THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Master in Equity

James O. Spence, Master in Equity

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SC Court of Appeals

Case No. 2016-000613

SunTrust Mortgage, Inc.,

Respondent,

v.

Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, and Job Development Loan Fund, Inc.,

Of whom Cathy G. Lanier and Randy D. Lanier are the Appellants.

Appellants.

RECORD ON APPEAL

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RETURN TO THE EQUITY COURT

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as trustee for Salomon Mortgage Loan Trust Series 2003-NBC1,

PLAINTIFF,

v.

Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, and Job Development Loan Fund, Inc.,

DEFENDANTS.

F10-09485

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-32-00156

ORDER DENYING DEFENDANTS' MOTIONS TO AMEND AND ASSERT COUNTERCLAIMS AND GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION AND FACTS

This is an action to foreclose a mortgage which secured a note. On or about August 11, 1997, for value received, Cathy G. Lanier and Randy D. Lanier executed and delivered to Heritage Federal Savings and Loan Association a promissory note, in writing, for the sum of $425,000.00, secured by a mortgage encumbering three parcels generally described as Parcel 1, 213 Lake Villa Road, Lexington, SC 29072, Parcel 2, 211 Lake Villa Road, Lexington, SC 29072, and Parcel 3, 2651 Knox Station Road, Chester, SC 29706 (hereinafter collectively "the Properties"). Thereafter, through a series of corporate mergers and name changes, Heritage Federal Savings and Loan Association became SunTrust Bank. Subsequently, SunTrust Bank assigned said mortgage unto SunTrust Mortgage. Inc. by virtue of an assignment dated March 16, 2013, recorded March 23, 2014, in the Office of the Register of Deeds for Lexington County in book 15409 at page 303. SunTrust Mortgage, Inc. is in possession of the original note indorsed in blank. The Laniers have been in default on said note and mortgage since

approximately September 1, 2010, and are currently indebted to SunTrust Mortgage, Inc. on said note and mortgage.

The Laniers were previously indebted to Bayview Loan Servicing, LLC (hereinafter "Bayview") and Branch Banking and Trust Company of South Carolina (hereinafter "BB&T") by virtue of a separate judgment of foreclosure and sale entered on October 7, 2011. As a result of that action, Randy D. Lanier filed for Chapter 13 bankruptcy on November 3, 2011, which action, after a hearing, was dismissed on November 7, 2011. The Laniers did not appeal the dismissal, and the time to file an appeal has expired. The Laniers again filed for Chapter 13 bankruptcy on November 8, 2011, which action, after a hearing, was dismissed with prejudice. By order of the bankruptcy court, The Laniers were also prohibited from filing another cause under Chapters 11, 12, and 13 of the bankruptcy code for a period of one year.

On March 25, 2011, the Laniers filed an answer in this foreclosure action. On June 2, 2011, the Laniers filed an amended answer without consent of the plaintiff or leave of the court. On February 14, 2012, the Laniers filed an appeal of Judge Waites' bankruptcy order, and a motion to stay the foreclosure sale. On February 28, 2012, after considering the Laniers second motion to stay the foreclosure sale, the bankruptcy court issued an order denying the Laniers' motion to stay. On March 2, 2012, the bankruptcy court denied the Laniers' appeal of the order denying stay and the Laniers' motion to reconsider, filed March 1, 2012. On July 12, 2012, the Laniers, in the present foreclosure case, filed a second motion to amend answer, and on August 3, 2012, they filed a third motion to amend answer. The Laniers also filed a fourth motion to amend answer on September 6, 2012, alleging counterclaims against plaintiff and requesting the dismissal of this action. On December 10, 2012, the Laniers filed their fifth motion to amend answer, and on May 20, 2014, the Laniers filed their sixth motion to amend their answer.

C

II. DISCUSSION

A. THE LANIERS LACK STANDING TO ASSERT COUNTERCLAIMS AGAINST SUNTRUST MORTGAGE, INC.

SunTrust Mortgage, Inc. asserts Cathy G. Lanier and Randy D. Lanier (Defendants) lack standing to amend their answer to assert counterclaims because they failed to list these counterclaims in their bankruptcy schedules. On November 8, 2011, Defendants filed a Chapter 13 voluntary bankruptcy petition and completed the schedules and statements. In paragraph 21 of Schedule B, Defendants were required to set forth "[o]ther contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims." Next to this paragraph, Defendants checked the box under the column "None," indicating Defendants had no claims to assert against parties. Defendants made this statement under penalty of perjury. On November 7, 2011, Defendants' first Chapter 13 case was dismissed, and on January 3, 2012, Defendants' second Chapter 13 case was dismissed with prejudice. The bankruptcy order stated that Defendants sought bankruptcy in bad faith and in order to impede the foreclosure actions filed against them.

When a debtor files for bankruptcy, an estate is created that is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C.A. § 541(a). Unless the bankruptcy court orders otherwise, the debtor is required to file a list of all creditors and a schedule of assets and liabilities. *Id.* at § 541(a)(1)(A)-(B)(i). "Legal and equitable interests" has been broadly defined and includes causes of action. *In re Educators Group Health Trust*, 25 F.3d 1281, 1283-84 (5th Cir. 1994). When the causes of action giving rise to the debtors' counterclaims begin before the present case commences and initial pleadings are filed, the debtor must list those causes of action on his bankruptcy petition. *See In re Iredale*,

429 B.R. 853, 855 (Bankr. D. S.C. 2010). Whether the debtor knew about the possible counterclaims at the time he filed the bankruptcy petition is immaterial. *See id.*

When the bankruptcy case is closed, "any assets, including claims, that were scheduled by the debtor but not disposed of are deemed abandoned and revert to the debtor." *Tyler House Apartments, Ltd. v. United States*, 38 Fed. Cl. 1, 6 (1997). Claims that are not set forth on the schedules, however, remain under the control of the bankruptcy trustee. *See id.* "If a cause of action belongs to the estate, then the trustee has exclusive standing to assert the claim." *Educators Group Health Trust*, 25 F.3d at 1284. Therefore, a debtor may not amend his cause of action to include counterclaims he no longer possesses. *See Iredale*, 429 B.R. at 855-56. Further, a debtor's persistence in alleging counterclaims of this kind may be construed as bad faith. *See id.* at 856.

In the present case, Plaintiff initiated this foreclosure action on January 14, 2011. Assuming Defendants' alleged counterclaims arise out of the present foreclosure action, at the time Defendants filed for bankruptcy in 2011, Defendants were required to list all outstanding claims on their itemized bankruptcy schedule. Defendants assert in their amended answer and counterclaim the following counterclaims which Defendants did not list on Schedule B: a) violation of Truth in Lending Act; b) violation of RESPA; c) violation of the Fair Debt Collections Act; d) slander of title; e) lack of good faith and fair dealing; e) violation of the South Carolina Unfair Trade Practices Act; f) fraud and swindle; g) civil conspiracy ; h) and RICO violations. Therefore, as Defendants' bankruptcy cases were disposed of in 2011 and early 2012, Defendants' causes of action remain under the control of the bankruptcy trustee, and only the bankruptcy trustee has standing to assert the claims against SunTrust Mortgage, Inc. Accordingly, Defendants have no standing to assert the counterclaims.

4.

In their memorandum, Defendants allege that "their bankruptcy case was dismissed because of lack of jurisdiction of the bankruptcy court based on 11 USC § 109(e). " Defendants further allege "[t]hat means the Bankruptcy Court never took jurisdiction over this matter and that there never was an estate created as a result of the bankruptcy filing, so the argument by Plaintiff is invalid in total." According to Defendants, this means the argument asserted by SunTrust Mortgage, Inc.. regarding the Defendants lack of standing is invalid.

The Defendants do not cite anything in support of their argument. First, nowhere in the bankruptcy court's order does the bankruptcy court state that it lacks jurisdiction. Instead, the bankruptcy court concludes that the Defendants had "actual knowledge that the debts exceeded the limitations provided by 11 USC §109(e) and that they were not eligible to file the present bankruptcy case." The bankruptcy court found the Defendants "filed the present case in bad faith and to impede [a mortgagee's foreclosure sale]."

Second, the relevant time with regard to whether a debtor has standing to assert pre-petition claims that are not listed on the debtor's bankruptcy schedules is whether a bankruptcy trustee has been appointed. *See Iredale,* 429 B.R. at 855 ("Once a trustee is appointed, the chapter 7 debtor has no standing to pursue a pre-petition cause of action.."). In both of Defendants' bankruptcy cases, a trustee was appointed. Therefore, the Defendants lack standing to assert their counterclaims against SunTrust Mortgage, Inc.

B. IN THE ALTERNATIVE, THE LANIERS' COUNTERCLAIMS SHOULD BE DISMISSED BASED ON THE FOLLOWING GROUNDS

1. *Violation of Truth in Lending Act – 15 U.S.C. § 1601 et seq.*

In Defendants' first counterclaim for violation of the Truth in Lending Act, Defendants allege that Plaintiff violated numerous provisions in the Truth in Lending Act in regards to the consummation of the loan transaction. Pursuant to 15 U.S.C. § 1610, any action brought forth

under the Truth in Lending Act must be brought within one year from the date of the occurrence of the violation. 15 U.S.C. § 1610 (2012). As stated in the Introduction and Facts, Defendants executed a promissory note and a mortgage on August 11, 1997, to SunTrust Mortgage, Inc's predecessor in interest. Therefore, any action brought outside one year from August 11, 1997, the date the loan closed, is barred by the statute of limitations. The amended answer and counterclaim of Defendants was filed on December 10, 2012, over fifteen years following the date of the subject loan closure. Thus, Defendants' counterclaims based upon the Truth in Lending Act should therefore be dismissed pursuant to 15 U.S.C. § 1610.

2. *Violations of RESPA – 12 U.S.C. § 2601 et seq.*

In Defendants' second counterclaim, Defendants allege that plaintiff violated RESPA by failing to accurately comply with disclosure requirements at the time of the closing of the subject property. Defendants' alleged violation of RESPA fails as a matter of law as it is barred by the applicable statute of limitations under RESPA. Pursuant to 12 U.S.C. § 2614, any action brought pursuant to 12 U.S.C. § 2605 relating to a closing must be brought within three years of the violation. 12 U.S.C. § 2614. As Defendants did not assert a cause of action under REPSA until on or about September 6, 2012, more than fifteen years after the alleged cause of action accrued, it is barred by the statute of limitations set forth in 12 U.S.C. § 2614.

3. *Violation of Fair Debt Collections Practices Act – 15 U.S.C. § 1692e*

In Defendants' third counterclaim, Defendants allege that plaintiff violated the Fair Debt Collections Practices Act by engaging in various false representations with respect to the debt owed. This counterclaim should be dismissed as Defendants have failed to provide sufficient facts in their pleading to support a cause of action.

In South Carolina, "[a] pleading which sets forth a cause of action, whether an original

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claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled." Rule 8(a), SCRCP.

Defendants fail to provide any facts supporting their allegations and any entitlement to relief. Defendants have not complied with the requirements for the pleading of a counterclaim, and therefore Defendants' counterclaim for Violation of the Fair Debt Collection Practices Act should be dismissed.

4. *Slander of Title*

In Defendants' fourth counterclaim, Defendants allege that plaintiff disparaged Defendants' exclusive valid title by filing documents relating to this foreclosure action. This counterclaim should be dismissed as the pleadings in this case are absolutely privileged.

"Under South Carolina case law, "[w]hen a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published, i.e., an action will not lie even if the report is made with malice." *Hainer v. American Med. Intern.*, Inc., 328 S.C. 128, 135, 492 S.E.2d 103, 106 (1997). "The [absolute] privilege covers anything that may be said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court." *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 22, 567 S.E.2d 881, 892 (Ct. App. 2002). "South Carolina has long recognized that relevant pleadings . . . are absolutely privileged." *Id.* at 23, 567 S.E.2d at 893.

Defendants' cause of action in this case arises out of the pleadings in this case. Because the statements in the pleadings are absolutely privileged, no cause of action can arise from any

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misrepresentations made by statements in the pleadings.

5. *Inequitable Foreclosure Attempt, Lack of Good Faith and Fair Dealing*

In Defendants' fifth counterclaim, Defendants allege that plaintiff has placed the court in a position to award an inequitable and unconscionable foreclosure. This counterclaim should be dismissed as Defendants have failed to provide sufficient facts in their pleading to support a cause of action.

In South Carolina, "[a] pleading which sets forth a cause of action, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled." Rule 8(a), SCRCP.

Defendants fail to provide any facts supporting their allegations and any entitlement to relief. Defendants have also not complied with the requirements for the pleading of a counterclaim.

6. *Subject Property Outside of Jurisdiction for Lexington County, SC*

In Defendants' sixth counterclaim, Defendants claim that a parcel of property subject to this foreclosure action is located in Chester County, South Carolina, and is therefore not in the jurisdiction of the courts of Lexington County. As properties subject to this action are located in both Chester and Lexington counties, plaintiff's foreclosure action may take place in either county. Therefore, Defendants' counterclaim should be dismissed.

In South Carolina, when more than one parcel of land is subject to a foreclosure proceeding, the action may take place in either county in which the land is located. *See Barrett*

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v. Watts, 13 S.C. 441, 443-44 (1880). In this case, the properties subject to the foreclosure action are located in both Lexington County and Chester County. Therefore, Plaintiff has the option of foreclosing all parcels of property in Lexington County.

7. *Failure to Comply with SC Supreme Court Administrative Order 2011-05-0201 or to Offer Solutions Under HAMP; Violation of South Carolina Unfair Trade Practices Act; Fraud and Swindle; Civil Conspiracy; and Violations of RICO*

In Defendants' seventh, eighth, ninth, tenth, and eleventh counterclaims, Defendants claim that: plaintiff has failed to comply with SC Supreme Court Administrative Order 2011-05-02-01 or to offer solutions under HAMP; plaintiff committed unlawful business practices; plaintiff committed fraud; plaintiff conspired to victimize Defendants; and plaintiff directly involved itself in a pattern of racketeering activity, respectively. As Defendants have failed to state a cause of action for which relief can be granted for any of these counterclaims, each should be dismissed as a matter of law.

In South Carolina, "[a] pleading which sets forth a cause of action, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled." Rule 8(a), SCRCP.

Defendants fail to provide any facts supporting their allegations and any entitlement to relief. Defendants have not complied with the requirements for the pleading of a counterclaim, and therefore Defendants' counterclaims for failure to comply with SC Supreme Court Administrative Order 2011-05-0201 or to offer solutions under HAMP; violation of South Carolina Unfair Trade Practices Act; fraud and swindle; civil conspiracy; and violations of RICO

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should be dismissed as a matter of law.

C. THE ALLEGEDLY NEWLY- DISCOVERED EVIDENCE DOES NOT ALLOW DEFENDANTS TO ASSERT THE COUNTERCLAIMS

Defendants assert that, because SunTrust Mortgage, Inc. failed to fully respond to Defendants' discovery requests, Defendants only recently learned of their counterclaims and that Defendants should therefore be able to assert the counterclaims against SunTrust Mortgage, Inc. However, a review of Defendants' discovery requests reveals that they are requesting numerous documents that are either irrelevant to this case or impossible for SunTrust Mortgage, Inc. to provide. Also, the "important" information that Defendants purport to have discovered through their "securitization audit" is that the loan may be securitized. According to the affidavit of William McCaffrey, who performed the "securitization audit," this basically leads to the conclusion that plaintiff cannot enforce the note at issue in this case.

Even if true, whether the loan at issue in this case was securitized could clearly have been discovered previously by the Defendants. Because Defendant could easily have, but did not, find this purported evidence sooner, Defendants should not avoid the bar of the statute of limitations. The fact that Defendants may have only recently discovered it also has no effect on the Defendants' lack of standing to assert the claim because they failed to assert it in their bankruptcy schedules. *See Iredale,* 429 B.R. at 855 ("That Defendant may have only recently become aware of [the claim] is of no consequence; it is part of the bankruptcy estate, subject to control by the Trustee.").

Although the court requested that the Defendants set forth specifically how the newly-discovered evidence related to the counterclaims they wish to assert, the Defendants failed to do so. The court should not have to speculate as to this relationship, but the Defendants may be attempting to assert either the "splitting" theory, or that someone else owns the note and

mortgage such that SunTrust Mortgage, Inc. cannot maintain this action. Both arguments fail.

Proponents of the "splitting" theory believe that once a loan is securitized, the mortgage is split from the note, making the note unenforceable. *See Larota-Florez v. Goldman Sachs Mortg. Co.* 719 F.Supp. 636, 641-42 (E.D.VA. 2010) (discussing the theory). Courts have routinely dismissed this argument. *See id.* ("Foreclosures are routinely and justifiably conducted by trustees of securitized mortgages. Therefore, Plaintiff's arguments for declaratory judgment and quiet title based on the so-called 'splitting' theory fail as a matter of law.").

Second, SunTrust Mortgage, Inc. is in possession of the original note, and the note is indorsed in blank. *See* S.C. Code § 36-3-205(a) and (b) (defining 'special indorsement' and 'blank indorsement') . Since SunTrust Mortgage, Inc. is in possession of the original note indorsed in blank, it is a "holder" of the note. *See* S.C. Code § 36-1-201 (20) (defining "holder"). As "holder" of the note, SunTrust Mortgage, Inc. is entitled to enforce the note. *See* S.C. Code § 36-3-301 (defining 'person entitled to enforce" an instrument); *see also Bank of America v. Draper,* ___ S.C. ___, 746 S.E.2d 478, 482 (Ct. App. 2013) (citing this same language in support of its finding that Bank of America was the holder of the note in that case). Even if SunTrust Mortgage, Inc. were the servicer, as opposed to the owner, of the note, SunTrust Mortgage, Inc. would still be entitled to maintain this foreclosure action. *See Draper,* 746 S.E.2d at 480-83 (servicer of loan has standing to maintain the foreclosure action).

D. AMENDMENT OF THE PLEADINGS TO SHOW SUNTRUST MORTGAGE, INC. AS THE PLAINTIFF

On August 29, 2012, plaintiff's attorney mailed to the court a proposed order substituting SunTrust Mortgage, Inc. as the plaintiff in this action. The proposed order was sent to the clerk of court and a copy mailed to all of the parties who had appeared in the action.

Although the signature line on the proposed order listed the signer as "Master-in-Equity for Lexington County," the order was signed by R. Knox McMahon, a circuit court judge. Discovering that the order was signed by Judge McMahon instead of the master in equity for Lexington County, to whom the case had previously been referred pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, plaintiff's attorneys, on December 4, 2012, mailed a new proposed order substituting plaintiff to the master in equity. This second proposed order, which has not been signed, was also mailed to all parties who had appeared in the action. There is no case on point, but case law strongly implies that, since the case had already been referred to the master in equity, the circuit court judge lacked jurisdiction to sign the proposed order. If the circuit court lacked jurisdiction to sign the order, the order would be void.

In *Smith v. Ocean Lakes Family Campground,* 315 S.C. 379, 433 S.E.2d 909 (Ct. App. 1995), the order of reference provided that the final order should be filed by the master in equity within ninety days of the date of the order of reference; otherwise, the order of reference was null and void. *Smith,* 315 S.C. at 380-81; 433 S.E.2d at 910. The order of reference was dated May 8, 1991, and although the hearing before the master in equity occurred on July 10, 1991, the final order was not filed until September 30, 1991. *Id.* The court of appeals held that, since the order of reference specifically provided the reference would be null and void if the master in equity did not file the final order within ninety days, the master lost the power to issue the final order when the final order was not filed within ninety days. *Id.* In holding the final order was a "nullity," the court stated that "the case has thus been withdrawn from [the master in equity] and *returned to the circuit court,* where it remains pending." *Id.* (emphasis added).

In order for the case to be "returned" to circuit court, it seems clear the case would have first had to be removed from the circuit court by the order of reference. If this is true, after the

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reference in the present case, the circuit court lost jurisdiction to sign the order substituting plaintiff and amending caption when the order of reference was filed. If the circuit court did not have the power to sign the order substituting plaintiff and amending caption, it, like the final order issued in *Smith,* should be a nullity.

Although the order substituting plaintiff and amending caption signed by Judge McMahon is probably void for lack of jurisdiction, whether it is a nullity does not affect the validity of anything else in this case. Rule 25(c) of the South Carolina Rules of Civil Procedure, which is entitled "Substitution of Parties," provides: "In case of any transfer of interest, *the action may be continued by or against the original party*, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." (emphasis added). Interest in the note and mortgage at issue in this case have been transferred to SunTrust Mortgage, Inc., and since the court has not signed the second proposed order substituting plaintiff and amending caption, the court has not directed that SunTrust Mortgage, Inc. be substituted as plaintiff. Therefore, the court has allowed the case to be continued by the original party.

E. DISMISSAL OF THE CASE

The note at issue in this case was recently paid off by Branch Banking and Trust Company, which held a second mortgage on the property. Branch Banking and Trust Company foreclosed on its mortgage and currently holds title to the property at issue in this foreclosure case. SunTrust Mortgage, Inc. has therefore moved that its current foreclosure action be dismissed.

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III. CONCLUSIONS OF LAW

There is no genuine issue of material fact as to the counterclaims alleged by Defendants, therefore, SunTrust Mortgage, Inc. should be granted summary judgment as to the counterclaims. SunTrust Mortgage, Inc. should also be substituted as the plaintiff in this case. Finally, this case should be dismissed, as the note at issue in the case has been paid off by Branch Banking and Trust Company, which foreclosed on its second mortgage and is the current owner of the property.

IV. ORDERS

IT IS ORDERED that plaintiff's motion for summary judgment as to the counterclaims asserted by the defendants, Cathy G. Lanier and Randy D. Lanier, be and hereby is granted.

IT IS FURTHER ORDERED that all of the motions to amend their answer filed by the defendants, Cathy G. Lanier and Randy D. Lanier, be and hereby are denied.

IT IS FURTHER ORDERED that SunTrust Mortgage, Inc. be and hereby is substituted as the plaintiff in this matter.

IT IS FURTHER ORDERED that this case be and hereby is dismissed.

IT IS SO ORDERED!

THE HONORABLE JAMES O. SPENCE
MASTER IN EQUITY FOR LEXINGTON COUNTY

March 18, 2015
Lexington, South Carolina

N:\PD\F10-09485

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COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	CASE NO.: 2011-CP-32-0156
	)	
SunTrust Mortgage, Inc.,	)	
	)	
Plaintiff,	)	**ORDER DENYING DEFENDANTS' MOTION TO RECONSIDER**
	)	
vs.	)	
	)	
Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, and Job Development Loan Fund, Inc.,	)	
	)	
Defendants.	)	
	)	

FILED
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M. A. CARRIGG
CLERK OF COURT
LEXINGTON, S.C.

Before this Court is Cathy G. and Randy D. Lanier's motion for the Court to reconsider its decision granting SunTrust Mortgage, Inc.'s motion for summary judgment. In their motion the Laniers argue the Court erred in granting SunTrust Mortgage, Inc.'s motion for summary judgment for the following reasons: (1) the Laniers have standing to pursue their claims; (2) the statute of limitations has not run on the Laniers' claims for violations of the Truth in Lending Act, 15 U.S.C. §1601, *et. seq.* ("TILA") and the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.* ("RESPA"); and (3) SunTrust Mortgage, Inc. is not immune from slander of title claims. For the following reasons, the Court denies the Laniers' motion to reconsider and affirms its granting of SunTrust Mortgage, Inc.'s motion for summary judgment.

I. FACTUAL AND PROCEDURAL HISTORY

On or about August 11, 1997, for value received, Cathy G. and Randy D. Lanier (the "Laniers") executed and delivered to Heritage Federal Savings and Loan Association a written promissory note for the sum of $425,000.00 (the "Note"), secured by a mortgage (the "Mortgage") encumbering three parcels generally described as Parcel 1, 213 Lake Villa Road, Lexington, SC 29072; Parcel 2, 211 Lake Villa Road, Lexington, SC 29072; and Parcel 3, 2651 Knox Station Road, Chester, SC 29706 (collectively, "the Properties"). Thereafter, through a

series of corporate mergers and name changes, Heritage Federal Savings and Loan Association became SunTrust Bank. Subsequently, SunTrust Bank assigned said mortgage unto SunTrust Mortgage, Inc. ("SunTrust Mortgage") by virtue of an assignment dated March 16, 2013, recorded March 23, 2014, in the Office of the Register of Deeds for Lexington County in Book 15409 at Page 303. SunTrust Mortgage is in possession of the original note. The Laniers have been in default under the Note and Mortgage since approximately September 1, 2010.

The Laniers were previously indebted to Bayview Loan Servicing, LLC and Branch Banking and Trust Company of South Carolina by virtue of a separate judgment of foreclosure and sale entered on October 7, 2011. As a result of that action, the Laniers filed for Chapter 13 bankruptcy on November 3, 2011. After a hearing, the Laniers' bankruptcy action was dismissed on November 7, 2011. The Laniers did not appeal the dismissal, and the time to file an appeal has expired. The Laniers filed for Chapter 13 bankruptcy again on November 8, 2011. This bankruptcy action was dismissed with prejudice after a hearing. By order of the bankruptcy court, the Laniers were prohibited from filing another cause under Chapters 11, 12, and 13 of the Bankruptcy Code for one year.

SunTrust initiated this foreclosure action by filing a Summons, Complaint, and Lis Pendens on January 14, 2011. On March 25, 2011, the Laniers filed an answer in this foreclosure action. On June 2, 2011, without consent of the plaintiff or leave of the court, the Laniers filed their first Motion to Amend. On February 14, 2012, the Laniers filed an appeal of Judge Waites' bankruptcy order, and a motion to stay the foreclosure sale. On February 28, 2012, after considering the Laniers' second motion to stay the foreclosure sale, the bankruptcy court issued an order denying the Laniers' motion to stay. On March 2, 2012, the bankruptcy court denied the Laniers' appeal of the order denying stay and the Laniers' motion to reconsider, filed March 1, 2012. Throughout the bankruptcy proceedings, the

Laniers never listed as an asset any of the claims they seek to assert against SunTrust Mortgage in this matter.

On July 12, 2012, the Laniers—in the present foreclosure action—filed a second Motion to Amend, and on August 3, 2012, they filed a third Motion to Amend. On September 6, 2012, the Laniers filed a fourth Motion to Amend, alleging the following counterclaims against SunTrust Mortgage: (1) violation of TILA, (2) violation of RESPA, (3) violation of the Fair Debt Collections Act, (4) slander of title, (5) lack of good faith and fair dealing, (6) violation of the South Carolina Unfair Trade Practices Act, (7) fraud and swindle, (8) civil conspiracy, and (9) violation of the Racketeer Influenced and Corrupt Organizations Act.

On December 10, 2012, the Laniers filed a fifth Motion to Amend. On May 20, 2014, the Laniers filed their sixth Motion to Amend, again requesting the Court allow them to assert counterclaims against SunTrust Mortgage. On July 1, 2014, SunTrust Mortgage filed a memorandum in opposition to the motion. The Court thereafter entered an order denying the Motion to Amend and granting SunTrust Mortgage summary judgment as to the Laniers' counterclaims on March 18, 2015 (the "Order"). The Laniers filed a Motion for Reconsideration on March 30, 2015. A hearing on the motion was held on November 18, 2015. For the following reasons, the Court denies the Laniers' motion to reconsider and affirms its grant of summary judgment in favor of SunTrust Mortgage.

II. STANDARD OF REVIEW

"A motion under Rule 59(e) long has been viewed as a 'motion for reconsideration' despite the absence of those words from the rule. Consequently, a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004) (citations omitted). The decision whether to grant a motion to reconsider is in the trial

court's discretion. *See Brown v. Pearson*, 326 S.C. 409, 416-17, 483 S.E.2d 477, 481 (Ct. App. 1997) (so holding in context of motion for summary judgment).

Rule 56(c), SCRCP allows a party to move for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." If the moving party has provided the necessary support, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP.

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003); *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Under South Carolina law, where "plain, palpable and indisputable facts exist on which reasonable minds cannot differ," summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

III. LAW AND ANALYSIS

A. Chapter 13 Debtors' Standing

The Laniers argue the Court erred in finding they lacked standing to bring their claims due to their failure to include the pre-petition claims on their bankruptcy schedule.

When a Chapter 13 petition is filed, a bankruptcy estate is automatically created. 11 U.S.C. § 541; 11 U.S.C. § 1306. Section 541(a)(1) of the Bankruptcy Code broadly defines property of an estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." Therefore, a pre-petition claim is the property of the estate. *See* 11

U.S.C. §541(a)(1) ; *In re Iredale*, 429 B.R. 853, 855 (Bankr. D.S.C. 2010); *Richardson v. United Parcel Serv.*, 195 B.R. 737, 739 (E.D. Mo. 1996) ("Causes of action which belong to the debtor . . . are estate property."). "When an action is not disclosed by the debtor, it remains property of the bankruptcy estate even after the case is closed—indeed, unless it is administered or abandoned by the trustee, the action remains property of the estate 'forever.'" *In re Arana*, 456 B.R. 161, 170 (Bankr. E.D. N.Y. 2011) (citation omitted).

