stringent. It has got to be
9 compulsory.

10 MR. HALFORD: May it please the court, Cameron
11 Halford for the defendant, Michelle Minardi. I have
12 the case, Your Honor. The problem with this here,
13 Bank of America brought claims Your Honor, and I will
14 describe to the court what is compulsory.

15 We are now in Discovery. We are in mid-Discovery.
16 We have been served interrogatories, request for
17 production. We have them right here. I will show
18 them to counsel before I show them to you if that is
19 okay. What they gave us is payment history on this
20 loan.

21 Now, your Honor has correctly cited there are
22 certain steps under HAMP modification before this
23 proceeds on to Equity Court and to foreclosure. My
24 client has been working with Bank of America for three
25 years. They performed HAMP modification in August of

1 2010 -- April. I am sorry, April of 2010. Under a
2 typical modification the mortgagor is given three
3 shots; make three payments to show you can do it and
4 we will talk modification. My client made 13. Your
5 Honor, at the point that my client makes number 14 --
6 which is well in excess of what she should have had to
7 have done, Your Honor -- at that point the plaintiff
8 in this case sends her money back to her. Rejects her
9 payment. So you will see in this case judge in their
10 discovery is actually proving out my case giving
11 validity to legal counterclaim.

12 The default, the cease of payments is not created
13 by mortgagor. Here it is created by them and now they
14 want to tell the Court we have done another HAMP
15 modification. I submitted -- I went through some
16 trouble to get it, but I submitted expert affidavit
17 who looked at it yesterday and basically says several
18 things that the Court can pay attention to.

19 One, this mortgage is under \$729,000. Fits HAMP.
20 It was originated before December the 1, 2009. Fits
21 HAMP. Three, they declared they are participating in
22 HAMP as as financial institution. Four, they gave her
23 HAMP modification by their own admissions. Five, they
24 took 13 payments from this lady.

25 My client suffered the death of a child. We are

1 not disputing that she fell behind. She actually got
2 Bank of American to engage twice and now they got
3 nowhere to go. So, I would ask the Court not only to
4 deny the order, finding that these legal counterclaims
5 are in fact compulsory. They rise out of the actual
6 default created by his client.

7 I respectfully ask that the Court deny the relief
8 being sought. If my legal counterclaims are confirmed
9 there appears to be some kind of negligence. There is
10 definitely a misrepresentation going on. But I can
11 assure, if you should let me argue this to the Court,
12 if you should grant this motion we are going to have
13 have this same hearing in front of Judge Kimball;
14 whether or not our legal counterclaims do they arise
15 out of the same lender's conduct and the default. I
16 respectfully submit that you are capable of deciding
17 that they are, should you decide.

18 But number two, judge, if you refer the case the
19 legal counterclaims are being lost by default. Just
20 struck down. So we pleaded against Bank of America
21 and our claims are actually in negligence and we still
22 have time to move to amend but I am telling you this
23 one smells bad. So, I am asking the Court to deny
24 their relief that is being sought.

25 Let us go on with Discovery. If Discovery, judge,

1 bears out half of what I already have from them then,
2 this is a problem case and it shouldn't be just
3 treated as a simple foreclosure under the Well's Fargo
4 case.

5 MR. TRULUCK: Your Honor, in as much as I
6 sympathize with Mr. Halford's opinion of the facts I
7 didn't come here today to go through the loan
8 modification.

9 Your Honor, I came here asking Your Honor to refer
10 it and what I've been given and we submitted to the
11 Court based on our client's interpretation is what is
12 required.

13 THE COURT: Listen. Answer his question, he says
14 that your clients agreed to the HAMP modification.
15 That you start off with three payments. You took 13
16 from her. She even increased payments over what she
17 was required to pay and for a reason satisfactory only
18 to your client they decided to terminate the HAMP
19 modification and as I understand what Mr. Korn is
20 saying in his statement is we looked at -- we decided
21 she wasn't a good candidate. Either she didn't have
22 sufficient income or something. I don't know what he
23 based it on. And so my question to you is, if you
24 were in the HAMP modification and agreed to take that
25 and she met all the terms and complied with it, and

1 you unilaterally decide we don't think she is a good
2 candidate we are going to terminate.

3 Number one, why didn't you tell her before she made
4 the payments?

5 MR. TRULUCK: Your Honor, I understand I will have
6 to rely on habit here a little bit, and when I say "I"
7 I mean my client. We don't evaluate --

8 THE COURT: I am going by a statement by him.
9 Something in here I read in which he stated they don't
10 meet the criteria. Where he got that information from
11 the bank I don't know.

12 MR. TRULUCK: Yes, Your Honor.

13 THE COURT: But there is something in here saying
14 that and maybe it is something he submitted on his
15 signature, but it says they didn't meet the criteria.

16 MR. TRULUCK: And Your Honor, I agree. I
17 believe that Mr. Halford if he wants to have a hearing
18 on that is why I mentioned it in my first
19 presentation. I believe -- I do believe that is
20 going to start happening. However, the way the trial
21 modification -- and I'm not speaking directly to this
22 case -- to shed some light on the question, the trial
23 modification requires submission of documents which
24 can take anywhere from thirty days to several months.
25 Once all the documents are submitted and then if it

1 looks possible then a trial modification letter is
2 sent out. Typically, if three payments are met then
3 we will review the possibility of keeping it that way.
4 If three payments are met it does not constitute a
5 change in the contract. It says, you know, we need to
6 see that you can make payments and we will continue to
7 evaluate you. So, I don't personally know whether or
8 not the trial modification went on that long. But
9 even if it did I still respectfully submit --

10 THE COURT: Aren't you prohibited from proceeding
11 under the administrative order of the Chief Justice
12 proceeding on these? Under what circumstances are you
13 not prohibited from if she's been making payments and
14 doing it regularly that you agreed on, et cetera?
15 Then what criteria allows you to go forward under the
16 administrative order that she is not doing what she is
17 suppose to do.

18 MR. TRULUCK: I understand. I do. My reading is
19 that if the client comes back and tells them they do
20 not meet the requirements and that is clear. We ask
21 them why. In this account it is signed by Dean Hayes
22 as he responded by the clients, was that ultimately it
23 calculated that she could not maintain those payments.

24 Now Mr. Halford is submitting that 13 payments --
25 ten payments over what is typical is his major

1 concern. I believe that is unusual. Beyond that I am
2 not prepared to go any further.

3 I just respectfully submit this was a hearing to
4 address his counterclaims and the request for a jury
5 trial. We are required to submit that certification
6 of denial. That is what Mr. Hayes has done. I have
7 to rely on that as being truthful and I don't believe
8 Mr. Halford would in any way submit that Mr. Hayes is
9 untruthful. I find him to be credible and truthful.

10 THE COURT: I am saying what is basis for it?
11 What is the law? Can you just string them along and
12 then arbitrary make the decision to terminate
13 particularly with regard to administrative orders in
14 place by the Chief Justice.

15 MR. TRULUCK: I'm not saying we are excused in
16 having to address the issue. That is why I mentioned
17 that Mr. Halford can ask for a review. But what I can
18 recall from the administrative order it really says it
19 is stayed until the clerk receives a letter stating
20 that loan modification is denied or other
21 circumstances. I believe there is three to four
22 different ones. It doesn't provide other
23 verification. It doesn't provide for a hearing to be
24 had on why it was denied and I think that will
25 probably start happening and I find that is very

1 strange as well. I understand why you are asking.
2 That is all the order says; a certification from the
3 client that it was denied and in this matter they
4 appear to state that. The inability to create forms.

5 Now granted, I don't know every single aspect of
6 why they came to that conclusion. I will not try and
7 represent otherwise, but they complied with the
8 administrative order and I anticipate if you were to
9 grant my Order of Reference they would immediately ask
10 that a hearing be had on the loan modification
11 process. And that's all I can do, Your Honor. I can
12 only follow the rules that are set forth in the
13 administrative order.

14 THE COURT: So you are telling the Court you don't
15 have to give a reason. You just do it and it doesn't
16 make any difference. You just say we don't think you
17 meet the criteria. That is it. That is all you got
18 to do?

19 Did you provide the information to the defendant
20 in this case?

21 MR. TRULUCK: Your Honor, apparently Discovery has
22 been ongoing. We have been trying to as far
23 explanation that is provided in the Notice of Denial
24 submitted by Dean Hayes is that they did the
25 calculations. That it did not work.

1 THE COURT: Frankly counsel, that is not
2 acceptable to this Court. I can tell you that.

3 MR. TRULUCK: Yes, Your Honor.

4 THE COURT: If all you got to do is dole out a
5 letter then what good is administrative orders or
6 anything else. It means nothing. Except that we want
7 you to write a letter.

8 MR. TRULUCK: I believe we are subject to the HAMP
9 review.

10 THE COURT: But you don't have to provide your
11 reasoning on it and why they don't meet the criteria.

12 MR. TRULUCK: I don't believe that Mr. Halford is
13 beyond requesting that information. I'm not saying my
14 client is not responsible for anything else. That is
15 not what I'm saying Your Honor.

16 THE COURT: I will deny your motions at this time.

17 MR. TRULUCK: Yes, Your Honor.

18 THE COURT: I will require you to comply with
19 Discovery.

20 MR. TRULUCK: Yes, Your Honor.

21 THE COURT: And -- and provide an explanation as
22 to why it was denied, and then at that point you can
23 then move again to have counterclaim if you think they
24 are entitled to have it dismissed and to refer it.

25 MR. TRULUCK: Yes, Your Honor.

1 THE COURT: You just can't ignore the
2 Administrative Order and tenor of the Order and
3 require good faith compliance with that Order. Simply
4 to allow the banks, etc, to enforce a foreclosure to
5 dole off a letter to the other side saying you don't
6 meet the criteria, particularly when they seem to be
7 meeting the criteria. And if they didn't make any
8 payments or anything or were late on the payment or
9 gave less than the payment that might be a little
10 different factual situation, but in fact they were
11 meeting the requirement.

12 Now, if you say long term we don't think you can
13 meet the requirement I think you got to justify that.
14 I'm not talking about you. I am talking about your
15 clients. But I think that there has got to be good
16 faith compliance with the Chief Justice's
17 Administrative Order, and the purpose of the Order was
18 all possibilities of trying to allow a debtor to get
19 in compliance or to negotiate to get in compliance. A
20 letter from a creditor just simply saying you don't
21 meet the criteria after 13 payments, then Chief
22 Justice's Order is not worth the paper it's written on
23 as far as I'm concerned.

24 MR. TRULUCK: Yes, sir.

25 THE COURT: I think you need to give an explanation

1 as to why they don't meet terms.

2 I know I can refer it over. I know he is holding a
3 whole bunch of these over there until there is
4 compliance with the Chief Justice's Order and there
5 should be some report to the Court as to progress
6 being made on that. So, I think you have obligation
7 to provide the Court with status of it, okay. And as
8 I understand the court administrations instruction to
9 us is to require that.

10 MR. TRULUCK: Yes, Your Honor, and just for the
11 record, Your Honor, I only was explaining the Order as
12 I saw it. I agree there is good faith as well. I
13 just didn't think that Order specifically called for
14 it and that's all I was saying Your Honor.

15 THE COURT: I don't know what it calls for. I
16 think there needs to be effort made to try and keep
17 the debtor in their homes if it's possible and work
18 something out with the bank.

19 I am not in the banking world, but on the other
20 hand I think you need to at least do a report on that
21 and as to why they are not going to meet the criteria
22 and going to proceed on it.

23 The Master in Equity is holding a whole bunch of
24 these over here; foreclosure. I think he accepted it
25 over there. That is what is going to happen.

1 Compulsory counterclaims might be extinguished by
2 accepting that over there. I don't know. I think the
3 Master could always send it back.

4 MR. TRULUCK: That is my point.

5 MR. HALFORD: We would be prejudiced.

6 THE COURT: It will wind up in this Court. And it
7 seems like to me the primary purpose of the whole
8 action is their foreclosure action, and he deals with
9 this ever single day. He is well equipped; legal
10 expertise to deal with it and maybe that is where it
11 ought to go and let him deal with it.

12 What are your thoughts about that?

13 MR. HALFORD: Your Honor, I think we would end up
14 arguing again whether the conduct is compulsory or not
15 and here it appears to be. So I think it would, in
16 effect, extinguish her rights to a jury trial. It is
17 foreclosure, equitable action. I don't deny that.
18 But when we brought out counterclaims it is not my job
19 to move to dismiss those. That is my opponents.

20 THE COURT: He could raise that issue.

21 MR. HALFORD: Again, at this point we are in mid-
22 discovery, Your Honor.

23 THE COURT: I will deny your motion today. I will
24 express to you my concerns. Discovery has not been
25 completed in this case and I will allow Discovery to

1 be completed before I dismiss any counterclaims and
2 before foreclosure can proceed I think there needs to
3 be some information provided to the debtor as to why
4 she does not qualify under HAMP. There needs to be
5 some explanation.

6 MR. TRULUCK: Yes, Your Honor.

7 I just want Your Honor to know I didn't in any way
8 think without good faith it should be allowed to
9 proceed. I just struggled with clarification myself.
10 I didn't see that as being part of it, but I agree
11 with Your Honor. I was just --

12 THE COURT: Listen. For the bank to arbitrary
13 deny them with no explanation then Chief Justice's
14 Order doesn't mean anything as far as I am concerned.

15 MR. TRULUCK: And that why I agree with you.
16 Thank you, Your Honor.

17 MR. HALFORD: Thank you, Your Honor.

18 (END OF TRANSCRIPT)
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 6th day of Septemeber, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 7, 2015

A. Butler

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4604278

Bank Of America NA

FILED-RECEIVED

2012 SEP -7 PM 12:53

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Michelle Minardi

Ameris Bank

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order; (formal order to follow)☐ Statement of Judgment by the Court:

Motion Denied as the Court

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR DEBTOR/ITC/ITDA

Complete this section below. If the judgment is payable to a third party, please provide the name and address of the third party. If the judgment is payable to the debtor, please provide the name and address of the debtor. If the judgment is payable to the ITC/ITDA, please provide the name and address of the ITC/ITDA.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2113

Judge Code

Date

OFFFORM4M

SCCA SCRCP Form 4C (Revised 10/2011)

For Clerk of Court Office Use Only

This judgment was entered on September 7th, 2012, and a copy mailed first class or placed in the appropriate attorney's box on September 7th, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

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Columbia, SC 29211

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter: Aileen Butler

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A.,

[X] Plaintiff,

vs.

Michelle Minardi, et al.,

[] Defendants.

check box above indicating submitting party

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-46-04278

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

name, SC Bar no. and address of plaintiff's attorney

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ATTORNEY FOR DEFENDANT

MICHELLE MINARDI

[X] MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

[] FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

[] PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Order of Reference

Estimated Time Needed: 15 minutes

Court Reporter Needed: YES [X] NO []

SECTION II: Motion/Order Type

[X] Written motion attached

[] Form Motion/Order:

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

Signature of Attorney for Plaintiff

10/24/13
Date Submitted

SECTION III: Motion Fee

[X] PAID - AMOUNT: \$25.00

[] EXEMPT: [] Rule to Show Cause in Child or Spousal Support

[] Domestic Abuse or Abuse and Neglect

(check reason) [] Indigent Status [] State Agency v. Indigent Party

[] Sexually Violent Predator Act [] Post Conviction Relief

[] Motion for Stay in Bankruptcy

[] Motion for Publication [] Motion for Execution (Rule 69, SCRPC)

[] Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

[] Other: _____

JUDGE'S SECTION

[] Motion Fee to be paid upon filing of the attached order.

[] Other: _____

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: D. Harbrough

(print name)

Date File: _____

[X] MOTION FEE COLLECTED: \$25.00

[] CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to BAC
Home Loans Servicing, LP f/k/a Countrywide Home
Loan Servicing, LP,

PLAINTIFF,

v.

Michelle Minardi and Ameris Bank,

DEFENDANTS.

F11-05497

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-46-04278

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR AN
ORDER OF REFERENCE**

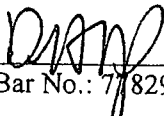
TO: J. CAMERON HALFORD, ATTORNEY FOR DEFENDANT MICHELLE MINARDI:

It appearing, pursuant to Rule 53, SCRCP, that the Plaintiff moves for a hearing that the foreclosure issue in this action be referred to the Honorable S. Jackson Kimball, III, as Master-in-Equity for York County, and that the Master-in-Equity shall have the authority to enter final judgment, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules; now, on motion of the undersigned attorney for the Plaintiff.

This motion is made pursuant to applicable South Carolina case law, the pleadings in this case, and the South Carolina Rules of Civil Procedure.

ISO MOVE:

KORN LAW FIRM, P.A.


Chris S. Truluck, SC Bar No.: 77829
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

October 24, 2013

Dean Hayes
SC Bar #66066

FILED-RECEIVED
2013 NOV -1 AM 11:02
DAVID H. HAYES
C.C.P. & RS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to BAC
Home Loans Servicing, LP f/k/a Countrywide Home
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IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-46-04278

**AFFIDAVIT REGARDING
MILITARY SERVICE**

PERSONALLY appeared before me the undersigned attorney, who first being duly sworn,
deposes and says:

Michelle Minardi, the defendant above named, is not in the Military Service of the United
States.

The source of information on which I base my belief is as follows: The attached status
reports from the Department of Defense Manpower Data Center.

KORN LAW FIRM, P.A.

P.O. Box 11264

1300 Pickens Street

Columbia, South Carolina 29211-1264

BY: DAVID HAYES

Date: 10/24/13

PETER D. KORN / JOHN S. KAY / DEAN HAYES

ALAN M. STEWART / JOHN B. KELCHNER

H. GUYTON MURRELL / SUZANNAH HAYES

KEVIN T. HARDY / ASHLEY ZARRETT

CHRIS S. TRULUCK

Attorneys for Plaintiff

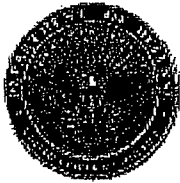
SWORN to before me this

24 day of October, 2013

[Signature] (SEAL)
Notary Public for South Carolina

My Commission Expires: 10/06/2020

FILED-RECEIVED
2013 NOV -1 AM 11:02
DAVID HAYES
KORN LAW FIRM
P.O. BOX 11264
COLUMBIA, SC
YORK COUNTY, SC

**Status Report
Pursuant to Servicemembers Civil Relief Act**Last Name: MINARDIFirst Name: MICHELLE

Middle Name:

Active Duty Status As Of: Oct-24-2013

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty. HOWEVER, WITHOUT A SOCIAL SECURITY NUMBER, THE DEPARTMENT OF DEFENSE MANPOWER DATA CENTER CANNOT AUTHORITATIVELY ASSERT THAT THIS IS THE SAME INDIVIDUAL THAT YOUR QUERY REFERS TO. NAME AND DATE OF BIRTH ALONE DO NOT UNIQUELY IDENTIFY AN INDIVIDUAL.

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
4800 Mark Center Drive, Suite 04E25
Arlington, VA 22350

EXHIBIT A PAGE 1 OF 2

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenseink.mil" URL: <http://www.defenseink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC § 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.

Certificate ID: A5V8Y433P05FTB0

EXHIBIT A PAGE 2 OF 2

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to BAC
Home Loans Servicing, LP f/k/a Countrywide Home
Loan Servicing, LP,

PLAINTIFF,

v.

Michelle Minardi and Ameris Bank,

DEFENDANTS.

F11-05497

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-46-04278

CERTIFICATE OF SERVICE

I, Elizabeth A. Kozlarek, an employee of the Korn Law Firm, P.A., attorneys for plaintiff in the above-captioned action, certify that **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR ORDER OF REFERENCE, AFFIDAVIT REGARDING MILITARY SERVICE, AND AFFIDAVIT OF DEFAULT** were served on counsel for the defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

J. Cameron Halford, Esquire
Law Office of Halford Nierniec & Freeman, LLP
238 Rockmont Drive
Fort Mill, South Carolina 29708
ATTORNEY FOR DEFENDANT MICHELLE MINARDI

this 24th day of October, 2013.

KORN LAW FIRM, P.A.


Elizabeth A. Kozlarek
Paralegal to Chris S. Truluck

Columbia, South Carolina

FILED-RECEIVED
2013 NOV -1 AM 11:04
DAVID W. HILTON
C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP f/k/a
Countrywide Home Loan Servicing, LP,

PLAINTIFF,

v.

Michelle Minardi and Ameris Bank,

DEFENDANTS.

L11-05497

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-46-04278

NOTICE OF HEARING

on

**PLAINTIFF'S MOTION FOR AN
ORDER OF REFERENCE**

**TO: J. CAMERON HALFORD, ATTORNEY FOR DEFENDANT MICHELLE
MINARDI:**

YOU WILL PLEASE TAKE NOTICE that a hearing on Plaintiff's Motion for an Order of Reference in the above-captioned foreclosure action has been scheduled for **Monday, January 13, 2014, at 12:00 PM** at the York County Agriculture Building, Council Chambers, 6 S. Congress Street, York, South Carolina, before The Honorable John Hayes. Please be prepared to argue all outstanding motions at that time.

KORN LAW FIRM, P.A.



Chris S. Truhuck, SC Bar No: 77829

Dean A. Hayes, SC Bar No: 66066

1300 Pickens Street

Post Office Box 12369

Columbia, SC 29211-2369

Telephone: (803) 252-5817

Facsimile: (803) 231-2060

ATTORNEYS FOR PLAINTIFF

December 30, 2013
Columbia, South Carolina

FILED-RECEIVED
2014 JAN -2 AM 11:46
DAVID HAMILTON
CLP & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP f/k/a
Countrywide Home Loan Servicing, LP,

PLAINTIFF,

v.

Michelle Minardi and Ameris Bank,

DEFENDANTS.

F11-05497

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-46-04278

CERTIFICATE OF SERVICE

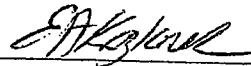
of

NOTICE OF HEARING

I, Elizabeth A. Kozlarek, an employee of the Korn Law Firm, P.A., attorneys for plaintiff in the above-captioned action, certify that the **NOTICE OF HEARING ON PLAINTIFF'S MOTION FOR ORDER OF REFERENCE** was served on counsel of record by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

J. Cameron Halford, Esquire
Law Office of Halford Niemiec & Freeman, LLP
238 Rockmont Drive
Fort Mill, South Carolina 29708
ATTORNEY FOR DEFENDANT MICHELLE MINARDI

KORN LAW FIRM, P.A.



Elizabeth A. Kozlarek
Paralegal to Chris S. Truluck & Dean A.
Hayes

this 30th day of December, 2013
Columbia, South Carolina

FILED-RECEIVED
2014 JAN -2 AM 11:46
DAVID HAMILTON
C.C.P. & S.
YORK COUNTY, SC

TIME LINE – CASE NO. 2011-CP-46-4278
Bank of America, N.A. v. Michelle Minardi, and Ameris Bank

What Has Changed Since September 6, 2012 ?

5/2/2011
Administrative
order

Nov 11, 2011
complaint

9/6/2012
J. Alford order

- (13) Jan 11, 2012
Answer / counterclaim
1. 2011-05-02-01: Administrative Order of the South Carolina Supreme Court.
"No foreclosure hearing or foreclosure sale may be held in the foreclosure
action until the Mortgagee's attorney certifies the following":

JAN. 13, 2014
#2 motion for
Reference

- a. Circumvention of Administrative Order – (14) trial modification payments. See, paragraph (16) complaint – *"The HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification because the borrower defaulted on the terms of the HMP trial plan."*
 - b. **Failure to certify** pursuant to Paragraph 1(B)(1)(a) through (e) – no certification per (b), (c), (d), or (e).
 - c. Foreclosure Commences November 11, 2011 after trial modification rejected on payment #14.
2. Objection to Reference / Answer / Legal Counterclaims filed Jan. 11, 2012.
- a. Legal Counterclaims –
 1. Breach of Contract : (13) successive trial mod payments accepted.
 2. Negligence (rejection of trial mod. Payment #14).
 3. FDCPA violation
3. Chief Administrative Judge Alford denies Reference September 6, 2012 (order attached). *"Motions Denied At This Time"*.
4. Rule 52 – Findings By The Court:
- a. No Certification Since September 9, 2012 by Lender Attorney.
 - b. No material change.
 - c. Request for Attorneys Fees pursuant to Administrative Order.

State of South Carolina.,) In the Common Pleas
) Court of York
)
County of York.) Case No.: 2011-CP-46-04278

Bank Of America.,)
)
Plaintiff.,)
)
-vs-) Transcript of Record
)
Michelle Minardi, et al.,)
)
Defendant.)
)

January 13, 2014
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., judge.

A P P E A R A N C E:

Christopher S. Truluck
1300 Pickens Street
Columbia, South Carolina 29211-2369
803-252-5817
cstruluck@hotmail.com
For the Plaintiff

J. Cameron Halford
Halford, Niemiec & Freeman, LLP
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
cam@fortmillllaw.com
For the Defendant

Wanda Nelson, CVR-M
Official Court Reporter
To the Honorable John C. Hayes, III

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

I-N-D-E-X

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>

No Exhibits were received into the record.

1 (COURT IN SESSION MONDAY, JANUARY 13, 2014 AT 11:58
2 AM.)

3 THE COURT: Thank you. Take your seats.

4 The next matter is *Bank of America versus Minardi* and
5 this is listed - I've read through the file fairly quickly
6 but it's listed as a motion for reference by the bank.

7 MR. TRULUCK: Yes, your Honor, Chris Truluck on behalf
8 of the Plaintiff.

9 THE COURT: Okay. You may proceed.

10 MR. TRULUCK: Thank you, your Honor.

11 Your Honor, we previously moved for reference I
12 believe it was sometime last year before Judge Alford.
13 That request was denied at the time; it's at least my
14 position and I'm not sure if Mr. Halford will - Excuse me,
15 opposing counsel disagreed that the reason it was granted
16 was because the defense had concerns about the status of
17 the case in regard to the Administrative Order and whether
18 or not my client had properly complied with the
19 modification requirements.

20 Your Honor, I have reviewed the files since then and
21 I'll address those concerns if that's still an issue, but
22 I'll proceed with your permission with the reference
23 motion.

24 THE COURT: Okay. I did see that order from Judge
25 Alford. It look like it just says continue at this time.

1 Let me see if I can -

2 MR. TRULUCK: Yes, your Honor, I believe it says
3 denied at this time.

4 THE COURT: Denied at this time.

5 MR. TRULUCK: And I believe he wrote it in a way to
6 hint to the court that it wasn't on the reference argument
7 because of his concerns about the modification status.

8 THE COURT: All right. Yes, sir.

9 MR. TRULUCK: And, your Honor, again I'll go back to
10 that if you require it. But since, your Honor, there were
11 three counterclaims pled by the defendant in this case. A
12 breach of contract; a negligence, and a Fair Debt
13 Collection Practice's Act. All of them have either
14 statutory damage's claims, money damage's claims, or they
15 specifically seek a remedy of money damages. And, your
16 Honor, under *Wells Fargo v. Smith* the court clearly sets
17 out that in an equity action, in that particular case a
18 foreclosure action, where the claims will not have any
19 effect on the note then they are considered permissive and
20 are not requiring a jury trial and that a reference is
21 appropriate.

22 In this case, your Honor, where none of these claims
23 is pled; the breach of contract, the negligence or Fair
24 Debt Collection Practice's Act will have any bearing on the
25 enforceability of the note and mortgage. We believe that

1 reference is appropriate, your Honor, so that we can
2 proceed with the case. I'll leave it at that for now, your
3 Honor. Of course I'll be happy to respond to defense's
4 position, your Honor.

5 THE COURT: All right, Mr. Halford.

6 MR. HALFORD: May it please the court, your Honor.

7 Can I approach?

8 THE COURT: Yes, sir.

9 (DOCUMENTS RECEIVED UP BY THE COURT.)

10 MR. HALFORD: Forgive me for not having done a power
11 point on this one, your Honor. I can just pass this up to
12 you, be more appropriate.

13 Your Honor, we did come before Judge Alford already
14 and Judge Alford's order was read; he didn't make expressed
15 findings of fact or conclusions of law but he said the
16 motions for reference is denied at this time.

17 The problem with this case, your Honor, and you'll
18 notice that Number 13 circled on top of my time line, this
19 case gets filed. My client is a forty-five year old female
20 self-employed; she lost her child back in 2010. I'm not
21 trying to try the case today factually. She did - We don't
22 dispute that she missed two to three payments, I believe,
23 and I don't have the exact number, but before she ever
24 engages my office or counsel then informs, she engages Bank
25 of America's lost mitigation department and she enters into

1 a trial modification program.

2 Now your Honor is well aware that typically when these
3 trial modification programs take place they will make three
4 to four payments and roll it into a permanent modified
5 solution. In this case my client made thirteen successive
6 payments. On payment number fourteen Bank of America
7 rejected it and then placed her in foreclosure. His law
8 firm then files a foreclosure action November 2011 to which
9 we answered in January 2012 and we filed a legal
10 counterclaim. This court had - We're not here on the
11 counterclaims today; we're here on his motion to reference.

12 I would argue that our counterclaims are compulsory;
13 that the default in this bank - that the default in this
14 case wasn't created by my client it was created by the
15 bank. Never the less I have ask what's changed since the
16 last time we were before Judge Alford? And the answer to
17 the question is absolute nothing.

18 And under the Chief's administrative order I think
19 this foreclosure was filed and just blatant disregard. And
20 I quote Judge Alford in September of last year "the chief's
21 order isn't worth the piece of papers it's written on to
22 permit this type thing to occur."

23 So if something has changed, if he's entitled to a
24 reference then the onuses is on them. Under the Chief's
25 order in this paragraph 1(b) a through e subparagraphs they

1 can file their certification with the court and they failed
2 to do that. The onuses is on them to do that, your Honor,
3 and that's not occurred either.

4 THE COURT: What's the paragraph you referenced?

5 MR. HALFORD: Chief'S Administrative Order dated May
6 2, 2011 paragraph 1(b) subparagraph A through E.

7 THE COURT: In (d) or (b)?

8 MR. HALFORD: I believe it's (1)(b), your Honor. I
9 have it right here.

10 THE COURT: B? I can't understand what you're saying.
11 B or d?

12 MR. HALFORD: I'm sorry.

13 THE COURT: We can figure it out. I believe I can.

14 MR. HALFORD: I did misspeak, your Honor. Paragraph
15 (b)(1) subparagraph A through E. They can meet paragraph
16 A; what they can't meet is the subsequent paragraphs,
17 subparagraphs B, C, D, and E. So again I'd argue the
18 onuses is on them to prove that the circumstances have
19 changed to permit this reference. We're not here on the
20 legal counterclaims today, your Honor.

21 The other thing I'd point out about this case is the
22 discovery in this case - I mean I've just recently given
23 them discovery last week. I don't believe he's completed
24 review of that yet. But if you go back, your Honor, and -
25 Forgive me for approaching the court, this is their

1 complaint. I'll just pass this up.

2 (DOCUMENTS RECEIVED UP BY THE COURT.)

3 MR. HALFORD: Briefly, this was their complaint back
4 in September and paragraph 16, your Honor, specifies if you
5 can't process --

6 (PERSON ENTERS COURTROOM.)

7 MR. HALFORD: I'm sorry, here's my client. I didn't
8 know that she was here. Paragraph 16 specifies that a hand
9 modification progress at the time they filed this complaint
10 had been completed without resulting in any type of relief
11 because the borrower defaulted. And respectfully, your
12 Honor, here's where Bank Of America has stepped at. She
13 was in a trial modification payment before she ever got
14 cancelled.

15 She had complied with the thirteen payments even
16 elevating her own payments; on payment number fourteen they
17 reject her payment and then put her into foreclosure.
18 They're trying to retrofit - if you'll excuse the term -
19 compliance with the administrative order, Judge. And the
20 problem with this is they did correctly serve her when they
21 filed the complaint Notice of Rights to Foreclosure
22 Intervention, but the point is, she was already in
23 foreclosure, Judge, and they created the default. So we're
24 not here on the legal counterclaims today.

25 I'd argue that should be the subject of another day's

1 battle, your Honor, but in terms of the reference, they're
2 judge shopping here. Judge Alford already told 'em no.
3 And what I would ask the court to look at is what's really
4 changed since September of last year. What has changed and
5 the answer to that is nothing.

6 I've got one other request for the court today. I
7 can't get anywhere, Judge, and I'm not sure Mr. Truluck can
8 either. I'm very good colleagues with his boss Dean Hayes,
9 I've known the firm but this is just one where we have to
10 agree to respectfully disagree. I'd ask the court to
11 compel mediation in this one under the Administrative Order
12 given the authority to do so, but we're getting no where.
13 As to the status of the case and in the counter -

14 THE COURT: Well I am concerned this is a 2011 case;
15 that you're still here struggling with it in 2014.

16 MR. HALFORD: That's what we been doing. We been
17 submitting paperwork profusely in the exchange. But to
18 tell the court in their pleadings that they completed the
19 hand modification progress without resulting in the
20 modification because she defaulted?

21 THE COURT: When in your answer you denied that
22 paragraph?

23 MR. HALFORD: Yes, sir. And I'd also point out to the
24 court there is a - We've gone to the point of getting a
25 loss mitigation expert; his affidavit is in the court's

1 file. They admit that they're participating with him. I'd
2 ask the court to go back and review that the mediation but
3 I think the order of reference should be denied at this
4 time, again.

5 THE COURT: All right.

6 MR. TRULUCK: Your Honor, I have very strong feelings
7 on this. This is exactly what happened the last time as
8 much as Mr. Halford feels comfortable using the term judge
9 shopping. We scheduled this at the best time we could
10 find. When I first came before Judge Alford I knew nothing
11 of Mr. Halford's specific complaints about this issue. I
12 was standing in for Mr. Hayes and so I was taken back about
13 these complaints about a loan modification.

14 I knew they were in the answer but I was concerned
15 with the motion for reference only that day. Now, when he
16 took a very strong position against us I went back - and we
17 didn't file another motion until I collected information
18 sufficient to explain to the court what had happened over
19 the course of her loan modification.

20 Now, again, Mr. Halford's brought up a new issue in
21 regard to the initial filing of the complaint. I don't
22 have any reason to believe that that wasn't true; that
23 there wasn't some failure to submit a document by Ms.
24 Minardi but that's not the issue before your Honor. I am
25 asking for reference because these kind of things are

1 entitled to it.

2 Furthermore, your Honor, in as much as Mr. Halford
3 brought this up last time I'll be happy to explain to you
4 that they offered a trial modification to Ms. Minardi. Her
5 general loan payment before the default was anywhere from
6 nineteen thirty-five to nineteen forty-two a month for a
7 Two Hundred and Eighty-six Thousand Dollar loan. Now she
8 submitted applications and obtained a trial modification
9 where she was instructed to make three payments. She made
10 the three payments and admittedly, your Honor, it's not a
11 perfect situation but it did go on for several more months.

12 What my client did is they took - And I believe Mr.
13 Halford and I can agree it's at least somewhere between
14 fourteen, and I admonish that she was ten payments, but
15 that's not - I don't think that's a crucial issue, but that
16 every payment was credited to her account and this was
17 explained to her in the trial modification agreement that
18 came out saying that these payments will be put into a non-
19 interest bearing account and as it become a total payment
20 will be applied to your due payment.

21 Now she continues to go further and further into
22 default over this time. But this arrangement at least if
23 it doesn't work out she's in a better position where she's
24 not so far beyond default other options might not be
25 possible. So it wasn't - There was no malice; in fact I

1 think they handled it as perfectly as they could. And they
2 kept Ms. Minardi informed by sending her letters which Mr.
3 Halford should have copies of now which I've had a chance
4 to review. And at least on four if not five different
5 occasions explained to her that her income was not
6 sufficient such that it was thirty-one percent could meet
7 the modification terms and so she was denied on a Two
8 Hundred and Eighty-six Thousand Dollar loan, your Honor,
9 which obviously was still proceeding further into default.

10 Now, Mr. Halford is relying on the administrative
11 order and I don't blame him. The problem is that I filed
12 the motion for the reference based on the issues and I've
13 come prepared with this additional information because I've
14 seen his concerns. But he's ask the Court - He has failed
15 to ask the Court for mediation or a motion for mediation
16 and he's failed to ask the court to elect, which I believe
17 is in the rules for the administrative order, to have a
18 hearing on this one issue. Instead I file a motion for
19 reference come today and I don't know why that Mr. Halford
20 might have left me out in working a while ago because I
21 think we work great together. We have four or five
22 possibly other cases and we seem to get to the point of it
23 sooner or later. But there has been no motion on his
24 behalf. And, your Honor, as much as the obesus as he
25 characterizes on me, your Honor, the case law says unless

1 it affects the enforceability it shouldn't stop the
2 reference because his action was filed in response to our
3 foreclosure action.

4 And, your Honor, furthermore where the standard is
5 legal and compulsory, I concede that the breach of contract
6 that the FDC gave that negligence claims are legal but they
7 are not compulsory in as much as Wells Fargo has said that
8 they have to effect enforceability to know so, your Honor, I
9 do believe reference is appropriate. And I think as much
10 as Mr. Halford wants the rules to be observed that he
11 should file a motion to ask for a hearing on this matter
12 instead of mutating my reference when I come before the
13 court. And similar, your Honor, I stand behind the facts
14 that it appears as though she was granted a modification
15 trial period and they did what they could but they couldn't
16 make it work and that's where we are.

17 THE COURT: What - Are you familiar, Mr. Halford, with
18 Wells Fargo or Mr. Smith?

19 MR. HALFORD: I am, your Honor, discussed as well but
20 not legal but the counterclaims were legal. Compulsory
21 counterclaims, permissive counterclaims, but that's not
22 what's before the court today. The court is presented with
23 his motion for a reference. He could have brought a motion
24 to submit, he's done this before, we have several cases but
25 the counterclaims aren't before the court; the motion for a

1 reference is.

2 THE COURT: But the motion for reference has got to be
3 feed on something.

4 MR. HALFORD: And apparently he's predicated it on the
5 legal counterclaims but I wasn't on notice of that. If you
6 want me to argue that I can today.

7 THE COURT: I think you should.

8 MR. HALFORD: Well -

9 THE COURT: I mean what - I don't see a lot of these
10 but permissive and mandatory are pretty standard in these.
11 But before you get to that, what - The issue with her
12 making thirteen payments and failure if they did comply
13 with Chief's order, those don't make 'em - Why does - That
14 doesn't take it out of the equity rheum does it? It's
15 still an equity action and those are just defenses or set
16 offs or - And I noticed you pled in one place set offs. I
17 mean those are issues - Those aren't issues that - to feed
18 a reference are they?

19 MR. HALFORD: I disagree.

20 THE COURT: Well I know. I'm not asking you do you
21 disagree but tell me why.

22 MR. HALFORD: Because the conduct that's being
23 complained of in the legal counterclaims in this case
24 arises out of a default which we didn't create. Its rare
25 and I see a lot of these cases where a mortgagor just

1 simply doesn't make a payment and they create the default.
2 Here the default is created by his client. And thus the
3 default comes on after fourteen, excuse me, thirteen
4 successive accepted payments, your Honor.

5 THE COURT: But I still don't understand why that -
6 why that can't be handled in the foreclosure matter.
7 That's part of the foreclosure not these other claims.

8 MR. HALFORD: Well, and again I go back to the
9 complaint.. They specified that the hand process was
10 completed and it wasn't. They issued -

11 THE COURT: But that's a defense. You deny that but
12 that's ain't an issue.

13 MR. HALFORD: This is the game, your Honor, they want
14 to refer it over to equity and then make motions on legal
15 counterclaims to dismiss 'em to make this just a mechanical
16 foreclosure action when in fact its not; it's as legal
17 compulsory counterclaims. The conduct being complained of
18 arises out of the same transaction occurrence which is the
19 default which wasn't created by my client.