On November 8, 2011, the Laniers filed a petition for Chapter 13 bankruptcy. The schedules attached to the bankruptcy petition required the petitioning party to list all claims of any nature, including counterclaims. The Laniers listed "None" on their schedule. The Laniers verified this information by signing the petition under penalty of perjury. Therefore, the Laniers do not have standing to bring any causes of action which existed at or prior to the time of the filing of the Chapter 13 bankruptcy petition; such right, under the statutory framework of the Bankruptcy Code, belongs solely to the trustee (because such property belongs to the bankruptcy estate). Without the trustee as no less than a co-plaintiff (or co-counterclaim plaintiff, as in the present case), the Laniers cannot pursue their claims. *See In re Gardner*, 218 B.R. 338, 342 (Bankr. E.D. Pa. 1998) (finding the issue of standing for a Chapter 13 party was alleviated due to the appearance of the trustee); *Richardson*, 195 B.R. at 739 (holding a Chapter 13 debtor lacked standing to pursue an action in his own name).[1] Accordingly, the Court finds that the Laniers' claims remain the property of the estate and they lack standing to assert any unreported claim that existed prior to filing for bankruptcy protection.

[1] While not binding precedent because it is an unpublished opinion, this Court notes that the South Carolina Court of Appeals has previously agreed with the ruling set forth herein. *See MidFirst Bank v. Brooks*, No. 2008-UP-196, 2008 WL 9841165, at *3 (S.C. Ct. App. Mar. 20, 2008) (affirming Master-In-Equity's summary judgment order as "proper based on the determination that [appellant] lacked standing to assert the defenses and counterclaims that she raised in her responsive pleadings" because of her Chapter 13 bankruptcy action, despite her claim that such lack of disclosure was inadvertent).

B. Judicial Estoppel

Next, the Court finds the Laniers are judicially estopped from asserting their pre-petition bankruptcy claims based on their failure to include the claims on their bankruptcy petitions.

Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (2004). The doctrine's function is to protect the integrity of the judicial process and the integrity of the courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. *Commerce Center of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 556 S.E.2d 718 (Ct. App. 2001); *see also Cothran*, 357 S.C. at 215, 592 S.E.2d at 631 (stating the purpose of the doctrine is to ensure the integrity of the judicial process). Stated otherwise, judicial estoppel precludes a party from adopting a position in conflict with one earlier taken. *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003); *Commerce Center*, 347 S.C. at 554, 556 S.E.2d at 723.

"A long-standing tenet of bankruptcy law requires one seeking benefits under its terms to schedule, for the benefit of creditors, all his interests and property rights." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 416 (3d Cir. 1988). "It is a generally recognized proposition that one cannot play fast and loose with the courts." *Payless Wholesale Dist., Inc. v. Albert Culver (P.R.) Inc.*, 989 F.2d 570, 571 (1st Cir. 1993) (internal quotation marks omitted). Numerous courts have held the omission or nondisclosure of a cause of action as an asset in a bankruptcy schedule provides an appropriate basis for imposition of judicial estoppel. *Id.* at 571-72; *Hay v. First Interstate Bank*, 978 F.2d 555, 557 (9th Cir. 1992); *Oneida*, 848 F.2d at 419-20; *Management Investors v. United Mine Workers*, 610 F.2d 384, 391-93 (6th Cir. 1979); *Jim Meagher Chevrolet, Inc. v. General Motors Corp.*, No. 4:93CV2385 GFG (E.D.

Mo. Aug. 26, 1994); *In re H.R.P. Auto Center, Inc.*, 130 B.R. 247, 254-55 (Bankr. N.D. Ohio 1991).

Judicial estoppel is specifically utilized by the courts to prevent the type of conduct sought here: assertion post-petition of pre-petition claims against a creditor of the bankrupt party. *See Welsh v. Quabbin Timber, Inc.*, 199 B.R. 224, 229 (D. Mass. 1996) (plaintiff estopped from proceeding with action against bank which was a creditor in his bankruptcy case); *In re H.R.P. Auto Center*, 130 B.R. at 254 (debtor estopped from asserting undisclosed counterclaim against major creditor); *In re Hoffman*, 99 B.R. 929, 935-36 (N.D. Iowa 1989) (estopping a lender liability suit against one of the plaintiff's primary bankruptcy creditors).

In the instant matter, the Laniers signed a federal court filing—their bankruptcy petition—under penalty of perjury. The document admittedly has inaccuracies, including the failure to list any of the claims the Laniers desire to assert in this matter. The Laniers were required to disclose the existence of any claim that existed prior to filing for bankruptcy. The claims the Laniers have raised in this action existed prior to filing for bankruptcy. Even assuming the best of intentions by the Laniers, to allow them to bring these claims would impinge on the integrity of this Court. The Laniers are therefore judicially estopped from seeking any of their pre-petition claims.

C. Statute of Limitations

i. Violation of Truth in Lending Act, 15 U.S.C. §1601, *et. seq.*

The Laniers argue the Court erred in applying TILA's one year statute of limitations. Pursuant to 15 U.S.C. §1640(e), any action brought under TILA must be brought within one year from the date of the occurrence of the violation. Any action brought to enforce a violation of Section 1639 of TILA must be brought within three years of the occurrence of the violation. 15 U.S.C. §1640(e).

The Laniers executed a promissory note and a mortgage to SunTrust Mortgage's predecessor in interest on August 11, 1997. In their fourth amended complaint, the Laniers alleged SunTrust Mortgage violated TILA at the "consummation of the transaction" when they failed to provide the Laniers with the statutorily required documents. Therefore, the Laniers' claim must have been brought by August 11, 2001, at the latest. The Laniers first filed their claim for violation of TILA on September 6, 2012—over ten (10) years since the claims allegedly occurred. Accordingly, the Laniers' claim is barred by the statute of limitations set forth in Section 1640(e) of TILA.

ii. Violation of RESPA, 12 U.S.C. § 2601 *et seq.*

The Laniers allege SunTrust Mortgage violated Section 2605(e)(2) of RESPA at the time of closing on the sale of the Properties by failing to correctly and accurately comply with the disclosure requirements. Under Section 12 U.S.C. § 2614, any claim for a violation of Section 2605 relating to a closing must be brought within three (3) years of when the alleged violation occurred.

The Laniers closed on the Properties in 1997. They filed their first claim on September 6, 2012—over ten (10) years after the alleged violation occurred. Accordingly, the Laniers' claim for violation of RESPA for failing to correctly and accurately comply with the disclosure requirements is barred by the three year statute of limitations. *See* 12 U.S.C. § 2614.

D. Slander of Title

The Laniers allege SunTrust Mortgage disparaged their title by filing the foreclosure complaint and lis pendens.

"Privileged communications are either absolute or qualified." *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 22, 567 S.E.2d 881, 892 (Ct. App. 2002). "When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under

which it is published, i.e., an action will not lie even if the report is made with malice." *Id.* (quoting *Hainer v. American Med. Intern., Inc.*, 328 S.C. 128, 135, 492 S.E.2d 103, 106 (1997)). "The [absolute] privilege covers anything that may be said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court." *Id.* (citation omitted) (alteration in original). A lis pendens is absolutely privileged. *Id.* at 32, 567 S.E.2d at 897.

The Laniers' slander of title claim is derived from the foreclosure complaint and the accompanying lis pendens. These documents are absolutely privileged communications. Therefore, the Court dismisses the Laniers' slander of title cause of action on the grounds that pleadings—including the lis pendens—are absolutely privileged and no action lies in the publication of absolutely privileged communications.

IV. CONCLUSION

For the reasons set forth herein, the Laniers' motion to reconsider is **DENIED**.

AND IT IS SO ORDERED.

THE HONORABLE JAMES O. SPENCE
MASTER IN EQUITY FOR LEXINGTON COUNTY

February _____, 2016
Lexington, South Carolina

Summons and Complaint

COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
Wells Fargo Bank, N.A., successor in interes to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1
PLAINTIFF,
vs.
Cathy G. Lanier, et al
DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

FILED
2011 JAN 14 P 1:35
CIVIL ACTION COVERSHEET
[illegible]
C/A NO: [illegible]

F10-09485 Submitted By John S. Kay, (Bar #7914), John B. Kelchner, (Bar # 13589), Alan M. Stewart, (Bar #15576)
Telephone # 803 252 5817
Address [illegible]
Fax #:
Other: 2011CP3200156
E-mail:

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) _____
- ☐ 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) _____
- ☐ Arbitration (900)
- ☐ 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)

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)
- ☐ Other (999)

Submitting Party Signature: [signature] Date: 1/14/11

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union 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 LEXINGTON

FILED

2011 JAN 14 P 1:35

IN THE CIRCUIT COURT FOR THE
11th JUDICIAL CIRCUIT

Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1

PLAINTIFF,

vs.

Cathy G. Lanier, et al

DEFENDANT(S).

(NON-JURY MORTGAGE FORECLOSURE)

CERTIFICATE OF EXEMPTION
FROM ADR

C.A.NO:

DEFICIENCY REQUESTED

F10-09485

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; or

☐ 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

ALAN M.STEWART /JOHN B. KELCHNER

H. GUYTON MURRELL

Defendant/Attorney(s) for Defendant(s)

Date: 1/14/11

FILED

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	LIS PENDENS 2011 JAN 14 P 1:35
Wells Fargo Bank, N.A., successor in interes to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1.	(NON-JURY MORTGAGE FORECLOSURE) RETURN ORIGINAL CLERK OF COURT LEXINGTON SC
PLAINTIFF,	C/A NO: DEFICIENCY REQUESTED
vs.	
Cathy G. Lanier, Randy D. Lanier, and Branch Banking and Trust Company,	2011-LP-32 00068
DEFENDANT(S).	

F10-09485

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 Randy D. Lanier and Cathy G. Lanier to Heritage Federal Savings and Loan Association in the amount of Four Hundred Twenty-Five Thousand And 00/100 ($425,000.00) Dollars, dated August 11, 1997, and recorded August 25, 1997 in the Office of the Register of Deeds for Lexington County in Book 4297 at Page 150 and re-recorded on September 22, 1998, in Book 4869 at Page 49, in the amount of $425,000.00.

Thereafter by virtue of a name change, Heritage Federal Savings and Loan Association changed it's name to Heritage Federal Bank.

Thereafter, by virtue of a series of corporate merger, Heritage Federal Bank merged with SouthBank; Thereafter, SouthBank merged with Central Carolina Bank; thereafter, Central Carolina Bank merged unto National Bank of Commerce; thereafter, National Bank of Commerce merged unto SunTrust Bank.

Thereafter, by virtue of an assignment to be recorded, SunTrust Bank assigned said mortgage unto Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1 making Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1 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:

PARCEL 1: ALL THAT CERTAIN piece, parcel or lot of land, with the improvements thereon, situate, lying and being located in the County of Lexington, State of South Carolina, said lot being shown on a plat prepared for Cemita, Inc. by Associated Engineers and Surveyors, dated June 26, 1972, and recorded September 26, 1972, in the Office of the RMC for Lexington County in Plat Book 122-G at Page 115; and being more particularly shown on a plat prepared for Randy D. Lanier and Cathy G. Lanier by Survey & Mapping Services of South Carolina, Inc., dated May 7, 1997, to be recorded, and according to said latter plat, having the following boundaries and measurements, to-wit: On the North by a 20' Private Road (Lake Villa Road) whereon it measures in a broken line a distance of 70.46 feet; on the East by property now or formerly Lanier whereon it measures 139.22 feet; on the Southwest by the waters of Lake Murray whereon it measures 176.35 feet; and on the Northwest by property now or formerly BB&T whereon it measures 106.40 feet; all measurements being a little more or less.

THIS BEING the same property conveyed unto Randy D. Lanier and Cathy G. Lanier by virtue of a Deed from Charles Edwin Puryear and Jan M. Puryear, dated August 11, 1997 and recorded August 25, 1997, in Book R 4297at Page 146.1, in the Office of the Register of Deeds for Lexington County, South Carolina.

PARCEL 2: ALL THAT CERTAIN piece, parcel or lot of land, together with any improvements thereon, situate, lying and being near the City of Columbia, in the County of Lexington, State of South Carolina, and being shown and designated as Lot 11 on a plat for D.E. Eford by Richard M. Lee dated May 7, 1957, and recorded in the Office of the RMC for Lexington County in Plat Book 77-G at Page 83; and being more particularly shown on a plat prepared for Randy D. Lanier and Cathy G. Lanier by Robert E. Collingwood, Jr., dated August 4, 1987, and recorded August 14, 1987, in the Office of the RMC for Lexington County in Plat Book 220-G at Page 270, and having the same boundaries and measurements as shown on said latter plat, reference to which is hereby craved for a more complete and accurate description, all measurements being a little more or less.

THIS BEING the same property conveyed unto Randy D. Lanier and Cathy G. Lanier by virtue of a Deed from John W. Preston, Jr. and Claudia S. Preston, dated August 11, 1987 and recorded August 14, 1987, in Book 916 at Page 189, in the Office of the Register of Deeds for Lexington County, South Carolina.

PARCEL 3: ALL THAT CERTAIN piece, parcel of lot of land, with dwelling house and all other improvements thereon, containing 131.736 acres, more or less, lying and being situate on the eastern side of Secondary Road S-12-35, known as Knox Station Road, in the County of Chester, State of South Carolina. Said parcel being more particularly shown on a plat thereof made by Ashmark Land Surveyors dated June 26, 1972, recorded August 13, 1992, in Plat Cabinet B, Slide 178, Page 7, Office of the Clerk of Court for Chester County, South Carolina, and having the courses and distances, metes and bounds as shown on said plat which is incorporated hereto by reference.

THIS BEING the same property conveyed unto Cathy G. Lanier by virtue of a Deed from James A. Gibson, dated August 13, 1992 and recorded August 13, 1992, in Book 625 at Page 138, in the Office of the Clerk of Court for Chester County, South Carolina.

213 Lake Villa Road, Lexington, SC 29072
211 Lake Villa Road, Lexington, SC 29072
Knox Station Road, Chester, SC 29706

TMS # 003418-02-014 (Parcel # 1)
TM # 003418-03-011 (Parcel # 2)
TME # 107-00-00-026-000 (Parcel # 3))

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

Peter D. Korn · John S. Kay
Alan M. Stewart / H. Guyton Murrell
John B. Kelchner / Meredith S. Lee
Attorneys for Plaintiff

Columbia, South Carolina

January 14, 2011

FILED

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS 2011 JAN 14 P 1:35 SUMMONS BETH A. CARRIG CLERK OF COURT LEXINGTON SC
Wells Fargo Bank, N.A., successor in interes to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1, PLAINTIFF, vs. Cathy G. Lanier, Randy D. Lanier, and Branch Banking and Trust Company, DEFENDANT(S).	(NON-JURY MORTGAGE FORECLOSURE) C/A NO: DEFICIENCY REQUESTED

F10-09485

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
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / MEREDITH S. LEE
Attorneys for Plaintiff

Columbia, South Carolina
January 14, 2011

FILED

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS 2011 JAN 14 P 1:35 BETH A. CARRIGG CLERK OF COURT LEXINGTON SC
Wells Fargo Bank, N.A., successor in interes to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1, PLAINTIFF, vs. Cathy G. Lanier, Randy D. Lanier, and Branch Banking and Trust Company, DEFENDANT(S).	COMPLAINT (NON-JURY MORTGAGE FORECLOSURE) C/A NO: DEFICIENCY REQUESTED

F10-09485

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

1. That the Plaintiff is a national association organized and existing under and by virtue of the laws of the United States of America; and that the Defendants, Cathy G. Lanier and Randy D. Lanier, are upon information and belief, citizens and residents of the County of Lexington, State of South Carolina. That the Defendant, Branch Banking and Trust Company, is upon information and belief a business organized and existing under the laws of North Carolina.

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

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

4. That on or about August 11, 1997, for value received, Randy D. Lanier and Cathy G. Lanier, did execute and deliver to Heritage Federal Savings and Loan Association, a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Randy D. Lanier and Cathy G. Lanier promised to pay to Heritage Federal Savings and Loan Association the sum of Four Hundred Twenty-Five Thousand And 00/100 Dollars ($425,000.00), together with interest thereon at an adjustable rate pursuant to the terms of the Note.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Randy D. Lanier and Cathy G. Lanier, did execute and deliver on August 11, 1997

unto Heritage Federal Savings and Loan Association, its successors and assigns, a mortgage covering the following described property:

Legal description and property address:

PARCEL 1: ALL THAT CERTAIN piece, parcel or lot of land, with the improvements thereon, situate, lying and being located in the County of Lexington, State of South Carolina, said lot being shown on a plat prepared for Cemita, Inc. by Associated Engineers and Surveyors, dated June 26, 1972, and recorded September 26, 1972, in the Office of the RMC for Lexington County in Plat Book 122-G at Page 115; and being more particularly shown on a plat prepared for Randy D. Lanier and Cathy G. Lanier by Survey & Mapping Services of South Carolina, Inc., dated May 7, 1997, to be recorded, and according to said latter plat, having the following boundaries and measurements, to-wit: On the North by a 20' Private Road (Lake Villa Road) whereon it measures in a broken line a distance of 70.46 feet; on the East by property now or formerly Lanier whereon it measures 139.22 feet; on the Southwest by the waters of Lake Murray whereon it measures 176.35 feet; and on the Northwest by property now or formerly BB&T whereon it measures 106.40 feet; all measurements being a little more or less.

THIS BEING the same property conveyed unto Randy D. Lanier and Cathy G. Lanier by virtue of a Deed from Charles Edwin Puryear and Jan M. Puryear, dated August 11, 1997 and recorded August 25, 1997, in Book R 4297at Page 146.1, in the Office of the Register of Deeds for Lexington County, South Carolina.

PARCEL 2: ALL THAT CERTAIN piece, parcel or lot of land, together with any improvements thereon, situate, lying and being near the City of Columbia, in the County of Lexington, State of South Carolina, and being shown and designated as Lot 11 on a plat for D.E. Eford by Richard M. Lee dated May 7, 1957, and recorded in the Office of the RMC for Lexington County in Plat Book 77-G at Page 83; and being more particularly shown on a plat prepared for Randy D. Lanier and Cathy G. Lanier by Robert E. Collingwood, Jr., dated August 4, 1987, and recorded August 14, 1987, in the Office of the RMC for Lexington County in Plat Book 220-G at Page 270, and having the same boundaries and measurements as shown on said latter plat, reference to which is hereby craved for a more complete and accurate description, all measurements being a little more or less.

THIS BEING the same property conveyed unto Randy D. Lanier and Cathy G. Lanier by virtue of a Deed from John W. Preston, Jr. and Claudia S. Preston, dated August 11, 1987 and recorded August 14, 1987, in Book 916 at Page 189, in the Office of the Register of Deeds for Lexington County, South Carolina.

PARCEL 3: ALL THAT CERTAIN piece, parcel of lot of land, with dwelling house and all other improvements thereon, containing 131.736 acres, more or less, lying and being situate on the eastern side of Secondary Road S-12-35, known as Knox Station Road, in the County of Chester, State of South Carolina. Said parcel being more particularly shown on a plat thereof made by Ashmark Land Surveyors dated June 26, 1972, recorded August 13, 1992, in Plat Cabinet B, Slide 178, Page 7, Office of the Clerk of Court for Chester County, South Carolina, and having the courses and distances, metes and bounds as shown on said plat which is incorporated hereto by reference.

THIS BEING the same property conveyed unto Cathy G. Lanier by virtue of a Deed from James A. Gibson, dated August 13, 1992 and recorded August 13, 1992, in Book 625 at Page 138, in the Office of the Clerk of Court for Chester County, South Carolina.

213 Lake Villa Road, Lexington, SC 29072
211 Lake Villa Road, Lexington, SC 29072
Knox Station Road, Chester, SC 29706

TMS # 003418-02-014 (Parcel # 1)
TM # 003418-03-011 (Parcel # 2)
TME # 107-00-00-026-000 (Parcel # 3)

6. Thereafter said mortgage was recorded in Book 4297 at Page 150 on August 25, 1997 and re-recorded on September 22, 1998, in Book 4869 at Page 49, in the Office of the Register of Deeds of Lexington County.

7. Thereafter by virtue of a corporate merger, Heritage Federal Savings and Loan Association merged with Heritage Federal Bank

8. Thereafter by virtue of a name change, Heritage Federal Savings and Loan Association changed it's name to Heritage Federal Bank.

9. Thereafter, by virtue of a series of corporate merger, Heritage Federal Bank merged with SouthBank; thereafter, SouthBank merged with Central Carolina Bank; thereafter, Central Carolina Bank merged unto National Bank of Commerce; thereafter, National Bank of Commerce merged unto SunTrust Bank.

10. Thereafter, by virtue of an assignment to be recorded, SunTrust Bank assigned said mortgage unto Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1 making Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1 the present lien holder and Plaintiff herein.

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

12. That the Defendant, Branch Banking and Trust Company, s/b/m to Branch Banking and Trust Company of South Carolina, is made a party by virtue of the following:

(a). Mortgage given by Randy G. Lanier and Cathy D. Lanier to Branch Banking and Trust Company of South Carolina, dated December 9, 2004 and recorded December 10, 2004, in Book 9768 at Page 154, in the amount of $550,000.00.

(b). Pending Summons and Complaint filed by Branch Banking and Trust Company of South Carolina against Randy D. Lanier and Cathy D. Lanier, dated October 6, 2010 and recorded October 8, 2010 for foreclosure action bearing Case # 10-CP-32-4364.

(c). Mortgage given by Randy G. Lanier and Cathy D. Lanier to Branch Banking and Trust Company, dated December 11, 2008 and recorded December 12, 2008, in Book 13286 at Page 47, in the amount of $167,000.00.

13. 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.

14. 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.

15. 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.

16. 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.

17. The monthly payments due on said note and mortgage are in default since September 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 September 1, 2010 the sum of One Hundred Sixty-Two Thousand Three Hundred Twenty-Two And 79/100 Dollars ($162,322.79), together with interest at an adjustable rate pursuant to the terms of the Note from August 1, 2010 and also for the costs and disbursements of this action, including attorney's fees.

18. That the Plaintiff does not waive but specifically demands judgment against the Defendants, Randy D. Lanier and Cathy G. Lanier for the full amount found to be due to Plaintiff on the note and mortgage held by plaintiff, with the right to enter personal judgment against the Defendants, Randy D. Lanier and Cathy G. Lanier for any deficiency in this action remaining after sale of the mortgaged premises.

19. This Mortgage loan is not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac nor is the servicer/investor participating in the Home Affordable Modification Program.

20. 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.

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

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

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

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

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

Fourth, Plaintiff have judgment against the Defendants, Randy D. Lanier and Cathy G. Lanier for the full amount found to be due Plaintiff on the note and mortgage, with right to enter personal judgment against the Defendants, Randy D. Lanier and Cathy G. Lanier for any deficiency in this action remaining after sale of the mortgaged premises.

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

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

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

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

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

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

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

Columbia, South Carolina
January 14, 2011

FILED
2011 JAN 14 P 1:35
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

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 17 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.

Answer

COPY

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-3200156-00498

FILED

2011 JAN 28 P 12:34

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1, Plaintiff

vs.

Cathy G. Lanier, et al, Defendants

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW the Defendants, Randy D Lanier, et al, files this Answer to the Complaint filed herein by the Plaintiffs, Branch Banking and Trust Company of South Carolina, and would state as follows:

The history recorded on the first page of the Complaint is incomplete. The subject property was first mortgaged in 1987 by Heritage Federal Savings and Loan, which became Heritage Federal Bank, and subsequently, additional properties were added to this loan. The loan was then purchased by Central Carolina Bank, due to a merger, and Central Carolina Bank was purchased by National Bank of Commerce, which was then purchased by SunTrust Bank. This means that for over 32 years, Defendant had never missed a mortgage payment, never been late with a mortgage payment, and had paid substantial principal over and above what was required. Defendant contacted SunTrust bank prior to missing any payments and indicated that she and her husband were unemployed, and attempting to sell other commercial properties held by them in order to stay afloat until they could find reasonable employment. Defendant indicated that since she would not have the funds to pay the property taxes on the properties under this mortgage, she requested that SunTrust pay them on her behalf, and requested that, due to the vast equity secured by this mortgage, SunTrust modify the loan to add the tax payments to the end of the loan and extend the terms, to allow it to be paid in reasonable payments. SunTrust refused to discuss the matter. Defendant continued to pay the regular principal and interest payment through September of 2010. However, September, 2010 was the first payment increased by over $5000 per month due to the required escrow to cover the tax payments, and SunTrust returned the payment made for principal and interest due to it being an incomplete payment.

Defendant then contacted the CEO of Suntrust, and was told that they refused to consider a modification. When pressed further, SunTrust, for the first time, admitted that they were not in a position to consider this request because this loan was owned by an outside investor. It took nearly 2 months for SunTrust to reveal that the outside investor was Wells Fargo. Defendant is in the process of negotiating with Wells Fargo, and understands that while still in negotiation, a foreclosure action is illegal, and therefore should be stayed until such time as the parties reach agreement or agree that there will be no agreement.

The balance of this mortgage prior to the tax payments being made was less than $165,000. The combined 3 properties securing this mortgage have a conservative appraised value of more than $2.5 million. It appears that Wells Fargo has taken the stance that they should, after Defendant serviced this mortgage flawlessly for over 32 years, take this vast amount of valuable property rather than use some of that equity to secure an extension to cover the tax payments. They will not accept monies sent to them by Defendant toward the principal and interest, simply due to the escrow payment not being able to be made.

It is also important to note that the two Lexington County properties are vacant lots with wide open access and in full view from the public road that accesses them. SunTrust, for many years, has attempted to force-place property insurance on these lots, and refuses to inspect the properties to see that there are no structures on them. In SC, it is illegal to place property insurance when there are no structures on the property, yet the insurance company located in New York state that works with SunTrust, currently has an illegally placed insurance policy on these properties. It appears that these two organizations are colluding to take advantage of property owners to require obscenely high premiums to be paid in addition to other monies. Defendant would recommend a full investigation and possibly sanctions against both SunTrust and their insurance provider.

Further, one property the secures this mortgage is not even located in Lexington County, so that property cannot be considered in this action.

The following addresses each of the specific claims made by the Plaintiff:

1. Defendant has no knowledge of an organization including the Plaintiff(s), and therefore denies this claim.

2. Defendant is represented pro se.

3. This action cites 3 properties. One is located outside of Lexington County, and cannot be included in this action.

4. The allegations of paragraph 4 are admitted.

5. The allegations of paragraph 5 are admitted.

6. The allegations of paragraph 5 are admitted.

7. The allegations of paragraph 7 are admitted.

8. The allegations of paragraph 8 are unknown to the Defendant and therefore denied.

9. The allegations of paragraph 9 are unknown to the Defendant and therefore denied.

10. The allegations of paragraph 10 are unknown to the Defendant and therefore denied.

11. The allegations of paragraph 11 are unknown to the Defendant and therefore denied.

12. The allegations of paragraph 12 are admitted.

13. The allegations of paragraph 13 are unknown to the Defendant and therefore denied.

14. The allegations of paragraph 14 are admitted.

15. The allegations of paragraph 15 are unknown to the Defendants and therefore denied.

16. The allegations of paragraph 16 are unknown to the Defendants and therefore denied.

17. The allegations of paragraph 17 are are inaccurate. Defendant made payment exceeding the amount of the interest and principal on or about September 1, 2010. Defendant was not able to pay any larger portion of escrow only. Plaintiff returned legal payment, denoted to be applied to principal and interest,

to Defendant. Upon inquiry by the Defendant to SunTrust mortgage (who Defendant thought owned the mortgage) Defendant was told to cease sending these payments. Defendant subsequently learned that loan was owned by the named Plaintiffs in this action, and had never been properly and legally noticed of this arrangement.

18. The allegations of paragraph 18 are unknown to the Defendants and therefore denied.

19. The allegations of paragraph 19 are unknown to the Defendants and therefore denied.

20. The allegations of paragraph 20 are denied. Nothing has been done to secure the property, and SunTrust has not even sent anyone out to view it to learn that it has no structures on it, and continues to illegally insure a vacant property.

21. The allegations of paragraph 21 are denied inasmuch as Defendants continue to be in negotiations with the Plaintiff, and believes it is illegal for them to file a foreclosure action while still in negotiations. A discussion regarding a cure and plan to sell another property to bring this mortgage current was held as recently as 2 weeks prior to this date.

AFFIRMATIVE DEFENSES

1. Plaintiffs attorneys' fees have not been broken down to establish what the attorneys fees are exactly covering, including how many hours were worked, etc.

2. The Defendants contacted Plaintiff well in advance of any default, and tried to make other arrangements to allow the mortgage to remain intact. It was not until fully 4 months past the original default that Suntrust divulged that the loan was actually owned by Plaintiffs, thereby negating all prior attempts to work out an arrangement to catch up the property tax payments. Defendants are still in negotiations to arrive at a reasonable solution in light of a serious economic downturn affecting Technology Solutions, Inc. that has resulted in no income to the Laniers from this business for over a year. While in negotiation with the bank, a bank is not allowed to foreclose on a property, as we interpret the law.

REQUEST FOR CONFERENCE

Defendants, Randy D. Lanier; Cathy G. Lanier, request a conference to settle all issues.

I hereby certify that the original was mailed by certified letter to the clerk of courts and a copy was sent by US Mail to John B. Kelchner on date January 27, 2011.

Randy D. Lanier

Randy D. Lanier, Pro Se Defendant

Cathy G. Lanier

Cathy G. Lanier, Pro Se Defendant

FILED
2011 JAN 28 P 12:34
CYNTHIA CARRIGG
CLERK OF COURT

172 Belle Chase Drive
Lexington, SC 29072
803-315-3636

Motion to Amend Answer filed July 12, 2014

STATE OF SOUTH CAROLINA

COUNTY OF [illegible]

IN THE COURT OF COMMON PLEAS

[illegible]

[illegible]

[illegible] 12 A 11: 01

[illegible]

MOTION AND ORDER INFORMATION

[illegible] FORM AND COVERSHEET

COPY

Cathy [illegible]

Defendant

Plaintiff's Attorney	Defendant's Attorney
Dean Hayes, Bar No. NA	NA Bar No. NA
Address:	Address:
1300 Pickens St., Columbia, SC	172 Belle Chase Drive, Lexington, SC 29072
Phone: 803-252-5817 Fax	Phone: 803-315-3636 Fax 803-359-7031
E-mail: Other:	E-mail: cathy@tsisc.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: Motion to Amend Answer, Dismiss Foreclosure Actions, Request for Jury Trial, Response to Cert. of Mortgagor non-compliance

Estimated Time Needed: _____ 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] [signature]

Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 20.50

☐ 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.	JUDGE CODE _____
☐ Other:	Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: $ _____

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) 11TH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-32-156

COPY

Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1,

Plaintiffs,

Vs.

Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, And Job Development Loan Fund, Inc.,

Defendants.

RESPONSE TO CERTIFICATION OF MORTGAGOR NON-COMPLIANCE (Administrative Order 2011-05-02-01)

MOTION TO AMEND ANSWER

MOTION TO DISMISS ALL FORECLOSURE ACTIONS BY PLAINTIFFS

REQUEST FOR JURY TRIAL

Defendants Cathy G. Lanier and Randy D. Lanier, having gained information as of February, 2012 that was not available to them at the time of their original answer to the Foreclosure Complaint, respectfully amend their answer and offer the following history of this case to show why Plaintiff has no standing or right to bring this action, and has perjured itself in its submission of the Certification of Mortgagor Non-Compliance. Defendants apologize for the lack of dates in the recounts of the earlier portions of the history, as they no longer have access to records going back that far. Defendants have requested this information from Plaintiffs, but have received none of it, indicating also that their records are inaccurate and incomplete. This proves they have no ability to verify the amount owed on any mortgage they claim to own, and without verification, they cannot proceed to a foreclosure action.

- One of the subject properties, 211 Lake Villa Road, Lexington, SC was originally mortgaged in August of 1987 with Heritage Federal Savings and Loan. Defendants were instructed to make

payments to Heritage Federal Bank ("Heritage Federal") at a later date. Due to their good relationship with Heritage Federal, additional properties were added to the same loan. First was 2651 Knox Station Road, Chester, SC, and next was the adjoining property to the original property, 213 Lake Villa Road, Lexington, SC.

- Due to the fact that Defendants had pre-paid a great deal of principal for this loan, Heritage Federal was in the process of releasing two of the properties (211 Lake Villa Road and 2651 Knox Station Road) when Defendants received notice to begin making payments to Central Carolina Bank ("Central Carolina"), and did so, even though there was never a transfer, an assignment or any legal instrument recorded to indicate this mortgage had been sold, assigned or transferred. Defendants were not notified of a transfer or assignment, but were simply provided a new name and address for payment purposes.
- At some point after that, Defendants were similarly instructed to make payments to Suntrust Bank ("Suntrust") as a result of their merger with Central Carolina Bank. Defendants did so, but there was still never a transfer, an assignment or any legal instrument recorded to indicate this mortgage had been sold, assigned or transferred. There was no official notice of a transfer or assignment sent to Defendants.
- Defendants never received the promised mortgage satisfactions removing the two afore-mentioned properties from Heritage Federal, and assumed that process had been "lost in the shuffle" of the sales and/or mergers that moved the loan to Central Carolina and subsequently to Suntrust. Defendants contacted Suntrust and were given the name of Chandra Smith to contact to complete this process. On March 19, 2007, Defendants faxed a letter (see Exhibit A) to Ms. Smith giving her the history and asking for the mortgage satisfactions on the two properties that Heritage Federal was in the process of releasing from the lien. Defendants later learned that Ms.

Smith was not the appropriate contact, and were passed around among a number of others before arriving at a Sami Asad, who replied to the request by email. In all communications with Suntrust, the only property they listed as being under the lien was 213 Lake Villa Road, clearly indicating that Heritage Federal had, in fact, removed the other two properties as they indicated they would do, prior to the sale and/or merger that moved the payments to Central Carolina and subsequently to Suntrust. Suntrust representatives admitted they had no record of the other two properties on their computer systems, but for some reason would not comply with our request to clean up the paperwork. On April 6, 2007, after having received a runaround from Suntrust, and now receiving an email indicating that it would cost Defendants a great deal of expense to have Suntrust correct an error that was clearly Suntrust's error, Defendants wrote to Sterling Edmunds, Jr. the President and CEO of Suntrust to attempt to get this matter cleaned up once and for all (see Exhibit B).

- Mr. Edmunds referred Defendants to others within Suntrust, but they were adamant about Defendants paying to perform unnecessary appraisals, property evaluations, etc. to clean up a mess Suntrust inherited and was bound to correct by law. Defendants eventually just gave up the fight, all the while continuing to pay the mortgage payments according to the terms of the note with Heritage Federal, and paying additional principal as well.
- In late 2008, due to the banking and economic crisis that dealt a huge blow to small businesses, Defendants' businesses were in a decline. Without reason or warning, current lines of credit being paid according to the terms of their agreements were closed, thereby removing all source of cash-flow funding required to sustain Defendants' businesses. Defendants contacted all creditors to attempt to refinance or restructure mortgages to be able to weather the storm. One of those contacted was Suntrust. At the time, Defendants had paid the mortgage payments for over 22 years without fail, had never made a late payment, were not behind on payments to

Suntrust, and had paid enough principal in advance for there to be a less than $165,000 balance on the mortgage (which is not verified, because Suntrust has failed to provide the full accounting requested and required in order to proceed with a foreclosure). The mortgage was tremendously over collateralized with three (3) properties totaling a conservative estimate of $2M because Suntrust had refused to release the two properties that Heritage Federal had authorized to be released from the lien. In fact, the only reason Defendants contacted Suntrust at all, was to try to work out an arrangement to pay a large escrow for property taxes that Suntrust had informed Defendants would come due in September of 2010, in one payment exceeding $8,000. Defendants spent the better part of 2010 trying to find the authorized person at Suntrust to discuss a loan modification to allow the real estate taxes due for the properties to be rolled into the loan, keeping the payments the same. With their excellent payment history, still having never missed or been late with a payment for the principal and interest required, they assumed this would be a routine request. However, the situation was quite different. Defendants would be told they were working with the person with the authority to help them, only to find that was not the case after months of sending documentation and requested information. Finally, Defendants received a notice that their required payment for the escrowed tax payments would be due in one payment in September of 2010. Again, Defendants requested that this escrow be spread over more months, or added to the end of the loan, extending the time to pay, but again, nothing was offered by Suntrust to prevent a default by Defendants.

- In September of 2010, Defendants sent only the $1400 payment to cover interest and principal (plus a bit more principal), as they could not afford the tax escrow of over $8000 in addition to the regular payment. That payment was returned, with a letter indicating that any and all payments for less than the amount including the escrow would be returned.

- At that point, on November 19, 2010, Defendants wrote a letter to James M. Wells, III, the President, CEO and Chairman of the Board for Suntrust, requesting that he step in and apply some logic to this situation (see Exhibit C). Defendants were offering many reasonable solutions, were able to continue to pay the interest and principal required, but simply needed help dealing with the huge escrow owed. One of the solutions was to have Suntrust finally rectify the mistake made that was tying up the two properties that were supposed to be released from the lien, so Defendants could sell one of those properties to pay off the Suntrust mortgage in full. However, in late November of 2010, Defendants received a phone call from someone from Suntrust's executive team, indicating that Suntrust had no authority to do what Defendants were asking, because it did not own Defendants' loan (emphasis added). When Defendants then requested to know who owned their loan, they were told that Suntrust was not at liberty to divulge that information. Defendants informed the caller that it was their right to know the owner of their mortgage, and if necessary would seek legal assistance to find out. The caller then said she would pass that information along and send a letter to Defendants with the information or how to obtain it. Again, there was nothing on record in the Lexington County or Chester County Registrars of Deeds to indicate the loan had ever been transferred to Suntrust, much less to yet another party.
- In December of 2010, Defendants were notified that the owner of their loan was Wells Fargo, and were provided a mailing address to contact them. This letter (see Exhibit D) also refers to force-placed insurance that was being charged to the Defendants, even though Defendants had removed the structure on the property in anticipation of building a new home there, and it is impossible to insure a vacant lot. The premium for this illegally placed insurance made up a significant percentage of the escrow demanded by Suntrust that caused Defendants to be in default. Defendants subsequently had to file a formal complaint with the SC Department of

Insurance to force Suntrust to remove the force-placed insurance, and Defendants learned of a potential "inside deal" with the insurer that implied that Suntrust was engaged in a scheme to defraud the public by charging for unwarranted or excess insurance through a business affiliate of their company. The SC Department of Insurance concurred with Defendants' findings, and forced Suntrust to reimburse the force-placed insurance premiums and remove their fraudulent insurance. There was indication that sanctions may be applied to both Suntrust and their affiliate insurance company, but Defendants have no way to verify whether or not that occurred.

- Defendants contacted Wells Fargo by phone to try to learn who to work with to resolve this issue, but the only response received was a notice of their intention to foreclose on all three properties because Suntrust had returned mortgage payments that did not include the escrow amount. To date, Defendants have never received a communication, either written or verbal, from Wells Fargo directly, so it was impossible to engage in any sort of negotiation to work out a resolution to this issue. It is clear they are in the business to simply take property from people who are making every effort to do the right thing, and Defendants' three (3) properties must seem to be a prize to them – valued at over $2M, with an outstanding (but unverified) loan balance of less than $165,000. Defendants were in a position to keep the mortgage current by paying the interest and principal amounts, but their payment in September of 2010 was returned, with a letter indicating that all subsequent payments not containing the full amount of the escrowed taxes and illegally placed insurance would be returned. In effect, Suntrust, obviously acting as an agent or third-party debt collector for Wells Fargo, would not allow Defendants to pay toward their loan.
- In January of 2011, a complaint and Lis Pendens was filed against Defendants by the Plaintiff Wells Fargo, NA, but all information brought forth made it clear that Suntrust was, in fact, trying to enforce a security interest in this loan. It even appeared that Suntrust had hired Korn

Law Firm (third party debt collector) to enforce this action on behalf of Suntrust. Defendants answered this complaint and requested various documents proving Suntrust's standing to bring a foreclosure action against Defendants. Defendants sent Plaintiffs, via Korn Law Firm, a Qualified Written Request (as per RESPA) in an attempt to sort out who, exactly owned the loan in question, so they could deal with the real party in interest. Suntrust responded to the QWR, and their response was insufficient to answer any of Defendants' questions.

- In August of 2011, Defendants received an email from Korn Law Firm asking for private and personal information to be completed for Suntrust. Defendant Cathy Lanier responded indicating that she would need to see proof that Suntrust was, in fact, the authority that could make decisions on these matters, as she had been informed before that Suntrust was not, in fact, that authority. None of the forms sent to Defendants by Korn Law Firm referred to Wells Fargo in any way, yet they were still being presented as the owner of the loan. (see Exhibit E)
- Defendants requested to see the original loan documents and all assignment, transfers, etc. indicating any standing of Suntrust or Wells Fargo to enforce an action against Defendants. Defendant, Cathy Lanier was invited to Korn Law Firm in October of 2011 to view what was represented to her over the phone and by email, the original note proving Suntrust's and/or Wells Fargo's standing to enforce the note. Ms. Lanier viewed the note, and found that it might likely be the original "wet ink" note, but it was the note with Heritage Federal Savings and Loan only. Markings on the note showed it had been altered without knowledge of the Defendants, thereby making it void. Additionally, attorneys for the Plaintiffs could not produce any documentation whatsoever showing a legal transfer or assignment of interest in this note to any of the entities claiming to be the real party in interest throughout the life of the loan. Specifically, there was no transfer from Heritage Federal Savings and Loan, to Heritage Federal Bank, to Central Carolina Bank, to Suntrust, or to Wells Fargo. A recent search at the

Lexington County Registrar of Deeds' website has located a recently filed Assignment of Mortgage (filed on March 23, 2012, see Exhibit F) that was clearly done in anticipation of this new action to try to establish standing and fraudulently prove Suntrust to be the real party in interest, where there is not a clear audit of deed or mortgage to prove same. This document shows an assignment directly from Heritage Federal Savings and Loan to Suntrust, which clearly is fraudulent. By the time Suntrust was involved with this loan, both Heritage Federal Savings and Loan, and its immediately successor, Heritage Federal Bank, were dissolved. The new document also fails to attribute any ownership to Wells Fargo, clearly exempting them from this case, even though Suntrust has specified in writing that Wells Fargo is the legal owner of this mortgage, and it is Wells Fargo that appears to be bringing this action. This filing is therefore fraudulent, and meant to perpetrate the fraud by Wells Fargo and Suntrust, to claim ownership of a security interest in these properties, where there is none. None of these parties have proven any damage in this matter either, indicating that in all likelihood, this mortgage was paid in full and satisfied even prior to an action being filed by Suntrust and Wells Fargo, which private agreements with these banks, as well as Defendants' records, indicate.

- Defendants were contacted several times by Suntrust in an effort to have them divulge personal and private information, even after Suntrust admitted they had no authority to negotiate on behalf of the lender, Wells Fargo. Defendants requested many times for Suntrust to prove their standing and ownership, otherwise they would only deal with the party claiming to own their loan, Wells Fargo. To date, Defendants have received no correspondence from Wells Fargo at all. Yet Korn Law Firm, acting as a third-party debt collector, has stated that Defendants have "failed, refused, or voluntarily elected not to participate in any foreclosure intervention process." Defendants have yet to receive from Wells Fargo, the named Plaintiff in this action, any offer of foreclosure intervention, therefore the Certification of Mortgagor Non-Compliance

is fraudulent. Korn Law Firm has committed perjury and their Certification is without merit. As outlined above, Defendants wasted months (nearly a year) attempting to deal with Suntrust to resolve this issue, even prior to a payment problem, only to be told, in writing, that Suntrust had no authority to negotiate these matters. Defendants simply insisted (as they are guaranteed by law) that they be allowed to deal directly with Wells Fargo, who has and continues to claim (by virtue of their being the Plaintiffs in this action) ownership of this loan.

Therefore, Defendants respectfully request that Plaintiffs be enjoined from proceeding toward any foreclosure action, based on the following:

PLAINTIFFS HAVE FAILED TO SHOW THAT THEY ARE THE REAL PARTY IN INTEREST

Defendants have requested over and over for nearly 18 months, any proof showing that Wells Fargo and/or Suntrust has standing to enforce an action against Defendants concerning the loan between Defendants and Heritage Federal Savings and Loan. Nothing has been produced to show either of these parties have any ownership or security interest in this loan. "Nothing is owed when the proper chain of title does not exist as determined by the Massachusetts Supreme Court when presented with similar issues." *US Bank National Association, Trustee v. Antonia Ibanez, and a consolidated case for ABFC 2005-OPTI Trust, ABFC Asset Backed Certificates, Series 2005-OPTI, in re Kang Jin Hwang*, 396 B.R. 757, 768 (Bankr. C.D. Cal 2008).

A Movant must have both constitutional and prudential standing and be the real party in interest under Fed. R. Civ. P. 17, in order to be entitled to lift-stay relief [citing: *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)]. Constitutional standing under Article III requires, at a minimum, that a party must have suffered some actual or threatened injury as a result of the defendant's conduct, that the injury be traced to

the challenged action, and that it is likely to be redressed by a favorable decision. *Valley Forge Christian Coll. V. Am. United for Separation of Church and State*, 454 U.S 464, 472 (1982).

Beyond the Article III requirements of injury in fact, causation, and redress ability, movant must also have prudential standing, which is a judicially-created set of principles that places limits on the class of person who may invoke the courts' powers. See *Warth v. Seldin*, 422 U.S. 490, 499 (1975). As a prudential matter, a plaintiff must assert "his own legal interest as the real party in interest." *Dunmore v. United States*, 358 F.3rd 1107, 1112 (9th Cir. 2004), as found in Fed. R. Civ. P. 17, which provides "an action must be prosecuted in the name of the real party in interest."

PLAINTIFFS HAVE PROVIDED NO TESTIMONY OR EVIDENCE AND ARE ATTEMPTING TO UTILIZE A THIRD-PARTY DEBT COLLECTOR

According to *Heintz v. Jenkins* (1995) 514 US 291, 299, "A debt collector is moving an action in its own behalf and its own interest and cannot represent a third party. See also, Wilson v. *Draper & PLLC* 443 F.3d 373 (2006). Korn Law Firm is also in violation of Title 15 USCA Ch. 41 part V Section 1692i(b). A debt collector moved an initial communication to collect a debt (Notice to Vacate January 4th, 2010). See *Goldman v F Cohen* 445 F3d 152 (2006). The Supreme Court has said in *Sicox v. Lang* (1889) 78 Cal. 118, 122: "The practice of attorneys verifying for their clients should be discouraged, and to that end, the provisions of the Code should receive a strict construction." Therefore, the Attorney Firm must be enjoined from any action in further unlawful acts against Defendants. See *State ex rel. State Bar of Wisconsin v. Bonded Collections, Inc.*, 36 Wis. 2d 643 (1967), *Carroll v. Wolpoff & Abramson* 961 F.2d (1962).

Based on the facts stated within and the blatant misrepresentation by Korn Law Firm as to their standing and the standing of their client (believed to be Suntrust), Korn Law Firm has grossly abused the judicial foreclosure laws of this state and is not entitled to any claim.

PLAINTIFFS AND THEIR ATTORNEY HAVE COMMITTED FRAUD, PERJURY, MISREPRESENTATION, OR OTHER MISCONDUCT OF AN ADVERSE PARTY

Civil Rule 60 (b) 3 indicates the facts of this case warrant a reversal of any action taken and/or a dismissal of any pending actions based on: (3) fraud, misrepresentation, or other misconduct of an adverse party. The naming of a party that is not a real party in interest to this lawsuit, can be considered nothing less than fraud. Plaintiffs have also misrepresented their standing, substantial facts of the case, and have perjured themselves.

VIOLATION OF TRUTH IN LENDING ACT – 15 U.S.C. §1601 *et seq.*

The loan transaction at issue is a consumer credit transaction subject to the provisions of TILA. Heritage Federal Savings and Loan, Heritage Federal Bank, Central Carolina Bank, Wells Fargo and Suntrust are "creditors" as that term is defined by 15 U.S.C. §1602. The transaction between Plaintiffs and these Defendants was a consumer loan transaction wherein the Plaintiffs extended credit to the Defendants and such credit was secured by an interest purportedly held by the Plaintiffs in the Property.

As a consumer credit transaction, the Plaintiffs were required to provide to Defendants mandatory Truth-in-Lending disclosure statements and notice of the borrower's right to rescind, specifying the date on which the three-day rescission period expires. If the lending institution fails to provide the rescission information, the borrower may rescind the loan within three years after it was consummated. 15 U.S.C. §1635(a) and (f); 12 CFR §226.23(b)(5). If the borrower timely exercises her right to rescind, the security interest giving rise to the right of rescission becomes void. *Ibid.*

In the course of the transaction described herein, Plaintiffs violated TILA in numerous ways, including, but not limited to: Failing to provide required disclosures prior to consummation of the transaction; failing to make required disclosures clearly and conspicuously in writing; failing to timely deliver to Defendants certain notices required by statute; placing terms prohibited by statute

into the transaction: and failing to disclose all finance charge details and the annual percentage rate based upon properly calculated and disclosed finance charges and amounts financed.

Records from the transaction indicate that Plaintiffs extended credit to Defendants without regard to their ability to pay, and even falsified relevant income and asset data to get the loan approved. Defendants are informed and believe and thereon allege that Plaintiffs have a pattern and practice of extending credit to consumers under high rate mortgages without regard to the consumers' repayment ability.

Because of these violations, Defendant has a continuing right to rescind the loan transaction for up to three years after consummation of the transaction. Defendants hereby give notice of rescission by and through this Complaint.

Because of these violations, Plaintiffs are liable to Defendants in the amount of twice the finance charge, actual damages to be established at trial, and costs in accordance with 15 U.S.C. § 1640(a). Defendants are also entitled: Rescission of the loan transaction; an order requiring Plaintiffs to take all actions necessary to terminate any security interest in the Property created under the transaction and a declaration by the Court that the security interest is void; expungement of any foreclosure instruments, including but not limited to any Notice of Default, relating to the transaction from any public record; removal of any derogatory information reported to any credit reporting agency or credit reporting bureau relating to the transaction; the return to Defendants of any money given by Defendants to anyone, including Plaintiffs, in connection with the loan transaction; statutory damages; costs and reasonable attorney's fees; and such other relief as the Court may deem just and proper.

As a result of Plaintiffs' misconduct, Defendants have suffered and continue to suffer damages in an amount to be proven at trial, which they are entitled to recover. Moreover, Plaintiffs'

misconduct was willful, malicious, and outrageous, and therefore punitive damages are warranted and demanded.

As a result of Plaintiffs' misconduct, the loan was void and unenforceable as of its inception, and therefore Defendants are entitled to rescind the loan agreement and promissory note and do hereby demand rescission.

As a result of Plaintiffs' misconduct, Defendants are entitled to declaratory and injunctive relief preventing Plaintiffs from taking any action to collect on the loan, and/or to foreclose upon the Properties, and/or to transfer the Properties.

VIOLATION OF RESPA – 12 U.S.C. §2601 *et seq.*

The loan transaction between Plaintiffs and Defendants is a mortgage loan covered by RESPA. Defendants are not certain at this time exactly which of Plaintiffs was actually the servicer of the loan at any given time, although they believed that the loan servicer was Suntrust at the time of the foreclosure. However, due to the conspiratorial nature of the misdeeds alleged herein, and also due to Plaintiffs' general failure to properly advise Defendants as to the roles and identities of the various entities that were purportedly handling their loan at any given time, these allegations are made as to all Plaintiffs.

Plaintiffs violated RESPA at the time of closing on the sale of the Properties by failing to correctly and accurately comply with disclosure requirements. Plaintiffs violated RESPA, 12 U.S.C. §2605(e)(2) by failing and refusing to provide a written explanation or response to Defendants' Qualified Written Request not later than 60 days after receipt of the request. Defendants are informed and believe, and thereon allege, that Plaintiffs have engaged in a pattern or practice of non-compliance with the requirements of the mortgage servicer provisions of RESPA as set forth in 12 U.S.C. §2605.

As a result of Plaintiffs' failure to comply with RESPA, Defendants have suffered and continue to suffer damages and costs of suit. Defendants are entitled to recover statutory damages of $1,000.00, actual damages in an amount to be determined at trial, and costs and reasonable attorney's fees

VIOLATION OF FAIR DEBT COLLECTIONS ACT – 15 U.S.C.1692e

In violation of U.S.C 1692e, 807, Plaintiffs engaged in the false representation of

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

Plaintiff also violated section (5) by threatening to take an action that cannot legally be taken. Plaintiffs also violated section (14) by failing to divulge the true name of the organization collecting the debt, or the owner of the debt.

Plaintiffs also failed to comply with U.S.C. 1692e, 809, by failing to provide verification and validation of the debt they claimed to be owed to them.

SLANDER OF TITLE

Plaintiffs disparaged Defendants' exclusive valid title in 2011, by and through the preparing, posting, publishing and recording of the documents previously described herein, including, but not limited to, the foreclosure Complaint. Said Plaintiffs knew or should have known that such documents were improper in that at the time of the execution and delivery of said documents, Plaintiffs had no right, title or interest in the properties. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Defendants' legal title to the properties. By posting, publishing, and recording, said documents, Plaintiffs' disparagement of Defendants' legal title was made to the world at large. Similarly, the law firm retained by

Plaintiffs is also culpable, as they are in the business of collection of consumer debts, either on behalf of itself or others, and are therefore under the authority of the Fair Debt Collection Practices Act Titles 15 and 18 U.S.C. which requires Korn Law Firm to verify actual ownership and factual, legal debt. Further evidence of Korn Law Firm to verify information is the listing of Job Development Loan Fund, Inc. as a Defendant in this matter. Any tie of these properties to JDLF expired over 20 years ago, as the small loan secured by the original property on the Heritage Federal Savings and Loan mortgage, was paid off within six (6) months of its origination.

As a direct and proximate result of Plaintiffs' conduct in publishing these documents, Defendants' title to the properties has been disparaged and slandered, and there is a cloud on Defendants' title, and Defendants have suffered, and continue to suffer, damages in an amount to be proved including loss of business and business goodwill. As a further proximate result of Plaintiffs' conduct, Defendants have incurred, and will continue to incur, expenses, including reasonable attorney's fees, in order to clear title to the properties. Moreover, these expenses are continuing, and Defendants will incur additional charges for such purpose until the cloud on Defendants' title to the Properties has been removed. The amounts of future expenses and damages are not ascertainable at this time.

As a further direct and proximate result of Plaintiffs' egregious conduct, Defendants have suffered loss of business, humiliation, mental anguish, anxiety, depression, and emotional and physical distress, resulting in the loss of sleep and other injuries to their health and well-being, and continue to suffer such injuries on an ongoing basis. The amount of such damages shall be proven upon request by the court.

At the time that the false and disparaging documents were created and published by the Plaintiffs, Plaintiffs knew the documents were false and created and published them with the malicious intent to injure Defendants and deprive them of their exclusive right, title, and interest in

the properties, and to obtain the properties for their own use by unlawful means. Plaintiffs committed perjury before the court by asserting they had ownership based on void and false documents.

The conduct of the Plaintiffs in publishing the documents described above was fraudulent, oppressive, and malicious. Therefore, Defendants are entitled to an award of punitive damages in an amount sufficient to punish Plaintiffs for their malicious conduct and deter such misconduct in the future.

INEQUITABLE FORECLOSURE ATTEMPT,
LACK OF GOOD FAITH AND FAIR DEALING

Historically, equitable courts developed to provide a forum of justice for litigants when law courts, which contained rigid principles and restrictive technicalities, were deficient. *See* Hedges v. Lysek, 84 So. 2d 28, 31 (Fla. 1955). As such, equity courts were created to do justice between the litigants. *See e.g.* Banks v. Shaw, 144 Fla. 550, 198 So. 341 (1940); Atlantic Nat. Bank of Jacksonville v. Simpson, 136 Fla. 809, 188 So. 636 (1938). Therefore, "a court of equity is a court of conscience; it should not be shackled by rigid rules of procedure and thereby preclude justice being administered according to good conscience." Demorizi v. Demorizi, 851 So.2d 243, 246 (Fla. 3d DCA 2003), *appeal dismissed* 851 So. 2d 168 (Fla. 3d DCA 2003) (quoting Wicker v. Board of Public Instruction of Dade County, 106 So.2d 550, 558 (Fla.1958)). Finally, with respect to foreclosures, "the general rule is that...[the] foreclosure must not be unconscionable or inequitable." Pezzimenti v. Cirou, 466 So.2d 274, 276 (Fla. 2d DCA 1985). By the Plaintiffs' failure to release the two properties authorized by Heritage Federal to be released, and by filing an action including all three properties together, Plaintiffs have attempted to place the court in a position of awarding an inequitable and unconscionable foreclosure.

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the properties, and to obtain the properties for their own use by unlawful means. Plaintiffs committed perjury before the court by asserting they had ownership based on void and false documents.

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Defendants have not waived their appraisal rights, under Section 29-3-680, as any purported waiver would be against public policy pursuant to SCN Mortgage Corp v. White, 312 SC 384, 440 S.E.2d 868 (1994). The Supreme Court of South Carolina held it was against public policy to require a waiver of this right in advance. Therefore, Defendants reserve the right to prove that the attempt to foreclose on all three (3) properties for such a small debt claimed, and yet to be verified, is inequitable and unlawful. The value of any one (1) of the three (3) properties named in this action, far exceeds the debt claimed to be owed by Plaintiffs. By attempting to foreclose on multiple properties Plaintiffs are committing theft. Individual properties must be foreclosed upon one parcel at a time because the amount secured by Plaintiffs exceed any one parcel.