20 THE COURT: How does that defeat the fact that she
21 owes the money? If I understand, I haven't read Wells
22 Fargo, but basically what he's saying Wells Fargo says - If
23 she owes them money then all these other collat - or
24 matters more like collateral matters, while we're using
25 permissive and compulsory, but they don't distinguish her

1 debt.

2 MR. HALFORD: Your Honor, the money that she owes now
3 how they apply, again this is in the court's affidavit that
4 we presented by George Hunter, the money they've applied
5 after having applied the thirteen payments we don't know
6 how or what they did with it. All our expert says is that
7 she probably - that she shouldn't have qualified.

8 THE COURT: But still, why does that move it out - I
9 mean isn't that something you can take up before the
10 Master?

11 MR. HALFORD: I guess under a motion to dismiss our
12 legal counterclaims that would be correct. That's the next
13 step.

14 THE COURT: Why would you have to dismiss your legal
15 counterclaim when you raised that as a defense?

16 MR. HALFORD: Well, we raised a legal counterclaims,
17 your Honor, creating the question of fact that they haven't
18 complied both with the administrative order and that my
19 client's been damaged. At some point somebody's got to
20 answer for all this, the interest capitulation and cost.
21 And by the way, under the HAMP program under the
22 supplemental guideline directives, they aren't supposed to
23 be capitalizing on those during a trial modification.

24 THE COURT: Well, you're getting way beyond anything I
25 can understand quite frankly. That's why I don't do

1 foreclosures. But I'm looking more at what the pleadings
2 raise not how you gonna prove it or not what you dispute or
3 not what they dispute. Now I haven't read George Hunter's
4 affidavit of what he says. The question is whether this is
5 a referral. And going back to Judge Alford he said motion
6 denied at this time which clearly indicates to me that he
7 is leaving the door open; that it to be raised again. Not
8 that they're judge shopping and that he by his wording in
9 his Form 4 is saying come again.

10 MR. HALFORD: I don't disagree with that, your Honor.

11 THE COURT: All right, anything else before - And I
12 will take it under advisement. All right, I'm gonna take
13 it under advisement.

14 MR. TRULUCK: Thank you, your Honor.

15 (END OF TRANSCRIPT OF RECORD.)
16
17
18
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20
21
22
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25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 13th day of January, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: _____/_____/_____

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4604278

Bank Of America NA

2014 JAN 14 AM 8:28

Michelle Minardi

Ameris Bank

DAVID H. HARTON
C.C.C.P. & GS
YORK COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

Plaintiff's motion for Relevance

Take under advisement

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2049

Judge Code

Date

1/13/14

For Clerk of Court Office Use Only

This judgment was entered on the 14 day of January, 2014, and a copy mailed first class or placed in the appropriate attorney's box on the 14 day of January, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

John Sanford Kay 1300 Pickens St. Columbia, SC 29201
Keller Cogswell Foster Foster Law 112 Briarwood Court
Spartanburg, SC 29302

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Cameron Halford 238 Rockmont Drive 238 Rockmont
Drive Fort Mill, SC 29708

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: Wanda Nelson

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Bank of America, N.A.,
[X] Plaintiff,

CASE NO. 2011-CP-46-04278

vs.

Michelle Minardi, et al.,

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

[] Defendants.

name, SC Bar no. and address of plaintiff's attorney

Dean A. Hayes, SC Bar No. 66066
Chris S. Truluck, SC Bar No. 77829
Post Office Box 12369
Columbia, SC 29211
telephone: (803) 252-5817 fax: (803) 231-2060
e-mail: dean.hayes@kornlawfirm.com;
chris.truluck@kornlawfirm.com

name, SC Bar no. and address of defendant's attorney

J. Cameron Halford, Esquire
238 Rockmont Drive
Fort Mill, SC 29708
ATTORNEY FOR DEFENDANT
MICHELLE MINARDI

- [] MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
[] FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
[X] PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

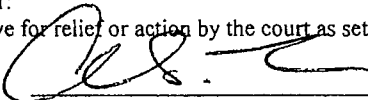
Court Reporter Needed: YES [] NO []

SECTION II: Motion/Order Type

[] Written motion attached

[X] Form Motion/Order:

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


Signature of Attorney for Plaintiff [X] Defendant []

1.31.14
Date Submitted

SECTION III: Motion Fee

[] PAID - AMOUNT:

[X] EXEMPT: [] Rule to Show Cause in Child or Spousal Support

[] Domestic Abuse or Abuse and Neglect

(check reason) [] Indigent Status [] State Agency v. Indigent Party

[] Sexually Violent Predator Act [] Post Conviction Relief

[] Motion for Stay in Bankruptcy

[] Motion for Publication [] Motion for Execution (Rule 69, SCRPC)

[X] Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

[] Other: _____

FILED - RECEIVED
2014 FEB 11 PM 2:51
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

JUDGE'S SECTION

[] Motion Fee to be paid upon filing of the attached order.

[] Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____
(print name)

Date File: _____

[] MOTION FEE COLLECTED:

[] CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP FKA Countrywide
Home Loans Servicing, LP,

PLAINTIFF,

vs.

Michelle Minardi and Ameris Bank,

DEFENDANTS.

F11-05497

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-46-04278

ORDER GRANTING PLAINTIFF'S MOTION
FOR ORDER OF MANDATORY
REFERENCE

FILED - RECEIVED
2014 FEB 11 PM 2:51
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY S.C.

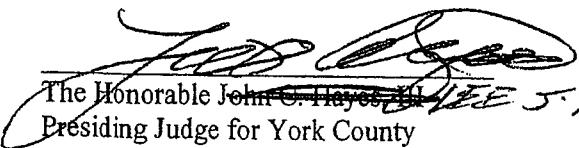
This matter came before me on January 13, 2014 for a hearing on the Plaintiff's motion for an order referring this case to the Honorable S. Jackson Kimball, III, as Master-in-Equity for York County. Present at this hearing was Chris S. Truluck, attorney for the Plaintiff. J. Cameron Halford, attorney for Defendant Michelle Minardi, was also present at the hearing.

This is a foreclosure action, which is an equitable action, that should, pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure and Wells Fargo Bank, N.A. v. Smith, 398 S.C. 487, 730 S.E.2d 328 (Ct. App. 2012), be referred to a master. I find that Defendant Michelle Minardi's counterclaims do not affect Plaintiff's right to enforce the subject note and its right to foreclosure. Defendant Minardi's counterclaims related to matters well beyond the inception of the debt and the granting of the mortgage. I specifically find that the Order of Chief Justice Toal mentioned by counsel for Defendant Minardi in no way applies to the issue of Plaintiff's right to have this foreclosure court referenced, and therefore,

IT IS ORDERED that Plaintiff's motion for an order referring this case to the Honorable S. Jackson Kimball, III, as Master-in-Equity for York County, be and hereby is granted. S. Jackson Kimball, III, as Master-in-Equity for York County, shall have the authority to enter final judgment in this case, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

February 7, 2014
York, South Carolina


The Honorable John C. Hayes, III
Presiding Judge for York County

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP FKA
Countrywide Home Loans Servicing, LP,

PLAINTIFF,

vs.

Michelle Minardi and Ameris Bank,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-46-04278

CERTIFICATE OF SERVICE

F11-05497

I, Elizabeth A. Kozlarek, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **THE PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER OF REFERENCE** was served on counsel for Defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

J. Cameron Halford, Esquire
238 Rockmont Drive
Fort Mill, SC 29708
ATTORNEY FOR DEFENDANT
MICHELLE MINARDI

FILED - RECEIVED
2014 FEB 11 PM 2:51
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This 3rd day of February, 2014.

KORN LAW FIRM, P.A.



Elizabeth A. Kozlarek
Paralegal to Dean A. Hayes and
Chris S. Truluck

Columbia, South Carolina
N:\PD\F11-05497

Bank of America



P.O. Box 10221
Van Nuys, CA 91410-0221



Send Payments to:
P.O. Box 15222
Wilmington, DE 19886-5222

0001525-0001525 LETRO 001 ----- 017347

Michelle Minardi
1808 Sam Smith Rd
Fort Mill, SC 29708-8466

Notice Date: October 18, 2010

Account No.: 192460533

Property Address:
1808 Sam Smith Road
Fort Mill, SC 29715

ABOUT YOUR LOAN

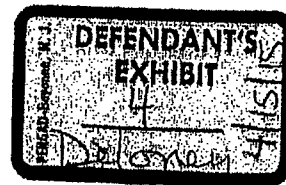
We are pleased to tell you that we have received the last installment due under our Special Forbearance agreement, dated March 30, 2010, and it has been credited to your account referenced above.

THANK YOU FOR YOUR BUSINESS

Thank you for fulfilling this commitment. You are now up to date and current on your home loan payments. You can resume making your normal monthly payments.

If you still have past due fees and/or charges, please pay those as soon as possible. We can tell you if you have past fee(s) or charge(s) and the amount(s) if you call us at 1-800-669-6650.

If you have any other questions, please contact us at 1-800-669-6650.



This communication is from BAC Home Loans Servicing, LP, the Bank of America company that services your home loan.

Please write your account number on all checks and correspondence.

LMPCURD 11967 03/31/2010

Bank of America Home Loans

4500 Amon Carter Blvd
Fort Worth, TX 76155

December 06, 2010

Michelle Minardi
1808 SAM SMITH ROAD
FORT MILL, SC 29715

Loan Number: 192460533

Dear Michelle Minardi:

We have reviewed your request for a loan modification under the federal government's Home Affordable Modification Program. Unfortunately, your loan is not eligible for a Home Affordable Modification for the reason stated below.

We are currently reviewing your financial information to determine if there are other options available to you. These options may include:

- A different modification program that may help you achieve more affordable payments;
- A forbearance program, which would offer you lower payments or no payments for a limited number of months to either give you time to resolve your financial difficulties or give us time to work together with you on a more permanent solution;
- A short sale, in which you would agree to sell your home and the proceeds of the sale would be applied to your loan balance, even if it is not enough to pay off the loan in full; or
- A deed in lieu of foreclosure, in which you would transfer the deed to your home to us in full payment of the outstanding balance on your mortgage.

Once we have finished reviewing your information, we will contact you within 10 days to let you know what other options are available to you and the next steps you need to take. Please contact us at 1.888.325.5399 if you have questions about these options.

Under the guidelines of the Home Affordable Modification Program:

Excessive Forbearance. Your loan is not eligible for a Home Affordable Modification because we are unable to create an affordable payment equal to 31% of your reported monthly gross income without changing the terms of your loan beyond the requirements of the program. In other words, to create an affordable payment for you, the investor (owner) of your loan would be required to delay collecting too large a portion of your principal balance until the loan pays off, beyond what the Home Affordable Modification Program allows.

We strongly encourage you to continue making the normal monthly payments required under your original loan documents to help avoid foreclosure. Unfortunately, there is no guarantee that making your payments will help you qualify for a program that may resolve your situation, but not making any payments will increase your chance of foreclosure. We want to help you avoid that possibility.

Important information about foreclosure proceedings

If a foreclosure proceeding or foreclosure sale of your home is currently pending and on hold, that hold will continue and remain in effect while you are considered for other home retention programs.

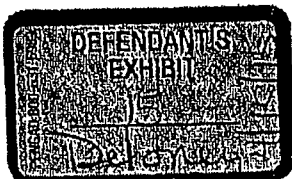
We're here to help you

Please call us today at 1.888.325.5399 if you believe your loan should be eligible for the Home Affordable Modification Program or if you have any questions. We will call you in 10 days to let you know what other options are available to you and the next steps you need to take.

You can also seek assistance at no charge from U.S. Department of Housing and Urban Development-approved housing counselors by calling the HOPE Hotline Number (1.888.995.HOPE). Assistance in understanding this notice is available through the HOPE Hotline by asking for MHA HELP.

BAC Home Loans Servicing, LP

Mortgages funded and administered by an Equal Housing Lender.
Protect your personal information before recycling this document.



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

CASE NO.: 2011-CP-46-04278

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP fka Countrywide
Home Loans Servicing, LP,

NOTICE OF APPEARANCE

Plaintiff,

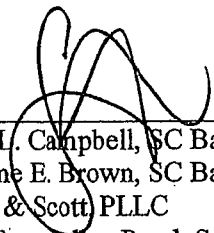
vs.

Michelle Minardi; Ameris Bank,

Defendant(s).

FILED-RECEIVED
2014 OCT -9 PM 12:16
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

COMES NOW Brock & Scott, PLLC, and files this Notice of Appearance on behalf of Plaintiff, Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP, for the purpose of service of all pleadings in relation to the above-styled cause of action and would request that all future correspondence, pleadings, papers, and other like documents filed in this case concerning said Plaintiff, be forwarded to the undersigned attorney at the address shown below from the date of this Notice forward.



Brian L. Campbell, SC Bar No. 74521
~~Suzanne E. Brown, SC Bar No 76440~~
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorney for Plaintiff

10 / 8 / 2014

Wilmington, North Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to BAC Home
Loans Servicing, LP fka Countrywide Home Loans
Servicing, LP,

Plaintiff,

vs.

Michelle Minardi, et al.

Defendant(s).

IN THE COURT OF COMMON PLEAS
16th JUDICIAL CIRCUIT
CASE NO.: 2011-CP-46-04278

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Brian L. Campbell, SC 074521 J. Martin Page, SC 100200
Suzanne E. Brown, SC 076440 Brook D. Dangerfield, SC 077912
Jason L. Branham, SC 072902 Travis E. Menk, SC 079144
Chad W. Burgess, SC 072520 Caroline R. Glenn, SC 077157
Sarah O. Leonard, SC 080165 Patrick A. McCabe, SC 081264

Address:

Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
phone: 888-726-9953 fax: 888-207-9353
e-mail: HomeownerAssist@BrockandScott.com other:

Defendant's Attorney:

Address:

Phone: Fax:

E-mail: Other: _____

DAVID HAMILTON
C.C.P.R. & G.S.
YORK COUNTY, SC

FILED-RECEIVED
2014 NOV -4 AM 11:40

- ☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for Plaintiff

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**
(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by LS Date Filed: 11-4-14

☒ **MOTION FEE COLLECTED: \$ 25.00**

☐ **CONTESTED - AMOUNT DUE: \$ _____**

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP fka Countrywide
Home Loans Servicing, LP,

Plaintiff,

vs.

Michelle Minardi; Ameris Bank,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2011-CP-46-04278

MOTION AND CONSENT ORDER
SUBSTITUTING COUNSEL

DAVID HAMILTON
C. COOPER & G.S.
YORK COUNTY, SC

FILED-RECEIVED
2014 NOV - 4 AM 11:40

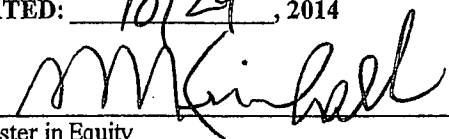
It appears that the Plaintiff has requested that the law firm of Brock & Scott, PLLC, be substituted as counsel in the above referenced action and that Korn Law Firm, P.A. be relieved as Plaintiff's counsel,

And as it appears that both counsel have noted their consent to the substitution, and that no unreasonable delay or prejudice will accrue,

THEREFORE, IT IS ORDERED that the law firm of Brock & Scott, PLLC is hereby substituted as Plaintiff's counsel and that Korn Law Firm, P.A. is hereby relieved as Plaintiff's counsel.

IT IS SO ORDERED

DATED: 10/29, 2014

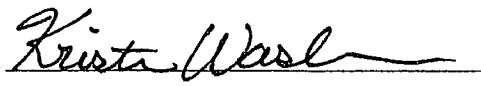

Master in Equity
York County, South Carolina

I SO MOVE


Brian L. Campbell, SCB# 74521

Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for Plaintiff

I CONSENT:


Kristen E. Washburn
Attorney of Record
Korn Law Firm, P.A.
1300 Pickens Street
Columbia, SC 29201
803.252.5817
Attorney for the Plaintiff



STATE OF SOUTH CAROLINA
COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP fka Countrywide
Home Loans Servicing, LP,

Plaintiff,

vs.

Michelle Minardi; Ameris Bank,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2011-CP-46-04278

CERTIFICATE OF SERVICE BY MAIL

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

FILED-RECEIVED
2014 NOV -4 AM 11:40

The undersigned hereby certifies that he is an employee of Brock & Scott, PLLC, and is a person of such age and discretion as to be competent to serve papers.

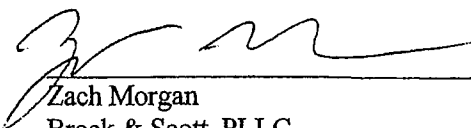
That on October 27, 2014 he served a copy of MOTION AND CONSENT ORDER SUBSTITUTING COUNSEL by placing said copy in a postage paid envelope addressed to each of the following persons at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

Pleading: MOTION AND CONSENT ORDER SUBSTITUTING
COUNSEL

Party(ies) Served:

Ameris Bank
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

Michelle Minardi
c/o Law Offices of Halford Niemiec & Freeman LLP
238 Rockmont Drive
Fort Mill, SC 29708


Zach Morgan
Brock & Scott, PLLC

Wilmington, North Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loan Servicing, LP FKA
Countrywide Home Loans Servicing, LP
☐ Plaintiff

v.

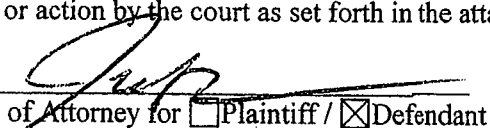
Michelle Minardi And Ameris Bank,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-46-4278

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Caroline Glenn, Bar No. Address: 3800 Fernandina Road, Columbia, SC 29210 phone: 803-454-3540 fax: e-mail: caroline.glenn@brockandscott.com other:		Defendant's Attorney: J. Cameron Halford, Bar No. 17184 Address: 238 Rockmont Drive Fort Mill, SC 29708 phone: 803-324-8100 fax: 803-324-8109 e-mail: cam@fortmilllaw.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: DEFENDANT MINARDI MOTION TO COMPEL MEDIATION Estimated Time Needed: 15 Min. Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: 1-30-15			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: <u>B. Hanke</u> Date Filed: <u>2/2/15</u>			

☒ MOTION FEE COLLECTED: 025
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Bank of America, N.A., successor)
By merger to BAC Home Loans)
Servicing, LP, f/k/a Countrywide)
Home Loans Servicing, LP,)

CASE NO. 2011-CP-46-4278

vs.)

DEFENDANT MICHELLE MINARDI'S
NOTICE OF MOTION AND MOTION TO
COMPEL MEDIATION

Michelle Minardi, and Ameris Bank,)
Defendants.)

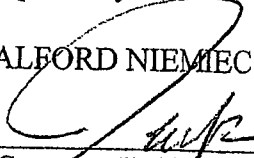
Pursuant to Administrative Order of the South
Carolina Supreme Court 2011-05-02-01

TO: CAROLINE GLENN, ATTORNEY FOR PLAINTIFF BANK OF AMERICA:

YOU WILL PLEASE TAKE NOTICE that the undersigned will move, within ten (10) days, or as soon as the Motion can be scheduled, before the Master in Equity Court for York County for an Order compelling mediation in this case, pursuant to the administrative order of the South Carolina Supreme Court 2011-05-02-01. If not sooner resolved by consent of counsel for the parties, this motion may be supported by Affidavit and/or Memorandum of Law as may be necessary showing that good cause exist to grant the relief being sought.

Respectfully submitted,

HALFORD NIEMIEC & FREEMAN, LLP



J. Cameron Halford
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax
cam@fortmilllaw.com

FILED-RECEIVED
2015 FEB -2 PM 3:58
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

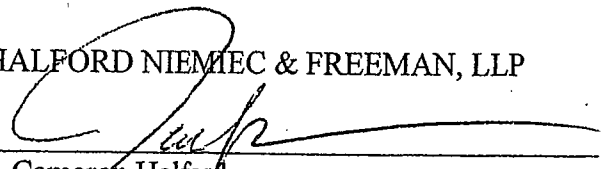
CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the Defendant in the above captioned case and that I did on January 30, 2015 serve a copy of the foregoing Defendant **NOTICE OF MOTION AND MOTION TO COMPEL MEDIATION** on counsel for the Plaintiff by e-mail and by depositing a copy of the same in the United States Mail, Postage Prepaid, and addressed as follows:

Brock & Scott, PLLC
Caroline Glenn, Esq.
3800 Fernandina Rd., Ste 110
Columbia, SC 29210
Attorney for Plaintiff
Caroline.Glenn@BrockandScott.Com

Respectfully submitted,

HALFORD NIEMIEC & FREEMAN, LLP



J. Cameron Halford
S.C. Bar 17184
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax
cam@fortmilllaw.com

FILED-RECEIVED
2015 FEB -2 PM 3:58
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Bank of America, N.A., successor
By merger to BAC Home Loans
Servicing, LP, f/k/a Countrywide
Home Loans Servicing, LP,

NOTICE OF HEARING

Plaintiff,

Case No.: 2011-CP-46-4278

v.

Michelle Minardi and Ameris Bank,

Defendants.

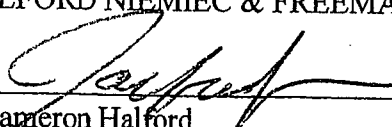
FILED - RECEIVED
2015 FEB - 9 PM 12:49
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

TO: CAROLINE GLENN, ATTORNEY FOR PLAINTIFF:

Please be advised that a Hearing is being held in connection with the above-captioned matter for a Motion to Compel Mediation on February 18, 2015 at 10:00 a.m., before the Master in Equity Court for York County located at 1 North Congress Street, York, South Carolina.

Date: February 5, 2015.

HALFORD NIEMIEC & FREEMAN, LLP


J. Cameron Halford

S.C. Bar 17184

238 Rockmont Drive

Fort Mill, S.C. 29708

803-547-6618

803-547-6638 fax

cam@fortmilllaw.com

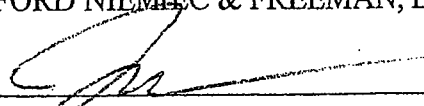
CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the Defendant, Michelle Minardi in the above captioned matter and that I did on February 5, 2015 serve a copy of the foregoing Notice of Hearing on the undersigned parties, by mailing a copy of the same, postage prepaid, as follows:

Carolina Glenn, Attorney at Law
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Attorney for Plaintiff

FILED - RECEIVED
2015 FEB - 9 PM 12: 49
DAVID H. HARTON
C.C.C.P. & G.S.
YORK COUNTY, SC

HALFORD NIEMIEC & FREEMAN, LLP



J. Cameron Halford
S.C. Bar 17184
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loan Servicing, LP FKA
Countrywide Home Loans Servicing, LP
☐ Plaintiff

v.

Michelle Minardi And Ameris Bank,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-46-4278

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Caroline Glenn, Bar No.
Address:
3800 Fernandina Road, Columbia, SC 29210
phone: 803-454-3540 fax:
e-mail: caroline.glenn@brockandscott.com other:

Defendant's Attorney:
J. Cameron Halford, Bar No. 17184
Address:
238 Rockmont Drive
Fort Mill, SC 29708
phone: 803-324-8100 fax: 803-324-8109
e-mail: cam@fortmilllaw.com other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: DEFENDANT MINARDI MOTION FOR SUMMARY JUDGMENT
Estimated Time Needed: 15 Min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

February 6, 2015
Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$25.00**

- ☐ **EXEMPT:** (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

D. Yarbrough

Date Filed:

☒ MOTION FEE COLLECTED: <u>\$25⁰⁰</u>
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Bank of America, N.A., successor)
By merger to BAC Home Loans)
Servicing, LP, f/k/a Countrywide)
Home Loans Servicing, LP,)

CASE NO. 2011-CP-46-4278

vs.)

**NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT**

Michelle Minardi, and Ameris Bank,)
Defendants.)

SCRCP 56

FILED-RECEIVED
2015 FEB 9 PM 2:20
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

TO: CAROLINE GLENN, ESQ.
ATTORNEY FOR PLAINTIFF BANK OF AMERICA, N.A.

YOU WILL PLEASE TAKE NOTICE that the Defendant Michelle Minardi, by and through her undersigned counsel, will move before the court on February 18, 2015, or as soon as counsel may be scheduled and heard by the court, but no sooner than ten (10) days from the service of this Motion, for entry of an Order granting Defendant Summary Judgment in favor of Michelle Minardi. Defendant respectfully submits the record lacks evidence sufficient to establish that Plaintiff is entitled to the equitable remedy of foreclosure and Defendant is entitled to judgment as a matter of law.

Defendant submits the following grounds for its Motion for Summary Judgment:

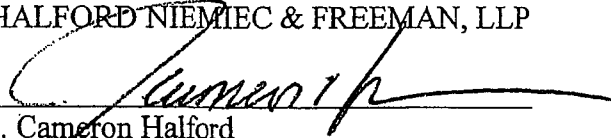
1. The record lacks evidence sufficient to establish that Plaintiff Bank of America, N.A. has complied with the administrative order of the South Carolina Supreme Court 2011-05-02-01, barring its claims for foreclosure.
2. The records lacks evidence sufficient to establish that Plaintiff is entitled to the equitable remedy of foreclosure where Plaintiff unilaterally terminated a March 15, 2010 HAMP modification *in progress* prior to filing its foreclosure action with this court.

3. The records lacks evidence sufficient to establish that Defendant Minardi created the default, Plaintiff having unilaterally rejected tender of payments.
4. The record lacks evidence sufficient to establish that Defendant failed to qualify [and continues to qualify] for loss mitigation, including a loan modification pursuant to the Making Homes Affordable Program ("HAMP").
5. Viewing all facts and inferences in a light most favorable to the Plaintiff Defendant Minardi successfully made thirteen (13) consecutive trial modification payments where Plaintiff offered, and Minardi accepted, a written, signed HAMP modification.
6. That the March 15, 2014 HAMP modification reformed the mortgage agreement between Plaintiff and Defendant and constitutes a valid and binding contract constituting consummation of a written offer, signed acceptance and exchange of valuable consideration in the form of fourteen (14) consecutive payments.
7. Plaintiff's admissions in the case pursuant to Rule 36, SCRPC, evidence that Plaintiff granted Defendant a HAMP mortgage modification on March 15, 2010.
8. Plaintiff's foreclosure is barred by the legal doctrine of unclean hands.
9. Plaintiff's foreclosure is barred by the affirmative defense of Novation, accord, satisfaction, payment, estoppel, and/or waiver by contract.

Counsel's motion will be based on affidavits of record in this case by George Hunter, Plaintiff's admissions of fact pursuant to Rule 36, SCRPC, and supporting memorandum of law citing authorities in support of summary judgment pursuant to Rule 56, SCRPC.

Respectfully submitted,

HALFORD NIEMIEC & FREEMAN, LLP



J. Cameron Halford
S.C. Bar 17184
238 Rockmont Drive,
Fort Mill, South Carolina 29708
803-547-6618

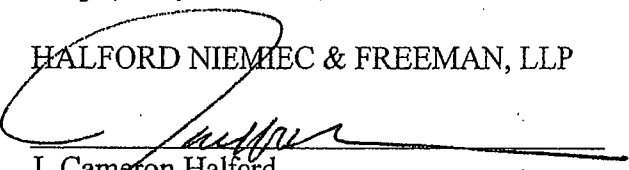
CERTIFICATE OF MAILING

I hereby certify that I am the attorney for the Defendant in the above captioned matter and that I did on February 6, 2015 serve the foregoing Notice of Motion and Motion for Summary Judgment on the party identified below by e-mail and by depositing a copy of the same in the United States mail, postage prepaid, and addressed as follows:

Caroline Glenn, Esq.
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210

Respectfully submitted,

HALFORD NIEMEC & FREEMAN, LLP



J. Cameron Halford
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax

FILED-RECEIVED
2015 FEB -9 PM 2:20
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
)
Bank of America, N.A., successor)
By merger to BAC Home Loans)
Servicing, LP, f/k/a Countrywide)
Home Loans Servicing, LP,)
)
vs.)
)
Michelle Minardi, and Ameris Bank,)
)
Defendants.)
)

CASE NO. 2011-CP-46-4278

MEMORANDUM IN SUPPORT OF
DEFENDANT MINARDI'S MOTION FOR
SUMMARY JUDGMENT

FACTUAL BACKGROUND

¹ Under the HAMP trial modification of April 10, 2010 Minardi was to make three (3) payments in the amount of \$874.22. Minardi ultimately makes thirteen (13) consecutive payments. On July 8, 2011 the fourteenth (14th) payment is rejected by bank of America. Exhibit –D. See also, Exhibit – G.

The foreclosure action is *then* filed November 11, 2011. Defendant is *then again* served with Notice of Rights to Foreclosure Intervention. There is no consummation of the year 2010 modification due to no fault of Minardi. No reason is given by Plaintiff through its attorneys, or otherwise, as to failure to grant a permanent modification under the rules, guidelines or supplemental directives of HAMP. Exhibit-D. Minardi never receives pre foreclosure notice of *why* she failed to qualify for HAMP modification at the time Bank of America rejects tender of payment.

Subsequent post-foreclosure HAMP loss mitigation reviews evidence that the lender cannot create an affordable payment under the terms of the loan. Affidavits in this case by George Hunter evidence that the loan is subject to modification pursuant to the Making Homes Affordable Program. Exhibit - E. Plaintiff can cite no standards, rules or guidelines of HAMP that its subsequent loss mitigation HAMP rejections of Defendant fall subject to or under. §(B)(1)(d), Administrative Order 2011-05-02-01. Instead, it continues the practice of sending loss mitigation offers to Plaintiff after failing to provide a full and fair opportunity under the year 2010 HAMP mod for defendant to consummate a permanent modified solution. Plaintiff *feigns* compliance with the administrative order in maintaining successive offers of the same loss mitigation to Defendant, accompanied by the same boilerplate denial(s), again and again.

Defendant answered the foreclosure action on January 11, 2012. Defendant asserted various compulsory legal counterclaims and objected to mandatory reference of the action. Defendant again requests loss mitigation in the form of a HAMP modification answering the suit. Plaintiff's reply to defendants pleadings are filed February 9, 2012. Defendant has provided the affidavit of George Hunter which evidences, *inter alia*, that

Plaintiff is participating in HAMP and that the loan is HAMP eligible. A motion for reference was last heard by the Hon. John C. Hayes on January 13, 2014. By Order dated February 11, 2014 the case was referred to the Master in Equity court. Defendant Minardi has moved for summary judgment and has moved for court-ordered mediation.

By way of background, Plaintiff is a self-employed female and single parent. The death of her child occurred in June, 2009. Exhibit-A. During the last illness and hospitalization spanning several months, Minardi fell into arrears on her mortgage payments. Upon emerging from the catastrophe of losing her child, she contacted Bank of America, N.A. and requested assistance in the form of a loan modification. Bank of America, N.A. granted Defendant a trial modification March 15, 2010 with payments beginning on or about April 10, 2010. The modified payments were \$ 874.22. Exhibit - B. Trial modification payments began April 1, 2010 and thirteen (13) Consecutive payments were made, *and accepted*, through the month of May, 2011. Defendant testified in deposition that she persisted in requesting a permanent modification, but was advised to *keep making the modified payments because the bank was too busy to provide her with a permanent loan solution at the time.* Exhibit - C. Payments continue over the course of the next year, through May, 2011, and the fourteenth tender of payments. Thirteen (13) payments are accepted and credited, yet no permanent solution is offered to Defendant by Bank of America.

Noteworthy is that Michelle Minardi successfully submits thirteen (13) consecutive *accepted* payments before the bank rejects tender. It provides no justification cited by HAMP program guidelines for not modifying the loan permanently. Exhibit-D. Plaintiff Bank of America, N.A. next files suit to foreclose Minardi's home on January

11, 2011. To *reiterate*, Plaintiff interrupts a HAMP modification in progress *before* filing its foreclosure citing no reason, and doing so outside of counsel. After the foreclosure is filed, Plaintiff offers two subsequent loss mitigation reviews where under Minardi fails to qualify, *each time*, for the same loss mitigation. Exhibit-E. (Despite Plaintiff having granted a HAMP modification on March 15, 2010). Plaintiff last filed with the courts a Notice of Denial of Loan Modification or Other Means of Loss Mitigation on or about August 9, 2012.

PROCERUAL POSTURE

The parties have both propounded and engaged in written discovery, and one (1) deposition has been taken pursuant to Rule 30, SCRCP. Defendant Michelle Minardi was deposed on July 16, 2014. Defendant noticed the Rule 30(b)(6) deposition of Bank of America, N.A. personnel most familiar with the facts of this case and circumstances surrounding Defendant's mortgage loan, the alleged default, and loss mitigation reviews. No deposition has occurred to date despite several attempts (4) to schedule. By order of substitution the firm Brock & Scott was substituted for Korn Law Firm for further representation of the Plaintiff. Defendant has motioned the court to compel mediation pursuant to the administrative order 2011-05-02-01, and Defendant has now filed for summary judgment. By its motion, Defendant asserts that Plaintiff has filed and maintained this foreclosure action in violation of the administrative order and that this court is presented with a pure issue of law.

SUMMARY JUDGMENT STANDARD OF REVIEW

Summary Judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. City of Columbia v. American Civil Liberties Union, etc., et al., 323 S.C. 384, 475 S.E.2d 747 (1996). SCRCP 56. In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in a light most favorable to the nonmoving party. Id. Summary Judgment is proper where plain, palpable, and indisputable facts exist on which reasonable minds cannot differ. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Baughman v. American Tel. And Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). For summary judgment to be granted, it must be perfectly clear no genuine issue of fact is involved. Piedmont Engineers, Architects and Planners, Inc. v. First Hartford Realty Corp., 278 S.C. 195, 293 S.E.2d 706 (1982). 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 upon mere allegations or denials contained in the pleadings. Baughman, supra. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. Id. In the absence of fraud, the construction of a

clear and unambiguous contract is a matter of law. Pearson v. Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996).

ARGUMENT

1. Plaintiff's foreclosure action is filed and maintained in violation of the Administrative Order of the South Carolina Supreme Court 2011-05-02-01.

This foreclosure action qualifies under paragraph (B)(1) of the administrative order as a owner-occupied dwelling and action for foreclosure pending on May 9, 2011. Pursuant to the Administrative Order, all proceedings in the foreclosure action are to be stayed until completion of such foreclosure intervention contemplated by the order, which expressly includes loan modifications pursuant to the Making Homes Affordable program or other methods of loss mitigation.

a. Plaintiff's rejection and interruption of payments under a trial modification resulted in *failure of consummation* of a HAMP modification due to no fault of the Defendant.

The violation of the administrative order that occurs is that on April 10, 2010 HAMP modification is interrupted and unilaterally shut down by Plaintiff as a prelude to its foreclosure. Under the lawsuit Plaintiff cites in HAMP reviews that Defendant seemingly fails to qualify for the very same HAMP modification she successfully made thirteen (13) trial payments under in year 2010. The decision occurs *direct* from Bank of America to Minardi, and not through foreclosure counsel as contemplated by the administrative order. The only person or entity that Plaintiff ever had the opportunity to negotiate with, pre-foreclosure, is Bank of America. Bank of America was, at all times, in a superior bargaining position with knowledge of the true state of affairs² concerning

its investors and/or the terms and structure of the loan. Because Plaintiff fails to cite any standard, guideline or rule of the Making Homes Affordable Program – or permit completion or consummation of the April 10, 2010 HAMP modification – its rejection and filing of foreclosure is in bad faith. Its foreclosure filing violates paragraphs (B)(1)(c) and (B)(1)(d) of the administrative order of the supreme court 2011-05-02-01. An *in-progress* HAMP trial modification is unilaterally obstructed and terminated prior to Plaintiff's foreclosure action filed in November 2011.

b. Plaintiff's rejection and interruption of payment under HAMP modification failed to provide Defendant a *full and fair* opportunity to obtain a permanent loan modification due to no fault of Defendant.

Defendant respectfully asserts it was denied a full and fair opportunity to consummate a HAMP modification by Plaintiff's rejection of payments and foreclosure. Plaintiff, in fact, fails to cite any standard, guideline or rule under the Making Homes Affordable program which Plaintiff cannot successfully qualify under. Instead, the reasons cited by Bank of America under HAMP trial modification for rejection of payments is that Defendant failed to make a full payment. Defendant respectfully asserts these are reasons not supported by the administrative order. Exhibit-D.

c. Plaintiff's foreclosure action is barred by the legal doctrine of Equitable Estoppel because Plaintiff breached loss mitigation in progress by rejecting payments, filing and maintaining a foreclosure suit in violation of the administrative order 2011-05-02-01.

Defendant has claimed by way of affirmative defenses that Plaintiff's action is barred in equity pursuant to the legal doctrine of Estoppel. In South Carolina, *"the essential elements of estoppel are divided between the estopped party and the party*

claiming estoppel." Provident Life & Accident Ins. Co. v. Driver, 317 S.C. 471, 477, 451 S.E.2d 924, 928 (Ct. App. 1994). As to the party being estopped, the elements are: 1) conduct which amounts to a false representation, or conduct calculated to convey the impression that the facts are otherwise, 2) the intention that such conduct shall be acted upon by the other party, and 3) knowledge of the true facts. Id. In order to claim estoppel, Minardi would be required to show "1) a lack of knowledge and the means of knowledge of truth as to facts in question; 2) justifiable reliance upon the conduct of the party estopped; and 3) prejudicial change in position. Walton v. Walton, 282 S.C. 165, 168, 318 S.E.2d 14, 16 (1984).

As to element one, Plaintiff Bank of America, N.A. on April 10, 2010 extended a trial loan modification under the Making Homes Affordable Program. **Exhibit -C.** The offer stated that a permanent modification would occur after three (3) trial payments. Defendant, in fact, makes thirteen (13) accepted trial modification payments. Id. Plaintiff's own documents evidence that it will provide a permanent loan modification if the borrower's representations in sections (2) and (3) of the agreement remain true in all respects. This failed to occur. As to element two, the bank advises Minardi to keep making modified payments, because it is too busy to do the permanent modification at the relevant time. Exhibit - _____. Minardi continues the payments until the fourteenth (14th) payment is rejected with no proper reason in May, 2011. (The payment is not rejected until July, 2011. Arguendo, Bank of America likewise accepted tender of payment #14). Lastly, the third element – *known only to Plaintiff at the relevant times* – is knowledge of the true facts; e.g., that Plaintiff's investor (owner) of the loan would be

required to delay collecting too large a portion of the principal balance until the loan pays off (sic), beyond what the Making Homes Affordable Program allows.²

Michelle Minardi has no knowledge of the third element, nor would she have had the means to ascertain facts involving the investor, Plaintiff's own subsidiary. Minardi justifiably relied upon the representations of Bank of America, N.A., by making no less than fourteen (14) consecutive trial payments. Thirteen (13) of these payments were *accepted* by Bank of America. Exhibit-G. Minardi suffered a prejudicial change in position by submitting far more than three (3) trial modification payments. Her performance under the trial modification is supported by no less than delivery of fourteen (14) consecutive payments. Minardi has justifiably changed position specifically under the Making Homes Affordable program that Plaintiff Bank of America – *then and now* – was a participating financial institution. To date, Bank of America is unable to provide justification under HAMP why a permanent modification was never provided in year 2010. Bank of America's solution is bad faith. It will terminate a year 2010 HAMP modification by shifting ownership to BAC Home Loans Servicing, its subsidiary. BAC becomes the "owner" and "investor" whose would be required to delay collecting too large of a portion of the principal balance had Bank of America, N.A. complied with the HAMP trial modification in good faith.

CONCLUSION

Defendant respectfully submits Plaintiff's foreclosure is filed and maintained in bad faith and violation of the administrative order in no less than four (4) respects; 1) the action is filed after Plaintiff interrupts a HAMP modification in progress; 2) by rejecting

² Bank of America, N.A. provides this information for the first time to Minardi on February 23, 2012 – ten (10) months after returning trial modification payments to Minardi when it rejects tender of payment #14.

payments Plaintiff fails to afford Defendant a full and fair opportunity for loss mitigation pursuant to ¶(B)(1)(d) of the order; 3) completion of foreclosure intervention involving the HAMP program specifically has been unilaterally thwarted by Plaintiff, yet Plaintiff has continued to maintain the action faking compliance with the administrative order; 4) Plaintiff can cite no standards, rules or guidelines under HAMP applicable to the mortgage loan under which Defendant Minardi fails to qualify under HAMP – then or now, for its rejection of payments. Plaintiff should be equitably estopped from proceeding with this action.