SUBJECT PROPERTY OUTSIDE OF JURISDICTION FOR LEXINGTON COUNTY, SC

One of the subject properties in this action is located in Chester County, SC, and is therefore not in the jurisdiction of the courts of Lexington County, SC, where this action appears to have been filed.

FAILURE TO COMPLY WITH SC SUPREME COURT ADMINISTRATIVE ORDER 2011-05-02-01 OR TO OFFER SOLUTIONS UNDER HAMP

SC Supreme Court Administrative Order 2011-05-02-01 clearly requires that for all mortgage foreclosures filed after May 9, 2011, the Mortgagee's attorney shall serve on the Mortgagor, along with the summons and complaint, a notice of the Mortgagor's right to foreclosure intervention. Although the original complaint in this matter was served earlier than that date, it was withdrawn. Defendants have not been served a new foreclosure complaint, and the notice of the Certification of Mortgagor Non-Compliance is the first notification of continued action by these Plaintiffs against Defendants. If there has been a new foreclosure complaint filed, it has not been

served on Defendants according to FRCP. therefore Mortgagor's attorney has failed to comply with the Administrative Order.

Further, Mortgagor's attorney has submitted a fraudulent Certification of Mortgagor Non-Compliance because Defendants have never been offered foreclosure intervention by the real party in interest to this mortgage.

Defendants have also not been offered any of the options under the HAMP program.

UNFAIR BUSINESS PRACTICES – SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

Defendants are informed and believe and thereon allege that Plaintiffs committed unlawful. unfair and/or fraudulent business practices. as defined by South Carolina Unfair Trade Practices Act by engaging in the unlawful, unfair, and fraudulent business practices alleged herein.

As a result of Plaintiffs' wrongful conduct, Defendants have suffered various damages and injuries.

Defendants seek injunctive relief enjoining Plaintiffs from engaging in the unfair business practices described herein.

Defendants further seek restitution, disgorgement of sums wrongfully obtained, costs of suit. reasonable attorney's fees, and such other and further relief as the Court may deem just and proper.

FRAUD AND SWINDLE 19 U.S.C. §1346 ANY SCHEME OR ARTIFICE TO DEFRAUD; 18 U.S.C. §1001 STATEMENT OR ENTRIES GENERALLY

As alleged herein, Plaintiffs have made several representations to Defendants with regard to important facts.

These representations made by Plaintiffs were false.

Plaintiffs knew that these representations were false when made, or these representations were made with reckless disregard for the truth.

Plaintiffs intended that Defendants rely on these representations.

Defendants reasonably relied on said representations.

As a result of Defendants' reliance, they were harmed and suffered damages. Defendants' reliance on Plaintiffs' false representations were a substantial factor in causing Defendants harm.

Plaintiffs are guilty of malice, fraud or oppression, and Plaintiffs' actions were malicious and done willfully, in conscious disregard of the rights and safety of Defendants, in that the actions were calculated to injure Defendants.[1] As such, Defendants are entitled to recover, in addition to actual damages, punitive damages to punish Plaintiffs and to deter future misconduct. Defendants will present their damages for determination at a hearing for that purpose.

CIVIL CONSPIRACY

Defendants are informed and believe, and thereon allege, that Plaintiffs conspired and agreed to implement a scheme to defraud and victimize Defendants through the predatory lending practices and other unlawful acts alleged herein.

Defendants are informed and believe and thereon alleged that Plaintiffs did the acts and things alleged herein pursuant to and in furtherance of their conspiracy to defraud and victimize Defendants, and use tainted court processes to steal Defendants' properties.

Defendants are informed and believe that Plaintiffs committed acts in furtherance of the conspiracy, and/or lent aid and encouragement to their co-conspirators and/or ratified and adopted the acts of their co-conspirators, and are thus jointly and severally liable for all harm to Defendants resulting from the conspiracy, see Salinas v. United States, 118 S. Ct. 469 (1997) at pg. 470: "...conspiracy is distinct evil, dangerous to the public, and so punishable in itself."

[1] South Carolina allows punitive damages, except in actions against the state or other governmental entity and in product liability actions based on strict liability. Punitive damages are allowed upon a showing by clear and convincing evidence of malice, ill will, a conscious indifference to the rights of others, or a reckless disregard thereof. *King v. Allstate Ins. Co.*, 251 S.E. 2d 762 (S.C. 1979). S.C. Code § 15-33-135.

As the direct and proximate result of Plaintiffs' conspiracy to defraud and victimize Defendants, Defendants have suffered damages, including, but not limited to, direct monetary loss, consequential damages, and emotional distress.

In conspiring to defraud and victimize Defendants, and in committing the wrongful acts alleged herein, Plaintiffs acted with malice, oppression, and fraud including perjury by written testimony in a court of law, thus justifying an award of exemplary damages in an amount sufficient to punish their wrongful conduct and deter such misconduct in the future.

RICO – 18 U.S.C. §§1961 *et seq.*

Wells Fargo is an enterprise engaged in and the activities of which affect interstate commerce. Suntrust and Korn Law Firm are persons within the meaning of 18 U.S.C. § 1961(3), and as persons associated with Wells Fargo, conducted and participated, directly and indirectly, in the conduct of the affairs of said enterprise through a pattern of racketeering activity in violation of 18 U.S.C.A. § 1962(c).

The predicate acts which constitute this pattern of racketeering activity were part of a scheme to wrongfully foreclosure upon the Properties without legal right, and therefore acquire title to the Properties through deception and fraud, for the profit of the enterprise, as described herein. For the purpose of executing this scheme, the Plaintiffs placed in post offices and/or in authorized repositories matter and things to be sent or delivered by the Postal Service, caused matter and things from the Postal service or commercial interstate carriers, including, but not limited to, default and foreclosure related notices. These notices were false, misleading, and contrary to law, as described herein; and were deliberately designed to compel Defendants either to part with large sums of money or to abandon the Properties, for the profit of the enterprise.

For the purpose of executing this scheme to defraud Defendants and obtain money by means of false pretenses, Plaintiffs also transmitted and received messages by wire, including, but not

limited to telephone and internet communications. In such communications, Plaintiffs sought to convince Defendant either to part with large sums of money or to abandon the Properties, for the profit of the enterprise, asserting the falsehood that Plaintiffs had the right to foreclose upon the security interest in the Properties.

These acts of racketeering, occurring within ten years of one another, constitute a pattern of racketeering activity within the meaning of 18 U.S.C.A. § 1962, in that, as a direct and proximate result of Plaintiffs' complained of acts, Defendants have suffered and continue to suffer damages, including but not limited to, monetary damages and emotional distress, in an amount to be proven at trial.

By reason of the Defendants' violation of 18 U.S.C.A. § 1962, Defendants are entitled, pursuant to 18 U.S.C.A. § 1964©, to threefold the damages sustained, costs of suit, and reasonable attorney's fees.

QUIET TITLE

Defendants claim an interest adverse to Plaintiffs' interest in the Properties, in the form of the Deed of Trust recorded pursuant to the loan transaction and Defendants are seeking to quiet title against the claims of Plaintiffs under such Deed.

Defendants desire and are entitled to a judicial declaration quieting title in Defendants' names as of August 10, 1987, the date on which the loan transaction was consummated.

IMPOSITION OF CONSTRUCTIVE TRUST

Since August 1987, Defendants have been the rightful owners of legal title to the Properties. In contravention of Defendants' ownership rights and interests in the Properties, Plaintiffs purported to obtain legal title to the Properties by means of an unjustified and fraudulent foreclosure action. Plaintiffs refuse to acknowledge Defendants' status as the rightful owner of the Properties. Plaintiffs hold whatever interest it claims in the Properties in trust for Defendants.

RELIEF REQUESTED

Therefore, Defendants respectfully request the following:

1. That Plaintiffs in this case be, from now and forever forward, enjoined from foreclosure action against Defendants, and a satisfaction of mortgage/lien be issued for the subject mortgage.
2. That Defendants be allowed to participate in a Trial by Jury to present damages and harm done to Defendants, for the purpose of seeking restitution and punitive damages against Plaintiffs.
3. That judgment be entered in their favor and against Plaintiffs, and each of them.
4. For a temporary restraining order, preliminary and permanent injunction preventing Plaintiffs, or anyone acting under or in concert with them, from collecting on the subject loan and from causing the Properties to be sold or assigned to a third party.
5. For an order stating that Plaintiffs must not report to any credit reporting agency anything of a negative nature against Defendants, and that they must repair any previously reported negative information.
6. For an order stating that Plaintiffs engaged in unfair business practices.
7. For an order stating that the Notice of Default, Lis Pendens and other documents filed by Plaintiffs constitute slander of title to Defendants and the Properties.
8. For an order and judgment quieting title to the Property.
9. For damages, disgorgement, and injunctive relief under South Carolina's common and statutory law of unfair business practices.
10. For compensatory and statutory damages, attorney's fees and costs according to proof at trial.

11. For exemplary damages in an amount sufficient to punish Plaintiffs' wrongful conduct and deter future misconduct.

12. For such other and further relief as the Court may deem just and proper.

Respectfully,

Cathy G. Lanier
172 Belle Chase Drive
Lexington, SC 29072
803-315-3636
803-359-7031 (fax)
cathy@tsisc.com
Pro Se

Randy D. Lanier
172 Belle Chase Drive
Lexington, SC 29072
803-315-7949
803-359-7031 (fax)
Pro Se

Lexington, SC
July 12, 2012

Exhibit A

Cathy G. and Randy D. Lanier
172 Belle Chase Drive
Lexington, SC 29072

March 19, 2007

Ms. Chandra Smith
Suntrust Mortgage
Via fax: 804-291-0724

Ms. Smith:

I was referred to you to assist us in taking care of some long-overdue paperwork regarding the mortgages held by my husband and I with predecessors to Suntrust. My current Suntrust loan number is 0033170952 and is collateralized by our property located at 213 Lake Villa Road.

I'll give you a little history on this mortgage: Back in 1987, we took out our original mortgage for 211 Lake Villa Road with Heritage Federal Savings & Loan in Laurens, SC. In 1994, the original loan was satisfied, and a new mortgage recorded for both the 211 Lake Villa Road property and property located on Knox Station Road in Chester, SC. Then, in 1997, a new mortgage, including 211 Lake Villa Road, Knox Station Road and 213 Lake Villa Road was recorded when we purchased 213 Lake Villa Road. Each of these mortgages replaced the one prior to it, and all mortgages should have been satisfied.

Some years later, we were planning to build on the 211 Lake Villa Road property, and requested a review from Heritage Federal to see if that property could be released from the mortgage since the mortgage had been paid down significantly and was tremendously over-collateralized. Heritage Federal agreed to not only remove 211 Lake Villa Road, but to remove the Knox Station Road, Chester property as well. The resulting mortgage remaining would only be on the 213 Lake Villa Road property, as your records show.

However, when all this was going on, Heritage Federal was purchased by another bank, and that bank was subsequently purchased by Suntrust. (I'm sorry I do not recall the interim bank's name.) Apparently in the merger, the paperwork to satisfy the mortgages on the Chester property and the 211 Lake Villa Road property was lost in the shuffle.

We now seek to put at least one of these properties on the market, but cannot do so until the appropriate paperwork is filed showing that there is no lien on the 211 Lake Villa Road and Chester properties. Apparently, Heritage Federal never took care of the paperwork to release those two properties from the mortgage taken in 1997. In fact, I cannot find a mortgage satisfaction of the 1994 loan that covered 211 Lake Villa Road and the Chester property, so even though the 1997 mortgage replaced that one, the paperwork was not done to satisfy the 1994 loan.

I have enclosed copies of the documents received from the courthouse indicating that our properties at 211 Lake Villa Road, Lexington, SC and our rural property in Chester, SC are still recorded as being under mortgage at Heritage Federal. I have included the front page and attachment pages of both the mortgages taken in 1994 and 1997 – if you need the full mortgage documents, I can

provide those. I understand that errors such as this, now inherited by Suntrust, fall under your responsibility to correct. We need the release of these two properties filed as soon as possible so that we may continue in our efforts to sell them.

Please don't hesitate to contact me if you require further information. Otherwise, please let me know as to when I might expect to be able to see that these properties have been released and a satisfaction is filed.

Thank you for your assistance.

Sincerely,

Cathy G. Lanier

Enclosures

Exhibit B

172 Belle Chase Drive
Lexington, SC 29072
April 6, 2007

Sterling Edmunds, Jr.
President & CEO
Suntrust Mortgage, Inc.
Customer Correspondence
PO Box 26149
Richmond, VA 23260

Re: Mortgage #0033170952

Dear Mr. Edmunds:

I have spent the better part of the past 3 months trying to resolve an issue that resulted from a mistake made by a bank with which Suntrust merged several years ago. I sincerely hope you might be able to point me to the department or individual there at Suntrust Mortgage that might be able to resolve this for me.

I used Heritage Federal Savings & Loan, based in Laurens, SC for a mortgage to purchase my lake house located at 211 Lake Villa Road in Lexington, SC, back in the late 80's. Then, in the early 90's (1992, I believe), I approached Heritage Federal to purchase the farm and farm house located in Chester County, SC, owned by my parents to provide them some income in their retirement years. Heritage Federal suggested combining both my currently mortgaged residential property with the farm property, resulting in a single mortgage secured by both properties.

Then, later in the 90's (1997, as I recall), I approached Heritage Federal about purchasing the property next door to my home in Lexington (213 Lake Villa Road) so that my mother could move to be near us, as my father had passed away a few years earlier. Again, they suggested closing out the existing mortgage, and placing all 3 properties on the same mortgage to provide the funds to purchase the additional Lexington property.

Just prior to Heritage Federal being bought by another bank (I apologize for not remembering the name, but that bank was then purchased by Suntrust a short time later), I was planning on removing the house from one of the Lexington lots (the lake property) and building a new home on that spot. I asked my banker at Heritage Federal if it would now be appropriate to release that property and the Chester property from the mortgage, as there was ample equity in the remaining lake property to meet the requirements of the existing mortgage. After doing some appraisal recertifications, Heritage Federal agreed to release both the Chester property and the 211 Lake Villa Road Lexington property from the existing mortgage, leaving only the 213 Lake Villa Road property encumbered.

In the months (and years) ensuing, we decided not to build on the lake lot yet, so it was not an issue, but we now seek to sell at least one of these pieces of property – likely the Chester property. I had a title search done for other purposes, and discovered two things:

1. The 1992 mortgage that was closed out and released by Heritage Federal prior to granting the 1997 mortgage, was never satisfied. In other words, although the loan had (and has) a $0 balance, the paperwork was never filed to satisfy that mortgage at the Registrar of Deeds offices in Lexington and Chester. I have located an individual there at Suntrust that I believe will be able to help me with that, since that is obviously just a paperwork error. I will have to do all the legwork, however, which includes making a trip to Chester County to get copies of the mortgage to be satisfied. With my busy schedule as the owner of 3 companies, that will be difficult and I'm hoping you might have another suggestion since this was not my error, but one your organization inherited.

2. The biggest problem exists with the release of 2 of the 3 properties originally encumbered by the 1997 mortgage. I had gone through all the hoops (including paying for appraisal recertifications) with Heritage Federal to have those properties released, and was granted the release, but apparently, that paperwork was never filed either. The result is that, according to the ROD offices in both Lexington and Chester, the mortgage that Suntrust inherited from these mergers still encumbers all 3 properties.

I have spoken with numerous people in your organization, all of whom report that the only property they show as being encumbered by the existing Suntrust mortgage is 213 Lake Villa Road. Obviously, that information had to be conveyed during the various mergers for it to have wound up on your systems as such. However, now that we need for the 211 Lake Villa Road property and the Chester property to be unencumbered, we find that the partial release for those properties was never accomplished by Heritage Federal or either of its successors.

After spending much too much time speaking with people at Suntrust who assured me they were, in fact, the ones who could help, only to find that not to be true, I've decided to write to you for assistance. The only person who actually understood what I'm trying to do, followed up with an email and a list of items I will have to provide in order to have this release take place. I've pasted in his email in its entirety, and will address each numbered requirement below it:

From: Asad.Sami [mailto:Sami.Asad@SunTrust.com]
Sent: Tuesday, March 27, 2007 1:01 PM
To: Cathy Lanier
Subject: Partial Release Letter

March 27, 2007
Cathy G Lanier
Randy D Lanier
172 Belle Chase Dr
Lexington SC 29072 7945
RE: Loan Number 0033170952
Dear Ms. Lanier:
Thank you for your call about a partial release. We will be glad to review your request once we receive the following information:
1. A copy of the survey or plat of the property showing the portion to be released and the remaining portion. Please include the complete dimensions, square footage or acreage.

2. The amount of funds that will be exchanged for the portion of land to be released. We may require the funds to reduce the principal balance if the proposed or new loan-to-value ratio is greater than the current loan-to-value ratio.
3. A proposal of how the released portion will be used. The locality may need to approve the intended use
4. An appraisal that provides the value of the portion to be released as well as the remaining portion. It is possible to use the original appraisal less than six months old or an appraisal recertification. However, the value must support a current loan-to-value ratio that is not greater than the current loan-to-value ratio
5. A Certificate of Partial Release. SunTrust Mortgage, Inc. does not prepare this document. An attorney or closing agent will need to prepare the release document
6. The following clause must be contained in your Certificate of Partial Release:

> "It is expressly understood that the release of said parcel from the lien shall not in any way affect the lien of said Deed of Trust (Mortgage) upon the remaining land thereby subject to the Deed of Trust/Mortgage."

7. If exchanging one property for another, we will require an update to the title insurance policy, private mortgage insurance policy and modification to the Deed of Trust adding that property before executing the Certificate of Partial Release.
8. A processing fee of $200.00.

CS011 035 SA2

1. I have no current plat, and see no purpose for it. The old mortgage contained 3 separate pieces of property with their own tax map numbers. We are not seeking to split any properties, just simply trying to effect the official release of 2 of the 3 separate properties from the mortgage, as they have already been released, according to your records.
2. I have an appraisal for the 213 Lake Villa Road property from December of 2004 showing a value of $373,000, and have enclosed that with this letter. Since this property has over 200 feet on Lake Murray, it has increased in value since then – some have guessed it has almost doubled in value. Since my existing loan with Suntrust on this property has a balance of less than $200,000, I believe there will be no funds necessary to correct the paperwork and leave this property as the sole one encumbered by my current mortgage. Even based on that 2004 appraisal, the loan to value ratio of the current mortgage is approximately 53%.
3. My intended use will not change from the current usage, so this section does not apply.
4. I have an appraisal for the 211 Lake Villa Road, also from 2004, but none for the Chester property even remotely recent. Again, these values would have no bearing since we are retaining a substantially low LTV ratio by releasing these 2 properties. Since this was a mistake made by Heritage Federal, and assumed by the interim merging bank, then finally Suntrust, I will not incur additional expenses to correct a mistake in which I had no part. If current appraisals are required, I would expect Suntrust to reimburse me for those costs.
5. I can get a certificate of release prepared, however, again, this would cause me to incur expenses to correct an error that is the responsibility of Suntrust to correct. If Suntrust will reimburse me these costs, I will be happy to comply.
6. See 5.
7. There is no property exchange, so this does not apply.
8. Again, I can see no justification for my paying you a fee to correct a problem that was not my fault. You inherited this error, and should fix it at no charge to me. I understand there are even penalties I could charge back to Suntrust, for Heritage Federal not filing the release of the early 1990's mortgage, but I do not plan to exercise that option unless I would need to in order to offset expenses incurred to have you correct this problem.

Please let me know at your earliest convenience the appropriate steps that must be done to correct this error, and correct the paperwork to effect the release of all but the 213 Lake Villa Road property from the current Suntrust mortgage.

Thank you for your assistance in this matter.

Sincerely,

Cathy G. Lanier

cc: James M. Wells, III, President and CEO, Suntrust Bank

Exhibit C

172 Belle Chase Drive
Lexington, SC 29072
November 19, 2010

James M. Wells, III
President, CEO & Chairman of the Board
Suntrust Banks, Inc.
303 East Peachtree Street, NE
Atlanta, GA 30308

RE: Account Number 0033170952

Dear Mr. Wells:

I am writing to see if you can help us with a situation concerning our Suntrust Mortgage. The originator of this mortgage was Heritage Federal Savings and Loan, back in 1987. We obtained the mortgage to buy our new home at 211 Lake Villa Road in Lexington, SC. Several years after that purchase, I needed funding to purchase my family's farm property in Chester, SC (2651 Knox Station Road), and again turned to Heritage Federal. The easiest program at that time was to simply restructure the original mortgage loan to add the amount needed to purchase the farm, so that was done.

Some years after that, my father passed away, and we needed to relocate my mother to live nearer to us. The property next door to our home on Lake Villa Road became available, and they accepted our offer. Again, Heritage Federal simply restructured the original loan and added this third property, located at 213 Lake Villa Road, Lexington, SC, to the loan.

Shortly after that transaction, Heritage Federal was purchased by another bank, and that bank was subsequently purchased by Suntrust. Knowing that the equity in the 3 properties used to secure the mortgage was excessive, I contacted Suntrust to learn how to go about arranging a release of one or more of the properties so I could have more flexibility. That request was declined, so I have continued to keep the mortgage current (usually paying more than was due) all this time, and getting the mortgage balance down to less than 10% of even the currently depressed equity in the properties.

However, my company has been suffering a downturn for the past 3 years, and last year we took a large hit. Subsequently, I have not been able to draw a salary or any income from the business since last January. My husband was laid off in October of 2009, and has not been able to find work either. That forced us into a position of not being able to pay our property taxes which were due. One of the properties (213 Lake Villa Road) was purchased at the tax sale by the county last year, but recently Suntrust stepped in to pay the taxes due on that property to prevent the sale from finalizing. At that time, I sent in paperwork showing that also the property at 211 Lake Villa Road was under your mortgage, and asked if you could also help with that. I never heard anything back, but saw that it was on the list for this year's tax sale. We have not been notified of the outcome, but lake property is very valuable and highly sought-after here (we are very close in to town), so I imagine that someone purchased that tax certificate too. We were able to pay the taxes on the Chester property, so the only outstanding is 2 years' worth of taxes for the 211 Lake Villa Road property.

Even in this depressed market, the properties that are side-by-side on the lake, are valued at more than $800,000 together. The Chester property, based on recent comparables, is worth more than $900,000. Clearly, the Suntrust mortgage is very over-collateralized at this point.

By selling personal articles and tapping into our savings, we were able to make the regular interest and principal payments up through September, 2010. However, at that time the escrow payment was huge, based on the rapid repayment schedule required to reimburse Suntrust for the tax payments. I contacted your customer service department and found no solutions. They also informed me that it was of no use for me to even send the regular payment of $1400 I had been sending, since if I could not also include the huge amount for the escrow, it would not be honored. Yesterday, I received even the September payment of $1400 back as a refund. So I owe you money, but you won't take the money I've sent to you? How is that even logical?

So I am asking for your intervention to work out some reasonable way to deal with this. My first thought would be that since there is such a huge amount of equity in these three properties, to please restructure the loan to roll the tax payments and overdue payments and fees back into the equity, increasing the overall amount owed on the property, but restoring it to an amount I can afford until we are able to sell some property. The three properties covered by your mortgage are the ones I consider home and one day, plan to build another house on the 2 lake properties. The farm has been in my family for nearly a century and a half, so losing it would be devastating to me and my extended family. So we have no desire but to keep these properties, and I will forsake anything else to continue my payments to Suntrust if they can be brought back to a reasonable amount.

When my company was booming, we amassed many real estate holdings, but since the economic downturn, have been unable to sell any of them. We have our two very valuable commercial properties on the market, and have had several viable offers, but until the banking industry returns to more reasonable lending standards, no one can obtain a loan to make the purchase. The sale of either one of those two properties would pay off our debts, and provide us ample money to handle the debt service to Suntrust until we are able to find suitable employment. We are the primary caregivers for my 92 year-old mother, so we are somewhat limited geographically, but are in talks with several local companies about opportunities coming up after the first of the year.

So I am asking for your assistance to provide us time to sell the commercial properties – I assume we may be able to do that within the next 6 months to a year. I am also asking that you consider a restructure of some sort to utilize existing equity in the 3 properties used to secure your mortgage so that the payment can be set to something we can afford until our fortunes turn around. My husband and I have always been able to earn a substantial income, and will again, but we are extreme victims of the problems in our economy. Those with the most to lose seem to have been the hardest hit. I have always paid my bills, and had an almost perfect credit score up until 18 months ago. I am asking that you work with us so that we can restore our good credit and repay you honorably. We are doing all we can to avoid bankruptcy, and know that a property sale will resolve all our issues, but we need time and reasonable solutions to make that happen.

Thank you for any consideration you can offer. I can be reached at (803) 315-3636 or cathy@tsisc.com.

Sincerely,

Cathy Lanier

Exhibit D

SUNTRUST MORTGAGE

SunTrust Mortgage, Inc
Post Office Box 26149
Richmond, VA 23260-6149
Toll Free 1.800.634.7928
www.suntrustmortgage.com

December 15, 2010

Cathy G Lanier
Randy O. Lanier
172 Belle Chase Dr
Lexington, SC 29072-7945

Re: SunTrust Mortgage Loan Number 0033170952
Property Address: 213 Lake Villa Rd , Lexington, SC 29072

Dear Mrs and Mr. Lanier:

This letter is in response to your correspondence dated November 19, 2010, addressed to Mr. James M. Wells III, President and CEO, SunTrust Banks, Inc., regarding the above referenced mortgage loan. I have been asked to research and respond to your concerns on his behalf.

Our goal is to help our clients keep their home; there are loss mitigation programs available and each situation is evaluated on a case-by-case basis.

On December 2, 2010, your file was assigned to Amy Doome, Escalation Loan Counselor. She reached out to you to discuss what your investor will allow. Your investor will only allow a Repayment Plan (RPP) and they are not offering modifications.

The investor for your loan is Wells Fargo. The mailing address is P. O. Box 10335, Des Moines, IA 50305-0335. The telephone number is 800.869.3557.

In reference to the force placed coverage on your mortgage loan, our records reflect at the time of origination, there was a house on the property known as 213 Lake Villa Road. The policy that was in force with State Farm was effective from August 2, 2009 to August 02, 2010. We attempted to retrieve the renewal information from State Farm, but were unsuccessful. We have sent correspondences to you in reference to having proper coverage on the dwelling. At this time, we are unable to remove the lender placed coverage until you have provided proof of coverage; once we are in receipt of the information, we will proceed with the removal of the lender placed policy.

If you have any questions, you may contact me at 800.634.7928, select option 5 and enter extension 58352, Monday through Friday from 8:00 a.m. to 5:00 p.m. Eastern Time.

Sincerely,

Robbie Hughes Carey
Executive Services
SunTrust Mortgage, Inc.

Copy to: Mr. James M. Wells III, Chairman & CEO, SunTrust Banks, Inc.
Mr. Sterling Edmunds, Jr., President & CEO, SunTrust Mortgage, Inc

Cathy Lanier

Exhibit 6

From: Elizabeth Perkins <Elizabeth.Perkins@KornLawFirm.com>
Sent: Friday, August 05, 2011 10:41 AM
To: Cathy Lanier
Subject: RE: Lanier-Intervention Docs

Rest assured we are sending you the proper forms. Please do not delay in returning them. I requested from our client that the original note and mortgage be sent to my attention. Once received, I will contact you to schedule a time for inspection and copying. Thank you.

Elizabeth Anne Perkins
Litigation Paralegal
Korn Law Firm, P.A.
1300 Pickens Street (29201)
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817, ext. 1320
Facsimile: (803) 231-2060

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From: Cathy Lanier [mailto:Cathy@tsisc.com]
Sent: Thursday, August 04, 2011 4:34 PM
To: Elizabeth Perkins
Subject: RE: Lanier-Intervention Docs

Thanks, Ms. Perkins. I'm out of town this week, and will review these. I do see in the list that there is a Suntrust form of some sort. I guess I'm confused: I spent a year trying to work something out with Suntrust, only to find that they had no authority to do anything because they were not the owner of my mortgage. After some chiding, they finally send me a letter indicating that Wells was the owner. I would like to set up an appointment to see the original "wet ink" note with any assignments and/or endorsements so that I will know for sure that I'm dealing with someone who can do what we need to do. With all due respect, I don't have the time or money to waste dealing with entities that really have no authority to do anything.

When might we be able to arrange for me to see that?

Thanks,

Cathy Lanier

1

From: Elizabeth Perkins [mailto:Elizabeth.Perkins@KornLawFirm.com]
Sent: Thursday, August 04, 2011 2:54 PM
To: Cathy Lanier
Subject: Lanier-Intervention Docs

Ms. Lanier

Good afternoon. I am writing to follow-up regarding your interest in participating in foreclosure intervention. Please see the attachment. Please return the requested information and documentation to my attention, (pdf/scan with originals to follow, if possible) and our loss mitigation department will forward this to our client for review.

We will need the following documents:

- Hardship letter.
- Two recent paystubs/Proof of income.
- 2009 and 2010 tax return
- Two months most recent bank statements – all pages
- SunTrust financial form (attached)

Please let me know you received this e-mail and attachment. Thank you.

Elizabeth Anne Perkins
Litigation Paralegal
Korn Law Firm, P.A.
1300 Pickens Street (29201)
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817, ext. 1320
Facsimile: (803) 231-2060

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From: Elizabeth Williams
Sent: Monday, July 25, 2011 11:58 AM
To: Elizabeth Perkins
Subject: RE: F10-09485: Lanier-election for intervention

Hi Liz,

We need the following documents from the borrower:

- Hardship letter.
- Two recent paystubs/Proof of income.
- 2009 and 2010 tax return.
- Two months most recent bank statements – all pages.
- SunTrust financial form (attached).

Thank you.

Elizabeth Williams
Loss Mitigation Department
Korn Law Firm, P.A.
1300 Pickens Street
Columbia, SC 29211
Telephone: (803) 252-5611
Fax: (803) 231-2039
elizabeth.williams@kornlawfirm.com

2012014351 FILED, RECORDED, INDEXED
2012-03-23 14:37:08:417
REC FEE: $7.00 ST FEE: $8.00
CO FEE: $8.00 Pages: 2
Lexington County R.O.D. Debra A. Gunter
MORTGAGE ASST Bk:Pg 15489:303

Exhibit F

Recording Requested By:
SUNTRUST MORTGAGE, INC

When Recorded Return To:

SUNTRUST MORTGAGE, INC
1001 SEMMES AVE
RVW-5033
RICHMOND, VA 23224

CORPORATE ASSIGNMENT OF MORTGAGE

Lexington, South Carolina
SELLER'S SERVICING #:0033170952 "LANIER"

Date of Assignment: March 16th, 2012
Assignor: SUNTRUST BANK AS SUCCESSORS IN INTEREST TO HERITAGE FEDERAL SAVINGS AND LOAN ASSOCIATION at 303 PEACHTREE CENTER AVE, ATLANTA, GA 30308
Assignee: SUNTRUST MORTGAGE, INC. at 1001 SEMMES AVENUE, RICHMOND, VA 23224

Executed By: RANDY D LANIER AND CATHY G LANIER To: HERITAGE FEDERAL SAVINGS AND LOAN ASSOCIATION
Date of Mortgage: 08/11/1997 Recorded: 08/25/1997 in Book/Reel/Liber: 4297 Page/Folio: 150 as Instrument No. 1997035343 ReRecorded 09/22/1998 in Book/Reel/Liber: 4869 Page/Folio: 49 as Instrument No.: 1998045503 In the County of Lexington, State of South Carolina.

Property Address: SEE EXHIBIT "A" ATTACHED, LEXINGTON, SC 29072

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Mortgage having an original principal sum of $425,000.00 with interest, secured thereby, with all moneys now owing or that may hereafter become due or owing in respect thereof, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's beneficial interest under the Mortgage.

TO HAVE AND TO HOLD the said Mortgage, and the said property unto the said Assignee forever, subject to the terms contained in said Mortgage.

SUNTRUST BANK AS SUCCESSORS IN INTEREST TO HERITAGE FEDERAL SAVINGS AND LOAN ASSOCIATION
On March 16th, 2012

By: Sandra Lancaster
Vice President

WITNESS

Dorothy West

WITNESS

Brandon Pair

STATE OF Virginia
COUNTY OF Richmond (City)

On March 16th, 2012, before me, Chiquita L Cross, a Notary Public in and for City of Richmond in the State of Virginia, personally appeared Sandra Lancaster, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

Notary Expires: 11/30/13

CHIQUITA L. CROSS
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES NOV. 30, 2013
COMMISSION # 7750169

(This area for notarial seal)

"GS1"GOSUNT"03/16/2012 12:00:04 PM" SUNTOTSUNTA000000000000000131799243" SCLEXIN" 0033170952 SCSTATE_MORT_ASSIGN_ASSN "GOSUNT"

LEGAL DESCRIPTION EXHIBIT 'A'

0013689 Bk: 0871 Pg: 0167

PARCEL 1: All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being located in the County of Lexington, State of South Carolina, said lot being shown on a plat prepared for Cemita, Inc. by Associated Engineers and Surveyors, dated June 26, 1972, and recorded in the office of the RMC for Lexington County in Plat Book 122-G at Page 115; and being more particularly shown on a plat prepared for Randy D. Lanier and Cathy G. Lanier by Survey & Mapping Services of South Carolina, Inc., dated May 7, 1997, to be recorded, and according to said latter plat, having the following boundaries and measurements, to-wit: On the North by a 20' Private Road (Lake Villa Road) whereon it measures in a broken line a distance of 70.46 feet; on the East by property now or formerly Lanier whereon it measures 139.22 feet; on the Southwest by the waters of Lake Murray whereon it measures 176.35 feet; and on the Northwest by property now or formerly BB&T whereon it measures 106.40 feet; all measurements being a little more or less.

Being the same property conveyed to the mortgagors herein by deed of Charles Edwin Puryear and Jan M. Puryear, dated and recorded simultaneously herewith

TMS: 3418-2-14

PARCEL 2: All that certain piece, parcel or lot of land, together with any improvements thereon, situate, lying and being near the City of Columbia, in the County of Lexington, State of South Carolina, and being shown and designated as Lot 11 on a plat for D. E. Efird by Richard M. Lee dated May 7, 1957, and recorded in the Office of the RMC for Lexington County in Plat book 77-G at Page 83; and being more particularly shown on a plat prepared for Randy D. Lanier and Cathy G. Lanier by Robert E. Collingwood, Jr., dated August 4, 1987, and recorded in the Office of the RMC for Lexington County in Plat Book 200-G at Page 270, and having the same boundaries and measurements as shown on said latter plat, reference to which is hereby craved for a more complete and accurate description, all measurements being a little more or less.

Being the same property conveyed to the mortgagors herein by deed of John W. Preston, Jr. and Claudia S. Preston, recorded 8-14-87 in Deed Book 916, Page 189.

TMS: 3418-3-11

PARCEL 3: All that certain piece, parcel or lot of land, with dwelling house and all other improvements thereon, containing 131.736 acres, more or less, lying and being situate on the eastern side of Secondary Road S-12-35, known as Knox Station Road, in the County of Chester, State of South Carolina. Said parcel being more particularly shown on a plat thereof made by Ashmark Land Surveyors dated June 26, 1972, recorded in Plat Cabinet B, Slide 178, Page 7, Office of the Clerk of Court for Chester County, South Carolina, and having the courses and distances, metes and bounds as shown on said plat which is incorporated hereto by reference.

Being the same property conveyed to the mortgagors herein by deed of James A. Gibson, recorded 8-13-92 in Deed book 625, Page 138

TMS: 107-00-00-026-000

DERIVATION: RECORD BK 4297 PAGE 156

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	11TH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	FILED
	)	CASE NO.: 2011-CP-32-156
	)	
Wells Fargo Bank, N.A., successor in	)	2012 JUL 12 A 11: 01
Interest to Wells Fargo Bank Minnesota,	)	
National Association, as Trustee for	)	RESPONSE TO CERTIFICATION OF
Salomon Mortgage Loan Trust Series	)	MORTGAGOR NON-COMPLIANCE
2003 NBC1	)	(Administrative Order 2011-05-02-01)
Plaintiff,	)	
Vs.	)	MOTION TO AMEND ANSWER
	)	
Cathy G. Lanier, Randy D. Lanier, and	)	MOTION TO DISMISS ALL
Branch Banking and Trust Company,	)	FORECLOSURE ACTIONS BY
Defendants.	)	PLAINTIFFS

COPY

REQUEST FOR JURY TRIAL

On this date, the named Response and Motions were mailed by first-class mail to the parties listed below:

Korn Law Firm
1300 Pickens Street
Columbia, SC 29201

Cathy G. Lanier
172 Belle Chase Drive
Lexington, SC 29072
803-315-3636
803-359-7031 (fax)
Pro Se

Randy D. Lanier
172 Belle Chase Drive
Lexington, SC 29072
803-315-7949
803-359-7031 (fax)
Pro Se

Columbia, SC
July 12, 2012

Common Pleas

Clerk : Beth A. Carrigg
Lexington County Judicial Center
Lexington, SC 29072
(803) 785-8212

Received From:	Lanier, Cathy G			Date: 7/12/2012
	172 Belle Chase Dr			Receipt # 156028
	Lexington, SC 29072			Clerk: amarin
Paying for:	Self			
Transaction Type:	Payment		Reference #:	
Payment Type	Credit Card	$75.00	Comment:	
	Convenience Fee	$1.28	Non-Refundable	
	SC.gov Portal Fee	$1.00		
Total Paid.		$77.28		

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2011CP3200156	Wells Fargo Bank NA , plaintiff, et al VS Cathy G Lanier , defendant, et al	$75.00	$75.00	$0.00

Total Cases: 1	**$75.00**	**$75.00**	**$0.00**
	Convenience Fee:	**$1.28**	
	SC.gov Portal Fee:	**$1.00**	
	Total Paid:	**$77.28**	

Motion to Amend Answer and Counterclaims filed September 14, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	11TH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	CASE NO.: 2011-CP-32-156
	)	
Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1,	)	RESPONSE AND COUNTERCLAIM TO ORDER SUBSTITUTING PLAINTIFF AND AMENDMENT CAPTION
Plaintiff(s),	)	
	)	
Vs.	)	MOTION TO AMEND ANSWER
	)	
Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, And Job Development Loan Fund, Inc.,	)	MOTION TO DISMISS ALL FORECLOSURE ACTIONS BY PLAINTIFF(S) AND ENJOIN PLAINTIFFS AND ANYONE ACTING ON THEIR BEHALF FROM PURSUING A FORECLOSURE OR RELATED ACTION
Defendants.	)	
	)	REQUEST FOR JURY TRIAL

Defendants Cathy G. Lanier and Randy D. Lanier, having gained information as of August, 2012 that was not available to them at the time of their original answer to the Foreclosure Complaint, respectfully amend their answer and offer the following history of this case to show why Plaintiff(s) have no standing or right to bring this action, and have perjured themselves in their dealings with Defendants, or in the filing of the Order Substituting Plaintiff and Amending Caption (Order). Plaintiff(s) have still not responded to requests by Defendants to provide records of the transactions they describe in the Order, but Defendants are certain that none of the rules and regulations pertaining to appropriate filings and notices have been followed to date, up to and including the fraudulently filed NEW transfer filed just as recently as March, 2012. Even in the face of the serious wrongdoings that have been pointed out to attorneys for Plaintiff (whomever it may be interpreted to be at this point), Plaintiff(s) filed a transfer without notice to Defendants, clearly in violation of RESPA laws that went into effect in January of 2011.

Defendants restate and reiterate all points and issues, in their entirety, as brought forth in the prior Response and Motion filed with the Lexington County Clerk of Court on July 12, 2012, as well as the amendment filed on August 7, 2012. It continues to appear that neither the Plaintiff (whichever one you choose at this time), nor its law firm, a third-party collector, truly knows who is the real party in interest to this purported mortgage loan, and therefore this foreclosure action must be dismissed.

The following outlines just a few of the serious irregularities that have occurred in this case:

- Defendants have shown proof (see Exhibit A) of a notification well after the fact, of a transfer to Wells Fargo, NA of this loan. After dealing with Suntrust for nearly a year to try to resolve the problem with the escrow described in previous answers and motions, Suntrust let Defendants know that Suntrust HAD NO AUTHORITY to enter into a refinance or loan modification, because SUNTRUST WAS ONLY THE SERVICER OF THE MORTGAGE, AND WELLS FARGO WAS THE OWNER.
- So now, we are asked to believe, in this new recital of the various hands that have been on this mortgage (none of which were noticed to Defendants over the years), that Wells Fargo was not, apparently ever, associated with this loan! So, either the Suntrust personnel who verified Wells Fargo's ownership to avoid working with Defendants to overcome the escrow problem, perjured themselves, or now Suntrust, as represented by Korn Law Firm has perjured itself in its historical representation of the true assignments and transfers that have taken place associated with the mortgage loan.
- At this point, it is impossible for anyone, least of all the Defendants in this matter, to ascertain to whom their mortgage belonged at any given time since the first transfer from Heritage Federal

Savings and Loan. Therefore, Defendants have been fraudulently "jerked around" in this matter, to the point of absurdity. For there now to be a statement that Suntrust was, all along, the owner of and real party in interest to this loan, after having Wells Fargo bring the action, and having Korn Law Firm argue for over a year that the loan was, in fact, owned by Wells Fargo, is an amazing display of the arrogance that has overtaken the mortgage and its third-party collectors' industries. Exhibit A verifies Wells Fargo's involvement as the reason Suntrust could not work with Defendants over the escrow issue. Fortunately, Defendants are now quite familiar with the underhanded tactics and subterfuge utilized by mortgage lenders, and hope they can rely on the Court to take action against them. Defendants have filed a suit in District Court bringing forth facts and testimony about similar situations, but this new angle to completely delete the involvement of Wells Fargo after it is proven they had involvement in this matter, truly exceeds all commonly utilized tactics to cover up the lies that are being told.

- Given the lack of care and incompetence of the parties bringing this action, it is now very clear to Defendants why the originally-approved mortgage satisfactions for 2 of the 3 properties under lien by whomever is claiming to own this loan, were never issued. The only analogy Defendants can draw to describe this issue is that of the famous skit called "Who's on First?" There clearly is serious default in the chain of title for this mortgage, and the hastily-filed but not noticed assignment from March of 2012, only reinforces the underhanded and fraudulent behavior going on by the Plaintiff(s) and their law firm.

Therefore, Defendants respectfully request that Plaintiff(s) be enjoined from proceeding toward any foreclosure action, based on the following:

PLAINTIFF(S) HAVE FAILED TO SHOW THAT THEY ARE THE REAL PARTY IN INTEREST

Defendants have requested over and over for nearly two years, any proof showing that Wells Fargo and or Suntrust has standing to enforce an action against Defendants concerning the loan between Defendants and Heritage Federal Savings and Loan. Nothing has been produced to show either of these parties has any ownership or security interest in this loan. "Nothing is owed when the proper chain of title does not exist as determined by the Massachusetts Supreme Court when presented with similar issues." *US Bank National Association, Trustee v. Antonia Ibanez, and a consolidated case for ABFC 2005-OPTI Trust, ABFC Asset Backed Certificates, Series 2005-OPTI: in re Kang Jin Hwang*, 396 B.R. 757, 768 (Bankr. C.D. Cal 2008).

A Movant must have both constitutional and prudential standing and be the real party in interest under Fed. R. Civ. P. 17, in order to be entitled to lift-stay relief [citing: *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)]. Constitutional standing under Article III requires, at a minimum, that a party must have suffered some actual or threatened injury as a result of the defendant's conduct, that the injury be traced to the challenged action, and that it is likely to be redressed by a favorable decision. *Valley Forge Christian Coll. V. Am. United for Separation of Church and State*, 454 U.S 464, 472 (1982).

Beyond the Article III requirements of injury in fact, causation, and redress ability, movant must also have prudential standing, which is a judicially-created set of principles that places limits on the class of person who may invoke the courts' powers. See *Warth v. Seldin*, 422 U.S. 490, 499 (1975). As a prudential matter, a plaintiff must assert "his own legal interest as the real party in interest," *Dunmore v. United States*, 358 F.3rd 1107, 1112 (9th Cir. 2004), as found in Fed. R. Civ. P. 17, which provides "an action must be prosecuted in the name of the real party in interest."

PLAINTIFF(S) HAVE PROVIDED NO TESTIMONY OR EVIDENCE AND ARE ATTEMPTING TO UTILIZE A THIRD-PARTY DEBT COLLECTOR

According to *Heintz v. Jenkins* (1995) 514 US 291, 299, "A debt collector is moving an action in its own behalf and its own interest and cannot represent a third party. See also, Wilson v. *Draper & PLLC* 443 F.3d 373 (2006). Korn Law Firm is also in violation of Title 15 USCA Ch. 41 part V Section 1692i(b). A debt collector moved an initial communication to collect a debt (Notice to Vacate January 4th, 2010). See *Goldman v F Cohen* 445 F3d 152 (2006). The Supreme Court has said in *Sicox v. Lang* (1889) 78 Cal. 118, 122: "The practice of attorneys verifying for their clients should be discouraged, and to that end, the provisions of the Code should receive a strict construction." Therefore, the Attorney Firm must be enjoined from any action in further unlawful acts against Defendants. See *State ex rel. State Bar of Wisconsin v. Bonded Collections, Inc.*, 36 Wis. 2d 643 (1967). *Carroll v. Wolpoff & Abramson* 961 F.2d (1962).

Based on the facts stated within and the blatant misrepresentation by Korn Law Firm as to their standing and the standing of their client, whomever it may be, Korn Law Firm has grossly abused the judicial foreclosure laws of this state and is not entitled to any claim.

PLAINTIFF(S) AND THEIR ATTORNEY HAVE COMMITTED FRAUD, PERJURY, MISREPRESENTATION, OR OTHER MISCONDUCT OF AN ADVERSE PARTY

Civil Rule 60 (b) 3 indicates the facts of this case warrant a reversal of any action taken and/or a dismissal of any pending actions based on: **(3)** fraud, misrepresentation, or other misconduct of an adverse party. The naming of a party that is not a real party in interest to this lawsuit, can be considered nothing less than fraud. Plaintiff(s) have also misrepresented their standing, substantial facts of the case, and have perjured themselves.

VIOLATION OF TRUTH IN LENDING ACT – 15 U.S.C. §1601 *et seq.*

The loan transaction at issue is a consumer credit transaction subject to the provisions of TILA. Heritage Federal Savings and Loan, Heritage Federal Bank, South Bank, Central Carolina Bank, National Bank of Commerce, Wells Fargo and Suntrust are "creditors" as that term is defined

by 15 U.S.C. §1602. The transaction between Plaintiff(s) and these Defendants was a consumer loan transaction wherein the Plaintiff(s) extended credit to the Defendants and such credit was secured by an interest purportedly held by the Plaintiff(s) in the Property.

As a consumer credit transaction, the Plaintiff(s) were required to provide to Defendants mandatory Truth-in-Lending disclosure statements and notice of the borrower's right to rescind, specifying the date on which the three-day rescission period expires. If the lending institution fails to provide the rescission information, the borrower may rescind the loan within three years after it was consummated. 15 U.S.C. §1635(a) and (f); 12 CFR §226.23(b)(3). If the borrower timely exercises her right to rescind, the security interest giving rise to the right of rescission becomes void. *Ibid.*

In the course of the transaction described herein, Plaintiff(s) violated TILA in numerous ways, including, but not limited to: Failing to provide required disclosures prior to consummation of the transaction; failing to make required disclosures clearly and conspicuously in writing; failing to timely deliver to Defendants certain notices required by statute; placing terms prohibited by statute into the transaction; and failing to disclose all finance charge details and the annual percentage rate based upon properly calculated and disclosed finance charges and amounts financed.

Records from the transaction indicate that Plaintiff(s) extended credit to Defendants without regard to their ability to pay, and even falsified relevant income and asset data to get the loan approved. Defendants are informed and believe and thereon allege that Plaintiff(s) have a pattern and practice of extending credit to consumers under high rate mortgages without regard to the consumers' repayment ability.

Because of these violations, Defendant has a continuing right to rescind the loan transaction for up to three years after consummation of the transaction. Defendants hereby give notice of rescission by and through this Complaint.

Because of these violations, Plaintiff(s) are liable to Defendants in the amount of twice the finance charge, actual damages to be established at trial, and costs in accordance with 15 U.S.C. § 1640(a). Defendants are also entitled: Rescission of the loan transaction; an order requiring Plaintiff(s) to take all actions necessary to terminate any security interest in the Property created under the transaction and a declaration by the Court that the security interest is void; expungement of any foreclosure instruments, including but not limited to any Notice of Default, relating to the transaction from any public record; removal of any derogatory information reported to any credit reporting agency or credit reporting bureau relating to the transaction; the return to Defendants of any money given by Defendants to anyone, including Plaintiff(s), in connection with the loan transaction; statutory damages; costs and reasonable attorney's fees; and such other relief as the Court may deem just and proper.

As a result of Plaintiff(s)' misconduct, Defendants have suffered and continue to suffer damages in an amount to be proven at trial, which they are entitled to recover. Moreover, Plaintiff(s)' misconduct was willful, malicious, and outrageous, and therefore punitive damages are warranted and demanded.

As a result of Plaintiff(s)' misconduct, the loan was void and unenforceable as of its inception, and therefore Defendants are entitled to rescind the loan agreement and promissory note and do hereby demand rescission.

As a result of Plaintiff(s)' misconduct, Defendants are entitled to declaratory and injunctive relief preventing Plaintiff(s) from taking any action to collect on the loan, and/or to foreclose upon the Properties, and/or to transfer the Properties.

VIOLATION OF RESPA – 12 U.S.C. §2601 *et seq.*

The loan transaction between Plaintiff(s) and Defendants is a mortgage loan covered by RESPA. Defendants are not certain at this time exactly which of Plaintiff(s) was actually the servicer of the loan at any given time, although they believed that the loan servicer was Suntrust at the time of the foreclosure. However, due to the conspiratorial nature of the misdeeds alleged herein, and also due to Plaintiff(s)' general failure to properly advise Defendants as to the roles and identities of the various entities that were purportedly handling their loan at any given time, these allegations are made as to all Plaintiff(s).

Plaintiff(s) violated RESPA at the time of closing on the sale of the Properties by failing to correctly and accurately comply with disclosure requirements. Plaintiff(s) violated RESPA, 12 U.S.C. §2605(e)(2) by failing and refusing to provide a written explanation or response to Defendants' Qualified Written Request not later than 60 days after receipt of the request. Defendants are informed and believe, and thereon allege, that Plaintiff(s) have engaged in a pattern or practice of non-compliance with the requirements of the mortgage servicer provisions of RESPA as set forth in 12 U.S.C. §2605.

As a result of Plaintiff(s)' failure to comply with RESPA, Defendants have suffered and continue to suffer damages and costs of suit. Defendants are entitled to recover statutory damages of $1,000.00, actual damages in an amount to be determined at trial, and costs and reasonable attorney's fees.

VIOLATION OF FAIR DEBT COLLECTIONS ACT – 15 U.S.C.1692e

In violation of U.S.C. 1692e, 807, Plaintiff(s) engaged in the false representation of

(A) the character, amount, or legal status of any debt; or

(13) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

Plaintiff also violated section (5) by threatening to take an action that cannot legally be taken. Plaintiff(s) also violated section (14) by failing to divulge the true name of the organization collecting the debt, or the owner of the debt.

Plaintiff(s) also failed to comply with U.S.C. 1692e, 809, by failing to provide verification and validation of the debt they claimed to be owed to them.

SLANDER OF TITLE

Plaintiff(s) disparaged Defendants' exclusive valid title in 2011, by and through the preparing, posting, publishing and recording of the documents previously described herein, including, but not limited to, the foreclosure Complaint. Said Plaintiff(s) knew or should have known that such documents were improper in that at the time of the execution and delivery of said documents, Plaintiff(s) had no right, title or interest in the properties. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Defendants' legal title to the properties. By posting, publishing, and recording, said documents, Plaintiff(s)' disparagement of Defendants' legal title was made to the world at large. Similarly, the law firm retained by Plaintiff(s) is also culpable, as they are in the business of collection of consumer debts, either on behalf of itself or others, and are therefore under the authority of the Fair Debt Collection Practices Act Titles 15 and 18 U.S.C. which requires Korn Law Firm to verify actual ownership and factual, legal debt. Further evidence of the incompetence and failure to verify pertinent information is Korn Law Firm's listing of Job Development Loan Fund, Inc. as a Defendant in this matter. Any tie of these properties to JDLF expired over 20 years ago, as the small loan secured by the original property on the Heritage Federal Savings and Loan mortgage, was paid off within six (6) months of its origination. There is an appropriately filed Mortgage Satisfaction proving this on record at the

Lexington County Register of Deeds, available to the public, and certainly available to a law firm with greater access to such records. That mortgage satisfaction is attached here as Exhibit B.

As a direct and proximate result of Plaintiff(s)' conduct in publishing these documents, Defendants' title to the properties has been disparaged and slandered, and there is a cloud on Defendants' title, and Defendants have suffered, and continue to suffer, damages in an amount to be proved including loss of business and business goodwill. As a further proximate result of Plaintiff(s)' conduct, Defendants have incurred, and will continue to incur, expenses, including reasonable attorney's fees, in order to clear title to the properties. Moreover, these expenses are continuing, and Defendants will incur additional charges for such purpose until the cloud on Defendants' title to the Properties has been removed. The amounts of future expenses and damages are not ascertainable at this time.

As a further direct and proximate result of Plaintiff(s)' egregious conduct, Defendants have suffered loss of business, humiliation, mental anguish, anxiety, depression, and emotional and physical distress, resulting in the loss of sleep and other injuries to their health and well-being, and continue to suffer such injuries on an ongoing basis. The amount of such damages shall be proven upon request by the court.

At the time that the false and disparaging documents were created and published by the Plaintiff(s), Plaintiff(s) knew the documents were false and created and published them with the malicious intent to injure Defendants and deprive them of their exclusive right, title, and interest in the properties, and to obtain the properties for their own use by unlawful means. Plaintiff(s) committed perjury before the court by asserting they had ownership based on void and false documents.

The conduct of the Plaintiff(s) in publishing the documents described above was fraudulent, oppressive, and malicious. Therefore, Defendants are entitled to an award of punitive damages in

an amount sufficient to punish Plaintiff(s) for their malicious conduct and deter such misconduct in the future.

INEQUITABLE FORECLOSURE ATTEMPT, LACK OF GOOD FAITH AND FAIR DEALING

Historically, equitable courts developed to provide a forum of justice for litigants when law courts, which contained rigid principles and restrictive technicalities, were deficient. *See* Hedges v. Lysek, 84 So. 2d 28, 31 (Fla. 1955). As such, equity courts were created to do justice between the litigants. *See e.g.* Banks v. Shaw, 144 Fla. 550, 198 So. 341 (1940); Atlantic Nat. Bank of Jacksonville v. Simpson, 136 Fla. 809, 188 So. 636 (1938). Therefore, "a court of equity is a court of conscience: it should not be shackled by rigid rules of procedure and thereby preclude justice being administered according to good conscience." Demorizi v. Demorizi, 851 So.2d 243, 246 (Fla. 3d DCA 2003), *appeal dismissed* 851 So. 2d 168 (Fla. 3d DCA 2003) (quoting Wicker v. Board of Public Instruction of Dade County, 106 So.2d 550, 558 (Fla.1958)). Finally, with respect to foreclosures, "the general rule is that...[the] foreclosure must not be unconscionable or inequitable." Pezzimenti v. Cirou, 466 So.2d 274, 276 (Fla. 2d DCA 1985). By the Plaintiff(s)' failure to release the two properties authorized by Heritage Federal to be released, and by filing an action including all three properties together, Plaintiff(s) have attempted to place the court in a position of awarding an inequitable and unconscionable foreclosure.

Defendants have not waived their appraisal rights, under Section 29-3-680, as any purported waiver would be against public policy pursuant to SCN Mortgage Corp v. White, 312 SC 384, 440 S.E.2d 868 (1994). The Supreme Court of South Carolina held it was against public policy to require a waiver of this right in advance. Therefore, Defendants reserve the right to prove that the attempt to foreclose on all three (3) properties for such a small debt claimed, and yet to be verified, is inequitable and unlawful. The value of any one (1) of the three (3) properties named in this

action, far exceeds the debt claimed to be owed by Plaintiff(s). By attempting to foreclose on multiple properties Plaintiff(s) are committing theft. Individual properties must be foreclosed upon one parcel at a time because the amount secured by Plaintiff(s) exceed any one parcel.

SUBJECT PROPERTY OUTSIDE OF JURISDICTION FOR LEXINGTON COUNTY, SC

One of the subject properties in this action is located in Chester County, SC, and is therefore not in the jurisdiction of the courts of Lexington County, SC, where this action appears to have been filed. That property must be removed from this and any related foreclosure action in Lexington County.

FAILURE TO COMPLY WITH SC SUPREME COURT ADMINISTRATIVE ORDER 2011-05-02-01 OR TO OFFER SOLUTIONS UNDER HAMP

SC Supreme Court Administrative Order 2011-05-02-01 clearly requires that for all mortgage foreclosures filed after May 9, 2011, the Mortgagee's attorney shall serve on the Mortgagor, along with the summons and complaint, a notice of the Mortgagor's right to foreclosure intervention. Although the original complaint in this matter was served earlier than that date, it was withdrawn. Defendants have not been served a new foreclosure complaint, and the notice of the Certification of Mortgagor Non-Compliance is the first notification of continued action by these Plaintiff(s) against Defendants. If there has been a new foreclosure complaint filed, it has not been served on Defendants according to FRCP, therefore Mortgagor's attorney has failed to comply with the Administrative Order.

Further, Mortgagor's attorney has submitted a fraudulent Certification of Mortgagor Non-Compliance because Defendants have never been offered foreclosure intervention by the real party in interest to this mortgage.