As to estoppel, on March 15, 2010 Plaintiff extended a loan modification pursuant to the Making Homes Affordable Program to Defendant Michelle Minardi. Exhibit-A. The offer is by Bank of America, in writing, *direct* to Michelle Minardi. It is offered as a form of loss mitigation specifically contemplated by the administrative order. The acceptance is signed by Michelle Minardi. Valuable consideration is exchanged in the form of payments for no less than thirteen (13), if not fourteen (14), months.

After tender and delivery of fourteen (14) consecutive payments Bank of America, N.A. – unilaterally - rejects tender. Its gives no qualified reason under the Making Homes Affordable Program – or the administrative order - why Minardi fails to qualify for the year 2010 modification. Consummation of the modification fails to occur under Bank of America's rejection of payments. Plaintiff is given no full and fair opportunity to complete the year 2010 modification prior to Plaintiff's filing its foreclosure lawsuit where it offers, *again and again*, subsequent loss mitigation options including HAMP reviews that are always, not surprisingly, denied.

As to the April 10, 2010 HAMP modification and the administrative order, the Defendant argues that the court is presented with a pure question of law. Within the four corners of the April 10, 2010 modification there exists an offer, acceptance, and performance by both parties. Bank of America, N.A. should be prevented from thwarting the administrative order of the South Carolina Supreme Court having modified – *both in writing and in course of conduct* – Michelle Minardi's mortgage loan on April 10, 2014. Plaintiff respectfully asserts Bank of America reformed its mortgage and that Defendants' performance thus constituted an Accord and Novation of the original mortgage agreement debt.

Alternatively, Defendant asserts that Plaintiff's claims are barred by the legal doctrine of equitable estoppel, and should thus be dismissed (and should previously have been dismissed) pursuant to the Administrative Order 2011-05-02-01.

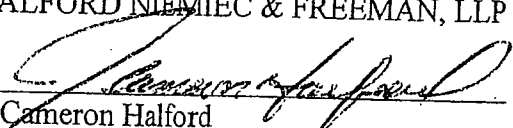
Lastly, Plaintiff violates the administrative order of the supreme court in no less than four (4) respects: (1) Plaintiff's rejection of payments in April, 2011 obstructs (and effectively ends) a HAMP modification in progress prior to the foreclosure filing; (2) Plaintiff offers Defendant no qualified reason under HAMP why she fails to qualify for a permanent modification under HAMP; (3) as such, Plaintiff thwarts successful consummation of a loss mitigation program, then files for foreclosure. (4) all negotiations and rejections of Plaintiff occur *direct, and not through Plaintiff's foreclosure counsel*; and lastly (5) Plaintiff has maintained this action while denying Defendant a full and fair opportunity pursuant to the Making Homes Affordable Program, despite the fact that Minardi qualified for and successfully performed under a year 2010 modification. Instead, Plaintiff seeks to pretend it has complied in good faith with the

administrative order with successive denials of the same HAMP loss mitigation that Defendant qualified for in year 2010. Defendant respectfully asserts that Plaintiff's claims are barred pursuant to the legal doctrine of equitable estoppel, and should be dismissed by this court.

Plaintiff further prays for an award of costs and attorneys fees in defense of this action pursuant to the administrative order.

Respectfully submitted,

HALFORD NIEMIEC & FREEMAN, LLP



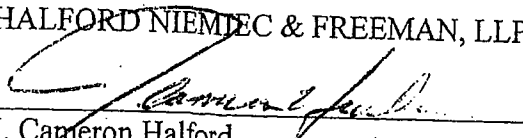
J. Cameron Halford
S.C. Bar 17184
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax
cam@fortmilllaw.com

CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the Defendant Michelle Minardi in the above captioned matter and that I did on February 17, 2015 provide a copy of the foregoing **DEFENDANT MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT** by e-mail and/or hand delivery (2/18/2015) of a copy of the same to counsel for the Plaintiff, addressed as follows:

Caroline Glen, Esq.
Brock & Scott, PLLC
3800 Fernandina Rd., Ste 110
Columbia, SC 29210

HALFORD NIEMIEC & FREEMAN, LLP



J. Cameron Halford
238 Rockmont Drive
Fort Mill, South Carolina 29708

STATE OF TENNESSEE Office of Vital Records

0810802



TENNESSEE DEPARTMENT OF HEALTH CERTIFICATE OF DEATH

STATE FILE
NUMBER

DECEDENT

PARENTS

IN GRANDFATHER

DISPOSITION

REGISTRAR

CERTIFIED

PHYSICIAN OR MEDICAL EXAMINER

SEE INSTRUCTIONS ON OTHER SIDE

CAUSE OF DEATH

1. DECEDENT'S NAME (First, Middle, Last) Brittney Shane Minardi		2. SEX F		3. DATE OF DEATH (Month, Day, Year) June 06, 2009	
4. SOCIAL SECURITY NUMBER 256-71-0250		5a. AGE LAST BIRTHDAY (Years) 19	5b. UNDER 1 YEAR DATE	6. DATE OF BIRTH (Month, Day, Year) 07/27/1989	7. BIRTHPLACE (City and State or Foreign Country) Valdosta, GA
8. WAS DECEDENT EVER IN U.S. ARMED FORCES? 1 Yes 2 No		9. PLACE OF DEATH (Specify street and number, city, state, and ZIP code) Valdosta, GA			
10. FACILITY NAME (If not institution, give street and number) Alive Hospice at St. Thomas Hospital		11. CITY, TOWN, OR LOCATION OF DEATH Nashville		12. COUNTY OF DEATH Davidson	
13. MARITAL STATUS (Married, Never Married, Widowed, Divorced, Separated) Never Married		14. SURVIVING SPOUSE (If wife, give maiden name) Student		15. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use "found") Public Education	
16. RESIDENCE STATE TN		17. COUNTY Davidson		18. CITY, TOWN OR LOCATION Nashville	
19. INSIDE CITY 37209		20. ZIP CODE 37209		21. STREET AND NUMBER OR RURAL LOCATION 6680 Charlotte Pike Apt. A-8	
22. WAS DECEDENT OF HISPANIC ORIGIN? (Specify Yes or No if Yes, specify origin: Mexican, Puerto Rican, etc.) 1 Yes 2 No		23. RACE (American Indian, Black, White, etc.) White		24. HIGHEST GRADE OF EDUCATION (Specify only highest grade completed) (Elementary, Secondary, Postsecondary) 12	
25. FATHER'S NAME (First, Middle, Last) Mike Price		26. MOTHER'S NAME (First, Middle, Last) Michelle Ann Minardi		27. MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, ZIP Code) 133 Reed Creek, Martinez, GA 30907	
28. INFORMANT'S NAME (Type and Print) Vincent Minardi		29. RELATIONSHIP TO DECEDENT Grandfather		30. DATE FILED (Month, Day, Year) July 2, 2009	
31. METHOD OF DISPOSITION 1 Burial 2 Cremation 3 Removal from State 4 Organ donation 5 Other (Specify)		32. PLACE OF DISPOSITION (Name of cemetery, crematory, or other place) Evergreen Cemetery		33. LOCATION (City or Town, State) Belmont, NC	
34. SIGNATURE OF FUNERAL DIRECTOR <i>[Signature]</i>		35. LICENSE NUMBER OF FUNERAL DIRECTOR 1593		36. SIGNATURE OF EMBALMER <i>[Signature]</i>	
37. NAME AND ADDRESS OF FUNERAL HOME Thomas Potest & Son Funeral Directors 214 Davis Rd., Augusta, GA 30907		38. LICENSE NUMBER OF FUNERAL HOME GA 1593		39. DATE SIGNED (Month, Day, Year) June 06, 2009	
40. REGISTRAR'S SIGNATURE <i>[Signature]</i>		41. DATE SIGNED (Month, Day, Year) June 06, 2009		42. DATE SIGNED (Month, Day, Year) June 06, 2009	
43. MEDICAL EXAMINER'S SIGNATURE <i>[Signature]</i>		44. LICENSE NUMBER 31292		45. DATE SIGNED (Month, Day, Year) June 06, 2009	
46. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN OR MEDICAL EXAMINER) (Type/Print) Amy R McMaster, M.D.; 850 R.S. Gass Boulevard, Nashville, TN 37216; MEC09-1063		47. PART I. Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line. IMMEDIATE CAUSE (Final disease or condition resulting in death) → a. Pending further studies		48. APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH	
49. PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.		50. WAS AN AUTOPSY PERFORMED? 1 Yes 2 No		51. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? 1 Yes 2 No	
52. MANNER OF DEATH 1 Natural 2 Pending investigation 3 Accident 4 Suicide 5 Homicide 6 Could not be determined		53a. DATE OF INJURY (Month, Day, Year)	53b. TIME OF INJURY	53c. INJURY AT WORK? 1 Yes 2 No	53d. DESCRIBE HOW INJURY OCCURRED
54. PLACE OF INJURY (At home, farm, street, factory, office, building, etc. (Specify))		55. LOCATION (Street and Number or Rural Route Number, City or Town, State)			

DEFENDANT'S
EXHIBIT
3
Minardi
7-16-14
PENGAD 800-651-6388

55366

I hereby certify the above to be a true and correct copy of the original document on file in this department. This certified copy is valid only when printed on security paper showing the red embossed seal of the Department of Health. Alteration or erasure voids this certification.
Tennessee Code Annotated 68-3-101 et seq., Vital Records Act of 1977.



Sharon M. Leinbach
STATE REGISTRAR

Blumberg No. 5114
DEFENDANT'S
EXHIBIT
A

Date Issued



CERTIFICATION OF VITAL RECORD

INCOME/EXPENSES FOR HOUSEHOLD¹

Number of People in Household: 2

Monthly Household Income		Monthly Household Expenses/Debt		Household Assets	
Monthly Gross Wages	\$ 1314.00	First Mortgage Payment	\$ 1941.00	Checking Account(s)	\$ 0
Overtime	\$ —	Second Mortgage Payment	\$ 125.00	Checking Account(s)	\$ 0
Child Support / Alimony / Separation ²	\$ 379.00	Insurance	\$ —	Savings/ Money Market	\$ 300.00
Social Security/SSDI	\$ —	Property Taxes	\$ —	CDs	\$ —
Other monthly income from pensions, annuities or retirement plans	\$ —	Credit Cards / Installment Loan(s) (total minimum payment per month)	\$ 350.00	Stocks / Bonds	\$ —
Tips, commissions, bonus and self-employed income	\$ —	Alimony, child support payments	\$ —	Other Cash on Hand	\$ —
Rents Received	\$ 1000.00	Net Rental Expenses	\$ —	Other Real Estate (estimated value)	\$ —
Unemployment Income	\$ —	HOA/Condo Fees/Property Maintenance	\$ —	Other	\$ —
Food Stamps/Welfare	\$ —	Car Payments	\$ —	Other	\$ —
Other (investment income, royalties, interest, dividends etc.)	\$ —	Other <u>Sub. electric</u>	\$ 600.00	Do not include the value of life insurance or retirement plans when calculating assets (401k, pension funds, annuities, IRAs, Keogh plans, etc.)	
Total (Gross Income)	\$ 2693.00	Total Debt/Expenses	\$ 2816.00	Total Assets	\$ 300.00

INCOME MUST BE DOCUMENTED

¹Include combined income and expenses from the borrower and co-borrower (if any). If you include income and expenses from a household member who is not a borrower, please specify using the back of this form if necessary.

²You are not required to disclose Child Support, Alimony or Separation Maintenance income, unless you choose to have it considered by your servicer.

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. **You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it.** If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. **If you do not wish to furnish the information, please check the box below.**

BORROWER		CO-BORROWER	
☐ I do not wish to furnish this information		☐ I do not wish to furnish this information	
Ethnicity: ☐ Hispanic or Latino ☐ Not Hispanic or Latino		Ethnicity: ☐ Hispanic or Latino ☐ Not Hispanic or Latino	
Race: ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☒ White		Race: ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White	
Sex: ☒ Female ☐ Male		Sex: ☐ Female ☐ Male	
To be completed by interviewer			
This request was taken by: ☒ Face-to-face interview ☐ Mail ☐ Telephone ☐ Internet		Name/Address of Interviewer's Employer	
Interviewer's Name (print or type) & ID Number <u>Carmelle Hutchinson</u>			
Interviewer's Signature <u>Carmelle Hutchinson</u>			
Date <u>1-13-12</u>			
Interviewer's Phone Number (include area code)			

ACKNOWLEDGEMENT AND AGREEMENT

In making this request for consideration under the Making Home Affordable Program, I certify under penalty of perjury:

1. That all of the information in this document is truthful and the event(s) identified on page 1 is/are the reason that I need to request a modification of the terms of my mortgage loan, short sale or deed-in-lieu of foreclosure.
2. I understand that the Servicer, the U.S. Department of the Treasury, or their agents may investigate the accuracy of my statements, and may require me to provide supporting documentation. I also understand that knowingly submitting false information may violate Federal law.
3. I understand the Servicer will pull a current credit report on all borrowers obligated on the Note.
4. I understand that if I have intentionally defaulted on my existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this document, the Servicer may cancel any Agreement under Making Home Affordable and may pursue foreclosure on my home.
5. That: my property is owner-occupied; I intend to reside in this property for the next twelve months; I have not received a condemnation notice; and there has been no change in the ownership of the Property since I signed the documents for the mortgage that I want to modify.
6. I am willing to provide all requested documents and to respond to all Servicer questions in a timely manner.
7. I understand that the Servicer will use the information in this document to evaluate my eligibility for a loan modification or short sale or deed-in-lieu of foreclosure, but the Servicer is not obligated to offer me assistance based solely on the statements in this document.
8. I am willing to commit to credit counseling if it is determined that my financial hardship is related to excessive debt.
9. I understand that the Servicer will collect and record personal information, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about account balances and activity. I understand and consent to the disclosure of my personal information and the terms of any Making Home Affordable Agreement by Servicer to (a) the U.S. Department of the Treasury, (b) Fannie Mae and Freddie Mac in connection with their responsibilities under the Homeowner Affordability and Stability Plan; (c) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan(s); (d) companies that perform support services in conjunction with Making Home Affordable; and (e) any HUD-certified housing counselor.

Michelle Mad
Borrower Signature

1-13-2011
Date

Co-Borrower Signature

Date

HOMEOWNER'S HOTLINE

*If you have questions about this document or the modification process, please call your servicer.
If you have questions about the program that your servicer cannot answer or need further counseling,
you can call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). The Hotline can help with questions about
the program and offers free HUD-certified counseling services in English and Spanish.*

888-995-HOPE

Homeowner's HOPE™ Hotline

NOTICE TO BORROWERS

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that:

"Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or www.sigtarp.gov and provide them with your name, our name as your servicer, your property address, loan number and reason for escalation. Mail can be sent to Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.





March 25, 2010

Ms. Michelle Minardi
1808 Sam Smith Rd
Fort Mill, SC 29708

*Called
6/30 5x
got cut
000*

Bank of America account ending: 0533

Dear Ms. Minardi:

This letter is in response to your correspondence dated February 18, 2010, forwarded to Bank of America, on your behalf, by the Office of the Comptroller of the Currency.

It is Bank of America's understanding that you are seeking a loan modification.

Our records indicate that you were mailed a letter on March 15, 2010 detailing information regarding the Making Home Affordable ("MHA") Trial Loan Modification Program which requires you to make trial payments of \$874.22 on April 1, 2010, May 1, 2010, and June 1, 2010. The documents are due to return April 1, 2010 in order for the trial modification to be processed.

Please note that if you miss a payment, you may be declined a permanent modification. At the conclusion of the trial period, the Making Home Affordable Team will review your file to determine if you qualify for a permanent loan modification. Please allow up to sixty (60) days from the end of your trial period for a response regarding a permanent modification. If you have any questions or concerns pertaining to the Making Home Affordable Program please contact a team member at 1.877.221.0825.

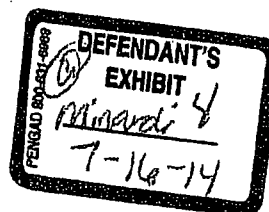
Please keep in mind that review for a modification is not a guarantee of a rate reduction or any other change to the originating loan terms. There are several factors that are considered when reviewing each individual's loan including, unexpected hardships and changes in your financial situation that possibly may be affecting your ability to pay the loan in accordance with its originating terms.

I hope I have satisfactorily addressed your concerns and I apologize for any delay in responding to your inquiry. If you have any questions about the information contained in this letter, you may contact me at 214.571.2413 Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., C.T. If you have other questions about your loan, please contact the Customer Service Department at 1.800.669.6607. Thank you.

Sincerely,


Akia Terry
Paralegal
Regulatory Relations Team

877-767-0669



cc: Office of the Comptroller of the Currency

Making Home Affordable Program Request For Modification and Affidavit (RMA)



REQUEST FOR MODIFICATION AND AFFIDAVIT (RMA) page 1

COMPLETE ALL THREE PAGES OF THIS FORM

Loan I.D. Number **192460533**

Servicer **Bank of Americ**

BORROWER		CO-BORROWER	
Borrower's name Michelle Mianrdi		Co-borrower's name	
Social Security number 329703841	Date of birth 07191969	Social Security number 329703841	Date of birth 07191969
Home phone number with area code		Home phone number with area code	
Cell or work number with area code 9804280619		Cell or work number with area code 9804280619	

I want to:	☒ Keep the Property	☐ Sell the Property
The property is my:	☒ Primary Residence	☐ Second Home ☐ Investment
The property is:	☒ Owner Occupied	☐ Renter Occupied ☐ Vacant

Mailing address 1808 Sam Smith Rd Fort Mill, SC 29708	
Property address (if same as mailing address, just write same) same	E-mail address michelle@cpwindowfilms.com
Is the property listed for sale? ☐ Yes ☒ No Have you received an offer on the property? ☐ Yes ☒ No Date of offer _____ Amount of offer \$ _____ Agent's Name: _____ Agent's Phone Number: _____ For Sale by Owner? ☐ Yes ☐ No	Have you contacted a credit-counseling agency for help? ☐ Yes ☒ No If yes, please complete the following: Counselor's Name: _____ Agency Name: _____ Counselor's Phone Number: _____ Counselor's E-mail: _____
Who pays the real estate tax bill on your property? ☐ I do ☒ Lender does ☐ Paid by condo or HOA Are the taxes current? ☒ Yes ☐ No Condominium or HOA Fees ☐ Yes ☒ No \$ _____ Paid to: _____	Who pays the hazard insurance premium for your property? ☐ I do ☒ Lender does ☐ Paid by Condo or HOA Is the policy current? ☐ Yes ☐ No Name of Insurance Co.: _____ Insurance Co. Tel #: _____

Have you filed for bankruptcy? ☐ Yes ☒ No	If yes: ☐ Chapter 7 ☐ Chapter 13	Filing Date: _____
Has your bankruptcy been discharged? ☐ Yes ☒ No	Bankruptcy case number _____	

Additional Liens/Mortgages or Judgments on this property: **Ameris Bank**

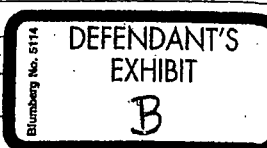
Lien Holder's Name/Servicer	Balance	Contact Number	Loan Number
Ameris Bank	25000.00	843-521-1968	7950900118-1
~~Ameris Bank~~	~~25000.00~~	~~843-521-1968~~	~~7950900118-1~~

HARDSHIP AFFIDAVIT

I (We) am/are requesting review under the Making Home Affordable program.
I am having difficulty making my monthly payment because of financial difficulties created by (check all that apply):

☒ My household income has been reduced. For example: unemployment, underemployment, reduced pay or hours, decline in business earnings, death, disability or divorce of a borrower or co-borrower.	☐ My monthly debt payments are excessive and I am overextended with my creditors. Debt includes credit cards, home equity or other debt.
☐ My expenses have increased. For example: monthly mortgage payment reset, high medical or health care costs, uninsured losses, increased utilities or property taxes.	☒ My cash reserves, including all liquid assets, are insufficient to maintain my current mortgage payment and cover basic living expenses at the same time.
☒ Other: My daughter passed away	

Explanation (continue on back of page 3 if necessary):



Section 2c: Home Affordable Modification Trial Period Plan
Customer Copy

Bank of America  Home Loans

Investor Loan # 513775803

HOME AFFORDABLE MODIFICATION TRIAL PERIOD PLAN
(Customer Copy)

Trial Period Plan Effective Date: April 1, 2010

Borrower ("I")¹: Michelle Minardi

Servicer ("Servicer"): BAC Home Loans Servicing, LP

Date of first lien Security Instrument ("Mortgage") and Note ("Note"): June 11, 2008

Loan Number: 192460533

Property Address ("Property"): 1808 Sam Smith Road, Fort Mill, SC 29708

If I am in compliance with this Trial Period Plan (the "Plan") and my representations in Section 1 continue to be true in all material respects, then the Servicer will provide me with a Home Affordable Modification Agreement ("Modification Agreement"), as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage. The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Plan and not defined have the meaning given to them in the Loan Documents.

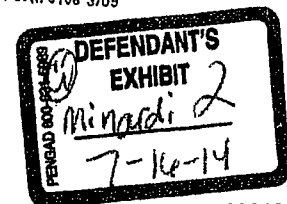
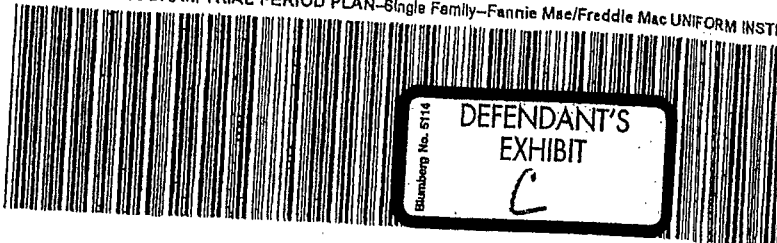
If I have not already done so, I am providing confirmation of the reasons I cannot afford my mortgage payment and documents to permit verification of all of my income (except that I understand that I am not required to disclose any child support or alimony unless I wish to have such income considered) to determine whether I qualify for the offer described in this Plan (the "Offer"). I understand that after I sign and return two copies of this Plan to the Servicer, the Servicer will send me a signed copy of this Plan if I qualify for the Offer or will send me written notice that I do not qualify for the Offer. This Plan will not take effect unless and until both I and the Servicer sign it and Servicer provides me with a copy of this Plan with the Servicer's signature.

1. My Representations. I certify, represent to Servicer and agree:

- A I am unable to afford my mortgage payments for the reasons indicated in my Hardship Affidavit and as a result, (i) I am either in default or believe I will be in default under the Loan Documents in the near future, and (ii) I do not have sufficient income or access to sufficient liquid assets to make the monthly mortgage payments now or in the near future;
- B I live in the Property as my principal residence, and the Property has not been condemned;
- C There has been no change in the ownership of the Property since I signed the Loan Documents;
- D I am providing or already have provided documentation for all income that I receive (and I understand that I am not required to disclose any child support or alimony that I receive, unless I wish to have such income considered to qualify for the Offer);

¹ If there is more than one Borrower or Mortgagor executing this document, each is referred to as "I". For purposes of this document words signifying the singular (such as "I") shall include the plural (such as "we") and vice versa where appropriate.

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.
HOME AFFORDABLE MODIFICATION PROGRAM TRIAL PERIOD PLAN—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3166 3/09



Section 2c: Home Affordable Modification Trial Period Plan
Customer Copy

Bank of America  Home Loans

- E Under penalty of perjury, all documents and information I have provided to Servicer pursuant to this Plan, including the documents and information regarding my eligibility for the program, are true and correct; and
- F If Servicer requires me to obtain credit counseling, I will do so.

2. **The Trial Period Plan.** On or before each of the following due dates, I will pay the Servicer the amount set forth below ("Trial Period Payment"), which includes payment for Escrow Items, including real estate taxes, insurance premiums and other fees, if any, of U.S. \$874.22.

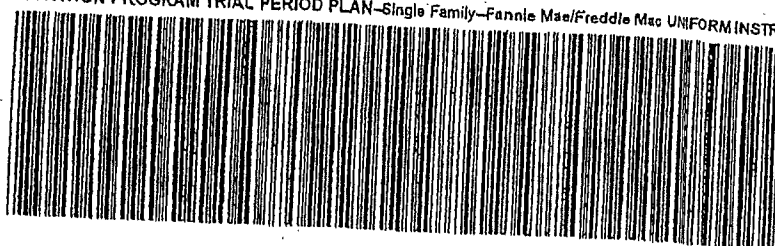
Trial Period Payment #	Trial Period Payment	Due Date On or Before
1	\$874.22	April 01, 2010
2	\$874.22	May 01, 2010
3	\$874.22	June 01, 2010

The Trial Period Payment is an estimate of the payment that will be required under the modified loan terms, which will be finalized in accordance with Section 3 below.

During the period (the "Trial Period") commencing on the Trial Period Effective Date and ending on the earlier of: (i) the first day of the month following the month in which the last Trial Period Payment is due (the "Modification Effective Date") or (ii) termination of this Plan, I understand and acknowledge that:

- A TIME IS OF THE ESSENCE under this Plan;
- B Except as set forth in Section 2.C. below, the Servicer will suspend any scheduled foreclosure sale, provided I continue to meet the obligations under this Plan, but any pending foreclosure action will not be dismissed and may be immediately resumed from the point at which it was suspended if this Plan terminates, and no new notice of default, notice of intent to accelerate, notice of acceleration, or similar notice will be necessary to continue the foreclosure action, all rights to such notices being hereby waived to the extent permitted by applicable law;
- C If my property is located in Georgia, Hawaii, Missouri, or Virginia and a foreclosure sale is currently scheduled, the foreclosure sale will not be suspended and the Servicer may foreclose if I have not made each and every Trial Period Payment that is due before the scheduled foreclosure sale. If a foreclosure sale occurs pursuant to this Section 2.C., this agreement shall be deemed terminated;
- D The Servicer will hold the payments received during the Trial Period in a non-interest bearing account until they total an amount that is enough to pay my oldest delinquent monthly payment on my loan in full. If there is any remaining money after such payment is applied, such remaining funds will be held by the Servicer and not posted to my account until they total an amount that is enough to pay the next oldest delinquent monthly payment in full;
- E When the Servicer accepts and posts a payment during the Trial Period it will be without prejudice to, and will not be deemed a waiver of, the acceleration of the loan or foreclosure action and related activities and shall not constitute a cure of my default under the Loan Documents unless such payments are sufficient to completely cure my entire default under the Loan Documents;

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.
HOME AFFORDABLE MODIFICATION PROGRAM TRIAL PERIOD PLAN—Single Family—Fannie Mae/Freddie Mac



UNIFORM INSTRUMENT Form 3156 3/09

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8245 10/09

Section 2c: Home Affordable Modification Trial Period Plan
Customer Copy

Bank of America  Home Loans

- F If prior to the Modification Effective Date, (i) the Servicer does not provide me a fully executed copy of this Plan and the Modification Agreement; (ii) I have not made the Trial Period payments required under Section 2 of this Plan; or (iii) the Servicer determines that my representations in Section 1 are no longer true and correct, the Loan Documents will not be modified and this Plan will terminate. In this event, the Servicer will have all of the rights and remedies provided by the Loan Documents, and any payment I make under this Plan shall be applied to amounts I owe under the Loan Documents and shall not be refunded to me; and
- G I understand that the Plan is not a modification of the Loan Documents and that the Loan Documents will not be modified unless and until (i) I meet all of the conditions required for modification, (ii) I receive a fully executed copy of a Modification Agreement, and (iii) the Modification Effective Date has passed. I further understand and agree that the Servicer will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Plan.
3. **The Modification.** I understand that once Servicer is able to determine the final amounts of unpaid interest and any other delinquent amounts (except late charges) to be added to my loan balance and after deducting from my loan balance any remaining money held at the end of the Trial Period under Section 2.D. above, the Servicer will determine the new payment amount. If I comply with the requirements in Section 2 and my representations in Section 1 continue to be true in all material respects, the Servicer will send me a Modification Agreement for my signature which will modify my Loan Documents as necessary to reflect this new payment amount and waive any unpaid late charges accrued to date. Upon execution of a Modification Agreement by the Servicer and me, this Plan shall terminate and the Loan Documents, as modified by the Modification Agreement, shall govern the terms between the Servicer and me for the remaining term of the loan.
4. **Additional Agreements.** I agree to the following:
- A That all persons who signed the Loan Documents or their authorized representative(s) have signed this Plan, unless a borrower or co-borrower is deceased or the Servicer has waived this requirement in writing.
- B To comply, except to the extent that they are modified by this Plan, with all covenants, agreements, and requirements of Loan Documents, including my agreement to make all payments of taxes, insurance premiums, assessments, Escrow Items, impounds, and all other payments, the amount of which may change periodically over the term of my loan.
- C That this Plan constitutes notice that the Servicer's waiver as to payment of Escrow Items, if any, has been revoked, and I have been advised of the amount needed to fully fund my Escrow Account.
- D That all terms and provisions of the Loan Documents remain in full force and effect; nothing in this Plan shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents. The Servicer and I will be bound by, and will comply with, all of the terms and provisions of the Loan Documents.

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

HOME AFFORDABLE MODIFICATION PROGRAM TRIAL PERIOD PLAN-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3166 3/09



Bank of America



Home Loans

Mail Stop CA6-919-01-15
450 American Street
Simi Valley, CA 93065

Notice Date: July 8, 2011

Account No.: 192460533

Michelle Minardi
1808 Sam Smith Rd
Fort Mill, SC 29708

Property Address:
1808 SAM SMITH ROAD
FORT MILL, SC 29715

IMPORTANT MESSAGE ABOUT YOUR LOAN

The monthly payment due 05/01/2010 for your mortgage loan is \$1935.71.

There is a total of \$1358.22 credited to your account, which does not represent a full monthly payment.

Since we have not received the remaining amount \$577.49 required to satisfy the payment due 05/01/2010 we are returning these funds.

WHAT YOU SHOULD DO

Please call us today at 1-888-872-6514. You may qualify for a number of options to assist you in resolving this delinquency.

At Bank of America, N.A., we take great pride in helping people achieve and maintain the dream of homeownership. It's not just our business, it's our passion. We look forward to assisting you.

Thank you. For information about other services we offer, please visit us at www.bankofamerica.com.



This communication is from Bank of America, N.A., the servicer of your home loan.

RTRNRYMT 13251 04/06/2011

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COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

Bank of America, N.A., successor)
By merger to BAC Home Loans)
Servicing, LP, f/k/a Countrywide)
Home Loans Servicing, LP,)

CASE NO. 2011-CP-46-4278

AFFIDAVIT OF GEORGE HUNTER

vs.)

Michelle Minardi, and Ameris Bank,)

Defendants.)

FILED-RECEIVED
2012 SEP -5 PM 2:33
DAVE HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

My name is George Hunter. I am employed as a Default Manager. I have worked in the field of loss mitigation for over twenty two years. My personal experience involves mortgage originations, loss mitigation including modifications, short sales, deed in lieu transactions, collections, and customer service. I am over eighteen years of age, and make this affidavit of my own personal knowledge and research involving the mortgage loan which is the subject of this foreclosure action. I make the following findings after interviewing the mortgagor and performing a preliminary audit of the loan documents, excluding the assignments of record in this case. At the request of defense counsel I have also reviewed the Administrative Order of the South Carolina Supreme Court 2011-05-02-01. My preliminary research to date reveals that the Defendant has *twice* been reviewed by the lender under the Making Homes Affordable Program ("HAMP").

At the request of the mortgagor Michelle Minardi, I have reviewed the two denials of a HAMP modification issued by Bank of America, N.A. issued in year 2010 and year 2012. The last denial was on July 6, 2012 attached as Exhibit A. I have conducted personal research into the payment history as submitted by the lender in



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discovery, and I have consulted the note and mortgage signed by the mortgagor on June 11, 2008. I have also reviewed the mortgagor's payment history under the first Home Affordable Modification Trial Period plan dated April 1, 2010. I have been asked to opine on the loss mitigation evaluation conducted by the Plaintiff and opine on the eligibility of the loan for loss mitigation options, including a permanent HAMP modification.

My research indicates that Bank of America, N.A. is participating in the Making Homes Affordable Modification program, as evidenced by the attached Exhibit A. This mortgage loan was originated on June 11, 2008 by Countrywide Home Loans Servicing, LP. My research indicates that Bank of America acquired Countrywide Home Loans Servicing, Inc. and is successor to this entity by way of merger. Bank of America would have acquired the subject mortgage loan as part of this merger.

The original loan amount for the above referenced foreclosure was \$ 286,000.00. In order to be eligible for a modification under the Making Homes Affordable Program ("HAMP"), the following criteria must be met:

1. The mortgage loan must be less than \$729,750.00 dollars.
2. The subject property must be occupied by the mortgagor as a primary residence.
3. The home owner must have taken the mortgage on or before January 1, 2009.
4. The mortgagor must not have been convicted within the last ten years of any crime or felony involving larceny, theft, fraud, forgery, money laundering, or tax evasion in connection with a mortgage or real estate transaction.

5. The mortgagor must have suffered a financial hardship and either be delinquent or in danger of falling behind on the subject mortgage.

My preliminary research indicates that the subject mortgage meets the above listed criteria. As a threshold matter, a mortgagor in any HAMP trial period typically must complete a three (3) month trial period to demonstrate that they can meet reduced payments and to do a permanent modification of their loan. The mortgagor in this case successfully undertook, at the request of the mortgage lender, to make thirteen (13) trial payments. My interview with the mortgagor indicates that the payments were received prior to this foreclosure being instituted. My review of the payment history indicates that payment #13 was rejected by the lender and submitted back to the borrower. Payments ceased after this credit. My review indicates that the payments were submitted under a HAMP modification review. The mortgagor was then, again, denied for loss mitigation on July 6, 2012. The grounds cited by the Plaintiff in this case for denial is that the loan is not eligible for a modification because the lender cannot create an affordable payment without changing the terms of the loan beyond the limits of the Making Homes Affordable Program.

In order to confirm the methods and practices utilized by the lender are in error, further discovery is required. I need to review all documentation received by the lender or servicer at the time of both HAMP evaluations to understand why this plan was not made permanent after receipt of the first three (3) trial payments, why late fees were charged during the process, or how the additional nine (9) trial payments were credited to the borrower's account. However, based on my preliminary review of this matter in reference to the five above cited conditions, it is my opinion that the mortgage is, in fact, subject to

loss mitigation pursuant to HAMP guidelines and supplemental directives for the following reasons:

The Defendant in this case appears to have on numerous occasions provided all documentation and successful paid more than three (3) trial payments on or before the due date assigned by the lender. Additionally, the mortgagor actually paid nine (9) additional payments that were accepted by the lender prior to the first HAMP denial letter being sent to the Defendant. Additionally, the Defendant appears to have demonstrated a willingness to submit, on her own accord, higher payments that dictated by the lender in the HAMP trial modification process.

My preliminary findings are based upon the fact that the subject property is the owner occupied residence of the Defendant Michelle Minardi; (2) the mortgage loan was undertaken on June 11, 2008 (well prior to January 1, 2009), and (3) The face amount of the mortgage loan was \$286,000.00. These elements would satisfy the first three requirements of HAMP requirements discussed above. Additionally, it appears that the mortgagor in fact suffered a financial hardship and entered into a April 10, 2010 trial program with the lender. The mortgagor appears to have completed that trial modification program successfully prior to the *second* July 6, 2012 HAMP denial. Under the initial review, the mortgagor successfully committed thirteen (13) total payments to the lender. Without further information from the lender on how these payments were credited, I cannot offer an opinion on why the mortgage was not modified successfully in year 2010 or 2012. However, it appears from preliminary review of the 2012 modification review that the Plaintiffs' loss mitigation staff has erred by not *promptly converting* the trial plan to a permanent modification after lender receipt of

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three (3) trial payments. Instead, the mortgagor continued to submit trial modification payments thirteen (13) times. Without further information, my observation is that payments ceased when the lender credited and returned payment #13 to the borrower. The borrower's payment history indicates that the Defendant was not only capable of making payments, but continued to cooperate with the lender until refund of payment #13. It also appears that the borrower, on their own, attempted submission of higher than proposed trial payments.

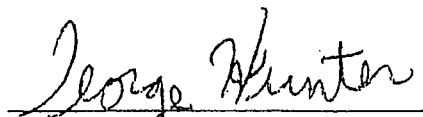
In short, the initial trial modification and the current modification denial appears to indicate that the lender did not accurately follow modification steps under the program. While modified payment terms were permitted by the lender, it does not appear that the modified payments created a lowered payment decreasing the mortgage payments to no greater than thirty one percent (31%) front-end debt to income (DTI) by reducing the interest rate or payment low enough. Additionally, the payment history indicates that the lender was charging late fees during the HAMP modification review.

Without further investigation I cannot ascertain whether Bank of America has received from the HAMP program matching reductions where the mortgagor should have been offered a payment not greater than thirty one (31%) DTI. I cannot ascertain without review of the process utilized by the lender whether an amortization period of greater than three hundred sixty (360) months was considered by the lender in evaluation of the modification. Nor can I ascertain whether the lender has or has not voluntarily deferred principal payments to reach the 31% DTI goal identified above, or whether the lender has waived unpaid late fees such that the home owner did not incur late fees while

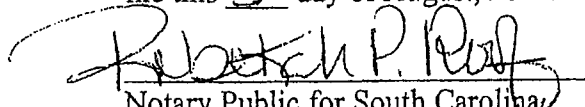
participating in the initial modification effort, or the HAMP modification which was recently denied in year 2012. (Exhibit A).

It is my opinion that if the lender did not undertake the above listed steps, including promptly converting the trial plan into a permanent modification after three (3) payments, that their evaluation of the borrower under HAMP guidelines and supplemental directives may be in error. If the modification is in error, then it is my opinion the subject loan would be eligible for loss mitigation efforts per the Administrative Order of the South Carolina Supreme Court 2011-05-02-01.

Further, affiant sayeth not.


George Hunter

Sworn to and subscribed before
me this 5th day of September, 2012.


Notary Public for South Carolina

My Commission Expires: 4/8/2013

Important information about foreclosure

Please call us as soon as possible to determine if you qualify for one of the options listed above. We are now returning your loan to normal collection activity, which could include referral to foreclosure and a foreclosure sale. **Do not ignore any legal notices about your home.** We may be able to postpone foreclosure proceedings; however, foreclosure postponement is not guaranteed and you will need to respond to all notices to protect your legal rights.

If you have any questions about the collection or foreclosure process, please call us. If you do not understand the legal consequences of foreclosure, we encourage you to contact an attorney or housing counselor for assistance.

We're here to help you

As a reminder we will call you in 10 days to let you know what other options are available to you and the next steps you need to take. **Please call 1.800.669.6650 if you have questions about these options.**

You can also seek assistance at no charge from U.S. Department of Housing and Urban Development-approved housing counselors by calling the HOPE Hotline Number (1.888.995.HOPE). Assistance in understanding this notice is available through the HOPE Hotline by asking for MHA HELP.

Rayquel Branch
Home Loan Team
Bank of America, N.A.

Bank of America  Home Loans

If you are currently in a bankruptcy proceeding, or have previously obtained a discharge of this debt under applicable bankruptcy law, this notice is for information only and is not an attempt to collect the debt, a demand for payment, or an attempt to impose personal liability for that debt. You are not obligated to discuss your home loan with us or enter into a loan modification or other loan-assistance program. You should consult with your bankruptcy attorney or other advisor about your legal rights and options.

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector. However, the purpose of this communication is to let you know about your potential eligibility for programs that may help you avoid a foreclosure sale of your property.

Mortgages funded and administered by an Equal Housing Lender.
Protect your personal information before recycling this document.