Defendants have also not been offered any of the options under the HAMP program.

UNFAIR BUSINESS PRACTICES – SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

Defendants are informed and believe and thereon allege that Plaintiff(s) committed unlawful, unfair and or fraudulent business practices, as defined by South Carolina Unfair Trade Practices Act by engaging in the unlawful, unfair, and fraudulent business practices alleged herein.

As a result of Plaintiff(s)' wrongful conduct, Defendants have suffered various damages and injuries.

Defendants seek injunctive relief enjoining Plaintiff(s) from engaging in the unfair business practices described herein.

Defendants further seek restitution, disgorgement of sums wrongfully obtained, costs of suit, reasonable attorney's fees, and such other and further relief as the Court may deem just and proper.

FRAUD AND SWINDLE 19 U.S.C. §1346 ANY SCHEME OR ARTIFICE TO DEFRAUD; 18 U.S.C. §1001 STATEMENT OR ENTRIES GENERALLY

As alleged herein, Plaintiff(s) have made several representations to Defendants with regard to important facts.

These representations made by Plaintiff(s) were false.

Plaintiff(s) knew that these representations were false when made, or these representations were made with reckless disregard for the truth.

Plaintiff(s) intended that Defendants rely on these representations.

Defendants reasonably relied on said representations.

As a result of Defendants' reliance, they were harmed and suffered damages. Defendants' reliance on Plaintiff(s)' false representations were a substantial factor in causing Defendants harm.

Plaintiff(s) are guilty of malice, fraud or oppression, and Plaintiff(s)' actions were malicious and done willfully, in conscious disregard of the rights and safety of Defendants, in that the actions

were calculated to injure Defendants.[1] As such, Defendants are entitled to recover, in addition to actual damages, punitive damages to punish Plaintiff(s) and to deter future misconduct. Defendants will present their damages for determination at a hearing for that purpose.

CIVIL CONSPIRACY

Defendants are informed and believe, and thereon allege, that Plaintiff(s) conspired and agreed to implement a scheme to defraud and victimize Defendants through the predatory lending practices and other unlawful acts alleged herein.

Defendants are informed and believe and thereon allege that Plaintiff(s) did the acts and things alleged herein pursuant to and in furtherance of their conspiracy to defraud and victimize Defendants, and use tainted court processes to steal Defendants' properties.

Defendants are informed and believe that Plaintiff(s) committed acts in furtherance of the conspiracy, and/or lent aid and encouragement to their co-conspirators and/or ratified and adopted the acts of their co-conspirators, and are thus jointly and severally liable for all harm to Defendants resulting from the conspiracy, see Salinas v. United States, 118 S. Ct. 469 (1997) at pg. 470: "...conspiracy is distinct evil, dangerous to the public, and so punishable in itself."

As the direct and proximate result of Plaintiff(s)' conspiracy to defraud and victimize Defendants, Defendants have suffered damages, including, but not limited to, direct monetary loss, consequential damages, and emotional distress.

In conspiring to defraud and victimize Defendants, and in committing the wrongful acts alleged herein, Plaintiff(s) acted with malice, oppression, and fraud including perjury by written

[1] South Carolina allows punitive damages, except in actions against the state or other governmental entity and in product liability actions based on strict liability. Punitive damages are allowed upon a showing by clear and convincing evidence of malice, ill will, a conscious indifference to the rights of others, or a reckless disregard thereof. *King v. Allstate Ins. Co.*, 251 S.E. 2d 762 (S.C. 1979). S.C. Code § 15-33-135.

testimony in a court of law, thus justifying an award of exemplary damages in an amount sufficient to punish their wrongful conduct and deter such misconduct in the future.

RICO – 18 U.S.C. §§1961 *et seq.*

Wells Fargo and Suntrust are enterprises engaged in and the activities of which affect interstate commerce. Korn Law Firm are persons within the meaning of 18 U.S.C. § 1961(3), and as persons associated with Wells Fargo and Suntrust, conducted and participated, directly and indirectly, in the conduct of the affairs of said enterprise through a pattern of racketeering activity in violation of 18 U.S.C.A. § 1962(c).

The predicate acts which constitute this pattern of racketeering activity were part of a scheme to wrongfully foreclose upon the Properties without legal right, and therefore acquire title to the Properties through deception and fraud, for the profit of the enterprise, as described herein. For the purpose of executing this scheme, the Plaintiff(s) placed in post offices and/or in authorized repositories matter and things to be sent or delivered by the Postal Service, caused matter and things from the Postal service or commercial interstate carriers, including, but not limited to, default and foreclosure related notices. These notices were false, misleading, and contrary to law, as described herein; and were deliberately designed to compel Defendants either to part with large sums of money or to abandon the Properties, for the profit of the enterprise.

For the purpose of executing this scheme to defraud Defendants and obtain money by means of false pretenses, Plaintiff(s) also transmitted and received messages by wire, including, but not limited to telephone and internet communications. In such communications, Plaintiff(s) sought to convince Defendant either to part with large sums of money or to abandon the Properties, for the profit of the enterprise, asserting the falsehood that Plaintiff(s) had the right to foreclose upon the security interest in the Properties.

These acts of racketeering, occurring within ten years of one another, constitute a pattern of racketeering activity within the meaning of 18 U.S.C.A. § 1962, in that, as a direct and proximate result of Plaintiff(s)' complained of acts, Defendants have suffered and continue to suffer damages, including but not limited to, monetary damages and emotional distress, in an amount to be proven at trial.

By reason of the Plaintiff(s)' violation of 18 U.S.C.A. § 1962, Defendants are entitled, pursuant to 18 U.S.C.A. § 1964©, to threefold the damages sustained, costs of suit, and reasonable attorney's fees.

QUIET TITLE

Defendants claim an interest adverse to Plaintiff(s)' interest in the Properties, in the form of the Deed of Trust recorded pursuant to the loan transaction and Defendants are seeking to quiet title against the claims of Plaintiff(s) under such Deed.

Defendants desire and are entitled to a judicial declaration quieting title in Defendants' names as of August 10, 1987, the date on which the loan transaction was consummated.

IMPOSITION OF CONSTRUCTIVE TRUST

Since August 1987, Defendants have been the rightful owners of legal title to the Properties. In contravention of Defendants' ownership rights and interests in the Properties, Plaintiff(s) purported to obtain legal title to the Properties by means of an unjustified and fraudulent foreclosure action. Plaintiff(s) refuse to acknowledge Defendants' status as the rightful owner of the Properties. Plaintiff(s) hold whatever interest it claims in the Properties in trust for Defendants.

JURY TRIAL

Section of guarantees a jury trial for any dispute involving more than twenty ($20) dollars. Plaintiff(s) in this case have attempted to usurp Defendants' rights by specifying a "non-jury mortgage foreclosure" on their documents. In the event this Motion to Dismiss and Enjoin

Plaintiff(s) from further actions in this matter is not granted. Defendants request the ability to outline this outrageous case in front of a jury of their peers.

RELIEF REQUESTED

Therefore, Defendants respectfully request the following:

1. That Plaintiff(s)' Order Substituting Plaintiff be stricken from the record, and Plaintiff(s) be prosecuted for filing fraudulent, false and misleading documents in a court in Lexington County.
2. That foreclosure case be dismissed in its entirety in compliance with Civil Rule 17.
3. That Plaintiff(s) in this case be, from now and forever forward, enjoined from foreclosure action against Defendants, and a satisfaction of mortgage/lien be issued for the subject mortgage, and all three (3) properties liened in the subject mortgage.
4. That Defendants be allowed to participate in a Trial by Jury to present damages and harm done to Defendants, for the purpose of seeking restitution and punitive damages against Plaintiff(s).
5. That judgment be entered in their favor and against Plaintiff(s), and each of them.
6. For a temporary restraining order, preliminary and permanent injunction preventing Plaintiff(s), or anyone acting under or in concert with them, from collecting on the subject loan and from causing the Properties to be sold or assigned to a third party.
7. For an order stating that Plaintiff(s) must not report to any credit reporting agency anything of a negative nature against Defendants, and that they must repair any previously reported negative information.
8. For an order stating that Plaintiff(s) engaged in unfair business practices.
9. For an order stating that the Notice of Default, Lis Pendens and other documents filed by Plaintiff(s) constitute slander of title to Defendants and the Properties.

10. For an order and judgment quieting title to the three (3) Properties

11. For damages, disgorgement, and injunctive relief under South Carolina's common and statutory law of unfair business practices

12. For compensatory and statutory damages, attorney's fees and costs according to proof at trial

13. For exemplary damages in an amount sufficient to punish Plaintiff(s)' wrongful conduct and deter future misconduct.

14. For such other and further relief as the Court may deem just and proper.

Respectfully,

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Lexington, SC
September 6, 2012

Transcript of November 8 2013 hearing

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	C/A No. 11-CP-32-0156
	)	
Wells Fargo Bank, N.A.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Cathy G. Lanier and Randy Lanier,	)	
	)	
Defendants.	)	
	)	

COPY

HEARING

****

Friday, November 8, 2013
9:01 a.m. - 10:12 a.m.

The hearing before the Honorable James O. Spence, Master-In-Equity for Lexington County, was taken at 205 East Main Street, Lexington, South Carolina on the 8th day of November, 2013 before Sara L. Quattlebaum, Court Reporter and Notary Public in and for the State of South Carolina.

CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

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Pro Se Defendants

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Certificate 53

EXHIBITS

(No Exhibits Proffered)

THE COURT: We're here on Wells Fargo vs. Lanier. It is Case No. 2011-CP-32-0156. We are here pursuant to the scheduling order. Today is the day they have set to resolve the various outstanding motions that have been filed by both parties. Mr. Hayes?

MR. HAYES: Yes, Your Honor. Chris Truluck and Dean Hayes are the plaintiffs, Your Honor.

THE COURT: All right. And I will note that Mr. and Mrs. Lanier are here. Before we begin, Ms. Quattlebaum is our Court Reporter. If either side wishes to get a copy of the transcript, whoever they is needs to contact her to arrange to get a transcript. I will ask Ms. Quattlebaum when she prepares the transcript, as a normal process mail it to me, and I will file it. And copy Mr. Hayes and Laniers with a cover letter letting them know that the transcript has been prepared and sent for filing to do that.

All right. We have a lot of things that have been filed. So what I'm going to do is I am going to start with plaintiff and ask plaintiff to address any motions they filed. If they have anything outstanding that has been

filed since the status conference, then we will go back and forth until we get this all taken care of.

MR. HAYES: Your Honor, the defendants have a motion to amend their answers to a certain counterclaim, a motion to amend their answer to a certain counterclaims.

THE COURT: All right, hold on. Do you all -- has the plaintiff filed any motions?

MR. HAYES: The plaintiff has filed a motion in opposition to their motion, and we've also filed a motion for summary judgment, Your Honor.

THE COURT: Okay. Let's then hear your motion for summary judgement first. And then we will let them argue their motion. They get to go first with their motion, and then you can respond to it.

MR. HAYES: Right. And, Your Honor, the motion for summary judgment is to their counterclaim. Mr. and Mrs. Lanier filed bankruptcy prior to this action being filed. And they did not list -- they asserted various counterclaims in that they asserted fraud, Truth in Lending Act, RESPA, FDCPA, slander of title, RICO,

conspiracy; just a lot of claims against the plaintiff. And this is a 1997 mortgage, Your Honor. First, they are barred by the statute of limitations from asserting anything regarding origination because we're, what, 16 years after the fact. Second, they are also barred from asserting any counterclaims because they didn't list them on Schedule B of their bankruptcy schedules.

THE COURT: All right. Hold on. Let's address both of those arguments.

MR. HAYES: Yes, sir.

THE COURT: All right. It's 16 years after the loan.

MR. HAYES: Yes, sir.

THE COURT: All right. The statute of limitations for these charges or counterclaims are how long?.

MR. HAYES: It depends. It depends on -- it's either one, two or three years for all of them, Your Honor.

THE COURT: All right. And it's one to three years based upon what date?

MR. HAYES: The date of origination, Your Honor.

THE COURT: All right. Is it the date of

origination of the loan or is it date of discovery of finding out about it?

MR. HAYES: It's the date they knew or should have known, if you are talking about fraud. If you are talking about TELA and RESPA, I believe it's the date of origination, Your Honor.

THE COURT: All right. And that's why I'm asking this very specific question because if your -- and that's why I'm trying to make sure I understand. If the federal statute relates to the truth in lending and all that and iron clad and says date from --

MR. HAYES: Uh-huh.

THE COURT: -- those notes at the time, you don't have the discovery rule, --

MR. HAYES: Yes, sir.

THE COURT: -- then that has -- that would seem to have one impact upon the rule because if it says there is anything to discovery, there would be no way to do discovery.

MR. HAYES: Yes, sir.

THE COURT: If, however, the ordinary discovery rules applies to when they knew or should have known fraud, then we may not be in a 16-year period. And I want to actually -- I'll

obviously ask you questions and them questions about is there anything that is known or should have been known.

MR. HAYES: Yes, sir.

THE COURT: All right. Well, you can just know that is one thing I will want to you to address, --

MR. HAYES: Yes, sir.

THE COURT: -- if not today, in a post-hearing memo.

MR. HAYES: Yes, sir.

THE COURT: All right. So the two reasons are that they are tie barred --

MR. HAYES: Yes, sir.

THE COURT: -- either by statute or knew or should have known.

MR. HAYES: Yes, sir.

THE COURT: And the second issue was they did not list them on a bankruptcy schedule. I mean, if that's a -- tell me if that is a statute or if that is a case.

MR. HAYES: Your Honor, that is a case. As a matter of fact, Your Honor, it's based on federal law. There is an unpublished opinion in South Carolina on this exact issue. It's a case I handled before Judge Evans. And the Court of

Appeals decided in my favor on that issue. And they cited this case.

THE COURT: The federal case.

MR. HAYES: Yes, the federal case, Your Honor. It's 25 F3d 1281 in the matter of Educators Group Health Trust v. Wright, Your Honor.

THE COURT: All right. And just the basis of it, the basis of the opinion is that since they did not list these claims when they were in bankruptcy, when I assume they listed the mortgage.

MR. HAYES: Yes, sir.

THE COURT: Okay. The bankruptcy would have said, and I'm guessing, and either side correct me because I haven't read the case, and I'm not recalling it. The logic would seem to be, then, that if you listed this Wells Fargo mortgage, and you are supposed to list your assets and debits or your debits and your assets. I know I'm not saying that right, but your pluses and your minuses in a bankruptcy case, you are also supposed to list accounts receivables, people who owe me money and things I claim, which I would assume would be a counterclaim.

MR. HAYES: Yes, sir.

THE COURT: All right. Is that the basis of it?

MR. HAYES: Yes, sir. And the logic in it is that any claims that -- any counterclaims or any claims you don't list with the bankruptcy court, once you're out of bankruptcy, you don't have the standing. Only the trustee -- the bankruptcy trustee over that case has standing to assert those claims, Your Honor.

THE COURT: All right. So only the bankruptcy trustee can later raise the claim?

MR. HAYES: Yes, sir. And it's a standing issue. If you don't list the claims in your schedule, once you're out of bankruptcy, you don't -- you have no standing to assert those claims. Only the bankruptcy trustee does, Your Honor.

THE COURT: Okay. All right. Well, I mean, I understand what the logic would be because it would be the trustee, the person gathering the assets. And if you don't disclose them when you are in bankruptcy, you can't go out and then try to get an asset when you're not subject to the bankruptcy court.

MR. HAYES: Exactly.

THE COURT: Okay. I understand that section per

your argument. All right. What else is the summary judgment based on?

MR. HAYES: Your Honor, those are the two main ones. I can't -- excuse me, Your Honor. Your Honor, there are insufficient factual allegations to the other claims. But again, the main problem is statute of limitations, and they are barred by lack of standing, Your Honor.

THE COURT: All right. When did they file bankruptcy, what year?

MR. HAYES: 2011, Your Honor. Their bankruptcy schedule was filed on November the 8th, Your Honor. It's case number -- Bankruptcy Case No. 11-06-932.

THE COURT: All right. And before I come over to the Laniers, what I'm trying to figure out is is if the bankruptcy case is right and these claims weren't filed, nothing else matters. Discovery doesn't matter.

MR. HAYES: Right.

THE COURT: Time doesn't matter because your argument is an absolute barr.

MR. HAYES: That's correct, Your Honor.

THE COURT: It doesn't matter if they knew or should have known because the bankruptcy trustee could

come in and do it.

MR. HAYES: That's correct, Your Honor. And in the case I had involving Judge Evans, the borrower, that's exactly what she tried to assert on appeal that she didn't know it. And it doesn't matter. If you lack standing to assert the claims, you can't assert them.

THE COURT: Okay. All right. Anything further?

MR. HAYES: No, sir.

THE COURT: All right. I would like to hear from the Laniers in response. And if you all will start maybe and go backwards, just the bankruptcy argument so we will have some continuity in the transcript.

MS. LANIER: Okay. Well, first of all, Your Honor, our bankruptcy case was very very incomplete. We had not finished our Schedule B by the time the bankruptcy was dismissed. And at the time, we had information and belief that this particular loan had actually been resolved by a series of investors who indicated to us that they had contacted, you know, the bank and worked everything out and that this loan was actually not valid any longer.

THE COURT: Hold on. And again, as you all know

because you all have been here, these -- I will be prone to interrupt to ask questions because I am typing my own notes. I'm not doing it to be rude or anything. It's just to help me understand the flow. All right. I want to understand what you just said. Who dismissed -- why was the bankruptcy dismissed? Did the bankruptcy dismiss it? Did you all dismiss it? Or why was it dismissed?

MS. LANIER: The bankruptcy court dismissed it.

THE COURT: Why did they dismiss it?

MS. LANIER: I'm trying to think the actual reason that they gave, but it was basically lack of evidence. We had filed it basically to stay the sale of another property that we were in the process of putting together a federal case against because it was an illegal foreclosure we believed. And we have basically filed it to stay that sale, and we basically didn't get to finish our schedules. We didn't get to --

THE COURT: All right. Hold on a minute. I would like to -- so the trustee then, I guess, or the judge dismissed it?

MS. LANIER: Yes.

THE COURT: All right. The schedules are done

pursuant to federal time lines. They send you the stuff and tell you you've got to fill it. So did you all not -- did --

MS. LANIER: We started our schedules. We actually worked on our schedules and had asked to be able to amend several schedules including Schedule B. And by the time all of that came about, the bankruptcy had already been dismissed. It was dismissed at the end of -- we filed it in November, and it was dismissed right at the end of January -- I mean at the end of December, first of January time frame.

THE COURT: All right.

MS. LANIER: We had barely even met with the trustee and got anything done with it.

THE COURT: All right. Then the third item was investors told you all that the matter with the bank was resolved?

MS. LANIER: Yes, sir.

THE COURT: The bank didn't tell you that.

MS. LANIER: No, sir.

THE COURT: All right. Anything else on the bankruptcy response?

MS. LANIER: No, sir.

THE COURT: Okay. All right. Tell me then the loan

was in 1997.

MS. LANIER: Yes, sir.

THE COURT: This law suit was filed in 2011. When did you all go into default? When did you miss your first payment?

MS. LANIER: Can I give you a little background?

THE COURT: First tell me, and then give me background.

MS. LANIER: Well, back during that time in late 2008, we had basically had our credit line for my company shut down by the bank for no apparent reason. We never missed a payment, etcetera. So we were starting to feel the pinch of some economic downturn. By the beginning of 2011 --

THE COURT: All right. Hold on. When did you miss your first payment?

MS. LANIER: September the -- in September of 2010, I issued the payment for principal and interest, but it was returned to me because it did not include roughly $8,000 worth of escrow catchup that I was trying to work with the bank to resolve.

THE COURT: All right. So basically from '97 to 2010, the loan went on fine?

MS. LANIER: Not a problem at all. We were paying more than required principal, trying to pay the loan off early, etcetera.

THE COURT: All right. So there weren't any thoughts on you all's part --

Ms. LANIER: No, sir.

THE COURT: -- during that time that there was fraud or violation of anything --

MS. LANIER: That we knew of. We later in discovery that there certainly was. But in early 2010 when I realized that we might run into some problems, basically what had happened is we didn't have the cash to pay the taxes for that year on the property. And so I had contacted, which I believe, had information and have reason to believe at the time that Sun Trust was the owner of the mortgage because that's where I sent my payments. And so I contacted Sun Trust to ask them because it says in the mortgage that they will step in and cover the taxes if we are unable to pay and then work something out. So I contacted them and asked them to make that payment for us and then started working with them about how we could possibly do a modification or an extension of

a loan or whatever so that I could catch up the tax money because at that time we had no anticipation that we were going to miss any of the actual payments. We just didn't have $8,000 to come up with all of a sudden. And so I spent from roughly January 2010 through September of 2010 working with Sun Trust to the point that I even wrote their CEO because I couldn't get anybody to really talk to me. They would request documents. They would request packets of paper, and I must have sent the same packets over and over probably eight times in a six-month period because they would get lost or the person that had been assigned to work with me would be gone and I would have to start all over with somebody new. It was just a nightmare. It was just a big runaround that I was getting from Sun Trust to make a simple request. I mean, at the time --

THE COURT: All right. Tell me though again -- I want to keep you on track of the specific argument.

MS. LANIER: Okay.

THE COURT: ell me then when you discovered that you believed the truth in lending; all of that that

you pled --

MS. LANIER: Right.

THE COURT: -- tell me just roughly the time period.

MS. LANIER: Okay. Well, in September of 2010 when I sent my payment in and it was returned to me because that was when they hit me with the back escrow payment and hadn't worked out anything for me to pay it over time, I contacted Sun Trust again. And I said, look, I said, you know, this is crazy. Why are you not accepting my mortgage payments? We're arguing about something different. At that time they had also placed forced placed insurance on my property, which was illegal and I had to file a complaint to get that fixed. So they were charging me for things that I didn't owe in addition to the tax escrow that I did owe but wanted to spread over time.

THE COURT: All right. All right. Hold on. Okay. Your arguing is that my mortgage -- going back to something you said earlier --

MS. LANIER: Uh-huh.

THE COURT: -- that if I can't pay my taxes and insurance, the bank contract requires them to pay it.

MS. LANIER: Yes, sir.

THE COURT: Is it required of them to pay it or is it optional?

MS. LANIER: I believe the language probably says, they may pay.

THE COURT: Okay. All right. So -- both of you all agree that you've got to look through the document to see if it says may or shall or is required. Okay. All right. Does the document also say that if they pay it for you, then they -- what happens then? Does the document say that we'll put it on the back end and you keep paying your normal payment? Does it say it will require to modify the loan? Does the document provide a process to govern what happens if they do step in and pay it?

MS. LANIER: I don't believe it provides a process. But from a logical standpoint at the time this all happened, the balance of the loan was about $165,000. The combined total value of the three properties that secured the mortgage was over $2 million. We had no credit issues. We were not missing payments at that point. We were still, you know, 800 credit scores and all that. There was no reason that the bank in my

mind should not have considered allowing us to add $8,000 to the principal to a balance --

THE COURT: Is this -- is this -- is this issue, --

MS. LANIER: Uh-huh.

THE COURT: -- the escrow tax issue, is that the facts that prompted the fraud, all the --

MS. LANIER: Yes, sir.

THE COURT: -- fraud related things?

MS. LANIER: Yes.

THE COURT: So the fraud and stuff that you are arguing about relates to the escrow payments, not back to the inception of the loan?

MS. LANIER: Yes, sir. Exactly. Because at the inception of the loan --

THE COURT: Okay. That means you're agreeing with me --

MS. LANIER: I'm agreeing with you.

THE COURT: Because I asked that wrong kind of question.

MS. LANIER: I'm agreeing as I understand it because my answer is based on the fact that we got our mortgage with Heritage Federal Savings and Loan back in -- actually '87 and just simply had added a property to it in '97 which redid the loan.

THE COURT: With all of that is related to --

MS. LANIER: All of that is related too because at this point in time I have been working with Sun Trust.

THE COURT: Stop, stop, stop, stop now. Because you are going off in a different direction now. The stuff you pled and I'm trying to make decision on is the fraud and the truth in lending and all of that, is based on not when the loan was done in 1997, but was done with -- from 2010 forward with the handling of the escrow and the payments of the loan and all of that, that time period?

MS. LANIER: Yes, sir. That's when I first learned of the fraud involved because --

THE COURT: Hold -- stop. What fraud? Fraud all the way back to 1997 or what --

MS. LANIER: Potentially, potentially, and I am getting a forensic audit of all of the transactions that occurred since 1997 to determine specifically what happened. But I can tell you what I do know. What I do know is when the payment was returned to me in September of 2010, obviously I contacted Sun Trust again to say, you know, this is crazy.

You're not even taking my principal and interest payments while we're arguing over how to handle this escrow payment.

THE COURT: Hold on and let me ask that. Do they have to?

MS. LANIER: I don't know if they have to or not.

THE COURT: Okay. So again, we're back at the bank documents. For example, if your bank -- if your bank payment is $1,000 and it said paid $1,000 plus -- I mean your principal and interest is $1,000, and they say you've got to pay that plus your escrow, your insurance and taxes.

MS. LANIER: Uh-huh.

THE COURT: And you say all I can send in is my $1,000. Do they have to take it or can the bank refuse to take it?

MS. LANIER: I don't know, Your Honor. I do not know.

THE COURT: But notwithstanding what would make -- what your argument would make good business sense, but do they have to take it?

MS. LANIER: Right. But I do not know the answer to that. When I did contact them about the payment that they returned, I had trouble

getting in touch with the people that I had been working with because I was now working with someone out of the executive division because I contacted the CEO and asked for his help. And I finally got a phone call back sometime toward the end of September, early October indicating --

THE COURT: This is what year now?

MS. LANIER: This is 2010, still 2010 when just that first payment had been returned back to me. And I was told that all of the work, all of the eight months, nine months worth of work that I had done with Sun Trust in trying to apply for and get some kind of a modification had been moot because they were not the owner of my loan and had no authority to make those decisions. I then asked them who the owner of the loan was, and they were not at liberty to divulge that. And I reminded them that it was certainly my right to know under all the existing laws, not to mention what's been done today here with the mortgage crisis. And so it was fully December 15th of that year that I finally received a letter from Sun Trust Mortgage that I have here if you'd like to --

if I can enter it in as an exhibit, finally stating that my loan was owned by Wells Fargo and giving me their mailing address and phone number. Okay. So at that point, I obviously contacted Wells Fargo. I made every effort. I sent letters. I left messages. Not once --

THE COURT: And that's December 15th of --

MS. LANIER: December 15th of 2010.

THE COURT: 2010.

MS. LANIER: Yes, sir. At that time, I had sent in my September payment, and they refused it. And I had sent in my October payment, and they also refused that.

THE COURT: All right. Now, when you sent in the payment, that again was not the full payment.

MS. LANIER: Right.

THE COURT: It was --

MS. LANIER: It was principal and interest.

THE COURT: P and I and not --

MS. LANIER: Which is all I had ever sent before. I had never had taxes or insurance escrowed. So my entire payment that showed up on my -- before that tax issue was only principal and interest was all I ever paid to whoever owned the loan.

THE COURT: Well, I'm confused now.

MS. LANIER: I handled the taxes and the insurance separately.

THE COURT: Well, I understand that. But -- I thought that when you sent in the September payment --

MS. LANIER: Uh-huh.

THE COURT: -- you said, I sent in my normal principal and interest.

MS. LANIER: Yes.

THE COURT: Then why would they have turned that -- sent that back to you if that's all you had ever sent in?

MS. LANIER: Because their -- they had invoiced me that month for that September payment, they had added on the taxes -- about $8,000 worth of taxes that they had advanced on my behalf and that I had been working with them for basically a year to ask to modify the loan so that I could get it spread out.

THE COURT: All right. Well, back up then. From 1997 to 2008 when this started, you would pay each month your principal and interest.

MS. LANIER: Yes, sir.

THE COURT: And you would pay separately

independently taxes and insurance.

MS. LANIER: Sure, yes.

THE COURT: Because it wasn't escrowed, you paid the County of Lexington the taxes?

MS. LANIER: Yes, sir.

THE COURT: And then whoever you had insurance with?

MS. LANIER: Yes, sir.

THE COURT: Then, sometime in 2008, the financial stuff started --

MS. LANIER: Uh-huh.

THE COURT: -- and they advanced you loans to pay taxes and insurance?

MS. LANIER: Just taxes.

THE COURT: Just taxes.

MS. LANIER: But they forced placed an insurance policy that was illegal in South Carolina.

THE COURT: Well, hold on. We're not talking about forced place now. Just a second.

MS. LANIER: All right.

THE COURT: So they paid the taxes on your behalf and then sent you a bill for it?

MS. LANIER: Yes.

THE COURT: And you kept paying -- you kept tendering your original principal and interest because you were trying to work out how to pay

the taxes?