Required disclosures

Bank of America, N.A. is required by law to inform you that we are unable to fulfill your request for a loan modification and the Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is The Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010-9050.

Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information. If you have any questions regarding this notice, you should contact us at:

Bank of America, N.A.
5401 N. Beach Street
Mail Stop: TX2-977-01-34
Fort Worth, TX 76137

Bank of America

Home Loans

P.O. Box 5170
Simi Valley, CA 93062-5170MICHELLE MINARDI
1808 Sam Smith Rd
Fort Mill, SC 29708

Notice Date: 04/05/2012

Account No.: 192460533

Property Address:
1808 SAM SMITH ROAD
FORT MILL, SC 29715**ABOUT YOUR LOAN**

Attached is a loan history that provides a detailed outline of transactions for the above-referenced account number.

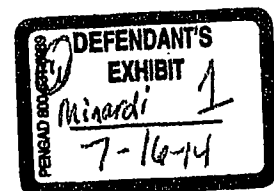
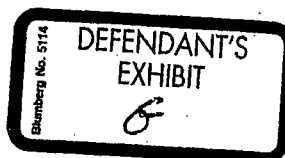
Please note that this history provides pertinent information on payments received, tax and insurance payments disbursed, and late charges assessed and paid.

If you need additional information or assistance, you can contact us online any time. Simply log on to your account at www.bankofamerica.com and Select 'Message Center.' With your online account, you will also have access to many other convenient services, such as: updating your account information, viewing current and historical monthly statements, and much more. Or, if you prefer, you can call one of our Customer Service Representatives directly at 1-800-669-6607.

THANK YOU FOR YOUR BUSINESS

You are a valued customer here at Bank of America, N.A. and it is our continued goal to provide our customers with the highest level of customer satisfaction.

If you need further assistance, please contact our Customer Service Department directly at 1-800-669-6607.



This communication is from Bank of America, N.A., the servicer of your home loan.

Account Number: 192460533
 Statement Period: 01/1986 - 04/2012
 Date Prepared: 04/05/2012

Property Address:
 1808 SAM SMITH ROAD
 FORT MILL, SC 29715

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
Beginning Balance				286,000.00		.00				
06/12/2008	MISC. POSTING	940.20	07/2008	.00	940.20	.00	.00	.00	.00	.00
06/12/2008	INITIAL INS DEP	213.75	07/2008	.00	.00	213.75	.00	.00	.00	.00
06/12/2008	INITIAL TAX DEP	977.97	07/2008	.00	.00	977.97	.00	.00	.00	.00
06/17/2008	INVESTOR REVRSL	-1,714.71	06/2008	-283.29	-1,431.42	.00	.00	.00	.00	.00
06/17/2008	INVESTOR ADJ.	283.29	06/2008	283.29	.00	1,191.72	.00	.00	.00	.00
06/17/2008	INVESTOR ADJ.	-283.29	06/2008	-283.29	.00	1,191.72	.00	.00	.00	.00
06/17/2008	INVESTOR PAYMENT	1,714.71	07/2008	283.29	1,431.42	.00	.00	.00	.00	.00
07/03/2008	REGULAR PAYMENT	1,942.13	08/2008	284.71	1,430.00	227.42	.00	.00	.00	.00
09/08/2008	REGULAR PAYMENT	1,942.13	09/2008	285.13	1,428.58	227.42	.00	.00	.00	.00
10/06/2008	REGULAR PAYMENT	1,942.13	10/2008	287.56	1,427.15	227.42	.00	.00	.00	.00
11/03/2008	REGULAR PAYMENT	1,942.13	11/2008	289.00	1,425.71	227.42	.00	.00	.00	.00
12/11/2008	REGULAR PAYMENT	1,942.13	12/2008	290.45	1,424.26	227.42	.00	.00	.00	.00
12/19/2008	COUNTY TAX PMT	-958.51	12/2008	.00	.00	-958.51	.00	.00	.00	.00
01/07/2009	REGULAR PAYMENT	1,942.13	01/2009	291.90	1,422.81	227.42	.00	.00	.00	.00
02/03/2009	REGULAR PAYMENT	1,942.13	02/2009	293.36	1,421.35	227.42	.00	.00	.00	.00
				283,976.89		1,825.15				



Account Number: 192460533
Statement Period: 01/1986 - 04/2012
Date Prepared: 04/05/2012

Page 4

Property Address:
1808 SAM SMITH ROAD
FORT MILL, SC 29715

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
03/05/2009	REGULAR PAYMENT	1,942.13	03/2009	294.83 283,682.06	1,419.88	227.42 2,052.57	.00	.00	.00	.00
04/06/2009	REGULAR PAYMENT	1,942.13	04/2009	296.30 283,385.76	1,418.41	227.42 2,279.99	.00	.00	.00	.00
04/24/2009	OVERAGE REFUND	-962.13	04/2009	.00 283,385.76	.00	-962.13 1,317.86	.00	.00	.00	.00
05/05/2009	REGULAR PAYMENT	1,942.13	05/2009	297.78 283,087.98	1,416.93	227.42 1,545.28	.00	.00	.00	.00
06/05/2009	HAZARD INS PMT	-707.00	05/2009	.00 283,087.98	.00	-707.00 838.28	.00	.00	.00	.00
06/08/2009	REGULAR PAYMENT	1,935.71	06/2009	299.27 282,788.71	1,415.44	221.00 1,059.28	.00	.00	.00	.00
06/08/2009	MISC. POSTING	6.42	06/2009	6.42 282,782.29	.00	.00 1,059.28	.00	.00	.00	.00
07/03/2009	REGULAR PAYMENT	1,935.71	07/2009	300.80 282,481.49	1,413.91	221.00 1,280.28	.00	.00	.00	.00
07/03/2009	MISC. POSTING	6.42	07/2009	6.42 282,475.07	.00	.00 1,280.28	.00	.00	.00	.00
08/04/2009	REGULAR PAYMENT	1,935.71	08/2009	302.33 282,172.74	1,412.38	221.00 1,501.28	.00	.00	.00	.00
09/03/2009	REGULAR PAYMENT	1,935.71	09/2009	303.85 281,868.89	1,410.86	221.00 1,722.28	.00	.00	.00	.00
10/06/2009	REGULAR PAYMENT	1,935.71	10/2009	305.37 281,563.52	1,409.34	221.00 1,943.28	.00	.00	.00	.00
11/27/2009	MISC. POSTING	1,162.50	10/2009	.00 281,563.52	.00	.00 1,943.28	.00	.00	.00	.00
12/16/2009	COUNTY TAX PMT	-2,228.52	10/2009	.00 281,563.52	.00	-2,228.52 -285.24	.00	.00	.00	1,162.50 1,162.50 .00 1,162.50

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Page 5

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
03/25/2010	MISC. POSTING	874.22	10/2009	.00 281,563.52	.00	.00	.00	.00	.00	874.22
04/14/2010	MISC. POSTING	874.22	10/2009	.00 281,563.52	.00	-285.24	.00	.00	.00	2,036.72
04/23/2010	MISC. POSTING	-1,935.71	10/2009	.00 281,563.52	.00	-285.24	.00	.00	.00	874.22
04/23/2010	REGULAR PAYMENT	1,935.71	11/2009	.00 281,563.52	.00	.00	.00	.00	.00	2,910.94
04/26/2010	LATE CHARGE ADJ.	85.74	11/2009	306.89 281,256.63	1,407.82	-285.24	.00	.00	.00	-1,935.71
05/26/2010	MISC. POSTING	874.22	11/2009	.00 281,256.63	.00	-64.24	.00	.00	.00	975.23
06/03/2010	HAZARD INS PMT	-744.00	11/2009	.00 281,256.63	.00	.00	.00	.00	85.74	.00
06/25/2010	MISC. POSTING	874.22	11/2009	.00 281,256.63	.00	-64.24	.00	.00	.00	975.23
06/28/2010	MISC. POSTING	-1,935.71	11/2009	.00 281,256.63	.00	-808.24	.00	.00	.00	874.22
06/28/2010	REGULAR PAYMENT	1,935.71	12/2009	.00 281,256.63	.00	.00	.00	.00	.00	2,723.67
06/29/2010	LATE CHARGE ADJ.	85.74	12/2009	308.43 280,948.20	1,406.28	-808.24	.00	.00	.00	-1,935.71
07/29/2010	MISC. POSTING	874.22	12/2009	.00 280,948.20	.00	-587.24	.00	.00	.00	787.96
09/01/2010	MISC. POSTING	874.22	12/2009	.00 280,948.20	.00	.00	.00	.00	.00	.00
09/02/2010	MISC. POSTING	-1,935.71	12/2009	.00 280,948.20	.00	-587.24	.00	.00	.00	874.22
				.00	.00	.00	.00	.00	.00	1,662.18
				.00	.00	-587.24	.00	.00	.00	874.22
				.00	.00	.00	.00	.00	.00	2,536.40
				.00	.00	-587.24	.00	.00	.00	-1,935.71
				.00	.00	.00	.00	.00	.00	600.69

Account Number: 192460533
 Statement Period: 01/1986 - 04/2012
 Date Prepared: 04/05/2012

Property Address:
 1808 SAM SMITH ROAD
 FORT MILL, SC 29715

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
09/02/2010	REGULAR PAYMENT	1,935.71	01/2010	309.97 280,638.23	1,404.74	221.00 -366.24	.00	.00	.00	.00
09/28/2010	MISC. POSTING	874.22	01/2010	.00 280,638.23	.00	.00 -366.24	.00	.00	.00	600.69
10/29/2010	MISC. POSTING	874.22	01/2010	.00 280,638.23	.00	.00 -366.24	.00	.00	.00	874.22 1,474.91
11/01/2010	MISC. POSTING	-1,935.71	01/2010	.00 280,638.23	.00	.00 -366.24	.00	.00	.00	874.22 2,349.13
11/01/2010	REGULAR PAYMENT	1,935.71	02/2010	311.52 280,326.71	1,403.19	221.00 -145.24	.00	.00	.00	-1,935.71 413.42
12/06/2010	MISC. POSTING	874.22	02/2010	.00 280,326.71	.00	.00 -145.24	.00	.00	.00	.00 413.42
12/15/2010	ESCROW SHORTAGE	760.74	02/2010	.00 280,326.71	.00	760.74 615.50	.00	.00	.00	874.22 1,287.64
12/15/2010	MISC. POSTING	-760.74	02/2010	.00 280,326.71	.00	.00 615.50	.00	.00	.00	.00 1,287.64
12/20/2010	COUNTY TAX PMT	-2,228.52	02/2010	.00 280,326.71	.00	-2,228.52 -1,613.02	.00	.00	.00	-760.74 526.90
01/04/2011	MISC. POSTING	874.22	02/2010	.00 280,326.71	.00	.00 -1,613.02	.00	.00	.00	.00 526.90
02/16/2011	MISC. POSTING	1,000.00	02/2010	.00 280,326.71	.00	.00 -1,613.02	.00	.00	.00	874.22 1,401.12
02/17/2011	REGULAR PAYMENT	1,935.71	03/2010	313.08 280,013.63	1,401.63	221.00 -1,392.02	.00	.00	.00	1,000.00 2,401.12
02/17/2011	MISC. POSTING	-1,935.71	03/2010	.00 280,013.63	.00	.00 -1,392.02	.00	.00	.00	.00 -85.74 2,401.12
03/29/2011	MISC. POSTING	1,000.00	03/2010	.00 280,013.63	.00	.00 -1,392.02	.00	.00	.00	-1,935.71 465.41
									85.74 .00	914.26 1,379.67

Account Number: 192460533
 Statement Period: 01/1986 - 04/2012
 Date Prepared: 04/05/2012

Property Address:
 1808 SAM SMITH ROAD
 FORT MILL, SC 29715

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
04/05/2011	MISC. POSTING	1,000.00	03/2010	.00	.00	.00	.00	.00	.00	1,000.00
				280,013.63		-1,392.02			.00	2,379.67
04/06/2011	MISC. POSTING	-1,935.71	03/2010	.00	.00	.00	.00	.00	.00	-1,935.71
				280,013.63		-1,392.02			.00	443.96
04/06/2011	REGULAR PAYMENT	1,935.71	04/2010	314.64	1,400.07	221.00	.00	.00	.00	.00
				279,698.99		-1,171.02			.00	443.96
04/07/2011	MISC. POSTING	-85.74	04/2010	.00	.00	.00	.00	.00	-85.74	.00
				279,698.99		-1,171.02			.00	-85.74
04/07/2011	MISC. POSTING	85.74	04/2010	.00	.00	.00	.00	.00	-85.74	358.22
				279,698.99		-1,171.02			85.74	.00
05/31/2011	MISC. POSTING	1,000.00	04/2010	.00	.00	.00	.00	.00	.00	358.22
				279,698.99		-1,171.02			.00	1,000.00
06/02/2011	HAZARD INS PMT	-817.00	04/2010	.00	.00	-817.00	.00	.00	.00	.00
				279,698.99		-1,988.02			.00	1,358.22
07/07/2011	MISC. POSTING	-1,358.22	04/2010	.00	.00	.00	.00	.00	.00	.00
				279,698.99		-1,988.02			.00	-1,358.22
12/12/2011	COUNTY TAX PMT	-1,978.92	04/2010	.00	.00	-1,978.92	.00	.00	.00	.00
				279,698.99		-3,966.94			.00	.00

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
) Case No. 2011-CP-46-4278

Bank of America, N.A.,
Successor By Merger to BAC
Home Loans Servicing, LP,
f/k/a Countrywide Home Loans
Servicing, LP,

Plaintiffs,

vs.

Michelle Minardi and Ameris
Bank,

Defendants.

TRANSCRIPT OF PROCEEDINGS

YORK, SOUTH CAROLINA

FEBRUARY 18, 2015

This transcription was prepared from an open audio recording provided by the court and may contain portions that are inaudible or indiscernible and phonetic spellings of proper names and terms.

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2 APPEARANCES:

3 For the Plaintiff -

4 Caroline Glenn, Esquire

5 Brock & Scott, PLLC

6 3800 Fernandina Road, Ste. 110
7 Columbia, South Carolina 29210

8 For the Defendant -

9 J. Cameron Halford, Esquire
10 Halford, Niemiec and Freeman
11 238 Rockmont Drive
12 Fort Mill, South Carolina 29708

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PROCEEDINGS

BEFORE: THE HONORABLE S. JACKSON KIMBALL

THE COURT: This is Case No. 2011-CP-46-4278, Bank of America against Michelle Minardi, and others. Present and representing the Plaintiffs, Ms. Caroline Glenn. Present and representing the Defendant, Mr. Cam Halford.

Mr. Halford, this is the Defendant's Motion for Summary Judgment, from what I have; is that right?

MR. HALFORD: Yes. May it please the Court, we also filed a motion to refer the case into mediation first, but I'd be happy to take up the Motion for Summary Judgment first.

THE COURT: Well, it'll be easier -- Let's talk about the mediation thing. Under what authority?

MR. HALFORD: Your Honor, I petitioned the chief's administrative order. I think you have the authority to send the case to mediation. And --

THE COURT: All right. I do.

1 MR. HALFORD: And -- Yes, sir. And, just
2 in the last two years, I've done four or five
3 with mediation, now, and I think this case
4 qualifies and has certain characteristics
5 that make mediation appropriate in the case.

6 We seem to be in a jam, Your Honor, and it
7 was actually my client's idea to have me
8 motioned to court for that. And it's -- This
9 is, as you've noted, a 2011 case that's got
10 some sticky issues to it, Your Honor. The
11 case has previously been in front of Judge
12 Alford and Judge Hayes. Judge Hayes last
13 rendered the reference to your court, Your
14 Honor.

15 Their counsel - and I'm not referring to
16 Ms. Glenn - has acknowledged that we have valid
17 legal counterclaims, in this case, Your Honor,
18 but we just can't seem to get anywhere with
19 that. We seem to be communicating
20 beyond or circumventing the administrative
21 order. So --

22 THE COURT: Would there be anything, in
23 the file, to indicate that the administrative
24 order has been circumvented?

25 MR. HALFORD: No, sir, I'm just -- As the

1 negotiations, in this case, have gone on over
2 the years, it seems that we would propose
3 something to opposing counsel, they will send
4 it to their client, and then the client
5 communicates back to my client. Most notably,
6 by sticking notes on the doors and sending
7 coded notices direct, but she doesn't qualify
8 for HAMP for any good reason.

9 And, if I can lead into my Motion for
10 Summary Judgment now, Your Honor. But the
11 main thing about this 2011 case was, prior to
12 the foreclosure being filed, there was a HAMP
13 modification, a trial modification, granted
14 to my client.

15 THE COURT: Well, let's do this in an
16 orderly way.

17 MR. HALFORD: Yes, sir.

18 THE COURT: The motion, as I read it
19 yesterday, has several different grounds for
20 relief. Because of that, I want to take them
21 one by one. So, now go ahead. With that
22 understanding, let's proceed.

23 MR. HALFORD: Yes, sir. And, may it
24 please the Court, as I began looking at the
25 case, Your Honor, again, and it's been some

1 time, I certainly noticed that, again, I
2 think the case was filed in violation of the
3 chief's administrative order. I think it's
4 been maintained this long, in violation, and
5 I'll go into those points, as the Court will
6 allow.

7 The first point, Your Honor, is Ms.
8 Minardi -- and not to try the case before
9 Your Honor today -- but she lost her child,
10 and she went into arrears, and which that's
11 not disputed.

12 As she comes out of that catastrophe, Your
13 Honor, she contacts the bank, and she arranges
14 for a modification. She actually went to
15 Senator Lindsey Graham, I believe, first, who
16 referred her to the HAMP program. Bank of
17 America granted a trial modification, under the
18 HAMP program, specifically. That occurred on
19 March 15, 2010, where she --

20 THE COURT: She made 13 payments.

21 MR. HALFORD: That is correct, 13
22 accepted payments, Your Honor.

23 In May of 2011, --

24 THE COURT: When does it not become a
25 trial program, Ms. Glenn? Knowing that you

1 weren't the original person involved, --

2 MS. GLENN: Well, according to my
3 client's records, Your Honor, it never became
4 a permanent modification, because --

5 THE COURT: Why?

6 MS. GLENN: -- she was sent a letter, on
7 April 9, 2010, stating that there was those
8 number of documents that were still required
9 to be submitted in order for it to go from a
10 trial to the permanent modification.

11 THE COURT: Well, did they continue to
12 accept payments?

13 MS. GLENN: They did.

14 THE COURT: Well, they waived that.
15 Okay.

16 MS. GLENN: They applied them partially,
17 but they continued to accept payments after
18 that.

19 THE COURT: Go ahead, Mr. Halford.

20 MR. HALFORD: Yes, sir, to continue, in
21 May of 2011, Your Honor, she makes the last
22 payment, which was number 14. That payment,
23 I'd argue, was actually accepted. But, in any
24 event, she received a notice in July, some 30
25 days later, that the payment's been rejected.

1 Again, she is in a HAMP trial modification.
2 But the reason for the rejection of the
3 payment --

4 THE COURT: Where, in the file, is there a
5 copy of the agreement itself?

6 MR. HALFORD: It's attached to my brief,
7 Your Honor, as Exhibit -- If you'll bear with
8 me one second.

9 THE COURT: Here it is.

10 MR. HALFORD: I believe it's Exhibit A
11 or B. I don't recall.

12 THE COURT: C.

13 MR. HALFORD: Thank you.

14 THE COURT: Give me just a minute. Let
15 me look at it. Let me just go off the record
16 and then read this.

17 (Off the record; resuming as follows:)

18 THE COURT: I've reviewed a signed
19 trial -- Home Affordable Modification Trial
20 Period Plan, which was signed on March 22,
21 2010, by the Defendant. The copy that I see
22 has not been signed by the Plaintiff.

23 MS. GLENN: As in --

24 THE COURT: Yeah, well, BAC, who was a
25 servicer, at that time. And it appears to --

1 seems to -- appears to me to correspond to
2 the unsigned copy that the Plaintiff has
3 submitted -- I mean, Defendant, rather, has
4 submitted in her memo. All right. Go ahead,
5 Mr. Halford.

6 MR. HALFORD: Yes, sir. Moving forward,
7 Exhibit D, Your Honor, is the Notice sent to
8 my client as the 15th -- excuse me, 14th
9 payment as rejected. And it says, you didn't
10 make the full payment. That seems to be a
11 reasonable return of the payment. It doesn't
12 cite any reason, under the Making Homes
13 Affordable Program why it's being rejected or
14 why they're refusing to take tender of the
15 payments, at that time, Your Honor. Since
16 that time, no payments have been made.

17 Going forward, Your Honor, if you check
18 Exhibit G, this was discovery --

19 THE COURT: Exhibit what?

20 MR. HALFORD: Exhibit G. That will
21 confirm what I've told Your Honor about how
22 many payments were made, under the trial
23 modification, and how they credited those
24 payments, as discovery provided by former
25 counsel Dean Hayes and Chris Truluck, Your

1 Honor. So --

2 THE COURT: All right. Hold on, hold on.

3 MR. HALFORD: Yes, sir.

4 THE COURT: Let me look at that. I'm
5 sorry, I should've just turned off the
6 computer, but I'm about done. Okay, go
7 ahead.

8 MR. HALFORD: Yes, sir. Your Honor,
9 when deposed, in this case -- and that was
10 Mr. Truluck who did the depositions -- he
11 asked her, did you ever request a permanent
12 modification? And my client responded that she
13 did. The only reason that she could give
14 counsel, though it wasn't granted, is because
15 Bank of America -- and I'm quoting from her
16 deposition, Page 20, -- told me they were way
17 too busy to send me one, meaning a permanent
18 modification, and it continues --

19 THE COURT: Where, in the agreement, does
20 it require that she requested it?

21 MR. HALFORD: I don't know that their
22 agreement requires it, Your Honor. And, if
23 you read the agreement, which is, I think,
24 Exhibit C, you mention that it states that if
25 all representations by her, in Paragraph 1

1 and Paragraph 2, continue to be true, in all
2 respects, then after three trial
3 modifications, they would evaluate her for a
4 permanent modification. That does occur, in
5 this case, Your Honor. And, as you pointed
6 out, she made 13, if not 14, payments. Which
7 leads me to my estoppel argument.

8 Before I go there, I'd like to point the
9 Court back to Exhibit E of my brief. We did
10 engage somebody very familiar with loss
11 mitigation, Your Honor. There is an Affidavit
12 in the file that's been there since
13 September 5, 2012. And the Affidavit of
14 George Hunter states two things: one, it
15 perfectly fits the parameters of the Making
16 Homes Affordable Program --

17 THE COURT: Who is George Hunter?

18 MR. HALFORD: He is an expert that we
19 have, in the case, Your Honor, and --

20 THE COURT: I understand that. What does
21 he do?

22 MR. HALFORD: He is in loss mitigation.
23 He now resides out of state. He was with
24 HSBC Mortgage Corporation, and he's done loss
25 mitigation for the past 20 years. And, with

1 the Court's permission, I'll move forward.

2 THE COURT: I would like to have had this
3 to read beforehand. I'm sorry to take so
4 much time. Okay, go ahead.

5 MR. HALFORD: Yes, sir. As the
6 foreclosure is filed, in this case, Your
7 Honor, that day would've been in November of
8 2011. And I think we answered in early
9 January, 2012. They do send her -- This is
10 Dean Hayes, from the Columbia Korn Law Firm.
11 They send her, again, Notice of Rights to
12 Foreclosure Intervention. We respond, on her
13 behalf, and indicate that we would like the
14 HAMP trial modification again. Although, I'd
15 argue that they interrupted that HAMP
16 modification prior to filing it.

17 THE COURT: I don't think one has -- one
18 is entitled to two HAMP modifications. You
19 don't have to go -- The lender does not have to
20 -- I don't know if the lender ever has to go
21 through the HAMP process. Based on the chief's
22 order, it's just that they have to go through
23 some modification process, if they offer it. I
24 think the law is clear that, if the lender
25 does not -- a lender is not compelled to -- I

1 haven't read the order in a good while.

2 MR. HALFORD: I would agree with Your
3 Honor.

4 THE COURT: The recommendation is that
5 it's not compelled until -- if they don't
6 offer it at all. Because, some federal
7 agencies, for example, did not, when the
8 chief's order was entered; notably, the VA, I
9 think, and FHA. Go ahead.

10 MR. HALFORD: Yes, sir. There's no --

11 THE COURT: The fact is they did engage
12 in it once, at least.

13 MR. HALFORD: Yes. No private right to a
14 HAMP modification. I understand what Your
15 Honor is saying. Here, Your Honor, they
16 did. It leads me into my estoppel argument.
17 They granted a trial modification, under HAMP.
18 And again, this went 14 some-odd payments
19 before the payment estopped and it's
20 unilaterally rejected, on one side, by Bank
21 of America, then the foreclosure files, Your
22 Honor.

23 Since that time, she's been with that
24 twice again; and, for some reason, they
25 can't -- she does not qualify for another

1 trial modification under HAMP, your Honor.
2 I've argued two things: one, they've already
3 granted it, and they've denied her a full and
4 fair opportunity to consummate, as within the
5 chief's order, that HAMP modification.

6 Secondly, Your Honor, my argument is that
7 trial modification should've been brought to
8 a conclusion before they ever filed the
9 foreclosure; because, I believe they've filed
10 foreclosure, in violation --

11 THE COURT: When did they give her notice
12 that -- Didn't I see a letter or something
13 where they gave her notice that -- when they
14 rejected her payment?

15 THE COURT: They gave her notice. That's
16 Exhibit D, Your Honor. They were sending
17 back her payment, because this was not a full
18 payment. And I don't know if one arm of the
19 bank didn't know what the other hand was
20 doing, but the point is --

21 THE COURT: I'm satisfied they don't.

22 THE COURT: Well, yes, sir. Point is,
23 she was taking modified payments. They were
24 874.22, if I recall correctly, and she
25 actually goes to the point of, you know,

1 she's calling the bank -- and I'm telling you
2 what she testified to, in deposition -- she
3 actually (inaudible) her own payment, and she
4 just can't get anywhere. And then, in July
5 of 2011, the payment is stopped; takes some
6 time for the foreclosure to file. I don't
7 think Dean and Chris knew, when they got
8 this, that they had offered the prior HAMP
9 modification. They have, since, and Ms.
10 Glenn has been kind enough to send more
11 paperwork for loss mitigation. But we've
12 done this, now, two and three times over,
13 Your Honor. And my argument is, A, under
14 estoppel, they can't claim, now, that a HAMP
15 modification wasn't offered or that she
16 didn't qualify. She certainly made 14 trial
17 modifications payments under it.

18 I think she certainly changed position,
19 in reliance upon Bank of America, Your Honor,
20 and I think she's demonstrated that she's
21 qualified to make it.

22 The reasons that they give, after the
23 foreclosure files, Your Honor, when we
24 applied for loss mitigation, is that there --
25 the loan's owner, the servicer is now Bank of

1 America, the owner, who I understand to be
2 BAC, one of their subsidiaries, is going to
3 be required to delay claiming too large a sum
4 of a principal balance. And that's the
5 reason they give, now, for now even extending
6 a trial modification. So they're looking back
7 at the old modification. She's clearly
8 participated in a trial modification. She
9 never failed once. She cooperated, in all
10 respects, Your Honor. It was just terminated,
11 by Bank of America, unilaterally; and then
12 they filed this foreclosure.

13 Under our estoppel order, Your Honor, I
14 say there should've been a stop from -- And
15 this why, if Your Honor, decides against us,
16 on the summary judgment motion that I've
17 petitioned the Court to set up the mediation,
18 it's been some time, and we just can't seem
19 to get around it, Your Honor. And, even with
20 Dean, who you know well, or with Ms. Glenn,
21 every time we're communicating, we just
22 can't -- we're at a logger jam. You know, I
23 think mediation would be helpful, in this
24 case. But, in looking at it, Your Honor, I
25 think you have grounds to dismiss their

1 foreclosure action. I don't think --

2 THE COURT: well, is it your position
3 that, therefore, the entire debt should be
4 canceled?

5 MR. HALFORD: No, sir.

6 THE COURT: well, what's going to happen?
7 That's my predicament that I always deal with,
8 I these cases, is that the debtor has
9 received money to buy a house, or refinance a
10 house, as the case may be. They fall on hard
11 times. Most of the defaults are not
12 intentional defaults, and they're
13 circumstantial, based on their circumstances.
14 But that doesn't mean they never have to pay
15 the money.

16 MR. HALFORD: Agree.

17 THE COURT: so what do you propose for
18 relief? If I grant your motion, what is the
19 relief? They just start over, because she's
20 still in default?

21 MR. HALFORD: Good question, Your Honor.

22 THE COURT: well, I thought so. That's
23 why I asked it. I've always wondered. I
24 just never have quite had one yet, to this
25 point -- well, let me hear from Ms. Glenn.

1 MR. HALFORD: Thank, Your Honor.

2 THE COURT: Ms. Glenn?

3 MS. GLENN: Thank you, Your Honor. Where
4 to go? I would propose that, first off,
5 before we even delve into this, as far as the
6 administrative order, I just came in to this
7 case recently.

8 THE COURT: I understand.

9 MS. GLENN: There's certificate of
10 compliance, but nothing has been filed, so I
11 know they are frustrated by the process, but
12 our firm hasn't had an opportunity to do any
13 of that, yet. So we weren't prepared to move
14 forward, because we know that we still have
15 to do our work on that end. And --

16 THE COURT: Well, now, let me stop you a
17 second. What are you telling me, when you
18 say that -- what do you mean your work?
19 There's been a notice of compliance with the
20 chief's order filed.

21 MS. GLENN: Notice of Compliance?

22 THE COURT: What did I read? I thought I
23 read -- Hold on. I thought I saw the
24 typical -- with the Complaint, the -- There
25 was a foreclosure intervention -- Maybe I'm --

1 I'm sorry. Maybe the form that says that
2 that's been completed has not been filed.

3 MS. GLENN: That's correct, Your Honor.
4 And, typically, the way that we like to
5 handle that, when we receive a transfer file,
6 is because, when we certify compliance with
7 the South Carolina Supreme Court, that's me
8 saying that I've given these people a full,
9 fair review, and I've been a part of the
10 process; and that hasn't happened yet,
11 because we just received this file. And I
12 understand they've done it before, but I
13 can't certify to that, because that wasn't
14 me. So we were going to start the process
15 again, which I understand, I know they're
16 frustrated with, but that's just --

17 THE COURT: Well, I don't think you have
18 to start the process again. I think your
19 certification -- and this is my view of it --
20 means that you have, as, you know, being the
21 next lawyer in line -- or your firm in line,
22 that you have reviewed the record, but it
23 appears, from your examination of the record,
24 that the -- there has been an effort at
25 foreclosure intervention --

1 MS. GLENN: And you're correct. I think
2 my problem with that is I saw -- There was
3 two denials I saw from June, 2012, and then
4 there was a package offered, in March, 2014,
5 by a prior counsel. And I think Mr. Halford
6 states that that went to an agreement. I'm
7 not sure. But I don't have any record of
8 that, any evidence. I have the package
9 that --

10 THE COURT: I don't believe there was an
11 agreement after March of 2012.

12 MR. HALFORD: No.

13 MS. GLENN: Well, and that -- that --

14 THE COURT: -- doesn't look to me like.
15 You don't contend there was, do you?

16 MR. HALFORD: No, sir.

17 THE COURT: All right. Go ahead.

18 MS. GLENN: But that's the last thing in
19 my files. So, typically, you're right. I
20 mean, I think I could certify, based on prior
21 denials. But, we don't always have to do
22 that. And, because Mr. Halford had reached
23 out to me, and we've been communicating, I
24 was more or less --

25 THE COURT: Here's my view of that, to

1 both of you. I think, if the process has
2 been -- My view is, if the process has been
3 applied once, unsuccessfully, there's no
4 other requirement, under the chief's order.
5 It does not preclude people from -- and I
6 encourage them to continue to try to work it
7 out, if they can. My problem is that I'm not
8 going to allow a case to go on forever, while
9 people do it again and again and again and
10 again. There's either going to be -- It's
11 either going to be dismissed or we're going
12 to proceed. And this one is a classic
13 example of that.

14 MS. GLENN: I agree with that, Your
15 Honor.

16 THE COURT: All right, now, having vented
17 all that --

18 MS. GLENN: I know. That's the
19 frustration that we all see every day.

20 THE COURT: What is -- Tell me what BOA's
21 position is.

22 MS. GLENN: Well, their position is
23 that -- I mean, even though, your Honor, you
24 stated that they waived that by continuing to
25 accept the payments, but that, in the

1 agreement, it lists out that it's not
2 accepted until all of these requirements are
3 met, and that the documents were not
4 returned. And I have, like, all these -- the
5 loan notes from the bank, and they say
6 accepting as partial payment, because she was,
7 you know, so far behind, they were still
8 accepting these as just a payment, not as a
9 trial modification payment, because the trial
10 mod never effectively --

11 THE COURT: Well, --

12 MS. GLENN: -- consummated, because there
13 was -- she never returned all the proper
14 documents.

15 THE COURT: And then, well, whose fault
16 is that? Is there any notice to her that
17 she didn't --

18 MS. GLENN: Yes, Your Honor, there is.

19 THE COURT: Let me see that. All right.
20 Let me ask them a question a second. All
21 right. Mr. Halford, I'm looking at a letter,
22 dated April 9, 2010 to Ms. Minardi, asking
23 for more documents. Specifically, it asks
24 for a signed copy of the most recently filed
25 federal tax return with all schedules. Was

1 that ever provided?

2 MR. HALFORD: My understanding, it was.

3 THE COURT: No, I don't want your
4 understanding.

5 MS. MINARDI: Yes, it --

6 THE COURT: I want to know --

7 MR. HALFORD: Yes.

8 THE COURT: -- whether it was --

9 MS. MINARDI: -- it was. I submitted
10 documents to them --

11 THE COURT: What year?

12 MS. MINARDI: At the same time. I sent
13 them that, at the same time. I mean, I sent
14 them --

15 THE COURT: What year tax return?

16 MS. MINARDI: 2009. I sent them 2009.
17 I sent them 2008. I think I even sent them
18 2007. I filled out that 4506T form three or
19 four times. I submitted --

20 THE COURT: What about your 2010 return?
21 It was due six days after this letter.

22 MS. MINARDI: Yes, I submitted that to
23 them. I submitted --

24 THE COURT: When?

25 MS. MINARDI: In 2010, I submitted

1 documents to them probably --

2 THE COURT: All right, stop one second.

3 MS. MINARDI: Okay.

4 THE COURT: I'm trying to put this
5 together. Do you know if you have a copy of
6 her 2010 tax return?

7 MS. GLENN: I do not, Your Honor.

8 THE COURT: Well, that would be important
9 to know.

10 MS. GLENN: No, I do not have a copy.

11 THE COURT: I know. But do you know if
12 you received --

13 MS. GLENN: They have sent me every
14 single thing in this file, and I've not seen
15 it.

16 THE COURT: All right. What do you have
17 indicating that you transmitted it?

18 MS. MINARDI: I have a file. I did not
19 actually bring all of my documentation with
20 me. But I --

21 THE COURT: You need to give it to your
22 lawyer.

23 MS. MINARDI: Okay, I will. I've given
24 it to him. I have a file that's this big. I
25 submitted documents to them over and over.

1 THE COURT: I'm not interested in, I
2 submitted documents. I want to be more
3 specific than that. The next item is, copy
4 of two recent pay stubs not more than 90 days
5 old indicating year-to-date earnings.

6 MS. MINARDI: Correct. I submitted that
7 to them.

8 THE COURT: When did you do that?

9 MS. MINARDI: At the same time -- I
10 believe I submitted everything to them at the
11 same time that I submitted --

12 THE COURT: When was that? When is --

13 MS. MINARDI: Back in 2010.

14 THE COURT: When, in 2010?

15 MS. MINARDI: Either March or April.

16 THE COURT: What do you have to show
17 that?

18 MS. MINARDI: I have probably faxed
19 receipts that I sent to them. Or, sometimes
20 25 I sent stuff certified to them, and I would
21 call them and ask them if they received
22 everything, and they would say, yes, they
23 did. And I have notes to --

24 THE COURT: I want to know -- what I need
25 to know is when was the information

1 transmitted.

2 MS. MINARDI: Okay.

3 THE COURT: Do you have anything about
4 that, Ms. Glenn, when --

5 MS. GLENN: I mean, I don't, Your Honor.

6 THE COURT: -- information in support of
7 the modification was submitted?

8 MS. GLENN: In the notes, it states, the
9 documents were reviewed and found to be
10 incomplete.

11 THE COURT: Well, what documents?

12 MS. GLENN: The document -- The trial
13 modification documents.

14 THE COURT: Okay.. Which are what?

15 MS. GLENN: This --

16 THE COURT: Without the --

17 MS. GLENN: The agreement, including the
18 financial documents. It states in there, you
19 know, you must return proof of all income --

20 THE COURT: Right.

21 MS. GLENN: -- to approve those documents.

22 THE COURT: Right.

23 MS. GLENN: And then, on --

24 THE COURT: But so you're telling me that
25 they sent a letter saying that they did

1 review such documents.

2 MS. GLENN: They reviewed the agreement.

3 THE COURT: Ma'am?

4 MS. GLENN: The -- Okay. It states that
5 the documents were reviewed and found to be
6 incomplete.

7 THE COURT: Yeah, what documents? What
8 did they review, is the question.

9 MS. GLENN: The modification agreement,
10 I'm assuming, Your Honor. I don't know what
11 all they sent in and reviewed. All I know is
12 that they are telling me that this letter was
13 sent, and that those documents were missing.

14 THE COURT: Okay. All right. I'm sorry.
15 Now, I know I've interrupted your train of
16 thought. What's next?

17 MS. GLENN: So I was talking about, okay,
18 compliance with the administrative order.

19 THE COURT: Yes, ma'am.

20 MS. GLENN: To his first comment, he's
21 saying that we had circumvented it. I don't
22 believe that we have circumvented it, Your
23 Honor, because we have a certified compliance,
24 at this time.

25 And, Your Honor, I would just argue that

1 I don't feel that this case is appropriate
2 for summary judgment. A lot of these issues
3 that he brings up in his motion are based on
4 issues of fact, Your Honor. You know, when
5 taken in a light most favorable to the
6 Plaintiff, I feel like the Plaintiff could
7 recover on the allegations that are set forth
8 in our Complaint and that summary judgment
9 would not be proper.

10 I mean, I kind of can go through -- You
11 know, he states that there was a written,
12 signed HAMP modification, but my client
13 disagrees with that and says that there was a
14 trial mod offered, but there was no
15 modification agreement ever entered into,
16 because of this letter.

17 THE COURT: Hold on one second.
18 Modification agreement. No, apparently,
19 there was not a modification agreement.

20 MS. GLENN: That's correct. He -- And,
21 in his Motion, in number 5, he just states up
22 there, Plaintiff offered and Minardi accepted
23 a written, signed HAMP Modification.

24 THE COURT: Say that again.

25 MS. GLENN: He states that, the Plaintiff

1 offered and Minardi accepted a written,
2 signed HAMP Modification. And I would just say
3 that that's --

4 THE COURT: Well, he just said he didn't.

5 MR. HALFORD: It's a trial modification,
6 Your Honor.

7 THE COURT: Well, a trial modification's
8 different.

9 MS. GLENN: It doesn't say a trial
10 modification, Your Honor.

11 THE COURT: I understand.

12 MS. GLENN: It says HAMP Modification.

13 THE COURT: Okay. Well, we're on the
14 same page, now, though.

15 MS. GLENN: And as to the March, 2014,
16 HAMP Modification, that he does refer to, in
17 the Motion, I'm just -- I've seen no proof of
18 that. I can go off the Motion, because this
19 is the first one I've seen that's in --

20 THE COURT: What is the basis for your
21 claim that there was a March, 2014 HAMP
22 Modification?

23 MR. HALFORD: No, sir, there was not a
24 March, 2014 trial modification granted.
25 They've never, post foreclosure --

1 THE COURT: Would you read that to me
2 again?

3 MS. GLENN: That the March 15, 2014 HAMP
4 Modification reformed the Mortgage Agreement
5 between Plaintiff and Defendant.