MS. LANIER: Yes. The actual bill for the taxes, and they had alerted me that that would show up on my September bill. So it was not actually due, you know, yet. And that's when I was taking all that time before that bill hit to hopefully modify the loan and add the $8,000 to it, since obviously we had enough equity to cover that, and, you know, would have increased my payments by, you know, eight months maybe or something. But, you know --

THE COURT: Okay. All right. I'm with you. I understand the facts.

MS. LANIER: All right.

THE COURT: All right.

MS. LANIER: So then when I found out from Wells Fargo that I had actually -- that I had wasted all of those many months with Sun Trust, and they didn't even have the authority to make a decision on my application of the loan. I tried to get in touch with Wells Fargo. Not once to this day, Your Honor, have I ever heard back from anybody at Wells Fargo. They simply ignored every request that I sent in, every -- you know, every request from me to work with me

on this so that I could salvage this mortgage. They absolutely provided nothing to me.

THE COURT: Hold on. All right. So this is December 2010.

MS. LANIER: Yes, sir.

THE COURT: All right. The lawsuit was filed when?

MR. HAYES: All right. Your Honor, I believe it was -- it was January 14, 2011, Your Honor.

THE COURT: All right. So the lawsuit was filed within, almost a month exactly when they were told -- well, I think Ms. Lanier said December 15, and that is 2010.

MS. LANIER: That's the date of the letter saying we actually --

THE COURT: That's the 2010 letter.

MS. LANIER: Yes, sir.

THE COURT: So a year later basically is when the lawsuit if filed.

MS. LANIER: No, sir. A month later. Less than a month from the time we learned Wells Fargo --

THE COURT: I'm sorry. I'm looking at it wrong. December 15, 2010 is when a letter comes in to you. They file a lawsuit a month later.

MS. LANIER: Yes, sir.

THE COURT: Okay. All right. Now tell me -- you

say that never responded. What about foreclosure intervention? Is this residential or is it business?

MS. LANIER: It's residential.

THE COURT: Okay. So Mr. Hayes told me about -- she said they never responded to any questions about foreclosure intervention.

MR. HAYES: Your Honor, that is completely false. We have offered her the opportunity to submit documents for a loan modification. They did not submit those documents, Your Honor. We have filed a notice of noncompliance with the court that was filed -- let's see, pretty early on, Your Honor. It was actually filed, let's see, June 20th of 2012 is when we mailed it in, Your Honor. And as for her bankruptcy, she actually filed bankruptcy twice -- they both did. It was dismissed -- the second case was dismissed with bad faith filing.

THE COURT: All right. When was that?

MR. HAYES: It was dismissed -- the second case was dismissed in January 2012.

MS. LANIER: That was the one I was referring to, Your Honor.

THE COURT: All right. When was the-- was the

January '12, was a bad faith filing?

MR. HAYES: Yes, sir.

THE COURT: All right. When was the first one?

MR. HAYES: Your Honor, I'm not sure the date -- maybe it was in the letter.

MS. LANIER: It was three days prior to the other one. It was basically thrown out because of irregularities in the filing.

MR. HAYES: Well, according to the court, it didn't say irregularities. It says, "It is clear that Cathy Lanier and Randy Lanier filed the present case in bad faith and to impede Bayview and BB&T's foreclosure sale scheduled for November 8, 2012. The court is not convinced by the debtor's assertion that the debts owed to Bayview and BB&T have been paid as the documents, debtors submitted at the hearing do not have any legal effect. Additionally, the Laniers' assertion of payment is eviscerated by the fact that no authority has been presented from other courts that have accepted the debtor's arguments which were argued and rejected by this court earlier."

THE COURT: But it doesn't say the date. It doesn't say the earlier bankruptcy.

MR. HAYES: Let's see, Your Honor.

MR. LANIER: November the 5th, I believe.

THE COURT: Ms. Lanier, you are saying it was within six months.

MR. LANIER: No, within three days.

MR. HAYES: I'm sorry, Your Honor, it was filed -- the order issued by the bankruptcy court, it was filed on January 3, 2012. On the second page, it says that they filed bankruptcy, Chapter 13 bankruptcy on November 3, 2011. That was Case Number 11-6828.

THE COURT: All right. Okay. Where we are then is -- all right. As I understand the argument then, what Plaintiff is arguing is that on the summary judgment that the bankruptcy, since it was not listed in bankruptcy court. Then since all these claims were inserted as a credit in the bankruptcy court of assets that they can't now raise it.

MR. HAYES: That's correct, Your Honor.

THE COURT: Okay. And that a subcategory of it would be and the time barred. And then you branch off from the time barred argument to say if the federal statute said it's time barred from when it occurred versus date of discovery

they are automatically time barred. But if it's date of discovery then what Ms. Lanier -- what the Laniers are arguing is we didn't discover this until the loan went bad because we've got all this period of everything is going fine, there is no need to look for it, everybody is happy. And then when it goes bad we start investigating it. Then we discover it. But your argument is that that doesn't matter. None of that matter because of the failure to list it on bankruptcy trumps all? Is that my understanding?

MR. HAYES: Yes. And I would like to -- she said from the date of discovery, and she said it was a date with regard to the escrow. If she can elaborate on exactly what claims she is -- what claims flow from the escrow account from date of discovery. I'm unclear. I know she is claiming everything out there, but --

THE COURT: Well, I mean, I understand she's got to do that. And we are getting to that. Now, once -- so we are at the point where the lawsuit is filed now. All right. Now, at this point everything that is going on presumably is going on between attorney against -- Mr. Hayes,

you all own the original in this?

MR. HAYES: That's correct, Your Honor.

THE COURT: Okay. So then once the lawsuit is filed on January 14, 2011. All right. From that point forward until now we've been dealing with the attorneys?

MS. LANIER: Right.

THE COURT: All right. So I've got the summary judgment motion. All right. Now, -- you can have a seat for a second.

MS. LANIER: May I address the workout or whatever, what he was telling me because it's pretty inaccurate.

THE COURT: All right. I'm going to come back to that in a minute. Now, do you all have any other motions filed?

MR. HAYES: Your Honor, I believe we have a motion to amend the caption to have Sun Trust as the -- as the Plaintiff, Your Honor, Sun Trust Mortgage.

THE COURT: All right. And what is the basis for that?

MR. HAYES: Sun Trust Mortgage is the holder of the note, Your Honor. And we have the personal note. And Ms. Lanier came over to the office

and actually looked at it.

THE COURT: All right. So it started with -- it started with Sun Trust.

MR. HAYES: Yes, sir.

THE COURT: And it went to Wells Fargo.

MR. HAYES: Yes, sir.

THE COURT: I mean, have they assigned it back? Is the basis for their ownership that they signed the mortgage; is it something based on a pooling agreement? What is the basis for their having the note?

MR. HAYES: Your Honor --

THE COURT: You can just tell me.

MR. HAYES: The note is endorsed in blank. Sun Trust endorsed this note in blank. And as you know, a note endorsed in blank is transferred just by giving it to someone else.

THE COURT: Okay. So there has been. So by implication then there's been no assignment, no written assignment? And this is why I'm asking. If you can bring me the note I will illustrate the point I'm about to make. All right. At 9:40 you own it because it was in your hands.

MR. HAYES: Yes, sir; that's correct.

THE COURT: It's 9:41. Who owns it now?

MR. HAYES: You have the deed. Even if you stole it from me you would have the right to assignment.

THE COURT: So I own it. I own the note right now?

MR. HAYES: That's correct.

THE COURT: All right. How did this note get -- assumably it went from Sun Trust to Wells Fargo.

MR. HAYES: Yes, sir.

THE COURT: Was it assigned?

MR. HAYES: Again, Your Honor, are you talking about an assignment of the mortgage or of the note?

THE COURT: Well again, what I'm trying to find out is I understand the UCC principle of whoever holds it has got it.

MR. HAYES: That's correct.

THE COURT: It's like money.

MR. HAYES: That's correct.

THE COURT: All right. And you don't have to record an assignment?

MR. HAYES: That's correct.

THE COURT: Because an assignment is just for third parties and creditors.

MR. HAYES: That's correct.

THE COURT: All right. Okay. So just out of

curiosity, why did the note go from Sun Trust to Wells Fargo? Was it according to an agreement or are they the same thing?

MR. HAYES: You know, I don't think it matters because, again, as you have just conceded, the note passed from me to you because you had asked for it. It doesn't matter if there was an agreement or not.

THE COURT: All right. What about the mortgage?

MR. HAYES: The mortgage is -- I have the original mortgage. The mortgage has -- I think there is an assignment in the Sun Trust Mortgage, Your Honor.

THE COURT: Okay. So if there is an assignment --

MR. HAYES: Yes, there is.

THE COURT: So the mortgage though is now -- now who owns the mortgage?

MR. HAYES: the owner of the note.

THE COURT: Well -- all right. Who is the mortgage assigned to now for the record?

MR. HAYES: Your Honor --

THE COURT: Because right now you are pleading is Wells Fargo.

MR. HAYES: Yes, sir.

THE COURT: All right.

MR. HAYES: The -- I apologize, Your Honor. I beg your pardon.

THE COURT: While you're looking for it, you would agree with me that while you don't have to record an assignment what you do, that has a legal effect.

MR. HAYES: Not in between the borrower and the lender -- not if between the holder of the note and the --

THE COURT: It does to the world out there, though, right?

MR. HAYES: It is notice -- the filing of the mortgage is noticed to third party that if the mortgagee has a lien on this property it has no bearing at all on the note holder's rights against the payee or payer of the note.

THE COURT: And why I'm asking and where I'm going with this is to get it straight in my mind. And I also want to prevent a theoretical possibility that occurred in Aiken several years ago. Because theoretically if Sun Trust holds the note, then somebody else is the record holder of the mortgage, and let's say they came up -- they won the lottery and paid the note off, can they then force a sale back

to the mortgage that is held by somebody else? What was the strange case with Judge Smoke in Aiken some years ago?

MR. HAYES: Are you talking about the lighting gallery case, Your Honor?

THE COURT: The note was satisfied, mortgage still alive.

MR. HAYES: That was the lighting gallery's case, Your Honor. And in that case, -- in that case I think the lien holder, the mortgagee was either a third report in mind. They knew there was no equity in the property at the time, so they obtained a judgement. They said on the note obtained a judgement against the borrower.

THE COURT: Right. Right.

MR. HAYES: And more than ten years later they -- there was equity in the property and they moved to either foreclose or -- they moved to collect on a judgment that they had obtained more than ten years earlier. And the borrower's position was, hey, your judgment has expired. Of course, the debt is still out there. The mortgage, even though the judgment was obtained on the note, the mortgage still secured the debt. And the mortgage was held for almost ten

years, so the lien holder, the third or fourth one that day could assert their claims against the borrower.

THE COURT: All right. All right. Using that kind of universe theory of notes and mortgages, all right, do my hypothetical again. You say the note now is owned by Sun Trust. It's 100 dollar bill; no difference. If that is right, whoever has got the 100 dollar bill in their pocket is the owner.

MR. HAYES: No. You can distinguish between owner and holder, Your Honor.

THE COURT: Well, I understand. I mean, because -- I mean, I understand the language in the UCC.

MR. HAYES: I just, for the record, wanted to make it clear that I am saying my client is the holder of the note.

THE COURT: Right. I got that. All right. Who holds the mortgage?

MR. HAYES: The mortgage is held by the holder of the note.

THE COURT: Okay. So the loan holder automatically holds the mortgage regardless of what the assignment says.

MR. HAYES: That's corre

THE COURT: Okay. And there is a law to that effect?

MR. HAYES: Yes, sir.

THE COURT: And what is that case?

MR. HAYES: B. A. King versus Kindred, Your Honor. I have a copy of the case if you want it.

THE COURT: No. You can put it in the memo. I'm aware of the old commonwealth where it talks about the note and the mortgage and one of them being a tail and one of them being a head. We can cut off one and the animal will live. But if you cut off the other it won't live. All right. So I understand that. But your argument, just to bring us back where we are is I don't have to have an assignment because I've got the original note that is endorsed in blank. You are the UCC, I'm holder.

MR. HAYES: That's correct, Your Honor.

THE COURT: And if I'm holder of the note the mortgage follows the note?

MR. HAYES: That's correct; Your Honor.

THE COURT: And however this case ends, if they get money and pay it off; the person that it's paid off holds the note and has the ability to satisfy the mortgage?

MR. HAYES: That's correct, Your Honor.

THE COURT: If they can't pay it off and you foreclose on it then the mortgage would be satisfied by a person who is the holder of the note?

MR. HAYES: That's correct, Your Honor.

THE COURT: Okay. All right.

MR. HAYES: Yes, sir.

THE COURT: All right. Now, tell me then about any other motions you've got.

MR. HAYES: That is it for us, Your Honor, just the motion to amend the caption to show Sun Trust Mortgage as the Plaintiff, and I think that's it.

THE COURT: Okay. All right. Now, you all have got -- do you want to address any legal argument back on the holder and -- yes, ma'am?

MS. LANIER: I would also like to have the opportunity to address their offers to work with me on the mortgage. Every single one of the documents and packets that came to me that they purport were a part of them complying with the law and offering me a workout or offering me a modification or whatever, all those came again, Your Honor, from Sun Trust, not Wells

Fargo, who has sued me. And if you will recall, I had already wasted ten months of my life working with Sun Trust only to be told they had no authority to do any of these things I would ask them to do, which was a modification or workout or any of that stuff. So I simply responded back that as soon as the actual person who has standing in this case and does have the authority can send me something, I might be interested in working with them. So that is why I never responded to any of the inquiries from Sun Trust except to tell them that Sun Trust had already admitted that they had no authority to do any of the things I was asking them to do. So I wasn't going to waste any more of my time and money in dealing with them.

THE COURT: All right. Hold on. I want him to answer.

MR. HAYES: Your Honor, I will represent to you that we received the original note around August 15, 2011. Ms. Lanier came shortly thereafter. I personally watched her take out her, I'm not sure what those things are called that you look at jewelry with, and look at the note. Our

notice of noncompliance was filed, I think in -- what did I say, 2012? June 20, 2012. So she had known for ten months that we were the holder of the note.

THE COURT: All right. All right. All right. I appreciate you telling me. Again, sit down. Who sent out the foreclosure intervention?

MR. HAYES: We did, Your Honor.

THE COURT: Okay. So you sent it out to them?

MR. HAYES: Yes, sir.

THE COURT: And did you respond back to the lawyer that said, I ain't responding back because I don't think your guy is right?

MS. LANIER: Yes, sir.

THE COURT: And then you went to look at the note?

MS. LANIER: I went to look at the note and the note was still owned by Heritage Family.

THE COURT: All right. But it has a blank endorsement?

MS. LANIER: I have that in some papers that I have, as well, yeah, supposedly.

THE COURT: Okay. All right. Okay. All right. Let's see it. All right. Ms. Lanier, anything else relating to the summary judgment motion?

MS. LANIER: Well, I mean, clearly, Your Honor, if

the summary judgment should be granted it means that there is nothing to dispute. And I would certainly think that there are many many items in dispute here. And that was what I had hoped we could accomplish today in going over the motions that I filed.

THE COURT: All right. What I'm trying to figure out is their motion for summary judgment, summary judgment is two things. You have to -- the law has got to be clear, and there can't be any contested facts basically. We look at the evidence. Once summed, with fraud you guys show a little more. It basically relates to the burden of proof of what you have to oppose it with. And I have to look at affidavits, responses to discovery, things like that to determine it. And what I'm doing is sitting here trying to figure out is -- what I'm hearing now argued is that none of your motions matter. It doesn't matter if any of these things you are arguing about fraud or truth in lending or any of that, even if it's all true, it doesn't matter because of what happened in bankruptcy. And if that is the law then they win. And we don't even go through examining

the disputed facts because there is obviously a bunch of he said, she said. I mean, that's clear. But what I'm trying to figure out is that the best course right now for the Court time and you all's time is that I ask you all to submit me memos after the transcript gets in solely on summary judgment. If I grant summary judgment then summary judgment is granted. And either the case moves forward to a damage hearing because all this is is summary judgment and liability; is that correct?

MR. HAYES: Your Honor, the summary judgment is actually to the counterclaims and defenses asserted.

THE COURT: Okay. Then you have still got to come in and -- theoretically if I worked a grant summary judgment into those counterclaims, we are still -- we are normal --

MR. HAYES: Okay. Your Honor, I misconstrued what you were asking. Yes, that's correct. It is -- the summary judgment is as to liability. It is not right now as to numbers.

THE COURT: Okay. And that was the point I was trying to make sure because the Laniers, and you can stay seated. The Laniers have raised

an issue also about foreclosed insurance, which would be a damage issue. If they --

MR. HAYES: Yes, sir. Yes, sir.

THE COURT: Right, because if I were to rule in you all's behalf on summary judgment, it has nothing to do with poor placement. They get a credit back for it for showing proof they have it because that's a damage issue.

MR. HAYES: That's correct, Your Honor.

THE COURT: All right. Okay. I just wanted to make sure that was your position and they understood that.

MR. HAYES: Yes, sir.

THE COURT: All right. This is what I'm going to do. We are going to stop here. And all we are going to do is summary -- I'm going to ask for memos from you on the summary judgment because if the case law says the bankruptcy controls, then they are titled and we don't talk about this stuff. If the bankruptcy doesn't control then we are going to come back and hear the remaining motions you have that are factually based things relating to all these other claims. But there doesn't seem to be -- and I just don't know that I need to listen to that

when the summary judgment argument right now that you all are doing is solely a legal issue by you.

MR. HAYES: That's correct.

MS. LANIER: Can you provide me the base that you filed the summary judgment on because I was never served with that?

THE COURT: All right. This is -- again, this is what I want to occur. Ms. Quattlebaum, when you do the transcript you mail the original to me. Copy the parties.

And then you've got 30 days from that to send in your memos. And then I'll rule. And I'm going to rule one of two ways. If I rule that bankruptcy rights and the logic and that un-public decision is right and they are entitled as a matter of law not being listed in bankruptcy, that that knocks all that out, what that would mean, and you all listen because I want to make sure I understand the posture of the case, all that means then is your counterclaims are gone. Your counterclaims are gone. They have established, if they pled it, liability. but we still have to come in and have a damage hearing which means we may have

-- you would still have to have a damage hearing.

MR. HAYES: I agree, Your Honor.

THE COURT: And what it may mean is that prior to that damage hearing, if it goes down that path, then we may have to come back in and hear certain of the Laniers' outstanding motions that may relate to debt calculations. If they have discovery motions out, the stuff on fourth place insurance and all of that. Does that make sense? I'm trying to do this so we are not duplicating hearings. All right. So we kind of have a -- both sides, does that sound as rational as can be?

MR. HAYES: Yes, sir.

MS. LANIER: (Indicates yes)

THE COURT: All right. Now, I'm not asking you to say I agree with what you're going to rule because either you all are not going to be happy with me or you all are not going to be happy with me because I have to rule. But what I want to do is I want to do it where we don't duplicate coming back and doing a hearing. And I also want to make sure that the Laniers understand if I do this, if I grant summary

judgment based on bankruptcy then whatever the summary judgment says, which I remember as it's argued, it's liability and against your counterclaims. They still have to come in and prove damages, which would mean unless you consent we would have to have a court reporter and a witness come in where you all would be able to cross examine the bank witness on the debt calculation, just like any normal foreclosure. All right. Does anybody have any questions? We all kind of understand what we're doing? All right. Do you understand it, Mr. Hayes?

MR. HAYES: Yes, sir.

THE COURT: Mr. and Ms. Lanier?

MS. LANIER: Yeah, I'm still waiting on the date of the --

MR. HAYES: And Your Honor, just for verification, we mailed to her -- mailed to Mr. and Ms. Lanier on September the 14th, 2012 at 172 Belle, B-E-L-E -- B-E-L-L-E Chase Drive, Lexington, South Carolina 29072 a copy of Plaintiff's notice of motion and motion in opposition to Defendant's motion to amend and assert counterclaims, motion for summary

judgment as to counterclaims and the memorandum of law that set forth the basis for summary judgment, Your Honor.

THE COURT: All right. Did you all --

MS. LANIER: We were out of town, and they were aware of that. And they did all sorts of fun things while we were gone.

THE COURT: But the mail still should have gotten to you.

MS. LANIER: That particular motion I would have responded to, obviously a motion for summary judgment.

THE COURT: Well, you know -- I mean, with summary judgment motion, if the basis of it is fact, again, you have to file an affidavit in opposition if it is fact today unless you have already laid the issue aside in a deposition or a response to her request to admit or something like that. The basis right now, as I understand it, is not -- the basis for summary judgment is not factually based. And it is legally based. If you didn't list these things, the same things you have for the counterclaims. If they were not listed in your bankruptcy, then you cannot do them now. The

case law says it. So it was not a fact -- the ruling on this is not going to be a finding that there is no disputed material fact. It would be a legal ruling and would be based on the law; not fact.

MS. LANIER: And it doesn't matter that we had not completed it and asked to amend our schedule?

THE COURT: I don't know. That's what you're doing your memos on. That is what you're going to be doing your memos on. What he is saying, what Plaintiff is saying this case says they didn't do it; they are bound. And you have argued in court this is why we didn't do it, that case shouldn't apply. So I'm going to listen to your arguments. And then I will make a ruling because as I understand it there are two cases that address this; there is the bankruptcy case and then there is the unpublished case that mentioned the bankruptcy case. Is that what I understood you to say?

MR. HAYES: Your Honor, there are other bankruptcy cases. the unpublished opinion by the court of appeals mentions two other cases. It mentions --

THE COURT: Well, you can cite them all in your

brief. But I'm just trying to make the point, this is a legal -- it appears to me at this point to be a legal argument, which means you were not prejudiced by not filing a factually based affidavit. All right?

MS. LANIER: Uh-huh. Okay.

THE COURT: All right. Anything further?

MR. HAYES: Your Honor, just for clarification, one of the bases was also statute of limitations. If we could address that in our memorandum, too?

THE COURT: Yeah, you can do that, but the legal aspect.

MR. HAYES: Yes, sir.

THE COURT: Just the legal issue of it.

MR. HAYES: Yeah, right.

THE COURT: Because again, what I'm saying is they are going by statute of limitations. And what he is arguing is that somewhere there is something that says, either truth in lending or RESPA, it is -- your time for filing the claim is based on date of event not normal discovery rule. So that would be a -- because Mr. Hayes and Mr. Truluck, you would argue with me that if they have argued fraud, just common law

fraud, that is clearly under the discovery rules.

MR. HAYES: Yes, Your Honor.

THE COURT: Right. So you can't say, okay, the fraud occurred back in 2000 and 2014, but if you didn't discover it until yesterday that's when you should have known; that's when the clock starts. So they are not saying you are time barred on all of them; it's just I'm assuming the federal mortgage related things like RESPA, those things.

MR. HAYES: RESPA, TELA, FDCPA; yes, sir.

THE COURT: Right. The federal, what I'm referring to as the federal causes of action -- the statutory causes of action, not common law stuff.

MR. HAYES: Yes, sir. Yes, sir.

THE COURT: Okay. All right. Is everybody clear? Okay. All right. Thank you all. Thank you for dealing with my rambling and my talking and my questions, but I'm just trying to follow it the best I can. We are off the record.

(There being nothing further, the hearing concluded at 10:12 a.m.)

CERTIFICATE

This is to certify that the within hearing consisting of fifty-two (52) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on April 10, 2014.

Sara L. Quattlebaum
Court Reporter

Notary Public for South Carolina
My Commission Expires: 9/24/2022

Transcript of November 18, 2015 hearing

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	C/A No. 2011-CP-32-00156
Wells Fargo, N.A. successor in interest to Wells Fargo Bank Minnesota, et al.,	)	
Plaintiff,	)	
v.	)	
Cathy G. Lanier	)	
Defendant.	)	

HEARING

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Wednesday, November 18, 2015
10:34 a.m. - 11:40 a.m.

The hearing before the Honorable James O. Spence, Master-In-Equity for Lexington County, was taken at 205 East Main Street, Suite 204, Lexington, South Carolina on the 18th day of November, 2015 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES

Lawrence M. Hershon, Esquire
Parker Poe Adams & Bernstein, LLP
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
Attorney for the Plaintiff

Also Present:
Cathy G. Lanier, Pro Se Defendant

Randy Lanier, Husband of Defendant

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EXHIBITS

(No exhibits were marked during this hearing.)

THE COURT: We're here on Wells Fargo vs. Lanier, et al. It's 2011-CP-32-00156. We're here on Defendant's Rule 59 Motion. Ms. Lanier.

MS. LANIER: Yes, sir. I just want you to -- to ask you to please reconsider the order that you granted the Plaintiff, summary judgement, and ruled on an issue regarding a bankruptcy filing that I believe was in error, and -- should I go ahead and launch into why I think ---

THE COURT: Yes, if -- specifically tell me what was left out of the order or what -- and what in the order was in error -- you part in error that I think is an obvious error is the ruling that we had to claim, in our very preliminary schedules in our Chapter 13 Bankruptcy filing, any -- I believe they suggested that if we thought we were going to be able to get damages out of this case, that those had to be listed as assets. And maybe that's true, maybe that's not. We -- I was in the process obviously of obtaining legal counsel to help us with the bankruptcy when it was dismissed. But the cases that were used to argue their point have absolutely nothing to do with our bankruptcy. All three cases that were cited in Plaintiff's

arguments were chapter 7 cases that were seen through to their completion. In other words, a bankruptcy was ordered and there was discharge and all sorts of things that happened over years. In our case we were a Chapter 13 Bankruptcy, and I'm sure you know that there is quite a bit of difference between Chapter 13 and Chapter 7. In Chapter 7, the trustee and the Bankruptcy Court take possession of the assets of that person immediately, unless it's an exempt asset like their personal home or anything like that, and then work to distribute those and figure out how the bankruptcy is going to work so that they discharge the debts. In Chapter 13, that is more of a negotiation, no assets are ever taken by the Court. And the whole object of a Chapter 13 is that the person gets to keep their assets while they simply work on a payment plan, restructuring some sort of a payment plan with any debtors that they might -- any creditors they may have. So the Court never took possession of our assets, never took jurisdiction over the case because -- and ultimately our case was subject to 11-USC-521(I) that says that they never took

jurisdiction because they -- we were subject to automatic dismissal because once the trustee reviewed our initial schedules while we were in the process of amending them, he decided that our debt limit was too high. So ---

THE COURT: All right. Let -- let me just make sure I'm understanding the broad argument.

MS. LANIER: Okay.

THE COURT: The broad argument is, is the bankruptcy cases that Plaintiff relies are distinguishable or don't apply for two basic reasons. One is different chapter ---

MS. LANIER: Yes.

THE COURT: --- different chapter, and different chapters do two different things ---

MS. LANIER: Different rules.

THE COURT: --- and also they were in different stages ---

MS. LANIER: Yes.

THE COURT: --- of the bankruptcy.

MS. LANIER: Right.

THE COURT: Okay. All right. ---

MS. LANIER: Yes.

THE COURT: --- just want to make sure that those were the two points -- were different ---

MS. LANIER: Yes.

THE COURT: --- chapters and different stages.

MS. LANIER: Yes, because ---

THE COURT: Right?

MS. LANIER: --- basically we still had leave to amend our schedules, in a Chapter 7 case, once those schedules are accepted and they're working with those in the Court, you have to actually file a Motion to Amend if you've omitted something or whatever. In our case, if those assets had to be claimed, they certainly were simply omitted until we got legal help to tell us that we needed to put them on there. But we were actually in the process of amending our schedules when we got notice that the -- the case had been dismissed. So there was never an estate created, there was never a creditor's list established or a creditor's meeting held, there was never a situation where the trustee took possession of any assets nor would they have because of the nature of the Chapter 13 filing. No plan was created or approved, the Court had already ruled that the debts exceeded the limitations in a previous case, and we were lead to believe that the

limitations were expanded by us filing jointly, which we later learned was in error. But -- so basically, it was -- it was simply thrown out before anybody did anything with it. There was nothing happening with our case, whereas in all three of the cases that the plaintiff relied on, they either had gotten to a discharge or were a year to two into the case of working through to get the discharge.

THE COURT: All right. So again, it's a different chapter then the stage you are in?

MS. LANIER: Right.

THE COURT: Okay. All right ---

MS. LANIER: And we still had to leave to amend and we're in the process of amending ---

THE COURT: Okay.

MS. LANIER: --- our schedules, so ---

THE COURT: All right.

MS. LANIER: --- we had all sorts of time to -- you know, when we got legal counsel we found out those assets had to be added, they certainly would have been added.

THE COURT: All right. Okay.

MS. LANIER: All right. And that's one of my issues. Do you want me to go on with the

others, or ---

THE COURT: Well let's -- let's have a response from the Plaintiff on that, on the bankruptcy issue.

MR. HERSHON: Sure. Your Honor, Lawrence Hershon on behalf of SunTrust Mortgage, your -- just as administrative matter, your last order in the case substitutes in SunTrust Mortgage as the -- as the proper plaintiff.

THE COURT: I think so.

MR. HERSHON: Okay.