6 THE COURT: All right. What are you
7 talking about, Mr. Halford?

8 MR. HALFORD: Your Honor, there was a
9 letter sent to us saying that she does not
10 qualify to receive and --

11 THE COURT: Where it says March 15, 2014,
12 HAMP Modification Agreement? Is that what it
13 says?

14 MS. GLENN: It doesn't say Agreement. It
15 says, the March 15, 2014 HAMP Modification
16 reformed the Mortgage Agreement.

17 THE COURT: What is the March, 2014 HAMP
18 Modification?

19 MR. HALFORD: It's an error, Your Honor.
20 It's the March, 2010 Modification that we've
21 been discussing all morning.

22 THE COURT: Why does it say March of
23 2014?

24 MR. HALFORD: It's a clerical error. I
25 was working on this late last night. I

1 apologize for that. But there is no March,
2 2014.

3 THE COURT: All right. So the last
4 agreement of any sort that we have that is
5 written is the Trial Modification Agreement,
6 which is styled Home Affordable Modification
7 Trial Period Plan, dated March 22, 2010. Is
8 that right?

9 MR. HALFORD: Yes, sir, I believe it was
10 entered into April 20, 2010, was the first
11 payment.

12 THE COURT: No, it is signed March 22,
13 2010.

14 MR. HALFORD: That is correct, Your Honor.

15 THE COURT: And there is no other
16 agreement, right?

17 MR. HALFORD: No, sir.

18 THE COURT: All right. Go ahead.

19 MS. GLENN: Okay. So I don't need to
20 worry about that one.

21 And I would just -- I would say that, as
22 far as the unclean hands, estoppel defenses
23 that he's asserting, Your Honor, that there's
24 no evidence to support that. But this is not
25 proper for summary judgment. There's many

1 issues of fact that need to be determined
2 still, at this time.

3 THE COURT: Okay. Anything else?

4 MS. GLENN: We can talk about the Motion
5 to Compel.

6 THE COURT: Well, let's lay that aside
7 for a moment.

8 MS. GLENN: Oh, I'm sorry, I missed one.
9 He talks about the Plaintiff's admissions in
10 the case, pursuant to Rule 36, our Request to
11 Admit, Your Honor.

12 And I do know -- I don't know if he's
13 referring to the first 20, because I was --

14 THE COURT: I did not -- I don't have
15 those in the file, I don't think. Were there
16 Requests for Admissions of Fact served?

17 MR. HALFORD: There was, Your Honor.

18 THE COURT: On whom were they served?

19 MR. HALFORD: Dean Hayes.

20 THE COURT: All right. And what
21 happened?

22 MR. HALFORD: Most of them came back --

23 THE COURT: Were they answered?

24 MR. HALFORD: Yes, sir, they were. And I
25 apologize. I don't have them with me.

1 THE COURT: Well, that's part of the
2 Motion. At least, what I read yesterday
3 referred to some admissions.

4 MR. HALFORD: And most of the admissions
5 were about how many payments were made and
6 whether or not they were accepted, Your Honor,
7 or credited.

8 MS. GLENN: And, I mean, if he's not
9 going to argue those, I mean, I just wanted
10 to make the point that there was a second set
11 of Request for Admissions submitted to Mr.
12 Hayes, with Korn, and they did send a letter
13 stating that they were objecting to those
14 requests, because it was over the allowable
15 number of admissions. The first one
16 contained 21.

17 THE COURT: All right.

18 MS. GLENN: So I just wanted to state
19 that, for the record.

20 THE COURT: That's fine. Anything else?

21 MS. GLENN: That's all I got.

22 THE COURT: Anything in reply, as to the
23 Motion for Summary Judgment?

24 MR. HALFORD: No, sir, not at this time.

25 THE COURT: Well, I think I can't -- What

1 we have here is, essentially, an equitable
2 argument, estoppel, waiver, certainly unclean
3 hands. All those are equitable arguments. I
4 believe that it's not appropriate to -- It's
5 most difficult, if not nearly impossible, to
6 grant summary judgment on an equitable
7 argument, because it presupposes certain
8 facts. And there are clearly some disputed
9 facts, in this case.

10 So I deny the Motion for Summary
11 Judgment. Obviously, it ought to -- It ought
12 to be obvious that I'm extremely concerned
13 that the bank has to explain how they entered
14 an agreement that said they would -- that
15 said if this lady made three trial payments
16 and cooperated, they would modify the loan.
17 They claim, immediately, that she didn't
18 cooperate, but they continued to accept
19 payments. And I think -- I don't know how --
20 As I said, I deny the Motion for Summary
21 Judgment, but it strikes me as difficult to
22 explain why they would continue -- why they
23 should be permitted to continue to accept
24 payments, knowing that they were going to
25 claim -- or they should've known they were

1 going to claim she failed the modification
2 plan.

3 And again, I'll go back and say the
4 difficulty I have with this case, and similar
5 cases, is what is the relief? The -- I
6 assume she's made no payment, no taxes, no
7 insurance, no mortgage payment since -- well,
8 it would be what; April of 2011?

9 MS. MINARDI: No. I took the insurance
10 out of escrow, and I've been paying the
11 insurance; and I did pay the taxes last year.

12 THE COURT: All right. But no mortgage
13 payment, for whatever period of time. She
14 can't -- I've never read a case where the
15 relief to be granted is the cancellation of
16 the note and mortgage. And this note and
17 mortgage precedes the most recent matrix
18 decision, which applies only going forward.
19 So that -- so the unclean hands cancellation
20 of the mortgage -- as I understand it, the
21 unclean hands cancellation of the mortgage
22 argument would not apply, because this
23 occurred -- and I believe it talks about the
24 date of the -- No, that's unauthorized
25 practice of law, anyway. But the date of the

1 note and the mortgage has to be subsequent to
2 the most recent decision interpreting matrix.
3 I've forgotten the name of that case. Do you
4 remember it? But anyway --

5 MS. GLENN: I look at these cases all the
6 time, and I can't --

7 THE COURT: Anyway, there's no -- On its
8 face, there's no unclean hands argument for
9 cancellation of the mortgage, without some
10 factual determination -- further factual
11 determination.

12 So, I guess what I'm saying is I deny the
13 summary judgment motion. I want to set it
14 for a hearing -- set the case for a trial.
15 Did you demand a jury trial?

16 MR. HALFORD: Yes, Your Honor.

17 THE COURT: In Answer and Counterclaim?

18 MR. HALFORD: Yes, Your Honor.

19 THE COURT: Do you agree with that? Have
20 you had a chance to look and see if that --
21 if you concede that?

22 MS. GLENN: I see his Answer and
23 Counterclaim.

24 THE COURT: Does it say anything about a
25 jury trial?

1 MS. GLENN: It does say, jury trial
2 demanded.

3 THE COURT: There has to be a
4 determination -- We need to find out whether
5 you -- not you -- your client opposes a jury
6 trial of the counterclaims and run it through
7 that -- I'm going to use the term matrix
8 another way, run it through that matrix
9 enough to see where that falls, whether they
10 are compulsory, whether there are legal
11 counterclaims. The equitable counterclaims
12 do not get a jury trial. Legal counterclaims
13 will, if they are compulsory counterclaims.
14 And then there's the question of -- well,
15 you've demanded it, so you haven't waived
16 that right. But then the determination needs
17 to be made about whether there will be a jury
18 trial of the legal counterclaims. Without
19 going back through the counterclaim myself, I
20 don't recall how many of those there are.

21 All right, now. There's a Motion to
22 Compel?

23 MR. HALFORD: There's a motion to send
24 the case to mediation, Your Honor.

25 THE COURT: That's what she's talking --

1 That's the only thing you're talking about?

2 MR. HALFORD: I believe that's what
3 she's --

4 MS. GLENN: Yes, Your Honor. I may've
5 misspoken.

6 THE COURT: Okay. All right.

7 MS. GLENN: I apologize.

8 THE COURT: Given the age and period of
9 time where there have been no payments, Mr.
10 Halford, what do you expect to accomplish by
11 mediation?

12 MR. HALFORD: Having a person there with
13 authority that can help us get this resolved.
14 Again, the problem, from my perspective, Your
15 Honor, it's over three years. And I'm not
16 faulting Dean. He's one of the best
17 attorneys in this arena. I'm not faulting
18 Ms. Glenn. But there's an unwillingness, on
19 their side.

20 THE COURT: Well, they have a right to be
21 unwilling, just like you do. But I can't --
22 Mediation doesn't force anybody to settle.
23 They have a right to say no. And I've been
24 doing -- Anyway, so is that it? I mean, just
25 so that there'll be somebody there who could

1 say yes or no?

2 MR. HALFORD: So, hopefully, we'll make
3 some progress, Your Honor. I've sent five to
4 mediation, now, with great success. I'm not
5 saying this one will be a success, but I
6 petitioned the Court, actually, at my client's
7 request.

8 THE COURT: Okay. What do you think?

9 MS. GLENN: Your Honor, I -- I don't
10 necessarily oppose mediation. I can't
11 consent to it. I've only done a couple of
12 them. I'm not positive. I feel very
13 confident that I got a lot of stuff worked out
14 myself with Bank of America, but I don't -- I
15 don't have a problem with it, per se, your
16 Honor, but I can't consent to it.

17 THE COURT: Now, one thing I do have a
18 problem with is, if Bank of America is
19 continuing to communicate directly with Ms.
20 Minardi. If they do that, I'm going to
21 sanction them. If they -- Yeah, I say if.

22 MS. GLENN: Okay.

23 THE COURT: I'm not saying they are.

24 MS. GLENN: I do have several letters
25 that show that they were sent to Mr. Halford.

1 THE COURT: If they continue to
2 communicate with Ms. Minardi, there will be a
3 sanction. And I'm not interested in hearing
4 anything about that. That's just going
5 forward. But she has a right to handle this
6 through her attorney. Of course, she needs
7 to understand that that's -- that that
8 increases the expense of everything,
9 necessarily, which makes -- may or may not
10 make it more difficult to resolve, or not to
11 make it more difficult to resolve.

12 All right. Now, I'm going to -- Mr.
13 Halford, if Ms. Glenn is willing to -- and
14 her client is willing to talk directly to you
15 about trying to work this out, what -- why
16 would we -- why is it necessary to engage in
17 mediation and hire a mediator and run up the
18 lawyer fees and all that?

19 MR. HALFORD: With all due respect -- and
20 I've never worked with Ms. Glenn. I've
21 worked with Dean. I've worked with Chris --

22 THE COURT: Well, her client's the
23 problem, not Ms. Glenn.

24 MR. HALFORD: That's where I was going,
25 Your Honor. You're right. It's just been

1 kind of -- not what I meant to imply, if it
2 came across that way, Your Honor. But the
3 problem is I've spent three years doing this
4 already. And, with all due respect, I can't
5 speak for what went on on their side of the
6 case, and they can't seem to move back from
7 there. I think, if we could sit down with a
8 mediator, I think it would be beneficial.
9 That's just --

10 THE COURT: Well, what if I just order
11 you -- what if I just order them to negotiate
12 with you?

13 MR. HALFORD: I haven't seen that done,
14 but I guess that's --

15 THE COURT: I mean, but the end result is
16 going to be a letter that says yea or nay.
17 And then, when that happens, there's going to
18 be a trial and maybe a -- The first trial may
19 be, depending on -- I haven't looked at it,
20 and nobody's asked me the question, but the
21 first trial may be a trial before a jury on
22 the legal counterclaims, if any. Then the
23 next trial would be a trial before me, on the
24 foreclosure, which would include any
25 equitable counterclaims and equitable

1 defenses. But this case is going to be heard.

2 Is it not on the jury roster?

3 MR. HALFORD: No, Your Honor. It's just
4 been referred to you by Judge Hayes. I've not
5 made a motion about --

6 THE COURT: That doesn't keep it off the
7 jury roster, if there are --

8 MR. HALFORD: It is not on the jury
9 roster.

10 THE COURT: -- if there are legal
11 counterclaims.

12 MR. HALFORD: I agree, Your Honor, and
13 it's not -- I mean, maybe that would assist
14 us, if it were, but I can't speak to why it's
15 not, Your Honor. Maybe it's --

16 THE COURT: What I'm going to do right
17 now is I'm going to take the Motion to Compel
18 Mediation under advisement. I will issue an
19 order for a court order denying summary
20 judgment, because there are many, many fact
21 questions raised by the Defendant, as well as
22 the Plaintiff, that have to be resolved.

23 And, if there's nothing further, that'll
24 conclude this hearing. Anything further?

25 MS. GLENN: Thank you, Your Honor.

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THE COURT: Anything further?

MR. HALFORD: Nothing further, Your Honor.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

Bank of America, N.A., successor)
By merger to BAC Home Loans)
Servicing, LP, f/k/a Countrywide)
Home Loans Servicing, LP,)

vs.)

Michelle Minardi, and Ameris Bank,)
Defendants.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

 COPY

CASE NO. 2011-CP-46-4278

DEFENDANT MICHELLE MINARDI'S
MOTION TO COMPEL DEPOSITION OF
PLAINTIFF 30(B)(6) DESIGNEE

FILED-RECEIVED
2015 MAR 18 PM 3:31
DANIEL C. CAMPBELL
CLERK
YORK COUNTY, SC

TO: **CAROLINE GLENN, ESQ.**
ATTORNEY FOR PLAINTIFF BANK OF AMERICA:

YOU WILL PLEASE TAKE NOTICE that the undersigned will move, within ten (10) days, or as soon as the Motion can be scheduled, before the Master in Equity Court for York County for an Order compelling discovery and deposition in this case of Plaintiff's designee pursuant to Rule 30(b)(6) SCRPC, if not sooner resolved by consent and agreement of counsel for the parties. This motion may be supported by memorandum and/or correspondences between counsel showing the number of prior attempts to schedule the deposition of Plaintiff's designee and the motion is filed pursuant to the ruling of the master in equity court on February 18, 2015.¹

Respectfully submitted,

HALFORD NIEMI & FREEMAN, LLP


J. Cameron Halford
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618

¹ On February 18, 2015 Hon. S. Jackson Kimball issued a ruling requiring counsel to have all motions that may be deemed necessary by the parties by March 18, 2015 and setting April 18, 2015 as the deadline for closure of discovery in this case. Counsel is without a written order at the time this motion is filed.

CERTIFICATE OF SERVICE

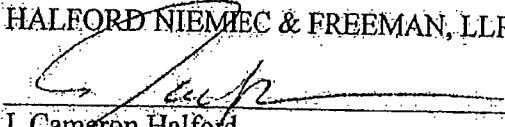
I hereby certify that I am the attorney for the Defendant in the above captioned case and that I did on March 18, 2015 serve a copy of the foregoing Defendant **NOTICE OF MOTION AND MOTION TO COMPEL RULE 30(B)(6) DEPOSITION** on counsel for the Plaintiff by e-mail and by depositing a copy of the same in the United States Mail, Postage Prepaid, and addressed as follows:

Brock & Scott, PLLC
Caroline Glenn, Esq.
3800 Fernandina Rd., Ste 110
Columbia, SC 29210
Attorney for Plaintiff
Caroline.Glenn@BrockandScott.Com

FILED-RECEIVED
2015 MAR 18 PM 3:37
DAVID R. & ES
C.C.P. & ES
YORK COUNTY, SC

Respectfully submitted,

HALFORD NIEMEC & FREEMAN, LLP



J. Cameron Halford
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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loan Servicing, LP FKA
Countrywide Home Loans Servicing, LP
☐ Plaintiff

v.

Michelle Minardi And Ameris Bank,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-46-4278

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Caroline Glenn, Bar No.
Address:
3800 Fernandina Road, Columbia, SC 29210
phone: 803-454-3540 fax:
e-mail: caroline.glenn@brockandscott.com other:

Defendant's Attorney:
J. Cameron Halford, Bar No. 17184
Address:
238 Rockmont Drive
Fort Mill, SC 29708
phone: 803-324-8100 fax: 803-324-8109
e-mail: cam@fortmilllaw.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: DEFENDANT MINARDI MOTION TO AMEND PLEADINGS

Estimated Time Needed: 15 Min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

March 18, 2015

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by:

D. Varbrough
pd. 125.00

Date Filed:

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP f/k/a
Countrywide Home Loans Servicing LP.

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-46-01231

**DEFENDANT NOTICE OF MOTION
AND MOTION TO AMEND
PLEADINGS**

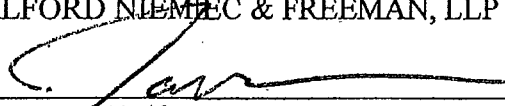
FILED-RECEIVED
2015 MAR 18 PM 3:38
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

**TO: CAROLINE GLENN, ESQ.
ATTORNEY FOR BANK OF AMERICA, NA.**

YOU WILL TAKE NOTICE that pursuant to the February 18, 2015 ruling of the Hon. S. Jackson Kimball III, Master in Equity for York County, Defendant moves to amend its pleadings pursuant to SCRCP 19, adding affirmative defense and legal counterclaims per Counts Eleven (11) through Fourteen (14) of the proposed amended complaint, pursuant to the attached Exhibit-A.

Respectfully submitted,

HALFORD NIEMEC & FREEMAN, LLP



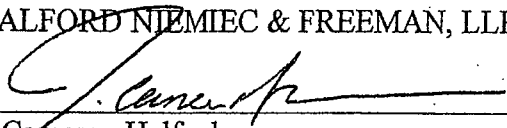
J. Cameron Halford
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax
cam@fortmilllaw.com
Attorney for Defendant Michelle Minardi

CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the Defendant in the above captioned matter and that I did on March 18, 2015 serve a copy of the foregoing Motion to Amend Pleadings upon counsel for the Plaintiff, addressed as follows:

Caroline Glenn, Esq.
Brock & Scott PLLC
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210
Attorney for Plaintiff Bank of America, N.A.

HALFORD NIEMIEC & FREEMAN, LLP



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March 18, 2015
Fort Mill, South Carolina

FILED-RECEIVED
2015 MAR 18 PM 3:38
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

[PROPOSED AMENDED COUNTERCLAIMS]

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

Bank of America, N.A., successor)
By merger to BAC Home Loans)
Servicing, LP, f/k/a Countrywide)
Home Loans Servicing, LP,)

CASE NO. 2011-CP-46-4278

AMENDED

ANSWER AND COUNTERCLAIMS

vs.)

Michelle Minardi, and Ameris Bank,)
Defendants.)

[JURY TRIAL DEMANDED]

In Answer to the Complaint of the Plaintiff, mortgagor and defendant Michelle Minardi would respectfully show the following by way of Amended Answer and Counterclaims:

FOR A FIRST DEFENSE

(Qualified General Denial)

1. Defendant Minardi would admit the allegations of paragraphs (1), (3), (4), (5), (6), (8), (9), (12), (13), (15).
2. Defendant Minardi would deny as stated the allegations of paragraphs (2), (7), (10), (11), (14), (16), (17), and (18) and demand strict proof of these allegations.
3. Further responding to paragraph (2), this Defendant is without sufficient information to admit or deny, and denies the same on this basis demanding strict proof of said allegations.
4. Further responding to paragraph (7), this Defendant is without sufficient information to admit or deny, and denies the same on this basis demanding strict proof of said allegations, incorporating
5. Defendant would admit as qualified paragraph (10), in that the loan documents speak for themselves. Defendant would deny the remainder allegations of paragraph ten, including the remedy of acceleration, and demand strict proof of the allegations.
6. Further responding to paragraph (11), Defendant would admit as qualified paragraph (11) in that the loan documents speak for themselves, but would deny



and demand strict proof of all further conclusory allegations of additional sums claimed due and owing by Plaintiff under this paragraph.

7. Responding further to paragraph (14), Defendant Minardi would deny the allegations of said paragraph incorporating by reference the allegations of defendant's First through Tenth defenses and counterclaims, below.
8. Responding further to paragraph (16), Defendant would show and allege by way of its Second through Tenth defenses and counterclaim below that Plaintiff, a HMP participating financial institution, considered Defendant for a Bank of America in-house modification and not a modification under the HMP program guidelines and supplemental directives.
9. Defendant is informed and believes that the conduct of Plaintiff described in paragraph (8) resulting in modification denial alleged to be a HMP trial modification which never occurred. Defendant instead evaluated Defendant under an alternative Bank of America modification.
10. Responding further to paragraph (17), Defendant Minardi occupies the home as her primary residence and is without information to admit or deny, is unaware of any inspection or security costs incurred by Plaintiff, and denies same demanding strict proof of any such charges, if any.
11. Responding further to paragraph (18), Defendant Minardi denies that all conditions precedent to acceleration of said debt have occurred prior to Plaintiff instituting this foreclosure, and demands strict proof. Specifically, Defendant is informed and believes that Plaintiff has sought to foreclose a HMP eligible loan prior to properly evaluating Defendant Minardi specifically for a HMP modification under HMP guidelines and supplemental directives.

FOR A SECOND DEFENSE

FIRST AFFIRMATIVE DEFENSE

[FAILURE TO STATE A CLAIM – SCRCP 12(B)(6)]

12. The above allegations and defenses are re-stated and incorporated by reference as if set forth verbatim.
13. Plaintiff's Complaint violates the Administrative Order of the Supreme Court 2011-05-02-01 of May 2, 2011 and on information and belief Plaintiff has failed to consider Plaintiff for HMP modification and other loss mitigation options prior to commencing this foreclosure in violation of said administrative order.
14. Plaintiff's Complaint fails to state a cause of action for which relief can be granted under applicable law, and should be summarily dismissed pursuant to SCRCP 12(b)(6).

FOR A THIRD DEFENSE
SECOND AFFIRMATIVE DEFENSE
(Failure to Mitigate)

15. The above defensive allegations are re-stated and incorporated by reference as if set forth verbatim.
16. Plaintiff has failed to mitigate damages as required by law prior to commencing this foreclosure action and by rejecting successive trial modification program payments wherein Defendant demonstrated and complied with modification payment terms.

FOR A FOURTH DEFENSE
THIRD AFFIRMATIVE DEFENSE
(*Waiver, Estoppel, Laches and Release*)

17. The above defensive allegations are restated and incorporated by reference as if having been set forth verbatim.
18. Plaintiff's claims are or may be barred by the legal doctrines of *waiver, estoppel, laches, and/or release* as Defendant successfully complied with trial modification payments under HMP guidelines, yet Plaintiff denied Defendant a HMP modification due to investor rejection and interference and despite Defendant's successful compliance with modification terms involving twelve (12) successive payments.

FOR A FIFTH DEFENSE
FOURTH AFFIRMATIVE DEFENSE
(*Acceptance, Novation, Accord & Satisfaction*)

19. The above defensive allegations are restated and incorporated by reference as if set forth verbatim.
20. Plaintiff offered and accepted a loan modification after Defendant successfully making thirteen (13) trial modification payments, and is now barred and should be estopped from asserting foreclosure of the mortgage due to the modification and novation.
21. Plaintiff's claims against Defendant are barred by the legal doctrines of accord and satisfaction and/or compromise and settlement, due to acceptance of twelve (12) trial modification payments.

FOR A SIXTH DEFENSE

*(Breach of Contract – Mortgagor Successful Compliance with Trial Modification Terms
and Lender Rejection of Trial Payments)*

FIRST LEGAL COUNTERCLAIM

22. The above allegations are restated here and incorporated by reference as if set forth verbatim.
23. That at all relevant times, Plaintiff is the owner, holder and was acting as a debt collector in communication with and acceptance from Defendant trial modification payments prior to Plaintiff commencing this foreclosure.
24. That for valuable consideration received, Plaintiff offered, and Defendant Accepted, a loan modification whereunder Defendant successfully made trial modification payments twelve times. Plaintiff rejected trial payments in July, 2011 returning monies to Defendant. Plaintiff then improperly declared Defendant in default after rejecting trial payments and returning same to Defendant.
25. That Defendant demonstrated financial ability to pay under a modified loan terms, but Plaintiff has nonetheless denied Defendant a loan modification under the HMP program guidelines.
26. That Plaintiff has improperly denied Defendant a HMP loan modification, and has alleged borrower default upon a HMP modification trial plan in breach of the parties' loan modification agreement.
27. That the ceasing of payments by Defendant arises out of debt collection practices and conduct of the Plaintiff in rejecting payments being sent by the Defendant under a trial modification terms.
28. That as a result, Defendant has incurred damages and been forced to engage the services of an attorney to defend this foreclosure and her home.
29. Defendant is informed and believes that Defendant is entitled to an award of damages as against Plaintiff for plaintiff's Breach of Contract, attorney's fees and costs exceeding \$7,500 to be proven at trial of this matter.

FOR A SEVENTH DEFENSE

FIFTH AFFIRMATIVE DEFENSE AND

(Negligence of Bank of America, N.A. loan personnel – Loan HMP Eligible)

SECOND LEGAL COUNTERCLAIM

30. The above defensive allegations are restated and incorporated by reference as if set forth verbatim.

31. Responding to paragraph (16) of the Complaint, on information and belief, Plaintiff is participating in the Home Affordable Modification program (HMP), but the HMP modification process specified by the guidelines or supplemental directives has **not** been completed properly by Plaintiff or its agents who have rejected and returned payments to Defendant after Defendant successfully made twelve (12) of thirteen (13) trial payments.
32. On information and belief, the Plaintiff has improperly declared Defendant in default of a HMP modification and seeks to accelerate after failing to properly evaluate Defendant for loan modification under the HMP Making Homes Affordable Program ("HMP") prior to commencing this foreclosure action.
33. Defendant is informed and believes that Plaintiff, its servicer, agents, loan personnel, and employees were willful, wanton, negligent and careless by failing to consider Defendant for HMP loan modification options, and instead enrolling Defendant in loan modification options specifically offered through Bank of America, N.A. instead of a modification under HMP guidelines.
34. That Plaintiff's HMP review and analysis is therefore negligent, careless, willful, wanton and reckless wherein it failed to properly evaluate Defendant for the HMP program as set forth by the Making Homes Affordable Modification Program.
35. That Plaintiff was negligent, willful, wanton and reckless by rejecting and mailing back to Defendant trial modification payment instead of properly applying said payments to the subject loan and by declaring Defendant in default of HMP modification options after rejecting payments sent by Defendant to Plaintiff.
36. That as a direct and proximate result, Defendant has incurred damages exceeding \$7,500 to be proven at trial of this matter, and has been forced to engage the services of an attorney.
37. Defendant is informed and believes that Defendant is entitled to an award as against Plaintiff for all damages, actual, punitive, and attorneys fees and costs.

FOR AN EIGHTH DEFENSE

(FDCPA VIOLATION – 28 U.S.C. 1692(E) §807(2), Et.Seq.)

THIRD LEGAL COUNTERCLAIM

38. The above defensive allegations are re-stated here and incorporated by reference as if having been set forth verbatim.
39. Defendant is informed and believes that Plaintiff has, in violation of §807(2) of 28 U.S.C. 1692(e) *materially misrepresented the nature, character, and amounts due* of the debt as set forth in its complaint, specifically paragraph (16).

40. That at all relevant times, including the acceptance of trial modification payments, Plaintiff was communication with Defendant and acting within the course and scope of a debt collector and was servicing Defendant's mortgage note as a debt collector for its investor.
41. That at all relevant times, including service of the Complaint, Plaintiff was communicating with Defendant and acting within the course and scope of a debt collector and was servicing Defendant's mortgage for its investor.
42. That Plaintiff has misrepresented the nature and character of this debt pursuant to paragraph (16) of its Complaint, in violation of the FDCPA and the Administrative Order of the South Carolina Supreme Court 2011-05-02-01, *to wit*:
- a. By falsely representing to the court that a proper HMP modification has been undertaken on the subject loan wherein the mortgagor defaulted, when in fact Plaintiff rejected payments.
 - b. By rejecting in-progress loan modification payments from Defendant and returning monies to Defendant in June, 2011 creating default while Plaintiff acted as a debt collector.
 - c. By misapplying trial modification payments prior to declaring Defendant in default of a HMP modification.
 - d. By falsely representing that Plaintiff has incurred fees and costs to secure and inspect the property, knowing Defendant resides at the premises as her primary home.
 - e. By falsely placing Defendant into an in-house Bank of America modification and not a proper HMP modification.
 - f. By failing to properly advise its investor that Defendant has successfully complied with over twelve (12) modification payments prior to instituting foreclosure.
 - g. By requiring twelve successive trial payments of Defendant, then rejecting Defendant for modification in June, 2011 and returning monies to Plaintiff.
 - h. By instituting Defendant default by return of monies that Plaintiff has previously accepted from Defendant, namely twelve (12) successive payments.

- i. By failing to properly modify Defendant's loan pursuant to HMP guidelines and supplemental directives prior to commencing this foreclosure action.
 - j. By knowingly instituting this foreclosure in violation of the Administrative Order of the Supreme Court, 2011-05-02-01.
43. Defendant is informed and believes that due to Plaintiff's conduct described above, Defendant is entitled to an award of all fines, penalties, attorneys fees and cost available to the Defendant pursuant to the FDCPA.

FOR A NINTH DEFENSE
SIXTH AFFIRMATIVE DEFENSE
(Unclean Hands Defense- Motion for Stay)

44. That Plaintiff seeks to foreclose Defendant's mortgage after falsely representing to the court in paragraph (16) of the Complaint that Defendant has been considered for HMP loan modification, then defaulted under HMP trial payments.
45. That said representations are *materially false*, because Plaintiff unilaterally rejected in-progress trial modification payments in July, 2011 and mailed them back to Defendant. Despite accepting twelve (12) trial payments, Plaintiff unilaterally declared HMP default as against Plaintiff.
46. That Defendant is informed and believes that Defendant has not been properly considered or evaluated for a HMP modification by Plaintiff due to investor interference, or that Plaintiff has improperly performed a HMP evaluation for loan modification and/or in-house Bank of America modification loss mitigation programs.
47. That said representations are materially false as Defendant successfully made twelve (12) consecutive trial modification payments prior to Plaintiff rejecting Defendants' payments in July, 2011 and commencing this foreclosure.
48. That Plaintiff's conduct in declaring that a HMP modification has occurred and that the Defendant has defaulted under a HMP modification are inequitable, false, and designed to circumvent the provisions of the Administrative Order of the Supreme Court 2011-05-02-01 to inappropriately conclude a foreclosure wherein HMP modification options have not been provided to the Defendant/Mortgagor.
49. That Plaintiff's causes of action are or may be barred by the legal doctrine of unclean hands due to Plaintiffs' own inequitable conduct.
50. That this action should be stayed or dismissed pending Plaintiff's compliance with the provisions of the Administrative Order of the Supreme Court 2011-05-02-01.

FOR A TENTH DEFENSE
SEVENTH AFFIRMATIVE DEFENSE
(Spoilation of Material Evidence Barring Plaintiff's Claims)

51. The above defensive allegations are restated and incorporated by reference as if set forth verbatim.
52. The Plaintiff's claims are or may be barred by the Plaintiff's spoliation of evidence, Plaintiff or Plaintiff's Investor having knowingly failed to preserve evidence material to the claims and defenses in this action.

FOR AN ELEVENTH DEFENSE
(Failure to Join Persons/Entities Needed for Just Adjudication-Ameris Bank, N.A.)

53. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
54. That Ameris Bank, N.A. is the secondary mortgage holder and lien upon the real property that is subject to this foreclosure action.
55. Plaintiff Bank of America, N.A. has failed to properly effect service upon join Ameris Bank as a party necessary for a just adjudication in this matter.
56. Defendant Minardi pleads Plaintiff's failure to join Ameris Bank as a bar to any equitable relief sought in this case by Plaintiff.
57. Defendant Minardi moves to stay the equitable claims in this matter and that the court compel Plaintiff to effect service upon Ameris Bank, N.A.

FOR A TWELTH DEFENSE
Fifth Legal Counterclaim
(Breach of Fiduciary Duty)

58. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
59. That the relationship of the parties is that of mortgagor/debtor and mortgagee/creditor arising out of that certain mortgage loan transaction account no. 192460533.
60. That Defendant requested, and Plaintiff approved loss mitigation in the form of a loan modification pursuant to the Making Homes Affordable Program ("HAMP") whereunder Defendant entered into trial payments in April, 2010.

61. That Defendant successfully tendered thirteen (13) trial modification payments, which were accepted by Plaintiff Bank of America, N.A., a HAMP-participating financial institution.
62. That Plaintiff Bank of America rejected tender of the fourteenth (14th) trial modification payment, refusing thereafter to accept payment from Defendant Minardi and subsequently filing suit for foreclosure.
63. That as part of entering into the loan modification, Defendant Minardi reposed special confidence in the Plaintiff that she would be allowed to consummate a loan modification by successful participation in the program and that Plaintiff, as a financial institution participating in the Making Homes Affordable Program would act in good faith, fair dealing, and with due regard to the ability of Defendant to retain her home.
64. That Bank of America, N.A. accepted the special confidence reposed in it by Minardi, accepted and credited Minardi's payments from April, 2010 through April, 2011.
65. That Bank of America breached its fiduciary duty to Defendant by rejecting tender of payments and unilaterally cancelling the trial modification that was in progress, thereafter filing this foreclosure action.
66. That Bank of America's foreclosure action violates the administrative order of the South Carolina Supreme Court 2011-05-02-01 by obstructing a loan modification in progress and by failing to permit the Defendant a full and fair opportunity to consummate the loan modification under the HAMP program.
67. That Plaintiff's initiation of this lawsuit resulted in Defendant having to engage counsel to defend her home and Defendant has incurred attorneys fees and costs in defending said foreclosure, and has incurred damage in the form of lost economic opportunities, fraudulent fees, fines, interest, penalties and padding by Bank of America.
68. Defendant is informed and believes that it is entitled to all actual and punitive damages including reimbursement of attorneys fees and costs from Bank of America.

FOR A THIRTEENTH DEFENSE

Sixth Legal Counterclaim
(Fraud)

69. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.

70. Plaintiff willfully, deliberately and fraudulently obstructed and unilaterally cancelled a loan modification that was in progress pursuant to the making homes affordable program.

71. Plaintiffs conduct constitutes fraud and dishonesty in fact, to wit:

- a. Plaintiff represented to Defendant that it was a HAMP participating financial institution and that it would provide Defendant a full and fair opportunity for loan modification under the government's Making Homes Affordable Program ("HAMP").
- b. Plaintiffs representation was materially false, plaintiff knowing at all times the true state of affairs that it could not fashion a solution that would be improved by its investor.
- c. Plaintiff's representation was material to Defendant who entered the program for the express purpose of preserving her home ownership.
- d. Plaintiff permitted Defendant trial modification payments and accepted tender of trial modification payments from April, 2010 thru April, 2011.
- e. That after the third successful trial payment, Defendant requested a permanent modified solution but was advised by Plaintiff to keep making payments until she received said permanent modification, demonstrating Plaintiff's intent that Defendant continue to pay trial payments.
- f. That Plaintiff unilaterally cancelled loss mitigation rejecting defendants trial payments in April, 2010 after accepting thirteen trial payments knowing it would not offer a permanent HAMP modified loan and knowing that it would foreclose against Defendant's home.
- g. That Defendant Minardi was ignorant to the false assurances by Bank of America, relied upon the truth, and had a right to rely thereon as evidenced by thirteen (13) continued trial payments.
- h. That Defendant has incurred consequential and proximate injury in the form of padded fees, attorneys fees, lost economic opportunities, stress, anxiety and worry.

72. Defendant Minardi is informed and believes that it is entitled to an award of all actual damages and punitive damages as may be proven before a jury of peers in this case.

FOR A FOURTEENTH DEFENSE

Seventh Legal Counterclaim

(Violation of the South Carolina Unfair Trade Practices Act)

73. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
74. Plaintiff unilaterally and in bad faith renigged on a loan modification in process with Defendant offered under the Making Homes Affordable Program ("HAMP") thereafter filing its foreclosure in violation of the Administrative Order of the South Carolina Supreme Court 2011-05-02-01.
75. That Plaintiff has willfully and deliberately refused to grant loss mitigation in the form of a HAMP modification to Defendant after filing its foreclosure, and after Defendant successfully performed under a year 2010 trial modification by making thirteen (13) trial payments.
76. That at all times Plaintiff Bank of America is a financial institution participating in the Making Homes Affordable Program after accepting TARP funding from the United States treasury.
77. That Plaintiff has refused to observe governmental guidelines and treasury regulations and supplemental directives of the treasury as a HAMP participating institution in denying Defendant a full and fair opportunity for loan modification.
78. That Plaintiffs conduct in failing to offer loss mitigation in the form of a HAMP modification to Defendant is deceptive, bad faith, illegal and affects commerce by tortuously interfering with economic opportunities of the Defendant.
79. Defendant is informed and believes that it is entitled to an award of actual and trebled damages as against Plaintiff for Plaintiff's fraudulent and deceptive acts and practices in failing to permit loss mitigation designed to assist Defendant preserve her primary home.

Respectfully submitted,

J. Cameron Halford (SC Bar 17184)
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loan Servicing, LP FKA
Countrywide Home Loans Servicing, LP
☐ Plaintiff

v.

Michelle Minardi And Ameris Bank,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-46-4278

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Caroline Glenn, Bar No. Address: 3800 Fernandina Road, Columbia, SC 29210 phone: 803-454-3540 fax: e-mail: caroline.glenn@brookandscott.com other:		Defendant's Attorney: J. Cameron Halford, Bar No. 17184 Address: 238 Rockmont Drive Fort Mill, SC 29708 phone: 803-324-8100 fax: 803-324-8109 e-mail: cam@fortmilllaw.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: DEFENDANT R42(b) MOTION TO BIFURCATE Estimated Time Needed: 15 Min. Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant March 18, 2015 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: Date Filed:			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP f/k/a
Countrywide Home Loans Servicing LP.

PLAINTIFF,

vs.

Michelle Minardi, and Ameris Bank,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-46-01231

**DEFENDANT NOTICE OF MOTION
AND MOTION TO BIFURCATE
AND REMAND LEGAL
COUNTERCLAIMS
SCRCP 42**

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2015 MAR 18 PM 3:31
DAVID HAMILTON
C.C.P. & ES
YORK COUNTY, SC

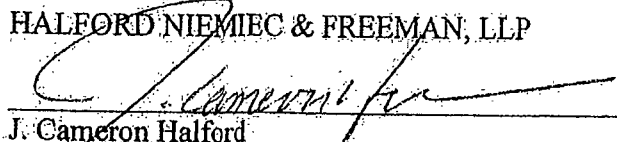
TO: **CAROLINE GLENN, ESQ.**
ATTORNEY FOR BANK OF AMERICA, NA.

YOU WILL TAKE NOTICE that pursuant to Rule 42(b), SCRCP, and the February 18, 2015 ruling of the Hon. S. Jackson Kimball III, Master in Equity for York County, Defendant moves to bifurcate the legal and equitable claims in this case. Counsel further moves to remand compulsory legal counterclaims to the Circuit Court for jury trial and scheduling on the jury trial roster of cases.

Counsel further moves the court to stay the foreclosure trial in this case tentatively scheduled for May 4, 2014 until resolution of the legal counterclaims pursuant to *Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987) on the grounds that there exist compulsory issues common to both the legal and equitable claims in this case and that Plaintiff would suffer irreparable harm if the equitable claims were to be tried prior to resolution of the legal counterclaims.

Respectfully submitted,

HALFORD NIEMIEC & FREEMAN, LLP

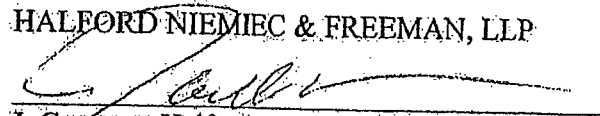

J. Cameron Halford
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax
cam@fortmilllaw.com
Attorney for Defendant Michelle Minardi

CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the Defendant in the above captioned matter and that I did on March 18, 2015 serve a copy of the foregoing Motion for Bifurcation and Remand upon counsel for the Plaintiff, addressed as follows:

Caroline Glenn, Esq.
Brook & Scott PLLC
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210
Attorney for Plaintiff Bank of America, N.A.

HALFORD NIEMIEC & FREEMAN, LLP


J. Cameron Halford
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Fort Mill, South Carolina 29708
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803-547-6638 fax

March 18, 2015
Fort Mill, South Carolina

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

FILED--RECEIVED
FORM 4

2015 MAR 30 AM 8:38

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4604278

Bank Of America NA

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Michelle Minardi

Ameris Bank

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON)
☐ Rule 43(k), SCRCP (Settled); ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ ACTION STRICKEN (CHECK REASON)
☐ Binding arbitration, subject to right to request modify arbitration award; ☐ Bankruptcy;
☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT ☐ Other: _____
☐ Affirmed; ☐ Reversed; ☐ Remanded
- File retained MIE for motion hearing + final trial*

APPLICABLE BOX):

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NO. CIRCUIT COURT RULING IN THIS APPEAL.

RIBUNAL, OR ADMINISTRATIVE AGENCY OF THE

IT IS ORDERED AND ADJUDGED: ☐ See attached (normal order to follow) ☐ Statement of Judgment by the Court:

This matter came before me on February 18, 2015, upon Defendant Minardi's Motion for Summary Judgment. Representing the parties were: Caroline R. Glenn for Plaintiff; and, J. Cameron Halford for Defendant Minardi.

Summary judgment is appropriate only when there is no genuine issue of material fact, and judgment is warranted as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), S.C.R.C.P. Further, the evidence and all reasonable inferences therefrom are viewed in the light most favorable to the non-moving party. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *Med. Univ. of S.C. v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004). The non-moving party need only submit a mere scintilla of evidence to withstand a summary judgment motion where the standard of proof is by a preponderance of the evidence. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

Applying this standard, Plaintiff/Defendant is not entitled to summary judgment. Under the facts of this case, it would be inappropriate to end the case at this juncture, and render judgment on the legal issues presented. Therefore, it is ordered that the motion for summary judgment be denied.

Further, as ordered from the bench at the motion hearing, in order to dispose of this case as soon as reasonably possible, it is further ordered as follows: (1) any and all motions in the case shall be made by March 20, 2015; (2) all discovery shall be completed by April 15, 2015; and, (3) the trial of the case is set for May 4, 2015, at 2:00 p.m.

AND IT IS SO ORDERED.

DM
#1

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

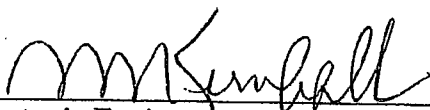
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Master in Equity

3063

Judge Code

3/26/2015

Date

For Clerk of Court Office Use Only

3-30-15

3-30-15

This judgment was entered on 3-30-15 and a copy mailed first class or placed in the appropriate attorney's box on 3-30-15 to attorneys of record or to parties (when appearing pro se) as follows:

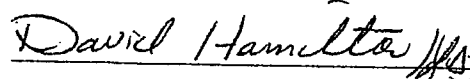
Caroline R. Glenn, Brock & Scott, PLLC
3800 Fernandina Road, Suite 110, Columbia, SC 29210
John Sanford Kay PO Box 8237 Columbia, SC 29202
Keller Cogswell Foster Foster Law 112 Sunset Drive
Spartanburg, SC 29302
Suzanne E. Brown 5431 Oleander Dr., Ste. 110 Wilmington,
NC 28403

J. Cameron Halford 238 Rockmont Drive 238 Rockmont
Drive Fort Mill, SC 29708

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter



David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
) Case No. 2011-CP-46-4278

Bank of America, N.A.,
Successor By Merger to BAC
Home Loans Servicing, LP,
f/k/a Countrywide Home Loans
servicing, LP,

Plaintiffs,

vs.

Michelle Minardi and Ameris
Bank,

Defendants.

TRANSCRIPT OF PROCEEDINGS

YORK, SOUTH CAROLINA

APRIL 14, 2015

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PROCEEDINGS

BEFORE: THE HONORABLE S. JACKSON KIMBALL

THE COURT: This is Case No. 2011-CP-46-4278, Bank of America against Michelle Minardi, and others. Present and representing the Plaintiff is Ms. Caroline Glenn. Present and representing the Defendant, Mr. Cam Halford.

According to what I have, I have three motions of the Defendant; is that right?

MR. HALFORD: That's correct, Your Honor.

THE COURT: All right. Proceed.

MR. HALFORD: Your Honor, just as a matter of housekeeping, the first motion was to compel their 30 (B)(6) deposition. That will occur at my offices tomorrow. So I'm going to pull -- Let's just hold onto that.

THE COURT: All right. So that's resolved, right?

MR. HALFORD: I believe so, Your Honor. I just -- I made the motion, out of abundance of caution, in keeping with the Court's scheduling order.

THE COURT: Well, I mean, is there a deposition scheduled tomorrow?

1 MR. HALFORD: Yes, sir, there is.

2 THE COURT: Okay. Well, that's resolved.

3 MR. HALFORD: Thank you, sir.

4 Moving to the second motion, Your Honor,
5 it's Defendant's motion to remand the legal
6 counterclaims back to the circuit court, Your
7 Honor.

8 THE COURT: This is the circuit court.

9 MR. HALFORD: I'm sorry. Back to the
10 jury roster, Your Honor.

11 As you're aware, this case was filed --
12 and not to go over the history in too much
13 detail, but it was filed November 11, 2011.
14 I know it's an old case. My client answered
15 and filed legal counterclaims on January 11,
16 2012, Your Honor. But it is old. It went
17 before Judge Alford September 7, 2013, on a
18 motion for reference, which was denied. And,
19 as you are aware, Judge Hayes later granted
20 that motion. And we're here, Your Honor --

21 The case does have legal counterclaims,
22 which are compulsory, Your Honor. They arise
23 out of the stopping of payments or the default.
24 I think Your Honor is aware of that facts in
25 the case. This was the matter where a HAMP

1 modification was granted in the year 2010,
2 and there were 13 accepted payments. On the
3 14th payment, they were rejected, and then
4 the commenced this foreclosure, Your Honor.
5 So we'd move to remand the case - at least, the
6 legal counterclaims - back to the jury roster,
7 at this time, Your Honor.

8 THE COURT: Okay. Ms. Glenn, what about
9 that?

10 MS. GLENN: Your Honor, it would be our
11 argument that the counterclaims are not legal,
12 that they are not compulsory. There are
13 three new counterclaims that he has
14 asserted --

15 THE COURT: Well, let me stop you there.
16 The one question I had is which -- what I'm
17 dealing with, I think, is the Answer and
18 Counterclaim filed January of 2012, because
19 the third motion is a motion to amend that.

20 In any event, I've read them both. So
21 you go ahead.

22 MS. GLENN: Well, okay.

23 THE COURT: There's some added claims and
24 defenses. But, in terms of the breach of
25 contract, fraud and negligence, I believe

1 those claims are contained in both the -- in
2 the old Answer and Counterclaim and the
3 Proposed Amended Answer and Counterclaim. So
4 go ahead from there.

5 MS. GLENN: What I was kind of going off
6 of, there were a few new counterclaims added,
7 but, your Honor, we think that the
8 counterclaims are permissive. And, based on
9 the U.S. case the Supreme Court just ruled on,
10 Carolina First, BAC, LLC, in that case, they
11 set out a couple of different assertions. And
12 they ruled that breach of contract was not held
13 to be a legal compulsory counterclaim. In this
14 particular case, they say that was because
15 the breach that they were referring to was
16 two years after the guarantee had been
17 executed; so, therefore, the claim does not
18 arise out of the ongoing transaction or
19 occurrence, because it does not affect the
20 execution or the enforceability of the
21 guarantee agreement.

22 THE COURT: Okay. Well, let's stop
23 there. If I remember, from the first,
24 obviously, it's not a mortgage foreclosure,

1 right? Was it a mortgage foreclosure? It
2 had to do with the guarantee.

3 MS. GLENN: Guarantee, yes, sir. Yes,
4 Your Honor.

5 THE COURT: Was it a mortgage foreclosure?
6 What's the name?

7 MS. GLENN: BAC, LLC.

8 THE COURT: It's clearly a debt.

9 MS. GLENN: Yes, it's a foreclosure
10 action.

11 THE COURT: Okay. All right.

12 MS. GLENN: I've been so focused on the
13 last part.

14 THE COURT: Okay. And read that language
15 again, please.

16 MS. GLENN: Well, this is just, right
17 now, on the breach of contract counterclaim.

18 THE COURT: Correct.

19 MS. GLENN: They stated that the breach
20 of contract that was claimed was -- took
21 place two years after the guarantees had been
22 executed; so, therefore, the claim does not
23 arise out of the underlying transaction or
24 occurrence, because it does not affect the
25 execution or enforceability of the guarantee

1 agreement. And I would argue here the breach
2 of contract that is counterclaimed, in our
3 action, is actually talking about the breach
4 of the trial mods, so that does not arise out
5 of the stated transaction or occurrence,
6 because it doesn't -- it doesn't enforce
7 the -- it doesn't affect the enforceability
8 of the note and mortgage. It was six years
9 after the note and mortgage.

10 The case also held, Your Honor, -- I'm
11 sorry. It cited another case that found that
12 claims of fraud, negligence and unfair trade
13 practices in a foreclosure action, were not
14 compulsory, because those claims do not affect
15 the enforceability of the note.

16 THE COURT: Go ahead.

17 MS. GLENN: Those were the other
18 counterclaims that I believe were asserted.

19 THE COURT: I know I downloaded that
20 case, but do you have a copy of it for me,
21 please? It's brand new, right?

22 MS. GLENN: Yes, sir.

23 THE COURT: Couple of months or a month?

24 MS. GLENN: Very new. Well, the Supreme
25 Court just ruled on it in January.

1 THE COURT: I remember reading it. I
2 need to refresh my memory. I remember
3 reading it, but I haven't looked at it,
4 obviously. All right. I've read the BAC,
5 LLC case. Again, go ahead, Ms. Glenn.

6 MS. GLENN: To continue on, BAC, LLC
7 states that, one is entitled to a jury trial
8 on counterclaims in an equitable action only
9 if the counterclaims are legal and compulsory
10 in nature. The counterclaim is compulsory,
11 if it arises out of the same transaction and
12 occurrence as the party's claim. In a
13 foreclosure action, a counterclaim arises out
14 of the same transaction and occurrence and is
15 thus compulsory when there is a logical
16 relationship between the counterclaim and the
17 enforceability of the guarantee agreement,
18 (inaudible), mortgage owner.

19 I would argue that these counterclaims
20 asserted are permissive, in nature, as they
21 do not affect the enforceability of the note
22 and mortgage.

23 THE COURT: What about the logical
24 relationship test?

1 MS. GLENN: I don't -- It's my position
2 that there's not a logical relationship,
3 because the counterclaims are based on the --
4 any breach or fraud that he's alleging is
5 based on the trial modification, which does
6 not affect the enforceability of the
7 underlying note and mortgage.

8 THE COURT: Okay. Mr. Halford?

9 MR. HALFORD: Yes, sir. In brief
10 response, I respectfully disagree, Your
11 Honor. What makes it compulsory, in this
12 instance, is the default was cured by their
13 own correspondence to my client; and then
14 they continued to accept, as you recall, 13
15 payments, in this instance, stopping the 14th
16 and placing her in foreclosure. So the
17 default was cured, actually, back in October
18 of 2010, and she continued to make payments;
19 and they continued accepting credit
20 statements. It states here, thank you for
21 fulfilling this commitment. So the default
22 are the crediting the payments -- excuse me --
23 stopping the payments, in this case, Your
24 Honor, I'd argue, is both compulsory, and
25 there's no fault in the original complaint.

1 I made a motion to amend. But, as to the
2 breach of contract and/or the negligence
3 counterclaims, I believe those are questions
4 of fact, and we'd ask that it be sent to the
5 jury roster, Your Honor.

6 THE COURT: Well, not so fast.

7 MR. HALFORD: Yes, sir.

8 THE COURT: I would make a distinction
9 between the breach of contract counterclaim
10 and the fraud and unfair trade practices and
11 FDCPA. The FDCPA counterclaim is just in the
12 new -- in the one we -- in the opposing
13 amended counterclaim? I can't remember.

14 MR. HALFORD: I believe that was in the
15 original, but I --

16 THE COURT: Well, in any event, it seems
17 to me to be that fraud, negligence, FDCPA
18 claim and any unfair trade practices claim,
19 are premised entirely on conduct unrelated to
20 enforcement of the note and the mortgage and
21 could be maintained separate and apart from
22 the foreclosure action. And they are not
23 related to the enforceability of the note and
24 mortgage. They are related to the Plaintiff's
25 alleged conduct not arising out of contract.

1 I'm talking about fraud, negligence, unfair
2 trade practices, and FDCPA. Now, I'm not
3 talking, you know, about the breach of
4 contract.

5 MR. HALFORD: I understand, Your Honor.
6 Those matters were not in the original
7 Complaint, just the FDCPA that the -- You're
8 referring to matters which we sought to
9 amend. They're not in the original Answer.

10 THE COURT: Well, we can -- And maybe I'm
11 covering too much at one time, but, now,
12 answer my question, I guess. How do the --
13 what the Defendant has alleged is improper or
14 unlawful conduct of the Plaintiff, unrelated
15 to the note and mortgage; but rather, in
16 failing to abide by the terms of a trial
17 modification agreement, right?

18 MR. HALFORD: No, sir. I would argue, in
19 our position, that, as I've stated, that
20 default is secured here, and she continued to
21 make 13 payments. And the lender rejected
22 the 14th and then placed her into foreclosure.
23 However, Your Honor, with the enforceability
24 of the note and mortgage, she also pleaded,
25 in her original Answer, and, again, there

1 will be an equitable defense, obviously, Your
2 Honor.

3 THE COURT: Well, we can cast those
4 aside. Those would have to be heard. Well,
5 they're non-jury, anyway. All but equitable
6 defense -- And I've looked at that, in trying
7 to get prepared for the motion. The equitable
8 defenses do not afford a jury trial right, in
9 any event.

10 MR. HALFORD: I would agree with that,
11 Your Honor.

12 THE COURT: As an aside, what is her --
13 what are her damages, in these legal causes
14 of action?

15 MR. HALFORD: Increased fees, Your Honor,
16 penalties and fines. As you've stated, I'm --
17 I know it probably doesn't mean much to the
18 Court, you know, she's got the right to have
19 and communicate to her attorney. They've been
20 to her door 15 or 20 times, after Dean was --
21 excuse me -- after Korn and their client was
22 notified that she's represented by counsel, I
23 mean --

24 THE COURT: Well, isn't that conflict
25 outside the enforceability of the note and

1 mortgage? I don't deny that that may afford
2 the basis for a claim. And I denied -- You
3 know, I think, didn't I deny summary judgment
4 to the --

5 MR. HALFORD: You did. Today's motion is
6 based to bifurcate and refer back to the jury
7 roster, Your Honor.

8 THE COURT: I mean, I don't -- I'm not
9 saying that there may not be conduct
10 unrelated to the enforcement of the note and
11 mortgage. An FDCPA claim doesn't have
12 anything to do, necessarily, with the
13 enforcement of the note and mortgage. It
14 stands alone. If there may -- She could be
15 current and, if they devoured the FDCPA, she
16 has a standalone claim. She could be current,
17 if she -- If they harassed her, she has a
18 standalone claim. That's what I'm saying. If
19 she's suffered damages by fraud -- She could
20 be current, but if she suffered damages by
21 fraud, in this trial mod program, she could
22 bring a standalone claim, it seems to me.
23 Now, again, I'm guessing which contract.

24 MR. HALFORD: Your Honor, in discussing
25 both the negligence and the breach of

1 contract claim, we seem to be focused on the
2 negligence, at the moment. If I'm wrong,
3 please tell me. But, you know --

4 THE COURT: Well, no, I wasn't focusing
5 on the negligence. I just named those three,
6 negligence, fraud, FDCPA, unfair trade
7 practices.

8 MR. HALFORD: Well, the interesting
9 thing --

10 THE COURT: But go ahead, if you want to
11 talk about the negligence.

12 MR. HALFORD: Well, one of the
13 interesting things about the case is, Your
14 Honor, they tell her, in 2010, after she
15 successfully completes the three trial
16 modification payments, that she's pleased to
17 afford that, under their special forbearance
18 agreement. She never applied for a
19 forbearance agreement, ever.

20 THE COURT: Well, that's a question of
21 fact. I'm not --

22 MR. HALFORD: That's the --

23 THE COURT: The question here is whether
24 those facts are decided by a jury or the
25 courts, without a jury. I don't -- Look,

1 I've seen plenty of crazy fact situations
2 that have been created by numbers. I'm not
3 saying this is one, because I don't know the
4 facts. But what -- All I am saying is the
5 issue here is whether -- whether, in respect
6 to the tort claims, I'll call them, and
7 statutory claims, those bear any logical
8 relationship to enforcement to the note and
9 mortgage, or are they essentially standalone
10 claims. That's the problem I'm having. I'm
11 not saying that she hasn't been -- Somebody
12 would've -- Somehow, somewhere, sometime,
13 somebody would determine whether she's --
14 whether the Plaintiff has wronged her. The
15 question is who will that be. Will it be a
16 jury or a judge, sitting without a jury.

17 What's your response to that?

18 MR. HALFORD: I think there is a logical
19 relationship. The HAMP modification grew
20 straight out of the mortgage, which was in
21 default. And I'm not denying that she had not
22 missed payments, but at the point that she
23 negotiated that HAMP modification, which
24 occurred back in, again, 2012, it states that
25 it is a HAMP modification, it's not a

1 forbearance. A 877.22 payment, and she
2 successfully makes three. And they
3 acknowledge, in writing, that she'd made
4 three.

5 THE COURT: I understand.

6 MR. HALFORD: I think it's whether or not
7 she modified the note. So what the agreement
8 was, Your Honor --

9 THE COURT: Well, here's what I -- I'm
10 sorry. Go ahead.

11 MR. HALFORD: As to what that agreement
12 was, I think she successfully negotiated and
13 navigated a HAMP modification; and, obviously,
14 she was denied a fair opportunity to
15 consummate that. I think it's a question for
16 the jury.

17 THE COURT: Well, it's certainly a
18 question of fact for somebody.

19 All right. Tell me -- Let's talk about
20 the breach of contract.

21 MR. HALFORD: Yes, sir.

22 THE COURT: What's the essence of the
23 breach of contract claim?

24 MR. HALFORD: Failure to meet the
25 substance of offer, acceptance in writing,

1 and consideration of payment, which was
2 accepted.

3 THE COURT: Let's talk about its
4 relationship to the mortgage foreclosure.

5 MR. HALFORD: Yes, sir, I will. It's our
6 fifth defense, Your Honor, that we alleged --
7 and, again, those are equitable, also. But
8 we alleged that there was a new agreement
9 form, by contract, Your Honor; and, again, it
10 was in writing, signed by my client, and
11 consideration was conveyed and accepted. So,
12 again, going back to whether or not it's
13 compulsory and whether or not there is a
14 logical relationship, clearly, I think it
15 goes to the enforceability of the note and
16 mortgage, as it was modified, not under the
17 original terms of the mortgage. There is no
18 question here that they modified it or that
19 she, at least according to them, completes
20 their trial plan. It was a HAMP trial plan.
21 It was not a forbearance. So at the point
22 that there is a default, Your Honor, it is
23 not my client degrading the default; it is
24 Bank of America.

1 THE COURT: It seems to me that she's
2 either, at some point, in default, or she was
3 not. If she was not, they can't foreclose
4 the mortgage. If she was, they can,
5 obviously.

6 MR. HALFORD: Do you want me to sit down,
7 Judge?

8 THE COURT: Pardon me?

9 MR. HALFORD: Do you want me still
10 standing? I didn't know --

11 THE COURT: No. Well, no, have a seat.

12 MS. Glenn, how about this? If --
13 What is the allegation of default? I've got
14 the Complaint here. Hang on a minute. Let
15 me --

16 MS. GLENN: As in the date of default?

17 THE COURT: Yes. Well, involvement. I
18 assume that it -- It has to be failure to
19 make a payment, right?

20 MS. GLENN: Yes, sir.

21 THE COURT: A timely payment.

22 MS. GLENN: May 1st, 2010.

23 THE COURT: Okay, hang on. I'm looking
24 at the Complaint. Hang on just a minute.
25 Okay. Monthly payments due or in default

1 since May 1, 2010. Is there anything in the
2 file indicating to me what the basis of that
3 assertion is? Payments were in default. Why
4 were they in default? What is the
5 Plaintiff's claim?

6 MS. GLENN: That she hasn't -- That her
7 payments are not current.

8 THE COURT: Well, what triggered the
9 default? That's what I want to know.

10 MS. GLENN: What I -- What's been
11 explained to me --

12 THE COURT: Well, let's back up. Let me
13 be sure I'm saying it right. All right.
14 Does the Plaintiff acknowledge that there was
15 some sort of modification agreement going
16 forward?

17 MS. GLENN: The Plaintiff acknowledged
18 that there was a modification -- a trial
19 modification was offered and that they did
20 accept payments, but that the modification
21 agreement was never ratified. It never came
22 into fruition into a full modification,
23 because the -- my client claims that they
24 never received the signed document back from

1 the Defendant, which would take it from a
2 trial mod to a permanent modification.

3 THE COURT: But they kept --

4 MS. GLENN: They did continue to make
5 payment -- or to collect payment, Your Honor,
6 or keep the payments, Your Honor, and they --
7 The way they explain that is that they just
8 apply them to what is owed. As to a trigger
9 that these banks do, as when they decide,
10 we're going to file a foreclosure tomorrow. I
11 don't know that. That's a good question,
12 because sometimes you'll have one that is in
13 default for three years before they decide to
14 pull the trigger and file foreclosure.

15 THE COURT: Well, the trigger, in a
16 general sense, if I understand you right, is
17 that they say that the signed agreement was
18 not returned?

19 MS. GLENN: That is correct. And we
20 discussed that prior -- previously.

21 THE COURT: Yes, I don't remember what
22 --

23 MS. GLENN: But she -- or they offer
24 modification. They do all the paperwork,
25 trial modifications, sets out payment

1 schedule. But my clients claim that they did
2 not see a return signed document from the
3 Defendant stating that -- and it clearly
4 stated, you must returned this signed to us
5 to tender into a full trial modification,
6 permanent modification. My client's saying
7 that that never occurred; so, therefore, the
8 modification went away.

9 THE COURT: And she is in default.

10 MS. GLENN: Correct.

11 THE COURT: Then why isn't there some --
12 and I don't mean necessarily a lot, but some
13 logical relationship between their claim of a
14 default and her claim of breach of contract?

15 MS. GLENN: I mean, I would just argue
16 that there is a logical relationship, because
17 the breach of contract claim that comes out
18 of the trial modification, that never went to
19 a permanent modification, so it didn't change
20 any terms of the original contract and was
21 in court --

22 THE COURT: Okay. Go ahead.

23 MS. GLENN: -- for years afterwards.

1 THE COURT: So she made the payments how
2 long before they declared it in default? Is
3 he right? Is Mr. Halford right?

4 MS. GLENN: I think that's about right.
5 I think they've gotten about ten payments and
6 then stopped those other payments.

7 THE COURT: Okay.

8 MR. HALFORD: Briefly, Your Honor.

9 THE COURT: Yes, sir.

10 MR. HALFORD: As of May, 2010, she is in
11 a trial modification.

12 THE COURT: We've already been over that.

13 MR. HALFORD: Okay.

14 THE COURT: I mean, I'm assuming that to
15 be true.

16 MR. HALFORD: All right. Thank you.

17 THE COURT: The question is whether
18 there's logical relationship between -- You
19 do need to stand up. I'm talking to you.

20 MR. HALFORD: I'm sorry, Your Honor.

21 THE COURT: Whether there's a logical
22 relationship between the counterclaim of
23 breach of contract and the enforceability of
24 the note and mortgage. And I'm inclined to
25 believe it probably is. It's not a

1 separate -- It's not -- It's really not -- In
2 the mortgage business, it's really not a
3 separate agreement. That was to become --
4 Let me say it this way. If they hadn't
5 declared her in default, in the trial
6 modification agreement, they couldn't have
7 enforced the note and mortgage. So I find
8 that there is, in this -- and these facts --
9 and the BAC case says that. Because it is a
10 fact intensive thing, I find that there is
11 some logical relationship between the breach
12 of contract and the enforceability of the
13 note and mortgage. Thus, that that is a
14 compulsory legal counterclaim and is entitled
15 to be bifurcated and tried before a jury.

16 Now, since we're talking about -- Y'all
17 haven't done any discovery, have you? You
18 have?

19 MR. HALFORD: Yes, sir.

20 THE COURT: What discovery do you have
21 about damages, Mr. Halford?

22 MR. HALFORD: They've taken my client's
23 deposition.

24 THE COURT: What are the alleged legal
25 damages of breach of contract?

1 MR. HALFORD: According to their
2 Affidavit of Debt, which she would -- in order
3 to properly reinstate, there's over a hundred
4 thousand dollars.

5 THE COURT: Well, that's not damages.
6 That's what -- That's as a result of their
7 failing to accept payments. I mean, they've
8 waived the deficiency. There's a waiver of a
9 deficiency. The damages all relate to -- If
10 the damages all relate to the failure to
11 make -- or what they claim -- Under the note
12 and mortgage, that's not damage. She owes
13 it. The question is whether she has to pay
14 it so one of the mortgages can be foreclosed.
15 She owes it. If it's -- If those are
16 payments, under the note and mortgage, she
17 owes it. The question is whether the note
18 and mortgage can be enforced, under the
19 circumstances. I mean, she owes the debt.
20 But the breach of contract cause of action
21 will not extinguish the debt. It will
22 provide her -- It could provide her extra
23 money -- I'm not sure what -- to apply to the
24 debt, but it won't extinguish the debt any

1 more than a negligence or fraud cause of
2 action.

3 Maybe I made a mistake in saying it's a
4 compulsory counterclaim, because the result
5 of the -- well, I'm going to stick by that.
6 The result of the -- what are the damages?
7 Let me just ask that. What she owes is not
8 her damages. She owes it.

9 MR. HALFORD: Damages being the amount of
10 which they've sought to collect. That's in
11 violation of the Fair Debt Collision
12 Practices Act.

13 THE COURT: Well, what are they?

14 MR. HALFORD: I think that's determined
15 by the charter of fact.

16 THE COURT: Well, what evidence is there?
17 That's what I'm asking you.

18 MR. HALFORD: How many of these have you
19 got on the --

20 MS. GLENN: I think, 15.

21 THE COURT: Money. Money. I'm talking
22 about money.

23 MR. HALFORD: I don't recall what the
24 fines are. I don't know, under the FDCPA,
25 what the remedy would be.

1 THE COURT: Well, that'd be a statutory
2 penalty. Or, I'm not sure. I don't -- There
3 have been no motions -- Did we hear motions
4 related to any of the counterclaims, like the
5 FDCPA, fraud, or anything like that? Have
6 there been any motions about that?

7 MS. GLENN: No, Your Honor, not on my
8 behalf. The only motion, prior to this one,
9 I believe, is his motion for summary judgment.

10 MR. HALFORD: That's correct.

11 THE COURT: Well, depending on what may
12 come of it, there may not be an FDCPA cause
13 of action at all. But that's not before me.

14 What I need to know is what damages does
15 she claim? You haven't discovered that? Has
16 any number been provided? Do you have
17 interrogatories?

18 MS. GLENN: I see -- I mean, we have. I
19 don't know, off the top of my head. Let me
20 pull this up. He claims a seventy-five
21 hundred dollar amount in the --

22 THE COURT: No, it just says over
23 seventy-five hundred dollars, in the
24 counterclaim. Damages in excess of seventy-

1 five hundred dollars. That's to keep it out
2 of the magistrate's court, I guess.

3 MS. GLENN: I'm having a hard time finding
4 their responses to all of those.

5 THE COURT: Well, you don't need to do
6 that now. I just -- If Mr. Halford, can't
7 tell me, I don't know how you would know.
8 What out-of-pocket money has she lost? Or --

9 MR. HALFORD: Aside from hiring counsel,
10 I'm not sure.

11 THE COURT: Well, there's no -- There
12 would be no -- Is there a right to attorney
13 fees for breach of contract?

14 MR. HALFORD: We sent the contract
15 (inaudible) a statute. In a general
16 response, I think, --

17 THE COURT: Well, I know.

18 MR. HALFORD: -- yes, sir. I mean, there
19 is an agreement in writing, and I have --
20 Forgive me, because I didn't memorize the
21 three-page agreement, but it was signed by my
22 client with a consideration extended. There's
23 the chief's order. There are two of the
24 chief's orders.

1 THE COURT: The chief's order doesn't
2 provide for attorney fees, does it?

3 MR. HALFORD: I believe it does.

4 THE COURT: Does it, Ms. Glenn?

5 MR. HALFORD: In the discussion of the
6 Court, Your Honor. I'm sorry.

7 THE COURT: I don't believe the chief's
8 order provides payment of attorney fees. But,
9 assuming it does, I'm at a loss to understand
10 what her damages are. She can't claim, as
11 her damages, what she owes. It's as simple
12 as that. If she owes a hundred thousand
13 dollars, that's not damages. Now, they might
14 not be able to complete their foreclosure
15 action, by reason of the breach of contract.
16 But the hundred thousand dollar she owes, by
17 definition, is not damages.

18 All right. I'm -- I find that the breach
19 of contract action has some logical
20 relationship to the enforcement of the note and
21 mortgage, so that it's a compulsory
22 counterclaim and the Defendant would be
23 entitled to a jury trial on that, as to the
24 tort claim. By that, I mean fraud and
25 negligence. I rule they are permissive.

1 Their right to a jury trial has been waived,
2 as to those, and they would be heard in
3 conjunction with the foreclosure case.

4 AS to the FDCPA, I don't know what -- Let
5 me see what else is in the original answer and
6 counterclaim.

7 MR. HALFORD: I was going to advise the
8 Court that there was no fraud in the original.

9 THE COURT: Okay.

10 MS. GLENN: Fraud and unfair trade and
11 breach of fiduciary duty, I think, were the
12 three new ones.

13 THE COURT: Well, I'm going to leave
14 questions of -- that the validity of the
15 counterclaims to whatever motions the
16 Plaintiff wants to make.

17 MR. HALFORD: Judge, are you changing
18 your prior order?

19 THE COURT: To what?

20 MR. HALFORD: All motions were to be made
21 by March 15th, I believe it was. I'd have to
22 look at your --

23 THE COURT: Well, is the case on the jury
24 roster? It's a 2011 case. You could probably
25 be tried tomorrow.

1 MR. HALFORD: I don't think it'd take but
2 a day.

3 THE COURT: Is the discovery complete?

4 MS. GLENN: We have a deposition tomorrow,
5 at his office.

6 THE COURT: What else, other than that?

7 MR. HALFORD: That would complete it,
8 from my side, Your Honor. It would be ready
9 for trial.

10 THE COURT: Ms. Glenn?

11 MS. GLENN: I'd have to go talk with my
12 client. I suppose they might want to -- But
13 she's already been deposed, correct?

14 THE COURT: Yeah. I do not recall if
15 there's a scheduling order that said that all
16 motions have to be filed and heard, dispositive
17 motions by a date.

18 MS. GLENN: Yes, Your Honor, I can do --
19 set it for the May 4th -- stating that we
20 will come back before you May 4th.

21 THE COURT: For the trial?

22 MS. GLENN: The trial.

23 MR. HALFORD: That's correct.

24 THE COURT: Well, that would go by the
25 boards and, based on my ruling about the

1 contract, breach of contract, because that
2 would have -- that could be tried first.

3 I know I'm stretching this out. But,
4 Mr. Halford, I can't -- I have trouble
5 conceptualizing what relief you would get --
6 what legal relief you would get, as a
7 result -- if the Defendant prevailed upon the
8 breach of contract counterclaim. Let's just
9 say she did, and the jury awarded her some
10 additional -- maybe late charges or something
11 like that, that was charged, as a result of
12 Plaintiff declaring her in default, what then
13 would be the status of the note and mortgage?

14 MR. HALFORD: After those claims were
15 tried, they would be subject to foreclosure
16 in a hearing before Your Honor.

17 THE COURT: Well, then the breach of
18 contract claim would not affect the
19 enforceability of the note and mortgage,
20 then, would it?

21 MR. HALFORD: No, sir, I disagree. I
22 think the breach of contract to the -- if
23 true, if there is one -- which hasn't been
24 determined -- does affect the enforceability
25 of that mortgage to the state. And I think

1 to require her to go forward with the --

2 THE COURT: Well, let me say it this way.
3 Wouldn't it be true that -- wouldn't it be
4 true that the note -- that if she prevailed
5 on the breach of contract claim and received
6 her damages, that the -- that she would still
7 have to pay the note and the mortgage -- pay
8 the note? She owes the money. Wouldn't she
9 still have to pay?

10 MR. HALFORD: I think it's for the jury
11 to decide which note or mortgage she would
12 pay under.

13 THE COURT: Excuse me?

14 MR. HALFORD: I think it would be a
15 question for the jury to determine which or
16 what that agreement was, at this point. It
17 has been modified --

18 THE COURT: But we know that the
19 agreement was that she agreed to pay, even
20 the trial and the modification -- loan
21 modification, she agreed to pay. So what
22 you're saying is she's had damages for breach
23 of contract. Well, so she recovers those
24 damages and assumes (inaudible) that I'm
25 correct, just in case I might be, about

1 the -- that she can't claim as damages what
2 she knows. Now there's some statutory causes
3 of action, for example, that don't apply to
4 this case, where a remedy is -- that deals
5 with extinction of the debt, but that's not
6 what she's asked for. That's not what she's
7 asking for. She's asking for money damages
8 for breach of contract. So, if she gets her
9 money damages, she's still left with a note
10 and a mortgage to pay, under a completed loan
11 modification.

12 MR. HALFORD: I think that's accurate.

13 THE COURT: Okay. Well, I'm going to
14 reverse myself. I think that the breach of
15 contract claim is not logically related to
16 the enforceability of the note and mortgage.
17 And, thus, the counterclaim is not compulsory.
18 And the right to a jury trial has been waived.
19 Because, when the dust settles, she still
20 owes the money. I mean, the payments -- If
21 she gets -- If a judge hears the case and
22 rules in her favor for breach of contract and
23 she's awarded some amount of damages, she's
24 still going to have to pay the debt. And
25 what puzzles me -- what troubles me about

1 that is that there's going to have to be some
2 equitable relief granted, in conjunction with
3 that, because they wouldn't accept payments.
4 Now, and that equitable relief might have to
5 be that she pays them those payments now and
6 they go forward. She pays the payments up to
7 date that they wouldn't accept, that
8 presumably she's kept. And the case -- And
9 then the mortgage goes forward and in current
10 status.

11 All right. So, I'm going to -- I guess
12 I'll say I'm going to reverse myself. I've
13 talked myself right out of it. I believe
14 that there isn't a logical relationship
15 between the breach of contract claim, or any
16 other counterclaim, and the enforceability of
17 a note and the mortgage. Because, the relief,
18 coming out of the breach of contract claim,
19 will not extinguish the note and the
20 mortgage. She will still have an obligation
21 to pay. Now, all that means is she gets to
22 try the case, but it just won't have a jury
23 trial, and all of it will be tried together.

24 Now, -- And, you know, without comment on
25 the facts, it does seem strange to me that

1 the Plaintiff would accept, what I remember,
2 the payment's accepted, and then, all of a
3 sudden say, well, okay, no more. And that's
4 to be determined at a trial.

5 So, I deny your motion. That's where I
6 am on that. Now, we've got the motion to
7 amend. Is there anything different, in the
8 causes of action, that you want to assert?
9 What are the extra causes of action?

10 MR. HALFORD: Ms. Glenn has accurately
11 recited them, breach of fiduciary duty being
12 first.

13 THE COURT: All right. That does not
14 affect -- I would rule that that's also not a
15 compulsory counterclaim, so it could be tried
16 with the -- could be tried with the rest of
17 the case, non-jury.

18 MR. HALFORD: Thank you, Your Honor.

19 THE COURT: Is that the only one?

20 MR. HALFORD: No, sir. The second was
21 fraud, which, as the Court's aware, --

22 THE COURT: I've already commented on
23 that.

24 MR. HALFORD: -- it must be proved by
25 (inaudible), and, presumably, the Court

1 doesn't want me to go through them, at this
2 point. And --

3 THE COURT: Right.

4 MR. HALFORD: -- third would be unfair
5 trade practices violation, Your Honor.

6 THE COURT: See, she's not -- Cam, she's
7 not claiming that the note and mortgage, in
8 its first instance, wasn't lawfully made. So
9 you're left with that. The only question is
10 whether she can be declared in default by
11 the -- by a breach of the trial modification.
12 The more I talk, the more I'm talking myself
13 into believing it's not a logical
14 relationship.

15 If the claims that she's making had to do
16 with the original note and mortgage, then you
17 got a point. And that's kind of what the
18 case -- the BAC case says, but they're not.
19 They're still there. The bank may not be --
20 And you've asserted equitable defenses. The
21 bank may not be able to foreclose, because
22 they breached their agreement or the other
23 equitable defenses, which means that Ms.
24 Minardi would have to -- some arrangement
25 would have to be made to catch up the

1 payments and go forward with the loan, under
2 the modification agreement. But, the note
3 and mortgage are still there, no matter what.
4 Nobody's ever claimed that the note and
5 mortgage were not lawfully made, on either
6 side. So --

7 MR. HALFORD: Just briefly --

8 THE COURT: I'm going to let you -- If
9 you're going to add causes of action, I'm
10 going to extend the time for the making of
11 motions to deal with them. Did we say we
12 were going to try it in -- May the 4th or so?

13 MR. HALFORD: Yes, sir.

14 MS. GLENN: I believe that's what you had
15 stated, Your Honor. But, I think you said,
16 you know, if we can try and get something
17 worked out. We've got this deposition
18 tomorrow. We've got witness coming, someone
19 in authority, so (inaudible).

20 THE COURT: All right. Well, I didn't
21 pull the scheduling order, so you guys have
22 got to tell me what's in it, what I said
23 about the trial. Did I say May the 4th?

24 MR. HALFORD: Yes, sir, you did.

25 MS. GLENN: Yes, Your Honor.

1 THE COURT: Okay. If you want to add
2 the -- If you want to add the causes of
3 action, I'm going to extend the time to make
4 motions, if any; and I will extend the trial
5 date for 30 days, which will be June the 3rd.
6 You'll have to check with Mary Ann to see what
7 that is, for a date. I'm not sure what we
8 may or may not have for that day, but that
9 would be June the 3rd. So that's your choice.
10 We can either go forward without the causes
11 of action. I find that they are not
12 compulsory. If you assert them, they're
13 waived, the jury trial's waived, and they'll
14 be tried non-jury. If you don't assert them,
15 according to my ruling, they're not
16 compulsory, and you could bring them later;
17 but, that's up to you. So, do you know what
18 you want to do?

19 MR. HALFORD: I would like to add the
20 breach of fiduciary --

21 THE COURT: All right. So we'll extend --
22 We'll extend the motions to May the 4th and
23 extend the trial date to June the 3rd,
24 assuming that that date is available. Okay?
25 And I think that --

1 MS. GLENN: If you would like, I'll
2 (inaudible) to Maryann, maybe tomorrow after
3 our deposition, to make sure June 3rd works.

4 THE COURT: I think you ought to stop on
5 your way out --

6 MS. GLENN: Okay. Okay.

7 THE COURT: -- and ask her. All right.
8 Anything else? So the Motion to Amend is
9 granted. The Motions to Bifurcate is denied.
10 I want you to e-mail me an order, in Word
11 format, denying the motion to bifurcate and
12 for the jury trial, based on the logic
13 I've -- if it's logical -- the logic upon
14 which I've based the rule; that is, that the
15 recovery, on the breach of contract claim,
16 does not affect the enforceability of the
17 note and mortgage, because the legality and
18 propriety of the note and mortgage, the
19 original transaction, is not challenged. At
20 some point, it is enforceable. And I think
21 that's consistent with the BAC case.

22 MR. HALFORD: And I apologize. I didn't
23 have the B A C case before I appeared this
24 morning. I just want to, for the record
25 purpose, Your Honor, --

1 THE COURT: Yes, sir.

2 MR. HALFORD: What the contract now is,
3 subsequent to the modification, I think, is
4 to be determined by a trier of fact. I'll
5 need a copy of the tape, before Your Honor,
6 at this point.

7 THE COURT: I don't have a tape. What
8 you have to do is you have to hire a court
9 reporter. I will provide the court reporter
10 with a -- with the -- this proceeding, a copy
11 of this proceeding, on flash drive. They
12 need to let us know when they're coming, so
13 we can locate it, and all that.

14 MR. HALFORD: Yes, sir.

15 THE COURT: Anything else?

16 MR. HALFORD: Nothing from us, Your
17 Honor.

18 THE COURT: That concludes the hearing.
19 Thank you.

20 MS. GLENN: Thank you, Your Honor.

21 THE COURT: Yes.

22

23

24

25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) 2014-CP-46-250

Bank of America, N.A.,)
successor by merger to BAC)
Home Loans Servicing, LP,)
f/k/a Countrywide Home)
Loans Servicing, LP,)

Plaintiff,)

vs.)

Michelle Minardi and Ameris)
Bank,)

Defendants.)

TRANSCRIPT OF PROCEEDINGS

YORK, SOUTH CAROLINA

JUNE 30, 2015

COPY

REPORTER: Cathy L. Young, CVR-M

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1 APPEARANCES:

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7 Representing the Defendant
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PROCEEDINGS

BEFORE: THE HONORABLE S. JACKSON KIMBALL

(1:00 P.M.)

* * * * *

THE COURT:

This is Case Number 2011-CP-46-4278, Bank of America against Michelle Minardi and others. Present and representing the Plaintiff is Mr. Will Stork. Present and representing the Defendant Ms. Minardi is Mr. Cam Halford. I believe, Mr. Halford, this is your motion to reconsider, isn't it?

MR. HALFORD:

Your Honor, that is correct.

THE COURT:

All right. Go ahead.

MR. HALFORD:

May it please the Court, Your Honor, last time we were before you was April the 14th and the Court will recall that we had a deposition which was to occur the next day, April the 15th. That deposition did occur. Bank of America's designee under Rule 30(b)(6) appeared at my office and testified, Your Honor. We've asked the Court to reconsider its last Order, I believe the date was March -- excuse me, May 17th was that Order, Your Honor. And in that hearing,

1 Your Honor may recall, it was a pretty close call
2 between whether the counterclaims in this case were
3 compulsory, legal counterclaims were permissive in
4 the Court.

5 THE COURT:

6 I ruled, didn't I --

7 MR. HALFORD:

8 Yes, you --

9 THE COURT:

10 -- that they were permissive?

11 MR. HALFORD:

12 Yes, sir, Your Honor, and we're asking for
13 reconsideration of that ruling. We have an equitable
14 complaint here, Judge. We have legal counterclaims
15 and you've ordered a single proceeding trial to occur
16 not in the too distant future, so just as part of
17 housekeeping, Your Honor, the claims were fraud in
18 this case. I'm going to make clear there's a footnote
19 in my memorandum, the fraud never was pleaded in
20 the original Answer and Counterclaim. Now that
21 sought by amendment and it was denied. We're also
22 asking for reconsideration of that. Just as a matter of
23 housekeeping, Your Honor --

24 THE COURT:

25 Okay, slow down just a little bit and give me just -

1 and stop for a second. Give me a minute. I'm going
2 to dig out that Order. I didn't do that, didn't get a
3 chance to do that before the hearing. Bear with me.
4 Okay, the Order that was recorded May the 20th?

5 MR. HALFORD:

6 Yes, sir, Your Honor.

7 THE COURT:

8 Okay. Go ahead.

9 MR. HALFORD:

10 Yes, sir. Previously the Defendant had asked that you
11 bifurcate these claims, and that she be permitted a
12 jury trial on compulsory legal counterclaims. Your
13 Honor held that they were permissive. We're asking
14 for reconsideration of that today, Your Honor. When
15 the deposition occurred in this case on April the 15th,
16 Your Honor, you will recall that Ms. Minardi had
17 entered a trial program, the HAMP modification
18 program. It was extended to her by Bank of America
19 back in March of 2010. She made her first payment in
20 April 2010. And you will recall the fact she made
21 some 14 payments before they were rejected by the
22 lender, Your Honor. Attached to my memorandum is
23 Exhibit A is where Bank of America notifies her that
24 she has completed her last required trial payment and
25 to please continue making your payments until we get

1 to you. And then Exhibit B to my memorandum, Your
2 Honor, is a December 2011, that's the sum of one
3 year later, notice to her from Bank of America that
4 she has been declined or has failed to qualify for a
5 HAMP modification. The two points I would like to
6 point out to Your Honor at this point is, number one,
7 in April 2010 she is granted a HAMP modification.
8 There's no dispute about this fact. Bank of America
9 grants to her in writing, she signs for acceptance,
10 there is consideration exchanged and some one-year
11 of payments go by before Bank of America interrupts
12 and rejects her payment. The second point I would
13 make --

14 THE COURT:

15 These payments were made under the HAMP program,
16 right?

17 MR. HALFORD:

18 That is correct.

19 THE COURT:

20 Under the HAMP modification?

21 MR. HALFORD:

22 Under a HAMP trial modification program, Your Honor,
23 that is correct.

24 THE COURT:

25 All right.

1 MR. HALFORD:

2 Going to Exhibit A, there's the notice from Bank of
3 America, and here's where we allege that it is in fact
4 compulsory, not permissive, Your Honor. They told
5 her that date that she has made the last required
6 payment under a special forbearance agreement. Now
7 I have to get into the deposition at this point to
8 demonstrate why we believe the claims to be
9 permissive, and I apologize, I don't have a copy for
10 Mr. Stork, but when we questioned their designee
11 under oath, Your Honor, and I will be happy to pass
12 up a condensed version if you'd like to see it, on the
13 forbearance, there's never been a forbearance applied
14 for ever. She never applied for one, they never gave
15 her one. They never even proposed that she accept
16 one. But the special forbearance agreement has been
17 used as the justification in this case, and it's
18 documented to say that she didn't qualify for the
19 HAMP modification. So on the one hand, Bank of
20 America has given a HAMP modification and she has
21 successfully tendered all payments according to their
22 documents. On the other hand, they've taken that
23 HAMP modification away from her on the basis of
24 excessive forbearance under their in-house special
25 forbearance agreement. I'd argue, too, Your Honor,

1 that constitutes compulsory conduct. The default in
2 this case that's alleged in the complaint, paragraph
3 14, says she is in default as of May 2010, and this
4 wasn't Mr. Stork's law firm that wrote the complaint,
5 but in May 2010, it's undeniable that she's making
6 payments under the HAMP modification program and
7 their 30(b)(6) designee which is Diane Deloney from
8 Plano, Texas, she flew here, had said they had all
9 been credited, not only had they extended, not only
10 had she accepted in writing, they had taken the
11 payments, accepted, and credited them, but again, in
12 December 2011, it's rejected based on excessive
13 forbearance under their special in-house, and this is
14 their testimony, not mine, forbearance agreement,
15 special forbearance agreement. That's not what she
16 was granted in May 2010. So as it alleges or as it
17 concerns the default, which they allege to be --

18 THE COURT:

19 which counterclaim are you talking about? which
20 one?

21 MR. HALFORD:

22 There were several.

23 THE COURT:

24 As I recall, they were all -- well, no, two of them were
25 based on the -- this HAMP modification business,

1 HAMP loan modification program. There was another
2 one that had to do with the FDCPA. Let me see, I
3 don't remember if there was another one.

4 MR. HALFORD:

5 There was. And my amendment, just for the Court's
6 occasion, you granted breach of fiduciary duty but
7 there were two in there. There was a proposed for
8 breach of contract which would be -- and this is
9 another reason why I believe the jury should pass on
10 these claims, Your Honor, is what contract, what note,
11 you seem to say -- you had me on a hard question
12 last time, Judge, "Does it affect the enforceability of
13 the note," and I answered in the affirmative at the
14 last hearing, but which note? We've got a 2008
15 mortgage as the note they're seeking to foreclose
16 after she successfully completes, according to their
17 documents, a 2010 HAMP modification. So as to what
18 agreement was intended or if they have, and I
19 understand I lost the argument or the Chief's
20 Administrative Order, what note and what agreement
21 are we talking about? Are we talking about the 2008
22 or are we talking about the 2010? Because according
23 to Bank of America's records, she tendered the last
24 required payment.

25 THE COURT:

1 That was the HAMP modification.

2 MR. HALFORD:

3 Yes, sir. And then we get into -- and you're recall Ms.
4 Glenn was here last time, she didn't provide sufficient
5 information, we needed more information. Their
6 designee testifies that she later provided all the
7 information. So again, are the claims compulsory?
8 Do they arise out of the same transaction or
9 occurrence? Are they that logically connected? It
10 doesn't get any more compulsory than this. It arises
11 straight out of the default that they allege in their
12 complaint, which was a HAMP modification that she
13 successfully navigated. At the point that it is rejected
14 or taken from her, it is done so under the guise of a
15 special forbearance agreement, and it is in black and
16 white. So I'd respectfully ask for consideration.

17 THE COURT:

18 Mr. Stork?

19 MR. STORK:

20 Your Honor, the agreement entered into by
21 Ms. Minardi is a trial period plan. And it states
22 directly within the text of this document, I understand
23 this plan is not a modification of the loan documents
24 and that the loan documents will not be modified
25 unless and until I meet all the requirements for

1 modification. Mr. Halford, in his memo in support,
2 included the denial letter for this stating that they
3 could not reach the 31 percent threshold, which would
4 be a requirement for a permanent modification. This
5 was not a guarantee of a modification in any way. As
6 a matter of fact, it states right there that this is not a
7 modification whatsoever. What it is is it's an attempt
8 to try to work something out with Ms. Minardi, a good
9 faith attempt on part of the Plaintiff Bank of America.
10 They did tender these payments. They did apply
11 these payments. Once that this trial period plan was
12 completed, they then took a look at her economic
13 situation at that time, and she wasn't denied for
14 missing documents or one of those things. They went
15 through, reviewed her finances, and denied her based
16 on the federal guidelines of 31 percent. Bank of
17 America's hands were tied in regards to issuing her a
18 modification at that time. But regardless of the
19 merits to any of the counterclaims that are before the
20 Court in this, the real issue is whether these
21 counterclaims are compulsory or are permissive. And
22 as Your Honor correctly ruled in his Order issued this
23 past May, these are all permissive counterclaims. Not
24 a single one of them would affect the enforceability of
25 the note and the mortgage. Let's just say even, you

1 know, assuming arguendo that Mr. Halford ends up
2 succeeding on any of his counterclaims, he can get
3 awarded money damages, absolutely he could get
4 awarded money damages for that, but that has
5 absolutely nothing to do with the fact that Bank of
6 America still has the right to foreclose under the
7 terms of the note and mortgage, which is the
8 definition of permissive as stated by the South
9 Carolina Supreme Court. So, Your Honor, we think
10 that the Court got it a hundred percent right with
11 their Order denying Defendant's Motion to Bifurcate.

12 THE COURT:

13 I doubt if I've ever get a hundred percent right.

14 MR. STORK:

15 And would ask that the Order stand as written.

16 THE COURT:

17 Okay. Mr. Halford, the issue is not whether she gets
18 a trial on her counterclaims, the issue is whether by
19 asserting them in this foreclosure action she's waived
20 her right to a jury trial. And I find and confirm that
21 she's done that. She has a trial, it's just non-jury,
22 because the counterclaims are indeed permissive. In
23 fact, this -- I want to say the last two weeks, I read
24 another case that even tightens the target more. The
25 foreclosure has to do with whether she's in default in

1 the note and mortgage, and whether the lender,
2 whomever that is in a particular case is entitled to
3 foreclose. She has a right to assert the counterclaim,
4 she's done them, they will be heard, but they're not
5 compulsory under the law. So I deny your motion.

6 MR. HALFORD:

7 Thank you for hearing us, Judge.

8 THE COURT:

9 I will say there's nothing -- I have heard nothing new.
10 That was all argued anyway.

11 * * * * *

12 (Concluded at 1:39 P.M.)

13 * * * * *

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CERTIFICATE

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I, the undersigned, Cathy L. Young, CVR-M, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing settlement was taken on the 30th day of June, 2015;

That the within deponents were sworn to tell the truth and that the foregoing is an accurate transcription of the testimony taken under oath;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of July, 2015.

CATHY L. YOUNG, CVR-M
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES FEBRUARY 19, 2019.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Bank of America, N.A., successor by merger to BAC
Home Loans Servicing, LP fka Countrywide Home
Loans Servicing, LP,

Plaintiff,

vs.

Michelle Minardi; Ameris Bank,
Defendant(s).

IN THE COURT OF COMMON PLEAS
C/A NO.: 2011-CP-46-04278

ORIGINAL

NOTICE OF FINAL HEARING

YOU WILL PLEASE TAKE NOTICE THAT, by virtue of the Order of Reference issued in the above-entitled cause, The Honorable S.J. Kimball, Master In Equity for York County, has appointed June 4, 2015 at 9:30 AM at 1 North Congress Street, Post Office Box 627, York, SC 29745, as the time and place for holding a Final Hearing in Foreclosure, at which time and place all interested parties will appear, and that the Plaintiff intends to prepare and submit a Record of Hearing containing written testimony. The Master In Equity will be authorized to enter a final judgment and to order the judicial sale of the property subject to foreclosure herein.

You are requested to notify Brock & Scott, PLLC at phone number (803) 454-3540 of your intention to appear.

Caroline Glenn

Caroline Glenn, SC Bar No. 077157
Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road Suite 110
Columbia, SC 29210
Phone 803-454-3540 Fax 803-454-3541
Attorneys for Plaintiff

Dated: April 16, 2015
Columbia, South Carolina

FILED - RECEIVED
2015 APR 20 PM 12:00
DAVID S. HILTON
C.C.P. & GS
YORK COUNTY, SC

14-22784 FC01



STATE OF SOUTH CAROLINA
COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP fka Countrywide
Home Loans Servicing, LP,
Plaintiff,

vs.

Michelle Minardi; Ameris Bank,
Defendant(s).

IN THE COURT OF COMMON PLEAS
C/A NO.: 2011-CP-46-04278

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he/she is an employee of Brock & Scott, PLLC, and is a person of such age and discretion as to be competent to serve papers.

That on the 16th day of April, 2015, he/she served a copy of the Notice of Hearing by placing said copy in a postage paid envelope addressed to each of the following persons at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

The Honorable S. Jackson Kimball
York County Master in Equity
P.O. Box 627
1 North Congress St.
York, SC 29745

J. Cameron Halford
Attorney for Michelle Minardi
238 Rockmont Drive
Fort Mill, SC 29708

Ameris Bank
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

FILED - RECEIVED
2015 APR 20 PM 12: 04
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC


Ilina Tchakarova, Paralegal
Brock & Scott, PLLC

Columbia, South Carolina

14-22784 FC01

000275

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger
to BAC Home Loan Servicing, LP FKA
Countrywide Home Loans Servicing, LP

Plaintiff,

vs.

Michelle Minardi and Ameris Bank,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-46-04278

**ORDER DENYING DEFENDANT'S
MOTION TO BIFURCATE AND
REMAND LEGAL COUNTERCLAIMS
AND GRANTING MOTION TO AMEND
PLEADINGS**

This matter came before me on April 14, 2015, upon Defendant Minardi's motions pursuant to Rule 42, SCRCP, to bifurcate and remand legal counterclaims, and Rule 19, SCRCP, to dismiss this action, and further motion to amend her Answer and Counterclaim. Representing Plaintiff was Caroline R. Glenn, and representing Defendant Minardi (hereinafter "Defendant") was J. Cameron Halford. Based on the record presented and the arguments of counsel, I make the following findings and conclusions.

BACKGROUND

This is a mortgage foreclosure action brought by Plaintiff against Defendant, asserting a default in payment. Defendant filed and served an Answer and Counterclaim on January 10, 2012, asserting counterclaims of fraud, negligence, Fair Debt Collection Practices Act violations, and Unfair Trade Practice Act violations. The case was referred to this court. The present motions were filed on March 18, 2015.

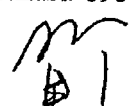
Defendant's motion pursuant to Rule 42, SCRCP, seeks to separate her "legal" counterclaims from the mortgage foreclosure aspect of the case, and have those claims heard first by a jury trial.

Defendant's motion to amend her Answer and Counterclaim seeks to add affirmative defenses and three legal counterclaims.

DISCUSSION

1. Rule 42, SCRCP.

Rule 42(b) addresses separate trials of counterclaims in order to preserve a party's right to a jury trial. The proper procedure for considering such relief is established in *Johnson v. South Carolina Nat. Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987). For the purposes of this action,



Johnson dictates that where “. . . the complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim. In such a case, the proper procedure is as follows: (a) The trial judge should, pursuant to Rule 42(b), order separate trials of the legal and equitable claims” *Id.*, 292 S.C. at 53, 354 S.E.2d at 896; *Wachovia Bank v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (2014). Where separate trials are ordered, the legal claims are to be tried first. *Johnson, supra*, 292 S.C. at 56, 354 S.E.2d at 897.

However, when the claim is equitable, but the legal counterclaims asserted in the same action are not compulsory, the defendant has waived the right to a jury trial on those counterclaims. *Id.*; *Wachovia Bank v. Blackburn, supra*. The case is then tried non-jury in one proceeding.

A counterclaim is compulsory only “. . . if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim” Rule 13(a), SCRPC. The test to determine such a connection is whether there is “a logical relationship” between the claims and counterclaims. *N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 517, 518, 381 S.E.2d 903, 905 (1989). A counterclaim has a “logical relationship” to the claim in a foreclosure action if “. . . the counterclaim would affect the lender's right to enforce the note and foreclose the mortgage.” *Wachovia Bank v. Blackburn, supra*, 407 S.C. at 331, 755 S.E.2d at 442, footnote 7.

In the present case, I find and conclude that none of Defendant's counterclaims affect Plaintiff's right to enforce its note and mortgage.

Defendant's “FIRST LEGAL COUNTERCLAIM” asserts a breach of a trial loan modification agreement. It does not challenge the validity of the note and mortgage; nor does it challenge Plaintiff's assertion of a default in payment. Thus, it is a permissive counterclaim.

Defendant's “SECOND LEGAL COUNTERCLAIM” asserts negligence on the part of Plaintiff in considering Defendant for a HAMP modification plan pursuant to a federally approved process. This has nothing to do with enforcement of the note and mortgage. Thus, this is likewise a permissive counterclaim.

Defendant's “THIRD LEGAL COUNTERCLAIM” is premised on alleged violations of the Fair Debt Collection Practices Act (28 U.S.C. § 1692 *et seq.* (“FDCPA”).) These allegations, likewise, have no relationship to enforcement of the note and mortgage, and address collection efforts and alleged misrepresentations occurring after a default. The counterclaim is, therefore, clearly permissive.

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In her proposed "Fifth Legal Counterclaim"¹, Defendant alleges a breach of fiduciary duty by Plaintiff. The allegations made relate to Plaintiff's conduct in regard to loss mitigation and loan modification efforts, not the validity or enforcement of the note and mortgage, and represent a permissive counterclaim.

In her proposed "Sixth Legal Counterclaim", Defendant alleges fraud on the part of Plaintiff, all related to actions concerning the HAMP program and loan modification process, not the note and mortgage. The counterclaim is permissive.

In her proposed "Seventh Legal Counterclaim", Defendant alleges violations of the South Carolina Unfair Trade Practices Act. Once again the allegations are directed entirely to loss mitigation relief, and modification of the loan. The original note and mortgage are not challenged, and the counterclaim is, therefore, permissive.

Plaintiff's foreclosure action is equitable in nature, and Defendant's counterclaims are legal in nature. Since these counterclaims are permissive, Defendant had the option of asserting them in this action, or alternatively, asserting them in a separate action. Where "... the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial." *Wachovia Bank v. Blackburn*, *supra*, 407 S.C. at 328, 755 S.E.2d at 441. By asserting the permissive legal counterclaims in this action, Defendant has waived her right to a jury trial on these legal counterclaims. It follows that Defendant's motion for a separate trial by jury on the counterclaims must be denied.

2. Motion to Amend.

Amendment of pleadings pursuant to Rule 12, SCRCP, is to be freely granted, so long as the adverse party will not suffer prejudice as a result. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct.App.1998).

Defendant's motion references Rule 19, SCRCP, which would ordinarily seek to add a party to this action; however, Defendant asserts Rule 19 as a basis for dismissal of this action in her Eleventh Defense in the proposed Amended Answer and Counterclaims. Defendant references only that Plaintiff's failure to effect service on Ameris Bank bars Plaintiff's equitable relief. At the motion hearing, Defendant's counsel argued only in relation to the addition of counterclaims and defenses, of which this was one, but offered no argument concerning lack of service on a named Defendant as a basis for dismissal of the action. I find and conclude that there is no legal basis to dismiss an action due to the inability to serve one of multiple

¹ The Amended Answer and Counterclaims apparently does not have a Fourth Legal Counterclaim.

BS

defendants, and thus, this relief is denied.

Based on the arguments of counsel at the hearing, I find and conclude that the only counterclaim to be added should be the "Fifth Legal Counterclaim" for breach of fiduciary duty. Leave to add the other new counterclaims is denied. Plaintiff will suffer no prejudice by adding the "Fifth Legal Counterclaim", as the factual allegations relate to the same loss mitigation efforts that are the subject of Defendant's other legal counterclaims.

Thus, Defendant's motion to amend the Answer and Counterclaim to include the causes of action for breach of fiduciary duty is granted, and the remainder of the motion is denied.

ORDER

Based on the findings, conclusions, and discussion herein, it is ordered as follows:

1. Defendant Minardi's motion to bifurcate and for separate trials as to the legal counterclaims is denied, and the counterclaims will be heard non-jury in the same trial as Plaintiff's claim for foreclosure of its mortgage.

2. Defendant Minardi's motion to amend to add a counterclaim for breach of fiduciary duty is granted. The balance of the motion to amend is denied. Plaintiff shall have thirty days from the date of this order to file and serve the amended pleading.

AND IT IS SO ORDERED.

May 19, 2015

#4


S. Jackson Kimball
Master in Equity
York County

COPY

STATE OF SOUTH CAROLINA

COUNTY OF YORK

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IN THE COURT OF COMMON PLEAS

Bank of America, N.A., successor by merger to

BAC Home Loan Servicing, LP FKA

Countrywide Home Loans Servicing, LP

☐ Plaintiff

2015 MAY 29 AM 10:35

DAVID HAMILTON

C.C.C.K. D.S.

YORK COUNTY, SC

CASE NO.

2011-CP-46-4278

v.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Michelle Minardi And Ameris Bank,

☒ Defendant.

Plaintiff's Attorney:

Caroline Glenn, Bar No.

Address:

3800 Fernandina Road, Columbia, SC 29210

phone: 803-454-3540 fax:

e-mail: caroline.glenn@brockandscott.com other:

Defendant's Attorney:

J. Cameron Halford, Bar No. 17184

Address:

238 Rockmont Drive

Fort Mill, SC 29708

phone: 803-324-8100 fax: 803-324-8109

e-mail: cam@fortmilllaw.com other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: DEFENDANT MINARDI MOTION FOR RECONSIDERATION

Estimated Time Needed: 15 Min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

May 29, 2015

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCF)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

Date Filed:

☐	MOTION FEE COLLECTED: _____
☐	CONTESTED - AMOUNT DUE: _____

FILED-RECEIVED

STATE OF SOUTH CAROLINA 2015 MAY 29 AM 10:35
COUNTY OF YORK IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

DAVID HAMILTON
C.C.P. & Q.S.
YORK COUNTY, SC

Bank of America, N.A.,
Successor by merger to BAC
Home Loan Servicing, LP,
F/K/A Countrywide Home Loans
Servicing, LP,

Case No. 2011-CP-46-04278

Plaintiff,

vs.

DEFENDANT MINARDI
NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION

Michelle Minardi, and Ameris
Bank,

AND MEMORANDUM IN SUPPORT
SCRCP 59(e)

Defendants.

TO: HON. S. JACKSON KIMBALL, III;
CAROLINE GLENN, ESQ., ATTORNEY FOR BANK OF AMERICA, N.A.

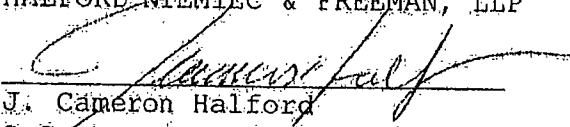
YOU WILL TAKE NOTICE that counsel for the Defendant Michelle Minardi will, pursuant to SCRCP 59(e), move before the Master in Equity Judge, within ten (10) days after service hereof, or as soon as counsel may be scheduled, for Reconsideration and for an Order to Alter or Amend the ruling of the Master in Equity dated May 18, 2015 and recorded May 20, 2015.

Defendant respectfully requests that the Master in Equity reconsider its ruling that the Defendant's counterclaims in the case are permissive and that Defendant is not entitled to, and has waived jury trial. Further, defendant respectfully asserts the trial court has erred as a matter of law by holding Wachovia Bank v. Blackburn, 407 S.C. 321, 755 S.E. 2d 437 (2014) as controlling

precedent in the case where Discovery now confirms that Plaintiff's acceptance of payments evidences no default, directly affecting the lender's right to enforce the note through foreclosure, specifically, as a remedy. The Rule 30(b)(96) deposition taken April 15, 2015 evidences denial of HAMP modification under guise of "Special Forbearance" Bank of America in-house Programs Defendant never applied for, and Plaintiff never offered. Defendant Minardi therefore seeks reconsideration of the negligence, breach of contract, and fraud¹ (proposed) causes of action in this case and seeks an Order to Bifurcate and Remand these causes of action.

Respectfully submitted,

HALFORD NIEMIETEC & FREEMAN, LLP



J. Cameron Halford
S.C. Bar No. 17184
238 Rockmont Drive
Fort Mill, S.C. 29708
803-547-6618
803-547-6638 fax

May 29, 2015
Fort Mill, S.C.

¹ The court's Order dated May 19, 2015 incorrectly cites Fraud as a counterclaim found within the original Answer. Fraud was proposed by Defendant motion to Amend Pleadings, and not claimed in the original defensive pleadings.

FILED-RECEIVED

STATE OF SOUTH CAROLINA
COUNTY OF YORK

2015 MAY 29 AM 10:35

THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Bank of America, N.A.,
Successor by merger to BAC
Home Loan Servicing, LP,
F/K/A Countrywide Home Loans
Servicing, LP,

Case No. 2011-CP-46-04278

Plaintiff,

vs.

DEFENDANT MINARDI
MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION

Michelle Minardi, and Ameris
Bank,

SCRCP 59(e)

Defendants.

Defendant respectfully requests that the Master in Equity reconsider its Order, and ruling, that the Defendant's counterclaims in the case are permissive and not compulsory. Further, defendant respectfully asserts the trial court has erred as a matter of law by holding Wachovia Bank v. Blackburn, 407 S.C. 321, 755 S.E. 2d 437 (2014) as controlling precedent where Discovery now confirms that Plaintiff's acceptance of payments evidences no default, directly affecting the lender's right to enforce via foreclosure where Plaintiff denied a HAMP modification under the guise of "Special Forbearance", and not HAMP supplemental guidelines and/or directives. Exhibit-A.

FACTUAL BACKGROUND

This case involves a June 11, 2008 mortgage where the Plaintiff alleges default in May, 2010. The undisputed facts evidence that the lender extends, and defendant accepted, a March 10, 2010 trial program under the Making Homes Affordable Program ("HAMP"). Pursuant to the parties' agreement, Defendant successfully tenders, beginning May, 2010, fourteen (14) payments from April, 2010 to May, 2011. Bank of America accepts and credits thirteen (13) of these payments. In May, 2011 the lender rejects payment returning the same to Minardi. The undisputed evidence in this case evidences Minardi entered a HAMP trial program, where she successfully completed all required trial payments. Under the guise of an in-house "Special Forbearance" program, the lender advises Minardi she has failed to qualify for permanent loan modification under the March 30, 2010 HAMP trial modification. This occurs after the lender advises Minardi she has successfully made all required payments. The age-old justification for need of yet more paperwork, or failure to qualify, is then invoked by the lender as justification for its denial of Minardi for help under the Making Homes Affordable Program, and the lender files for foreclosure in November 11, 2011.

PROCEDURAL BACKGROUND

Plaintiff alleged Defendant's default as of May, 2010. Discovery evidences Minardi is making trial modification payments

as of May, 2010 accepted and credited by the lender. Defendant Minardi filed the motions at issue on May 18, 2015 pursuant to Rule 42(b), SCRCP. Plaintiff sought relief in bifurcating and remand of Defendants' counterclaims for the purpose of jury trial pursuant to Johnson v. South Carolina Nat. Bank, 292 S.C. 51, 354 S.E.2d 895 (1987). Defendant's motion alleged that Minardi would suffer irreparable harm if the foreclosure were to be tried prior to resolution of the legal counterclaims before jury.

The trial court's May 19, 2015 Order denied bifurcation and remand, and ordered that Defendant's counterclaims be tried non-jury *"in the same trial as Plaintiff's claim for foreclosure of its mortgage"*. 5/20/2014 Order, P.4, at ¶(1). Rule 42(b) addresses separate trials of counterclaims *"in order to preserve (sic) a party's right to a jury trial."* Id.

At oral argument Plaintiff counsel submitted the case of Carolina First Bank n/k/a T.D. Bank, N.A. vs. BADD, LLC, 400 S.C. 343, 733 S.E.2d 619 (2012) in support of denial of bifurcation and remand. The court's Order of May 19, 2015 cites Wachovia Bank v. Blackburn, 407 S.C. 331, 755 S.E.2d 442 for the legal ruling that there exists no logical relationship and Defendants' counterclaims do not affect Plaintiff's right to enforce its note and mortgage. Defendant respectfully assert error of law and abuse of discretion under Johnson, *supra*, where discovery evidences Bank of America denial of a HAMP modification utilizing its own in-house "Special

Forbearance" agreement -- one that Plaintiff Bank of America never offers, and one which Defendant Minardi never requested. Exhibit A.

STANDARD OF REVIEW

The purpose of Rule 59(e), SCRCP, to alter or amend judgment[,] is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Collins Music Co., Inc. v. IGT, 353 S.C. 559, 562, 579 S.E.2d 524, 525 (Ct. App. 2002) (citations omitted).. "[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court "alter or amend the judgment", but also as a vehicle to request reconsideration of issues and arguments. A motion under Rule 59(e) long has been viewed as "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004) (citations omitted).

A new trial may be granted to all or any of the parties and on all or a portion of the issues ... "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and ... (2) "in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new

trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and direct the entry of a new judgment". SCROP 59(a).

ARGUMENT

1. The trial court's order was entered prior to discovery being concluded in this case which now evidences compulsory conduct of Plaintiff Bank of America, N.A. (see, Exhibit-A).

The court's ruling occurs one (1) day prior to Rule 30(b)(6) deposition of Bank of America's designee occurring on April 15, 2014. Discovery confirms that Plaintiff notified Defendant October 18, 2010 as follows: *"We are pleased to tell you that we have received the last installment due under our (*sic) "Special Forbearance Agreement", *(sic)-dated March 30, 2010, and it has been credited (sic) to your account ..."* Exhibit-A. Bank of America, N.A. then subsequently fails to provide a permanent modification citing "Excessive Forbearance" for the first time on December 6, 2010.

Exhibit - B. Discovery in the case confirms that at no time does Plaintiff request a "Special Forbearance" or a non-HAMP modification. (The "Excessive Forbearance" term and justification for denying modification under the HAMP program Defendant successfully completes occurs on October 18, 2010, a "non-HAMP" justification for denial is unilaterally imposed by the lender to justify its rejection of payments that occurred in May, 2011. Until some six (6) months later, Defendant is unaware that she is not actually participating in a HAMP program, but rather a Bank of

America in-house program designated a "Special Forbearance". It is a program which Defendant never requested and Plaintiff did not offer. This is confirmed in deposition by Bank of America's designee in deposition.

The trial modification payment plan offered in March, 2010 (commencing April 10, 2010) is a written offer from Plaintiff to Defendant. It is accepted and signed by Defendant. Valuable consideration is paid. Payments are accepted by Plaintiff Bank of America and credited. Exhibit-A. This occurs through the date of May, 2011 - a total of thirteen (13) accepted payments. Defendant Minardi respectfully asserts the master has erred in failing to recognize offer, acceptance and consideration - and that a valid contract exist - which has a logical relation to the default. The issue of existence of a contract is a question of fact for the jury when its existence is questioned and the evidence is either conflicting, or gives rise to more than one inference. Small v. Springs Indus., Inc., 292 S.C. 481, 357 S.E.2d 452 (1987). Although as a general rule contracts are to be construed by the court, where a contract (the March 10, 2010 HAMP trial modification) is capable of more than one construction (Exhibit-A), the question of what the parties intended becomes one of fact to be submitted to the jury. Soil Remediation Co. v. Nu-Way Env'tl., Inc., 325 S.C. 231, 482 S.E.2d 554 (1997). Respectfully, the court's ruling has deprived Defendant of a mode of trial to which she would be

entitled where the documentary evidence shows offer of a HAMP modification denied under a non-HAMP in-house Bank of America program in which Defendant never requested and arguably Plaintiff never offered. The March 10, 2010 trial mod was offered - accepted - performance rendered, and valuable consideration exchanged - under the Making Homes Affordable Program.

Alternatively, the court has erred by failing to recognize negligence - *error or omission by Bank of America* - in unilaterally denying a permanent modification predicated, erroneously, on "Forbearance" under a "non-HAMP" program. Exhibit-B. At no time did Defendant Minardi request a forbearance, special forbearance, or Bank of America corporate version of a HAMP trial mod. The documents produced in this case do not dispute this. Whether breach of contract, or negligence, both arise out of the May, 2010 HAMP trial modification and are causally connected. Both affect the default. Both would affect enforceability of the Note through Mortgage foreclosure as an equitable remedy.

2. Defendant's counterclaims are compulsory, and arise out of the same transaction or occurrence as the May, 2010 default alleged by Plaintiff.

The Complaint in this action alleges default as of May, 2010. [See, ¶(14), 11/11/2011 Complaint]. All evidence and testimony in the case confirms that Defendant Minardi was making payments pursuant to a HAMP trial modification plan offered by Plaintiff

as of May, 2010. Thirteen (13) payments are accepted before the lender unilaterally rejects tender May 11, 2011. Some six (6) months later, Bank of America notifies Defendant Minardi of its reason for denying her as : "Excessive Forbearance" under a "non-HAMP" (in-house) modification. It is not disputed, however, that as of May, 2010 Defendant Minardi is tendering - **and Bank of America is accepting** - trial modification Payments pursuant to the Making Homes Affordable Program ("HAMP"). As such, the allegations of default are in error, and Plaintiff would not be entitled to the equitable remedy of foreclosure under the administrative order, or existing case law. This would particularly be the case should *no default* exist - or should *no forbearance* have been requested. The lender's conduct in rejecting payments under a trial mod program pursuant to HAMP affects enforceability of the note through foreclosure, specifically. The lender has failed to permit Minardi to consummate a HAMP modification, and unilaterally interrupted the same, prior to commencing foreclosure.

3. There is a logical relationship between the claim of default and the May 10, 2010 HAMP Payments accepted by Plaintiff from Defendant which affect enforceability of the note and mortgage via foreclosure, specifically.

Do the legal counterclaims by Minardi affect the lender's right to enforce the note and foreclose the mortgage ? It is not disputed that as of May 10, 2010 Minardi is paying (and Plaintiff is

accepting) trial mod payments. If Plaintiff is accepting payments, there exists no default. If no default, there exists no lender right to foreclose. The lender notifies Minardi that she has completed the trial modification on October 18, 2011. Exhibit-A. In violation of the administrative order 2011-05-02-01, p. 4, ¶(c), the lender has denied Defendant a **full and fair** opportunity to consummate a HAMP modification. Exhibit-B.

4. The April 15, 2015 Rule 30(b)(6) deposition warrants reconsideration of Defendant's claims for Negligence and Breach of Contract causes of action as compulsory in nature and affecting Plaintiff's right to enforce the note and mortgage via foreclosure.

The trial court has, at oral argument, inquired as to whether Plaintiff would have the right to enforce the Note and Mortgage via foreclosure, should *arguendo* the counterclaims be tried first pursuant to Johnson, *supra*. The answer is yes. The irreparable harm in this case would be denial of due process right to be heard, first in priority, before a jury as to compulsory claims that affect enforceability of the note. It would include agreements capable of more than one construction - the original mortgage or October 18, 2010 modification, would be controlling. What the parties intended should properly be a jury question. Soil Remediation, *supra*. It affects a mode of trial, or substantial right pursuant to Article I, Sections (3) and (14) of the South Carolina Constitution. An order that effectively forecloses a

party from contesting the case on the merits affects a substantial right and is immediately appealable. McLaughlin v. Strickland, 279 S.C. 513, 309 S.C. 513 (Ct. App. 1983).

a. Deposition testimony confirms lender error or omission by designating the May 10, 2010 HAMP trial plan as a "forbearance" or "excessive forbearance". Exhibit-A.

On October 18, 2010 the lender notifies Minardi that she has Completed (sic)¹ the trial modification program under HAMP. The lender has used the pervasive and age-old justification that Minardi failed to properly return adequate paperwork to secure a modification after this letter. Noteworthy, however, is that the lender submits to Minardi in December, 2010 notice of why Defendant has been declined for permanent modification under HAMP: "Excessive Forbearance". At no place, and at no time, did Defendant request a forbearance; it is unilaterally imposed as justification by Bank of America for failing to consummate a permanent modification. This occurred after Minardi receives notification from Bank of America that she has successfully navigated and made the last required payment under a trial modification plan as of October 18, 2010. Bank of America unilaterally imposes a "Special

¹ Noteworthy is that the "Special Forbearance Agreement" references the March 30, 2010 Making Homes Affordable Trial Program entered into by Minardi with Bank of America on April 1, 2010. Minardi never applied for a Forbearance agreement of any type. She applied for (and received) a trial modification plan pursuant to the Making Homes Affordable Program ("HAMP").

Forbearance" in-house program for that of the HAMP modification they offered on March 30, 2015.

- b. Plaintiff's continued justification of need for "more information" is disingenuous, unmeritorious, and designed to evade a successful conclusion by Defendant of HAMP trial denied under lender in-house "Special Forbearance" program.

"Excessive forbearance" becomes the legal justification used for Bank of America denying Minardi under "our" (sic) program, not HAMP. It is undisputed that Bank of America offered, and Minardi accepted, a HAMP trial plan of March 30, 2010. Enter, however, "Special Forbearance" - a non-HAMP Bank of America alternative to the Making Homes Affordable Program. It is a program Defendant never requested, never applied for, and never discussed with Plaintiff. It is a program never offered by Plaintiff. It is, nonetheless, the legal justification for denying Minardi a permanent modification. Exhibit-B.

5. The Court's Order of May 19, 2015 permitting amended causes of action for Breach of Fiduciary Duty evidence that the counterclaims are *compulsory* and affect the Bank of America's right to enforce the note and *foreclose*.

- a. There can be no default as of May, 2010 where the lender is accepting HAMP trial modification Payments.

The payment history produced in discovery evidences Defendant paying - and Plaintiff accepting - trial modification payments. They commence on April 10, 2010. They end May 11, 2011 some fourteen (14) payments later. Payments are unilaterally rejected

by Bank of America May, 2011. It occurs after the lender notifies Defendant it has received the last payment due under the March 30, 2010 trial mod. The lender imposes "in-house" modification secreted upon Defendant as "Special Forbearance" program; it is the very essence of Breach of Fiduciary Duty in this case, which the court has granted as amendment. Not until December 6, 2011 does Minardi even know that Bank of America has substituted its own modification for the HAMP program Minardi applied for, and in contravention of the original HAMP trial mod agreement. Exhibit-
B.

b. Violation of the Administrative Order of the South Carolina Supreme Court 2011-05-02-01.

The November 11, 2011 equitable cause of action for foreclosure is instituted by Plaintiff, who then notified Defendant of her rights to foreclosure intervention - including the very HAMP modification Bank of America disrupts. This occurs after the lender declines Defendant Minardi for "Excessive Forbearance" on December 6, 2010 where no request for special forbearance ever existed. The lender unilaterally has imposed forbearance in reference to the March 30, 2010 trial mod program under HAMP. The lender has (a) rejected payments under a trial mod in progress under HAMP, after (b) notifying Defendant Minardi she has made the last of the required trial payments, and (c) filed its complaint for foreclosure after denying Minardi a fair opportunity to consummate

a HAMP modification. Defendant respectfully asserts the court should vacate its prior order as it pertains to Breach of Contract and Negligence specifically affecting enforceability of the Note and Mortgage via foreclosure, and grant Defendant Bifurcation and trial of counterclaims, first, before a jury. Pursuant to Johnson, *supra*, any other course of action fails to mitigate damage and prejudices the Defendant.

6. Johnson v. S.C. Nat'l Bank, 292 S.C. 51, 53, 354 S.E.2d 895 (1987) is controlling precedent and is dispositive of the issue before the court as to compulsory counterclaims affecting enforceability via foreclosure.

Despite Plaintiff's counsel citing BADD, LLC, 400 S.C. 343, 733 S.E.2d 619 (2012) at oral argument, the trial court has denoted Wachovia Bank v. Blackburn as controlling authority for the proposition that this Defendants' counterclaims are permissive; hence Defendant has waived its right to trial by jury. Defendant respectfully asserts error, where Johnson, *supra*, is and should be controlling precedent in the case, and not Wachovia Bank v. Blackburn. Johnson dictates that where "the complaint is equitable and the counterclaim legal and compulsory, the Defendant has the right to a jury trial on the counterclaim. In such a case, the proper procedure is as follows: (a) the trial judge should, pursuant to Rule 42(b), order separate trials of the legal and equitable claims. *Id.*, 292 S.C. at 53. Where separate trials are ordered, the legal claims are to be tried first. Johnson, *supra*, 292 S.C. 56, 354 S.E.2d at 897. The court's

ruling deprives Defendant of a mode of trial constitutionally guaranteed in this state. See, Article I, Section 3 Constitution of South Carolina.

CONCLUSION AND PRAYER FOR RELIEF

Defendant Minardi respectfully asserts the court has erred as a matter law and abused its discretion by failing to bifurcate and order separate trial of compulsory legal counterclaims which affect note enforceability via foreclosure, specifically. Defendant respectfully prays that the court Reconsider its Order, alter and amend the same, pursuant to Johnson v. South Carolina Nat. Bank, 292 S.C. 51, 354 S.E.2d 895 (1987) and Order Bifurcation of the counterclaims and remand for jury trial. Defendant further requests reconsideration of the court's order as to Fraud, Negligence or Breach of Contract as compulsory counterclaims.

Respectfully submitted,

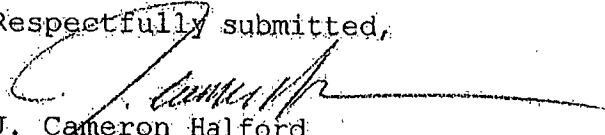

J. Cameron Halford
S.C. Bar 17184
Halford Niemiec & Freeman, L.L.P.
238 Rockmont Drive,
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638
cam@fortnilllaw.com

EXHIBIT A

BANK OF AMERICA LETTER TO
DEFENDANT MINARDI DATED
OCTOBER 18, 2010

Bank of America



P.O. Box 10221
Van Nuys, CA 91410-0221

0001525-0001525 LETRS 001 ***** 017347

Send Payments to:
P.O. Box 15222
Wilmington, DE 19886-5222

Michelle Minardi
1808 Sam Smith Rd
Fort Mill, SC 29708-8466

Notice Date: October 18, 2010

Account No.: 192460533

Property Address:
1808 Sam Smith Road
Fort Mill, SC 29716

ABOUT YOUR LOAN

We are pleased to tell you that we have received the last installment due under our Special Forbearance agreement, dated March 30, 2010, and it has been credited to your account referenced above.

THANK YOU FOR YOUR BUSINESS

Thank you for fulfilling this commitment. You are now up to date and current on your home loan payments. You can resume making your normal monthly payments.

If you still have past due fees and/or charges, please pay those as soon as possible. We can tell you if you have past fee(s) or charge(s) and the amount(s) if you call us at 1-800-669-6650.

If you have any other questions, please contact us at 1-800-669-6650.



This communication is from BAC Home Loans Servicing, LP, the Bank of America company that services your home loan.

Please write your account number on all checks and correspondence.

EXHIBIT B

BANK OF AMERICA LETTER TO
DEFENDANT MINARDI DATED
DECEMBER 6, 2010

Bank of America



Home Loans

4500 Amon Carter Blvd
Fort Worth, TX 76155

December 08, 2010

Michelle Minard
1808 SAM SMITH ROAD
FORT MILL, SC 29716

Loan Number: 192460833

Dear Michelle Minard:

We have reviewed your request for a loan modification under the federal government's Home Affordable Modification Program. Unfortunately, your loan is not eligible for a Home Affordable Modification for the reason stated below.

We are currently reviewing your financial information to determine if there are other options available to you. These options may include:

- A different modification program that may help you achieve more affordable payments;
- A forbearance program, which would offer you lower payments or no payments for a limited number of months to either give you time to resolve your financial difficulties or give us time to work together with you on a more permanent solution;
- A short sale, in which you would agree to sell your home and the proceeds of the sale would be applied to your loan balance, even if it is not enough to pay off the loan in full; or
- A deed in lieu of foreclosure, in which you would transfer the deed to your home to us in full payment of the outstanding balance on your mortgage.

Once we have finished reviewing your information, we will contact you within 10 days to let you know what other options are available to you and the next steps you need to take. Please contact us at 1.888.325.5399 if you have questions about these options.

Under the guidelines of the Home Affordable Modification Program:

Excessive Forbearance. Your loan is not eligible for a Home Affordable Modification because we are unable to create an affordable payment equal to 31% of your reported monthly gross income without changing the terms of your loan beyond the requirements of the program. In other words, to create an affordable payment for you, the investor (owner) of your loan would be required to delay collecting too large a portion of your principal balance until the loan pays off, beyond what the Home Affordable Modification Program allows.

We strongly encourage you to continue making the normal monthly payments required under your original loan documents to help avoid foreclosure. Unfortunately, there is no guarantee that making your payments will help you qualify for a program that may resolve your situation, but not making any payments will increase your chance of foreclosure. We want to help you avoid that possibility.

Important information about foreclosure proceedings

If a foreclosure proceeding or foreclosure sale of your home is currently pending and on hold, that hold will continue and remain in effect while you are considered for other home retention programs.

We're here to help you

Please call us today at 1.888.325.5399 if you believe your loan should be eligible for the Home Affordable Modification Program or if you have any questions. We will call you in 10 days to let you know what other options are available to you and the next steps you need to take.

You can also seek assistance at no charge from U.S. Department of Housing and Urban Development-approved housing counselors by calling the HOPE Hotline Number (1.888.996.HOPE). Assistance in understanding this notice is available through the HOPE Hotline by asking for MHA HELP.

BAC Home Loans Servicing, LP

Mortgages funded and administered by our Equal Housing Lender.
Protect your personal information before recycling this document.



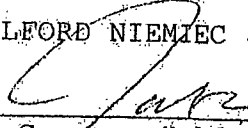
CERTIFICATE OF SERVICE

I hereby certify pursuant to Rule 59(g) that the undersigned received notice of entry and Form 4 of the trial court ruling on May 27, 2015, that the foregoing motion is filed in compliance with Rule 59(g) SCRPC, and that the foregoing Defendant Minardi Rule 59(e) Motion to Reconsider, Alter and/or Amend was served on the parties identified below by U.S. mail, postage prepaid, and addressed as follows:

Hon. S. Jackson Kimball III
Master in Equity Court
1 N. Congress Street,
York, South Carolina 29745

Caroline Glenn, Esq.
Brock & Scott, PLLC
3800 Fernandina Road,
Columbia, South Carolina
Attorney for Bank of America, N.A.

HALFORD NIEMIEC & FREEMAN, L.L.P.


J. Cameron Halford, Esq.
S.C. Bar 17184
238 Rockmont Drive,
Fort Mill, S.C. 29708
803-547-6618
803-547-6638 fax
cam@fortmilllaw.com

May 27, 2015
Fort Mill, S.C.

 **COPY**

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Bank of America, N.A., successor)
By merger to BAC Home Loans)
Servicing, LP, f/k/a Countrywide)
Home Loans Servicing, LP,)

CASE NO. 2011-CP-46-4278

**AMENDED ANSWER AND
COUNTERCLAIMS**

vs.)

Michelle Minardi, and Ameris Bank,)

[JURY TRIAL DEMANDED]

Defendants.)

Pursuant to the May 19, 2015 Order of the Master in Equity Court in this case, and In Answer to the Complaint of the Plaintiff, mortgagor and defendant Michelle Minardi would respectfully show the following by way of Amended Answer and Counterclaims, adding the Eleventh Defense and Fourth Legal Counterclaim, infra.:

FOR A FIRST DEFENSE
(Qualified General Denial)

1. Defendant Minardi would admit the allegations of paragraphs (1), (3), (4), (5), (6), (8), (9), (12), (13), (15).
2. Defendant Minardi would deny as stated the allegations of paragraphs (2), (7), (10), (11), (14), (16), (17), and (18) and demand strict proof of these allegations.
3. Further responding to paragraph (2), this Defendant is without sufficient information to admit or deny, and denies the same on this basis demanding strict proof of said allegations.
4. Further responding to paragraph (7), this Defendant is without sufficient information to admit or deny, and denies the same on this basis demanding strict proof of said allegations, incorporating the below Second and Tenth defenses and affirmative defenses.
5. Defendant would admit as qualified paragraph (10), in that the loan documents speak for themselves. Defendant would deny the remainder allegations of paragraph ten, including the remedy of acceleration, and demand strict proof of the allegations.
6. Further responding to paragraph (11), Defendant would admit as qualified paragraph (11) in that the loan documents speak for themselves, but would deny

and demand strict proof of all further conclusory allegations of additional sums claimed due and owing by Plaintiff under this paragraph.

7. Responding further to paragraph (14), Defendant Minardi would deny the allegations of said paragraph incorporating by reference the allegations of defendant's First through Tenth defenses and counterclaims, below.
8. Responding further to paragraph (16), Defendant would show and allege by way of its Second through Tenth defenses and counterclaim below that Plaintiff, a HMP participating financial institution, considered Defendant for a Bank of America in-house modification and not a modification under the HMP program guidelines and supplemental directives.
9. Defendant is informed and believes that the conduct of Plaintiff described in paragraph (8) resulting in modification denial alleged to be a HMP trial modification which never occurred. Defendant instead evaluated Defendant under an alternative Bank of America modification.
10. Responding further to paragraph (17), Defendant Minardi occupies the home as her primary residence and is without information to admit or deny, is unaware of any inspection or security costs incurred by Plaintiff, and denies same demanding strict proof of any such charges, if any.
11. Responding further to paragraph (18), Defendant Minardi denies that all conditions precedent to acceleration of said debt have occurred prior to Plaintiff instituting this foreclosure, and demands strict proof. Specifically, Defendant is informed and believes that Plaintiff has sought to foreclose a HMP eligible loan prior to properly evaluating Defendant Minardi specifically for a HMP modification under HMP guidelines and supplemental directives.

FOR A SECOND DEFENSE

FIRST AFFIRMATIVE DEFENSE

[FAILURE TO STATE A CLAIM – SCRCF 12(B)(6)]

12. The above allegations and defenses are re-stated and incorporated by reference as if set forth verbatim.
13. Plaintiff's Complaint violates the Administrative Order of the Supreme Court 2011-05-02-01 of May 2, 2011 and on information and belief Plaintiff has failed to consider Plaintiff for HMP modification and other loss mitigation options prior to commencing this foreclosure in violation of said administrative order.
14. Plaintiff's Complaint fails to state a cause of action for which relief can be granted under applicable law, and should be summarily dismissed pursuant to SCRCF 12(b)(6).

FOR A THIRD DEFENSE
SECOND AFFIRMATIVE DEFENSE
(Failure to Mitigate)

15. The above defensive allegations are re-stated and incorporated by reference as if set forth verbatim.
16. Plaintiff has failed to mitigate damages as required by law prior to commencing this foreclosure action and by rejecting successive trial modification program payments wherein Defendant demonstrated and complied with modification payment terms.

FOR A FOURTH DEFENSE
THIRD AFFIRMATIVE DEFENSE
(Waiver, Estoppel, Laches and Release)

17. The above defensive allegations are restated and incorporated by reference as if having been set forth verbatim.
18. Plaintiff's claims are or may be barred by the legal doctrines of *waiver, estoppel, laches, and/or release* as Defendant successfully complied with trial modification payments under HMP guidelines, yet Plaintiff denied Defendant a HMP modification due to investor rejection and interference and despite Defendant's successful compliance with modification terms involving twelve (12) successive payments.

FOR A FIFTH DEFENSE
FOURTH AFFIRMATIVE DEFENSE
(Acceptance, Novation, Accord & Satisfaction)

19. The above defensive allegations are restated and incorporated by reference as if set forth verbatim.
20. Plaintiff offered and accepted a loan modification after Defendant successfully making thirteen (13) trial modification payments, and is now barred and should be estopped from asserting foreclosure of the mortgage due to the modification and novation.
21. Plaintiff's claims against Defendant are barred by the legal doctrines of *accord and satisfaction and/or compromise and settlement*, due to acceptance of twelve (12) trial modification payments.

FOR A SIXTH DEFENSE

Fifth Affirmative Defense

(Breach of Contract – Mortgagor Successful Compliance with Trial Modification Terms and Lender Rejection of Trial Payments)

FIRST LEGAL COUNTERCLAIM

22. The above allegations are restated here and incorporated by reference as if set forth verbatim.
23. That at all relevant times, Plaintiff is the owner, holder and was acting as a debt collector in communication with and acceptance from Defendant trial modification payments prior to Plaintiff commencing this foreclosure.
24. That for valuable consideration received, Plaintiff offered, and Defendant Accepted, a loan modification whereunder Defendant successfully made trial modification payments twelve times. Plaintiff rejected trial payments in July, 2011 returning monies to Defendant. Plaintiff then improperly declared Defendant in default after rejecting trial payments and returning same to Defendant.
25. That Defendant demonstrated financial ability to pay under a modified loan terms, but Plaintiff has nonetheless denied Defendant a loan modification under the HMP program guidelines.
26. That Plaintiff has improperly denied Defendant a HMP loan modification, and has alleged borrower default upon a HMP modification trial plan in breach of the parties' loan modification agreement.
27. That the ceasing of payments by Defendant arises out of debt collection practices and conduct of the Plaintiff in rejecting payments being sent by the Defendant under a trial modification terms.
28. That as a result, Defendant has incurred damages and been forced to engage the services of an attorney to defend this foreclosure and her home.
29. Defendant is informed and believes that Defendant is entitled to an award of damages as against Plaintiff for plaintiff's Breach of Contract, attorney's fees and costs exceeding \$7,500 to be proven at trial of this matter.

FOR A SEVENTH DEFENSE

SIXTH AFFIRMATIVE DEFENSE

(Negligence of Bank of America, N.A. loan personnel – Loan HMP Eligible)

SECOND LEGAL COUNTERCLAIM

30. The above defensive allegations are restated and incorporated by reference as if set forth verbatim.

31. Responding to paragraph (16) of the Complaint, on information and belief, Plaintiff is participating in the Home Affordable Modification program (HMP), but the HMP modification process specified by the guidelines or supplemental directives has not been completed properly by Plaintiff or its agents who have rejected and returned payments to Defendant after Defendant successfully made twelve (12) of thirteen (13) trial payments.
32. On information and belief, the Plaintiff has improperly declared Defendant in default of a HMP modification and seeks to accelerate after failing to properly evaluate Defendant for loan modification under the HMP Making Homes Affordable Program ("HMP") prior to commencing this foreclosure action.
33. Defendant is informed and believes that Plaintiff, its servicer, agents, loan personnel, and employees were willful, wanton, negligent and careless by failing to consider Defendant for HMP loan modification options, and instead enrolling Defendant in loan modification options specifically offered through Bank of America, N.A. instead of a modification under HMP guidelines.
34. That Plaintiff's HMP review and analysis is therefore negligent, careless, willful, wanton and reckless wherein it failed to properly evaluate Defendant for the HMP program as set forth by the Making Homes Affordable Modification Program.
35. That Plaintiff was negligent, willful, wanton and reckless by rejecting and mailing back to Defendant trial modification payment instead of properly applying said payments to the subject loan and by declaring Defendant in default of HMP modification options after rejecting payments sent by Defendant to Plaintiff.
36. That as a direct and proximate result, Defendant has incurred damages exceeding \$7,500 to be proven at trial of this matter, and has been forced to engage the services of an attorney.
37. Defendant is informed and believes that Defendant is entitled to an award as against Plaintiff for all damages, actual, punitive, and attorneys fees and costs.

FOR AN EIGHTH DEFENSE

Seventh Affirmative Defense

(FDCPA VIOLATION - 28 U.S.C. 1692(E) §807(2), Et. Seq.)

THIRD LEGAL COUNTERCLAIM

38. The above defensive allegations are re-stated here and incorporated by reference as if having been set forth verbatim.
39. Defendant is informed and believes that Plaintiff has, in violation of §807(2) of 28 U.S.C. 1692(e) *materially misrepresented the nature, character, and amounts due* of the debt as set forth in its complaint, specifically paragraph (16).

40. That at all relevant times, including the acceptance of trial modification payments, Plaintiff was communication with Defendant and acting within the course and scope of a debt collector and was servicing Defendant's mortgage note as a debt collector for its investor.
41. That at all relevant times, including service of the Complaint, Plaintiff was communicating with Defendant and acting within the course and scope of a debt collector and was servicing Defendant's mortgage for its investor.
42. That Plaintiff has misrepresented the nature and character of this debt pursuant to paragraph (16) of its Complaint, in violation of the FDCPA and the Administrative Order of the South Carolina Supreme Court 2011-05-02-01, *to wit*:
- a. By falsely representing to the court that a proper HMP modification has been undertaken on the subject loan wherein the mortgagor defaulted, when in fact Plaintiff rejected payments.
 - b. By rejecting in-progress loan modification payments from Defendant and returning monies to Defendant in June, 2011 creating default while Plaintiff acted as a debt collector.
 - c. By misapplying trial modification payments prior to declaring Defendant in default of a HMP modification.
 - d. By falsely representing that Plaintiff has incurred fees and costs to secure and inspect the property, knowing Defendant resides at the premises as her primary home.
 - e. By falsely placing Defendant into an in-house Bank of America modification and not a proper HMP modification.
 - f. By failing to properly advise its investor that Defendant has successfully complied with over twelve (12) modification payments prior to instituting foreclosure.
 - g. By requiring twelve successive trial payments of Defendant, then rejecting Defendant for modification in June, 2011 and returning monies to Plaintiff.
 - h. By instituting Defendant default by return of monies that Plaintiff has previously accepted from Defendant, namely twelve (12) successive payments.

- i. By failing to properly modify Defendant's loan pursuant to HMP guidelines and supplemental directives prior to commencing this foreclosure action.
 - j. By knowingly instituting this foreclosure in violation of the Administrative Order of the Supreme Court, 2011-05-02-01.
43. Defendant is informed and believes that due to Plaintiff's conduct described above, Defendant is entitled to an award of all fines, penalties, attorneys fees and cost available to the Defendant pursuant to the FDCPA.

FOR A NINTH DEFENSE
EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands Defense- Motion for Stay)

44. That Plaintiff seeks to foreclose Defendant's mortgage after falsely representing to the court in paragraph (16) of the Complaint that Defendant has been considered for HMP loan modification, then defaulted under HMP trial payments.
45. That said representations are *materially false*, because Plaintiff unilaterally rejected in-progress trial modification payments in July, 2011 and mailed them back to Defendant. Despite accepting twelve (12) trial payments, Plaintiff unilaterally declared HMP default as against Plaintiff.
46. That Defendant is informed and believes that Defendant has not been properly considered or evaluated for a HMP modification by Plaintiff due to investor interference, or that Plaintiff has improperly performed a HMP evaluation for loan modification and/or in-house Bank of America modification loss mitigation programs.
47. That said representations are materially false as Defendant successfully made twelve (12) consecutive trial modification payments prior to Plaintiff rejecting Defendants' payments in July, 2011 and commencing this foreclosure.
48. That Plaintiff's conduct in declaring that a HMP modification has occurred and that the Defendant has defaulted under a HMP modification are inequitable, false, and designed to circumvent the provisions of the Administrative Order of the Supreme Court 2011-05-02-01 to inappropriately conclude a foreclosure wherein HMP modification options have not been provided to the Defendant/Mortgagor.
49. That Plaintiff's causes of action are or may be barred by the legal doctrine of unclean hands due to Plaintiffs' own inequitable conduct.
50. That this action should be stayed or dismissed pending Plaintiff's compliance with the provisions of the Administrative Order of the Supreme Court 2011-05-02-01.

FOR A TENTH DEFENSE
NINTH AFFIRMATIVE DEFENSE
(Spoilation of Material Evidence Barring Plaintiff's Claims)

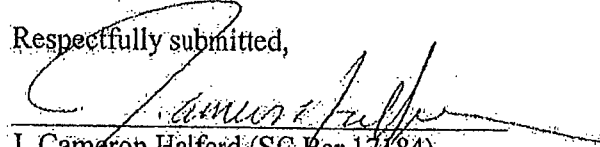
51. The above defensive allegations are restated and incorporated by reference as if set forth verbatim.
52. The Plaintiff's claims are or may be barred by the Plaintiff's spoliation of evidence, Plaintiff or Plaintiff's Investor having knowingly failed to preserve evidence material to the claims and defenses in this action.

FOR AN ELEVENTH DEFENSE
Tenth Affirmative Defense
Fourth Legal Counterclaim
(Breach of Fiduciary Duty)

53. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
54. That the relationship of the parties is that of mortgagor/debtor and mortgagee/creditor arising out of that certain mortgage loan transaction account no. 192460533.
55. That Defendant requested, and Plaintiff approved loss mitigation in the form of a loan modification pursuant to the Making Homes Affordable Program ("HAMP") whereunder Defendant entered into trial payments in April, 2010.
56. That Defendant successfully tendered thirteen (13) trial modification payments, which were accepted by Plaintiff Bank of America, N.A., a HAMP-participating financial institution.
57. That Plaintiff Bank of America rejected tender of the fourteenth (14th) trial modification payment, refusing thereafter to accept payment from Defendant Minardi and subsequently filing suit for foreclosure.
58. That as part of entering into the loan modification, Defendant Minardi reposed special confidence in the Plaintiff that she would be allowed to consummate a loan modification by successful participation in the program and that Plaintiff, as a financial institution participating in the Making Homes Affordable Program would act in good faith, fair dealing, and with due regard to the ability of Defendant to retain her home.
59. That Bank of America, N.A. accepted the special confidence reposed in it by Minardi, accepted and credited Minardi's payments from April, 2010 through April, 2011.

60. That Bank of America breached its fiduciary duty to Defendant by rejecting tender of payments and unilaterally cancelling the trial modification that was in progress, thereafter filing this foreclosure action.
61. That Bank of America's foreclosure action violates the administrative order of the South Carolina Supreme Court 2011-05-02-01 by obstructing a loan modification in progress and by failing to permit the Defendant a full and fair opportunity to consummate the loan modification under the HAMP program.
62. That Plaintiff's initiation of this lawsuit resulted in Defendant having to engage counsel to defend her home and Defendant has incurred attorneys fees and costs in defending said foreclosure, and has incurred damage in the form of lost economic opportunities, fraudulent fees, fines, interest, penalties and padding by Bank of America.
63. Defendant is informed and believes that it is entitled to all actual and punitive damages including reimbursement of attorneys fees and costs from Bank of America, N.A. for defense and prosecution of these matters.

Respectfully submitted,


J. Cameron Halford (SC Bar 17184)
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
803-547-6638 fax

May 28, 2015
Fort Mill, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Bank of America, N.A., successor by
merger to BAC Home Loans
Servicing, LP fka Countrywide Home
Loans Servicing, LP,

Plaintiff,
v.

Michelle Minardi; Ameris Bank,
Defendants,.

SIXTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2011-CP-46-04278

ORIGINAL

**PLAINTIFF'S AMENDED REPLY TO
DEFENDANT MICHELLE MINARDI'S
AMENDED ANSWER AND
COUNTERCLAIMS**

FILED - RECEIVED
2015 JUN -3 AM 11:35
DAVID HAMILTON
C.C.P. & F.S.
YORK COUNTY, SC

**TO: J. CAMERON HALFORD, ATTORNEY FOR DEFENDANT MICHELLE
MINARDI:**

INTRODUCTION AND FACTS

The Plaintiff responding to the Amended Answer and Counterclaim of the Defendant Michelle Minardi (hereinafter the "Defendant") respectfully alleges as follows:

1. That each allegation of the Answer and Counterclaim not specifically admitted is denied and strict proof of the same is demanded.
2. That the allegations contained in Paragraph 1 through Paragraph 21 and Paragraph 44 through Paragraph 57 of the Defendant's Amended Answer and Counterclaim do not require a response. To the extent that a response is required and to the extent said allegations infer any wrongdoing on behalf of the Plaintiff, the Plaintiff denies same in full and demands strict and absolute proof thereof.

AS A FIRST DEFENSE TO THE DEFENDANTS' COUNTERCLAIM(S)

Breach of Contract-Mortgagor Successful Compliance with Trial Modification Terms and

Lender Rejection of Trial Payments

(General Denial)

3. To the extent that they are not inconsistent with the pleadings herein, the above Paragraphs 1 and 2 are incorporated herein as if fully repeated verbatim.
4. No Response is required to the allegation contained in paragraph 22 of Defendant's Amended Answer and Counterclaims. To the extent that a response is required, Plaintiff denies any wrongdoing.
5. Plaintiff admits the allegations contained in paragraph 23 of the Defendant's Amended Answer and Counterclaims.

6. Plaintiff denies the allegations in paragraph 24 of the Defendant's Amended Answer and Counterclaim. Plaintiff affirmatively asserts that a trial plan was offered to the defendant.

7. Plaintiff denies the allegations contained in paragraphs 25 through 29 of the Defendant's Amended Answer and Counterclaims.

AS A FIRST DEFENSE TO DEFENDANT'S SECOND COUNTERCLAIM

Negligence of Bank of America, N.A. loan personnel -Loan HMP Eligible

(General Denial)

8. To the extent that they are not inconsistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim.

9. No response is required to the allegation contained in paragraph 30 of Defendant's Amended Answer and Counterclaims. To the extent a response is required, Plaintiff denies any wrongdoing.

10. Plaintiff admits the allegations contained in paragraph 31 of Defendant's Amended Answer and Counterclaims to the extent that Plaintiff participates in the Home Affordable Modification program (HMP). Plaintiff denies the remaining allegations contained in paragraph 31 of Defendant's Answer and Counterclaims.

11. Plaintiff denies the allegations contained in paragraphs 32 through 37 of the Defendant's Amended Answer and Counterclaims.

AS A FIRST DEFENSE TO DEFENDANT'S THIRD COUNTERCLAIM

FDCPA Violation-28 U.S.C. 1692(e) §807(2), et seq.

(General Denial)

12. To the extent that they are not inconsistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim.

13. No response is required to the allegation contained in paragraph 38 of Defendant's Amended Answer and Counterclaims. To the extent a response is required, Plaintiff denies any wrongdoing.

14. Plaintiff admits the allegations contained in paragraph 40 of the Defendant's Amended Answer and Counterclaims to the extent that Plaintiff was acting within the course and scope of a debt collector and Plaintiff was servicing Defendant's mortgage note. Plaintiff denies the remaining allegations of paragraph 40 of Defendant's Amended Answer and Counterclaims.

15. Plaintiff admits the allegations contained in paragraph 41 of the Defendant's Amended Answer and Counterclaims to the extent that Plaintiff was acting within the course and

scope of a debt collector and Plaintiff was servicing Defendant's mortgage note. Plaintiff denies the remaining allegations of paragraph 41 of Defendant's Amended Answer and Counterclaims.

16. Plaintiff denies the allegations contained in paragraph 42 of the Defendant's Amended Answer and Counterclaims.

17. Plaintiff denies the allegations contained in paragraph 43 of the Defendant's Amended Answer and Counterclaims.

AS A FIRST DEFENSE TO THE DEFENDANT'S FOURTH COUNTERCLAIM
BREACH OF FIDUCIARY DUTY

18. To the extent that they are not inconsistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim.

19. Plaintiff admits the allegations contained in paragraph 59 of Defendant's Amended Answer and Counterclaim to the extent the Plaintiff is the mortgagor and the defendant is the debtor.

20. Plaintiff denies the allegations contained in paragraph 60 of the Defendant's Amended Answer and Counterclaim. Plaintiff affirmatively asserts that there was a trial payment plan offered to the defendant.

21. Plaintiff admits that defendant tendered trial plan payments. The remaining allegations of paragraph 61 in Defendant's Amended Answer and Counterclaim are denied.

22. Plaintiff denies the allegations contained in paragraph 62 of the Defendant's Amended Answer and Counterclaim.

23. Plaintiff denies the allegations contained in paragraph 63 of the Defendant's Amended Answer and Counterclaim.

24. Plaintiff denies the allegations contained in paragraph 64 of the Defendant's Amended Answer and Counterclaim.

25. Plaintiff denies the allegations contained in paragraph 65 of the Defendant's Amended Answer and Counterclaim.

26. Plaintiff denies the allegations contained in paragraph 66 of the Defendant's Amended Answer and Counterclaim.

27. Plaintiff denies the allegations contained in paragraph 67 of the Defendant's Amended Answer and Counterclaim.

28. Plaintiff denies the allegations contained in paragraph 68 of the Defendant's Amended Answer and Counterclaim.

AS A SECOND DEFENSE TO DEFENDANT'S COUNTERCLAIMS

(Dismissal pursuant to SCRPC 12(b)(6))

29. To the extent that they are not inconsistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim.

30. That the Defendant has failed to state facts sufficient to constitute causes of action, therefore, the Defendant's Amended Counterclaims should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

31. Further, by pleading this 12(b)(6) dismissal in their Reply herein, the Plaintiff does not intend to waive any right to have the Court hear a motion for dismissal. The dismissal herein is included for notice purposes and to preserve the Plaintiff's right to move for a dismissal at anytime hereafter and up until trial.

AS A THIRD DEFENSE TO DEFENDANT'S COUNTERCLAIMS

(Failure to Mitigate Damages)

32. To the extent that they are not inconsistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim.

33. Defendant has failed to mitigate his alleged damages. Therefore, Defendant's claims against Plaintiff should be reduced accordingly.

AS A FOURTH DEFENSE TO THE DEFENDANTS' COUNTERCLAIM(S)

(Waiver/Laches/Estoppel)

34. To the extent that they are not inconsistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim.

35. The Defendants' claims are barred by the doctrines of waiver, laches, and estoppel based on Defendant's failure to comply with the agreement, including Defendant's failure to make timely payments under the terms of the note and mortgage.

AS A FIFTH DEFENSE TO THE DEFENDANTS' COUNTERCLAIM(S)

(Set-Off/ Offset/ Recoupment)

36. To the extent that they are not inconsistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim.

37. If the Plaintiff is found liable to Defendant, then any damages should be reduced by the doctrines of set-off, offset, or recoupment.

AS A SIXTH DEFENSE TO THE DEFENDANTS' COUNTERCLAIM(S)

(Unclean Hands)

38. To the extent that they are not inconsistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim.

39. Upon information and belief, the Defendants' claims are barred by their own actions and/or representations.

40. The Plaintiff has been injured by the Defendants' actions and/or representations.

41. The Defendants have failed to adhere to the terms and conditions set forth in the subject Note and Mortgage.

42. As a result of the Defendants' inequitable actions, the Defendants' claims are barred by the equitable doctrine of unclean hands.

AS A SEVENTH DEFENSE TO THE DEFENDANTS' COUNTERCLAIM(S)

(Statute of Limitations)

43. To the extent that they are not inconsistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim.

44. Defendant's claims are barred in whole or part by the statute of limitations.

AS AN EIGHT DEFENSE TO THE DEFENDANTS' COUNTERCLAIM(S)

(Statute of Frauds)

45. To the extent that they are not inconsistent with the pleadings herein, the above paragraphs are incorporated herein as if fully repeated verbatim.

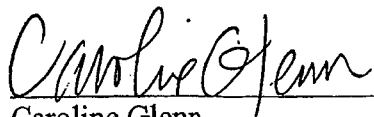
46. Defendant's claims are barred in whole or part by the statute of frauds.

WHEREFORE, having fully responded to the allegations contained in the Defendants' Answer and Counterclaim, the Plaintiff prays for the following:

- (a) That the Defendants' Answer and Counterclaim be dismissed with costs;
- (b) That the Plaintiff be granted the relief requested in the Complaint;
- (c) For such other and further relief as the Court may determine to be just and proper.

Brock and Scott, PLLC
Attorneys for the Plaintiff
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210

Dated: May 29, 2015
Columbia, South Carolina


Caroline Glenn

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, LP fka
Countrywide Home Loans Servicing, LP,

Plaintiff,
v.

Michelle Minardi; Ameris Bank,
Defendants,

SIXTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2011-CP-46-04278

CERTIFICATE OF MAILING

The undersigned hereby certifies that on May 29, 2015
she served a copy of Plaintiff's Amended Reply to Defendant's Amended Answer and
Counterclaims, and Certificate of Mailing upon the person(s) below by depositing the same in
the US Mail with proper postage affixed and addressed as follows:

J. Cameron Halford, Esquire
238 Rockmont Drive
Fort Mill, SC 29708

FILED-RECEIVED
2015 JUN -2 AM 11:35
DAVID HAMILTON
C.C.P. & GS.
YORK COUNTY, SC

Caroline Glenn
Caroline Glenn
Attorney for the Plaintiff

Dated: May 29, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger to
BAC Home Loan Servicing, LP FKA
Countrywide Home Loans Servicing, LP

Plaintiff,

v.

Michelle Minardi and Ameris Bank,

Defendants.

SIXTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2011-CP-46-04278

**MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT'S MOTION FOR
RECONSIDERATION**

INTRODUCTION AND FACTS

The instant action was brought by the Plaintiff for the foreclosure of a mortgage on property located in York County South Carolina. The Plaintiff's Lis Pendens, Summons, and Complaint were filed on August 8, 2013. On May 19, 2015 an Order denying Defendant's Motion to bifurcate and remand legal counterclaims and granting motion to amend pleadings was filed. The present motion for reconsideration was filed by Defendant, Michelle Minardi, on May 29, 2015. This memorandum will reflect that the Order issued on May 19, 2015, upon which the Defendant seeks reconsideration, was an appropriate interpretation of the law as such, the Order should not be reconsidered and the Defendant's motion should be denied.

DISCUSSION

As stated in the Order denying Defendant's motion to bifurcate and remand legal counterclaims, the counterclaims Defendant asserts are all permissive counterclaims, and as such, would not entitle the Defendant to trial by jury. The counterclaims that the Defendant asserts in her Answer and Counterclaim are fraud, negligence, Fair Debt Collection Practices Act violations and Unfair Trade Practice Act violations. Defendant also sought to add three new "legal" counterclaims in the motion to amend pleadings, however, the Order granting the motion to amend only added the counterclaim of breach of fiduciary duty. As the Court correctly reasoned, all of the alleged counterclaims are permissive in nature, and as such should be tried with the Plaintiff's equitable foreclosure action.

B&S No.: 14-22784

The Defendant's motion to reconsider attempts to use semantics to argue a logical relationship between the Defendant's counterclaims and the enforceability of the note and mortgage. As stated earlier, the Court's reasoning in the May 19, 2015 Order is sound because all of the defendant's claims arise from loss mitigation and loan modification efforts and not the enforceability of the note and mortgage. We believe the May 19, 2015 Order is supported by South Carolina case law and there are no grounds upon which the Order should be reconsidered.

CONCLUSION

In light of the foregoing, the Plaintiff has demonstrated that the Defendant's motion to reconsider should be denied.

Brock and Scott, PLLC
Attorneys for the Plaintiff
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210


Caroline R. Glenn

Dated: June 29, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Bank of America, N.A., successor by merger
to BAC Home Loan Servicing, LP FKA
Countrywide Home Loans Servicing, LP

Plaintiff,

vs.

Michelle Minardi and Ameris Bank,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2011-CP-46-04278

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER**

This matter came before me on the Defendant Minardi's Motion to Reconsider pursuant to Rule 59(e), SCRCP. Representing Plaintiff was William P. Stork, and representing Defendant Minardi was J. Cameron Halford. Based upon the record before me, I make the following findings and conclusions.

BACKGROUND

Defendant submitted an Answer and Counterclaim on January 10, 2012. The case was referred to me as Master in Equity for York County.

Defendant filed the present motion on May 29, 2015, after the Defendant's Motion to bifurcate and remand legal counterclaims was denied.

DISCUSSION

The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (Citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. See *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009); and, *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009).

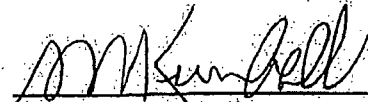
Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the court's ruling in the prior order.

AN
KL

Therefore, it is ordered that Defendant's Motion pursuant to Rule 59(e), SCRCF, be denied.

AND IT IS SO ORDERED.

July 29, 2015


S. Jackson Kimball
Master in Equity for York County

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 COPY

THE STATE OF SOUTH CAROLINA
In The South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Hon. S. Jackson Kimball III
Master in Equity

Case no. 2011-CP-46-250

Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP,
f/k/a/ Countrywide Home Loans Servicing, LP FKA Countrywide Home Loans
Servicing, LP

vs.

Michelle Minardi and Ameris Bank,
of whom Defendant Michelle Minardi is the APPELLANT

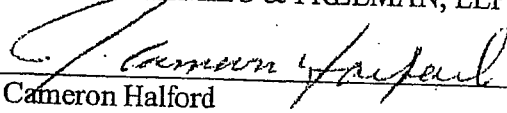
NOTICE OF APPEAL

FILED
2015 AUG -3 AM 11:00
DAVID HADSON
CLERK OF COURT
YORK COUNTY, SC

Appellant Michelle Minardi here files and serves Notice of Appeal of the Order of the York County Master in Equity Court dated July 29, 2015 and entered July 31, 2015. Appellant respectfully avers that the Order abridges Defendant's Constitutional Due Process Rights to Trial by Jury of compulsory legal counterclaims pursuant to Rule 38 SCRPC, *Johnson v. S.C. Nat't Bank*, 292 S.C. at 55-56, 354 S.E.2d at 897 (1987) and Article I Sections (3) and (14) of the South Carolina state constitution. The undersigned certifies receipt by mailing of said Order August 3, 2015.

Respectfully submitted,

HALFORD, NEMIEC & FREEMAN, LLP



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