THE COURT: I think I've got SunTrust on the motion, notice, and then -- but when we did the order it was Wells Fargo, so I don't know how we calendered it. We got it calendered SunTrust.

MR. HERSHON: Okay. So solely as to this bankruptcy issue, Your Honor, she notes some distinctions but there's a lack of case law to say that the chapter -- you know, the different chapter matters in any way in terms of the implacability of the -- the Iradel case; and whether the stages matter. I mean, filing bankruptcy is a, you know -- just as any lawsuit is a serious matter, they attempted to take that on pro se, and they still have the requirements to meet all -- they still have the

responsibility to meet the requirements of the -- of the bankruptcy code, and to -- and to properly fill out their Petition for Bankruptcy, which did not list these -- did not list these claims or counterclaims that they're asserting here. So, Your Honor, I don't think there's any reason to adjust your order that -- that list that reason as a -- for denying their motion to amend their claims. You know, if they go into their -- you know, also for the Court, I'm sure they're going to be going into other arguments is that their -- you have -- you've listed an alternative set of reasons for each of these claims to be dismissed that I believe also stand. And if they go into those, I can certainly do that.

THE COURT: All right. Well I think we're going to that, but let me ask -- let me ask -- make sure I'm summarizing what you're saying. What you're -- what you're argum- -- response is, is while the chapters are different, it doesn't matter for the purposes we're considering in the case because there's different chapters and the stages -- if you agree with them factually, because she says we could amend, was the orig-

-- was the statement that was filed, was that under oath?

MR. HERSHON: Yes, that statement is still under ---

THE COURT: Okay.

MR. HERSHON: --- oath at that time.

THE COURT: All right. Any statement you ever make under oath and file, you could theoretically always amend it later, couldn't you?

MR. HERSHON: There could always be a point of amendment.

THE COURT: You could always ---

MR. HERSHON: Right.

THE COURT: --- come in and change and say ---

MR. HERSHON: You could always -- you could be within a statutory period that allows you or you could be moving, you know, months and months later for the Court for permission to.

THE COURT: But point is, is when you sign it, you're representing it's true ---

MR. HERSHON: That's correct, Your Honor.

THE COURT: --- at that time. So, it's true at that time. And the statement that was -- that was sworn to that was originally filed said what? The bankruptcy statement said?

MR. HERSHON: Bank- -- I don't have it front of me,

Your Honor, but it -- you know, generally what it says is that, you know, that this is a complete listing -- that, you know, there's a portion there that you're supposed to be completely listing your claims that you may have.

THE COURT: And recognize the debt.

MR. HERSHON: And -- yes, Your Honor.

THE COURT: And recognize the debt. All right. Now, the next question I have -- the final question that I have is, is there validity to the argument that says we filed something under oath that we -- that the fact that we swore to it can be negated by the Court not taking jurisdiction? Because what -- what I think I hear Ms. Lanier arguing is, is we get a mulligan. Doesn't matter whether we were in error, we failed, whatever it was, we didn't understand, we didn't -- we swore, but that doesn't matter because ultimately the Court kicked us out.

MR. HERSHON: No, Your Honor, I disagree with that argument. And looking for backup to support that for case law to say that that somehow does gr- -- you know, as the Court has stated, has

a mulligan, I just don't see the support for that argument. And so ---

THE COURT: Okay.

MR. HERSHON: --- without that support, I think the -- the rule that's laid out in the Iradel case has to apply.

THE COURT: All right. Okay. All right. Thank you, I understand each side's position on bankruptcy.

MS. LANIER: All right. The next issue that I'd like to talk about is -- is standing in this case. And there's just recently been a decision come out of the Appeals Court -- and I -- you know I rely a lot on some of these other states that are doing more -- have more foreclosure push-back than we do here in South Carolina, so I'm sorry that there are very few things. But this particular case came out of Second DCA Court of Appeals in Florida, that just was released I think this week or last, that talks about specifically substituting Plaintiffs, and how that does not do anything to disturb the fact that the original Plaintiff, and which in this case was Wells Fargo, still has to prove a prima facie case

showing that they had standing at the moment at the inception of the case. All along I have -- I've asked in discovery, I've asked numerous different ways, in QWR, etcetera etcetera, for Wells Fargo to prove its standing. Because there was nothing filed with this complaint, there was no copy of the Note, there was no copy or anything. I went to Korn Law Firm in the summer of 2011 after this case was filed to review the Note and the Mortgage, and there were no endorsements, allonges, or anything of that nature. The Note was still made out to Heritage Federal Savings and Loan. And when I pointed that out to the lawyer that was then in charge from Korn Law Firm, he kind of went a little ballistic and started screaming. But -- but I don't know what that meant. But I simply pointed out that in order, you know, for someone to claim standing and to be a holder, that they actually had to have the Note, because that's how we do business -- real estate transactions here in South Carolina and pretty much everywhere else. They had to have the Note endorsed to them, either in blank or by special endorsement, which would have

brought it directly to Wells Fargo. And looking back at the history of this, there were so many mergers and acquisitions from Heritage Federal all the way to the bank that finally sold it into the trust where Wells Fargo wound up as the trustee, there were never any assignments accompanying any of those. And there were certainly never any kind of an assignment from the bank that would have, quote, wound up with it by merger and acquisition to Wells Fargo. And basically I pointed that out at the time and I said, you know, you don't have any -- you don't have any notes -- you don't have any endorsements whatsoever, the Note still is payable to Heritage Federal and it's direct assigns. And that -- that's nobody that's listed in this case. So, we had that problem from the very beginning. I ---

THE COURT: All right let -- let ---

MS. LANIER: I haven't seen a note since then ---

THE COURT: Okay.

MS. LANIER: --- to see if anything's been added to it, but I can certainly attest on the record and I'll swear on a stack of bibles that there

was nothing; because, we had that conversation.

THE COURT: Okay. All right. Thank you. As I understand the argument, the standing issue is, is based on two things. One is, is that when the summons and complaint were filed, the Note and Mortgage, or -- and I'm assuming you're arguing also, or a copy -- or a certified copy, was not attached.

MS. LANIER: Correct.

THE COURT: All right. And I think -- I think the answer to that is not dispositive because there's no requirement ---

MS. LANIER: Okay.

THE COURT: --- that you attach the Note and Mortgage.

MS. LANIER: It just represents some form of proof.

THE COURT: Well I understand, but I don't -- I don't think there's any law that says you have to attach -- now it's better practice, I think, but, you know -- because you're referring to a document ---

MS. LANIER: Right.

THE COURT: --- but I don't think it is a requirement.

MS. LANIER: Uh-huh.

THE COURT: The second thing is, is as I understand the argument is, is that the plaintiff, whoever filed the lawsuit when this was filed -- and I don't even know ---

MS. LANIER: 2011.

THE COURT: --- when it was filed, very first filed, was it Wells Fargo then?

MS. LANIER: It was 2011, Wells Fargo.

THE COURT: Whoever -- all right, let's say Wells Fargo filed it. That Wells Fargo did not have proper standing to file the lawsuit because Wells Fargo either did not have the original Note, did not have in their possession -- now when you say that, you're saying the law firm?

MS. LANIER: Yes.

THE COURT: Was there any proof that Wells Fargo, the Plaintiff, did not have possession of the Note? When you say you went over to the law firm, you're talking about copies you saw?

MS. LANIER: No. Actually, I -- this is the first -- the only case, in all that you've seen me for, that I believe there was actually an original that I looked at, but it had no endorsements.

THE COURT: Okay. All right. Y'all will need to go

back -- because we've had a lot of hearings on this and I'm pretty sure that came up then too. But I'm not -- it is not normal for a law firm to have the original document generally until right before the hearing because they don't -- because they're negotiable instruments and you just don't take them out of the vault.

MS. LANIER: Right.

THE COURT: So I don't know ---

MS. LANIER: And I specifically requested them and that's why they had them I'm sure.

THE COURT: Okay. So, we want to -- and I believe the law -- the law is in South Carolina -- and there is a case somewhere, do y'all know the case, it says you've got to have it -- I believe the case says when you file, you've got to have the Note and Mortgage. Right?

MR. HERSHON: I think that's right. I can't recall the name of the case.

THE COURT: Yeah. I mean, I think there's been an appellate case that basically says when you file the summons and complaint, you have to own the Note and Mortgage. So, we've obviously made a ruling that they had the Note and the Mortgage, the original Note and Mortgage.

There's also law I think that says if you have the possession of the Note -- there's law about what possession meets and what possession of the original Mortgage means. But your argument again is, is that it wasn't attached and that the -- you saw something, whether it was original or not, was not ---

MS. LANIER: Endorsed to the current Plaintiff.

THE COURT: --- endorsed -- it was not endorsed to Wells Fargo.

MS. LANIER: It did not meet 36-3-310 ---

THE COURT: Okay. Well ---

MS. LANIER: --- of making them a holder in any fo-- -- any description of a holder.

THE COURT: Okay. Was there an assignment to Wells Fargo that said we said assign the Note and Mortgage?

MS. LANIER: Not until -- again, we run into those trust issues because this trust closed back in two thousand something or other.

THE COURT: Well, no. All I want to know is the date ---

MR. LANIER: There was -- there's nothing on record but a corporate assignment of Mortgage recorded actually after the case was filed; which also

would indicate that that, you know, leads to they wer- -- they didn't have anything going at inception of case. But the assigner at that time was SunTrust Bank as successor in interest to Heritage Federal Savings and Loan, and SunTrust Bank was not one of those assigning it to SunTrust Mortgage.

THE COURT: All right.

MS. LANIER: So, that's the only anything we have there. There is nothing assigning from -- I think it was Commerce Bank or somebody that had wound up with all the assets of Heritage Federal after three or four mergers. And there is nothing bringing it from Heritage Federal or Commerce Bank to the trustee of the trust, which was Wells Fargo. And there is nothing bringing the servicing of it from the original servicer, which was somebody like Everhome or somebody, I actually forget, to SunTrust even as the servicer. So I think their entire argument fails because there was no standing whatsoever anywhere, and the Note didn't even have an endorsement on it even in blank. Otherwise somebody has added it after I saw it in about June of 2011.

THE COURT: All right. In the order it states that Sun trust is in possession of the original Note, the Note was endorsed in blank; SunTrust is in possession of the original Note endorsed in blank as the holder. It can enforce it.

MS. LANIER: There was no endorsement on the Note. And I asked for it later and was never -- I never got to see it again.

THE COURT: Well, I think what the thing is, it was blank. That's sort of like cash isn't it?

MS. LANIER: No. It has to actually be ---

THE COURT: If it's ---

MS. LANIER: --- stamped, pay to the order of, no recourse; and it had no stamp on it. It had nothing.

THE COURT: All right.

MS. LANIER: It had no endorsement whatsoever.

THE COURT: Okay. Mr. Hershon?

MR. HERSHON: Well I guess first, Your Honor, if this -- if the result of this hearing was that we'd be sending out these properties for an auction, you know, establishing and showing you the original Note, then that information would be important. I think here, you know, the result of this -- if the motion -- if the

current motion is denied, is that this case is over because these properties are being held within a -- in another foreclosure lawsuit. So, there's one part there that I'm not sure what the result or the purpose of this argument is. Because they're the ones right now, you know, trying to assert claims against SunTrust, not the other way around. And this motion -- and really, you know, the arguments that I'm presenting to the Court today are about the futility of those -- of these arguments. And as to the note issue, you know, as the Court stated, yes, a note can be -- a note certainly can be endorsed in blank. It can certainly be endorsed by an allonge where there's not a signature on there, as an example. So, I guess the short argument on that side, Your Honor, is I don't see anything to change what the prior holding was, that the Court established the Note was properly in the hands -- at one point in Wells Fargo, and now is in SunTrust -- or rather I think it's in SunTrust's hands -- possession.

THE COURT: All right. Thank you. What's the next issue? I understand what's being argued in

that.

MS. LANIER: May I address that just very quickly?

THE COURT: Now again, this case, the second -- is this the one where the second foreclosed?

MS. LANIER: Yes.

THE COURT: Okay. So, the second has already foreclosed on this property?

MS. LANIER: Yes, but that is not over. And what I believe may have happened is that there may have been some collusion between these folks and that party, and I just want to leave it open in case we find what I think we're going to find on the other side, that I am not barred from coming back against them. Because I believe they either accepted money as a payment on a loan that was at a zero balance, which is getting into some of the other issues of this. So, there is -- it is not futile is my argument.

THE COURT: Okay. All right. What's the next argument?

MS. LANIER: You had ruled specifically to reverse some of our counterclaims such as Violation of Fair Debt Collections Practices Act. And we now have proof that the loan was at a zero

balance at least from December of 2011, indicating that any attempts to collect on this step is fraudulent and violates the FDCPA.

THE COURT: So, you paid the loan off in 2011?

MS. LANIER: I believe that the loan was paid -- paid off prior to the time they -- now that I've done my accounting, I believe it was actually paid off when we paid them several payments past paying it off back in 2010. So, that's my belief and what my records are showing me. So, and then ---

THE COURT: All right. Hold on. Was any of that evidence in front of me when we had this hearing?

MS. LANIER: Bu- -- yes, because we never got past -- we never got any -- we never got to hear any of those cases because we kept getting stuck on the bankruptcy issue, so we never got to actually -- there are Motions to Dismiss, there are all sorts of things in front of you that have been there ---

THE COURT: Well ---

MS. LANIER: --- for years.

THE COURT: --- it's not if we've done a separate

judgment. What I'm asking is, is at the summary judgement hearing, was there an affidavit that said, not that I think I paid it off or I may have paid it off, but actual checks and things sho- -- proving that you paid it off. Is there anything like that that's ever been filed by the Court? That is real evidence that says ---

MS. LANIER: In discovery. It was filed in -- as a result -- as a result of them asking me for discovery.

THE COURT: All right. What ---

MS. LANIER: And as exhibits to motions to dismiss that I filed ---

THE COURT: Was it ---

MS. LANIER: --- that we never heard.

THE COURT: Was it brought before me ---

MS. LANIER: No, we never ---

THE COURT: --- when we argued this the first time?

MS. LANIER: We never had hearings about those.

THE COURT: No, ma'am. We had a hearing on this.

MS. LANIER: We had a hearing on the bankruptcy issue.

THE COURT: We had a hearing on the Summary Judgment Motion, all right? We ---

MS. LANIER: All we talked about was the bankruptcy.

THE COURT: We had a hearing. Right?

MS. LANIER: Yes, sir. But the only thing allowed to be discussed was the bankruptcy issue.

THE COURT: We've got a transcript that talks about what we talked about. But I guess what I'm saying is, is I have heard you now in this case say, now that I've done my accounting, I believe we've paid it off.

MS. LANIER: Yes, and I had done that yea- -- a year ago.

THE COURT: All right.

MS. LANIER: So yes, that information has been in front of you.

THE COURT: No, ma'am. Your statement -- what I'm asking you is, is due I have lists of checks that say -- here's the amortization schedule, payment one, check one; payment two, attached check two ---

MS. LANIER: No, but you have this and you've had that several -- put into the case several times, which is the mortgage-backed securities database that the entire mortgage-backed securities relies on but shows that loan

number with a zero balance.

THE COURT: All right. I'm not -- you're not answering my question.

MS. LANIER: All right.

THE COURT: Because again, that's a different thing. What I'm asking you is -- the best proof that somebody can prove I have paid off the debt is they show they have checks or wires because they are the person that controls that.

MS. LANIER: Right.

THE COURT: Stuff can get lost, people can lose things. The person who writes the check, it's their responsibility to show they have that. And what I'm asking you, it's not something you printed, not something you ---

MS. LANIER: I have not presented that into the case, no, sir.

THE COURT: Okay.

MS. LANIER: But I have presented to the case that they provided a payment accounting of what was supposed to be the entire loan, that's missing seven and a half years worth of data of any form: whether it's a balance, whether it's anything. So, they -- there's no

possible way they can verify there was a debt. And the information that I've gotten here shows that there certainly was no debt.

THE COURT: In this case?

MS. LANIER: In this case.

THE COURT: Okay.

MS. LANIER: Yes, sir.

THE COURT: All right. So, your -- and somewhere --

MS. LANIER: These are things we never got to discuss because we always stopped at the bankruptcy issue, and we couldn't talk about anything further.

THE COURT: All right. Well again, Ms. Lanier, what I'm trying -- what I'm trying again to repeat -- and I understand that you're here pro se, but I also understand, as you said, you've got lots of cases. You've got cases here, you got some cases elsewhere.

MS. LANIER: Yes, sir.

THE COURT: And as we've discussed at these Summary Judgment Motions, I have to hear evidence. I can't hear argument.

MS. LANIER: Right.

THE COURT: If a party starts talking about

something that they think or that they theorize or that might be, and it's not properly in front of evidence, I can't hear it. It's not that I'm deciding I don't want to hear this or I do want to hear that, what I have to listen to is proper evidence. Argument is not evidence.

MS. LANIER: Right.

THE COURT: Argument is supposed to be based on what the proper evidence is. So again what I'm saying is, is you've said in essence we don't have a mortgage because we've paid it off. We don't know if we paid -- if I'm understanding your argument, you are saying now that I -- it could be three things as I understand what you just said today. It could be I've gone back and looked and I've discovered now that I overpaid and I actually paid it off way back then. That's one argument, right?

MS. LANIER: Yes, sir.

THE COURT: Second argument is, is that we've pulled something off a database that said the bank reported it one time with a zero balance. So, that is inferential evidence

that they too think it's paid off. All right?

MS. LANIER: Yes.

THE COURT: And the third thing is, is when I looked at their discovery, they have a -- I consider they have a gap of seven years where they either don't show it or don't properly document showing seven years of payment.

MS. LANIER: Yes.

THE COURT: Okay. So, that's the three -- that's the three arguments we have.

MS. LANIER: Uh-huh.

THE COURT: And the proof for that is -- that it's been filed is you say in discovery, the document that says there zero.

MS. LANIER: Right.

THE COURT: You say that the summary of your accounting work ---

MS. LANIER: Right.

THE COURT: --- has been done, right?

MS. LANIER: Yes.

THE COURT: And then the other argument about they've got a gap, is based on reviewing what they gave you.

MS. LANIER: Right.

THE COURT: All right. So, that was all -- that was all in discovery.

MS. LANIER: Yes.

THE COURT: All right. Now, when we argued this motion, that was argued then. Was it arg- -- -

MS. LANIER: I -- I ---

THE COURT: Was that ---

MS. LANIER: If you'll recall, Your Honor, I never got an opportunity to respond to their Motion for Summary Judgment because they filed it and sent it to my home, knowingly I believe, on the day they knew I would be away for a month and unable to -- so I never -- I actually had filed a subsequent motion asking you to grant me leave to respond, and that was never heard and never decided on. Because, like I said, the bankruptcy issue just seemed to ---

THE COURT: Okay. All right.

MS. LANIER: --- override every single thing. So, I never got an opportunity to submit anything in response to their Motion for Summary Judgment because they filed it so that it arrived at my house on the Monday after the

Saturday that I left to go out of town. I know that they knew I was going to be gone for a month. And so by the time I got back, obviously the 10-day period had run. I learned about it. I sent you, I believe, a letter and I put in a motion asking to either strike their motion and let's start all over or do something.

THE COURT: I remember ---

MS. LANIER: And you never closed that.

THE COURT: I remember reviewing the prior status conference, the prior scheduling order, when people were going to be in, when people were going to be out, the time limits and -- okay. All right. Let me hear from the other side.

MR. HERSHON: Your Honor, as the Court was, you know, I think properly looking at -- I don't see any -- you know, the affidavits, documents submitted of record at that last hearing. There was a hearing, so there would've been a res- -- would have been an opportunity to put in evidence in advance of that hearing or at that hearing. The evidence to support these arguments is not there. And while this is a, you know,

attempt to see if the Court has misunderstood or anything like that under Rule 59, under Rule 59 there is still just not that factual basis that is required to make any ruling in the Defendant's favor on this issue.

THE COURT: All right. Okay.

MS. LANIER: I just -- I stand that I really did not have an opportunity to respond to the -- to the Motion for Summary Judgment because the time had lapsed, and I never got any closure on what I do about that. And subsequently I believe I filed -- I'd have to look back at the list of how things happen in order but I believe I filed a Motion to Dismiss after that fact too, listing lots of this information and putting in the documents. But we never heard that one either because everything seem to key on the bankruptcy issue; and if the bankruptcy issue won, then I couldn't talk about anything else.

THE COURT: Okay. All right.

MS. LANIER: So, you know, that's -- that's where we are. I also -- one of my other issues is that Plaintiff must be a real party in interest according to South Carolina Rules of

Procedure, Rule 17(a); and I don't believe that there's any way, shape or form by the way that they -- if they are in possession of the Note today, I don't believe there's any way that they can prove that it got there legally by the way that real estate transactions happen here in South Carolina. So, I don't believe the real party in interest brought the case. Which would explain why they had to get SunTrust Mortgage substituted in, because they're trying to claim that SunTrust is actually the real party in interest. But again, according to Dixon vs. Rosewell properties, this came out of the Appeals Court in Florida, that doesn't matter; that does not take away the need for Wells Fargo to prove that they were the party in interest to bring the case in the first place and that they have standing to do so.

THE COURT: All right. That sounds like the first argument you made to start.

MS. LANIER: Well, it's related to it because the real party in interest versus being a holder in due course and all that stuff kind of plays together ---

THE COURT: All right. You ---

MS. LANIER: --- but they do hit different levels of law.

THE COURT: You understand the holder in due course is a UCC ---

MS. LANIER: Yes.

THE COURT: --- a commercial paper, but there's also Chapter 4 that deals with secure transactions and specials for mortgages and Promissory Notes with mortgages.

MS. LANIER: Right.

THE COURT: So, not necessarily everything that's good for a check is the same law ---

MS. LANIER: Right.

THE COURT: --- with the mortgage, because there's a different chapter.

MS. LANIER: But a ---

THE COURT: Okay.

MS. LANIER: A note is ---

THE COURT: Right. Okay.

MS. LANIER: It works out to be almost like a check, you know, when you compare those.

THE COURT: All right. So, that argument is in essence the reverse side of the first argument.

MS. LANIER: It's ---

THE COURT: Is that they weren't ---

MS. LANIER: They weren't either.

THE COURT: They weren't right then and they're not right now.

MS. LANIER: Yes.

THE COURT: Because if Wells Fargo -- who did you make your Mortgage with when you originally made it?

MS. LANIER: Heritage Federal.

THE COURT: Okay. So Heritage Federal, and then you made, I assume -- did you make all your payments to Heritage Federal?

MS. LANIER: I made it to a variety of servicers and different banks ---

THE COURT: Different people they sent ---

MS. LANIER: --- all the way through.

THE COURT: Okay. All right. So your argument is -- is Wells Fargo, they never had it properly.

MS. LANIER: I ---

THE COURT: The law says ---

MS. LANIER: I never heard of Wells Fargo until this lawsuit happened.

THE COURT: --- that they have to have to have it

to start the lawsuit, they didn't have it? And therefore since they didn't have it properly, they couldn't assign it properly, I guess, to SunTrust now?

MS. LANIER: Correct.

THE COURT: Okay. Do you think SunTrust ever had it properly?

MS. LANIER: No.

THE COURT: Are you just -- who ---

MS. LANIER: I don't think anybody here had it properly ever.

THE COURT: Who do you think was the proper -- is the proper party of interest? Who do you think it is?

MS. LANIER: I think the last company that possibly could have had anything to do with this was National Bank of Commerce back in 2005.

THE COURT: Who did you make your last payment to?

MS. LANIER: SunTrust, the servicing arm. It was not the current guys that are here today.

THE COURT: Okay. All right. Okay. Any response?

MR. HERSHON: It would be a repeat of my arguments from earlier, Your Honor.

THE COURT: All right.

MR. HERSHON: This is -- so I don't need to, I

think, belabor that any further.

THE COURT: All right. Anything further?

MS. LANIER: Not on that particular subject.

THE COURT: All right.

MS. LANIER: I did want to just point out, in your order there was a talk of newly discovered evidence that was referred to as if it had just come on the scene.

THE COURT: Wait a minute. Tell you specifically what you're talking about. What page?

MS. LANIER: Let's see. Page -- I'm not sure because it's not page numbered.

THE COURT: All right. There ought to be a page number in the bottom right.

MS. LANIER: Looks like page -- maybe page 10. It's item C. Top of that, the alleged newly discovered evidence. We became aware of this evidence and put it into the case years ago. So, I don't believe we ever characterized it as newly discovered evidence that the loan had been paid off. But it was characterized as such in the order, so I just -- I don't believe that's a fair characterization of it. I believe if you look back to early 2012 was when we first indicated that there were

problems with the payments and whether the loan was paid off and what the current balance was.

THE COURT: All right. I think what that was talking about was the newly discovered evidence is, is people -- that phrase can be misleading. Because what it means legally is this, it doesn't mean I figured it out in 2015. What it means is if it could have been figured out in 2010, it ain't newly discovered.

MS. LANIER: Yeah.

THE COURT: Because you could have. You can't say ---

MS. LANIER: Well ---

THE COURT: It's something like a ---

MS. LANIER: --- had I known Wells Fargo, and my loan was in a trust, yeah, that's possible.

THE COURT: I understand. But that's sort of like saying we reviewed the game film, now that we reviewed the game film and seen what deep pass coverage they were in, we get to go back and run a different play and they have to run the same thing and we're going to run a different play.

MS. LANIER: Well, they do get to change referee calls.

THE COURT: Well, sometimes they -- I mean, you can't say that to that pro team that they just got the letter that said, sorry, y'all really won; we shouldn't have allowed the field goal. They didn't change that one.

MS. LANIER: Yeah.

THE COURT: But what I'm saying is, is newly discoverable evidence, the key to that, that I have to rule on, is not that either party thought, I've got a good idea now. All right? Or I found it now. The key is, is when could they have found it; could they have found it back then. If they could have found it back then, it's not newly discoverable. Otherwise, I mean, think about it -- think about it. Otherwise, then it's always -- it's never over.

MS. LANIER: Right.

THE COURT: Because you could think of it a month after the lawsuit, you could think of it a year after the lawsuit. So, that's ---

MS. LANIER: But I understand that since there were no notices in public and no notices sent to

me that my loan had been put into this trust and that Wells Fargo had anything to do with it and all of that whole line of things, I'm not sure how I would have known to go and look to see I di- -- I was in conversation with SunTrust the servicer.

THE COURT: Well, let me ask you a question.

MS. LANIER: Okay.

THE COURT: Did they have to get your permission to sell the loan ---

MS. LANIER: They did not have to get my permission.

THE COURT: --- per your contract?

MS. LANIER: But, according to -- there should have been an assignment on -- put into the record that would have noticed -- would have served to notice me.

THE COURT: Well, they don't have to assign it -- they don't have to do a pu- -- South Carolina law says you don't have to assign a mortgage on record.

MS. LANIER: I'm not -- I'm talking about the Note.

THE COURT: Right.

MS. LANIER: Talking about the Note. The note has to -- something has to happen, and then the

mortgage follows that. And there has to be some sort of public notice so that I, as the borrower, know who I am really dealing with.

THE COURT: Right. There is contractual stuff that says ---

MS. LANIER: Right.

THE COURT: --- we've got to notify you if we change it.

MS. LANIER: Right.

THE COURT: Okay. I think I understand your argument.

MS. LANIER: Okay. So that's -- in my opinion, our newly discovered evidence could not have occurred until the newly discovered evidence that I found out that my loan was not where I thought it was and not owned by who I thought owned it. And I had wasted an entire year -- the entire year of 2010 on the phone with the servicer, and letters and everything -- emails going back and forth talking to them specifically about the loan balance and how I had found information that appeared to show me that I didn't owe $160,000, that I probably didn't owe much if anything, and trying to get them to give me records, which

they never did. And I spent all that time -- because when you actually read the Note and the Mortgage in my case, which is a big part of this, which I tried to make a point early on before it even got assigned to you, the Note and the Mortgage do not give them -- don't give anyone the right to foreclose over what was a tax issue at the time. The whole thing that threw this loan into default was the fact that I was not able to come up with about -- I think it was 12 or $13,000 in taxes for all the properties at one time that year, in 2010. So I had asked, had made the phone call as per the Note and Mortgage instructs, to ask them to advance that. And then it further says in the Note and Mortgage, if that has occurred then they are to work with you to do some sort of workout, to let you pay that off by month or put it on the back of the mortgage or whatever can be done. Understand, we were 14 years into a 15-year mortgage that had started out at a pretty high rate and I had paid a whole lot toward -- it was at probably zero at that point. But I had simply gotten in touch with

them to ask them, okay, y'all have had to advance the taxes, now let's work out and see how we go forward with this.

THE COURT: All right. Let me ask you something.

MS. LANIER: Okay.

THE COURT: Was any of it argued in this hearing?

MS. LANIER: No, because we couldn't talk about anything but the bankruptcy.

THE COURT: I understand what you're saying about that.

MS. LANIER: Okay. Okay.

THE COURT: All right. But that wasn't argued at the hearing?

MS. LANIER: That was not argued at that hearing because nothing really was. But, the fact of the matter is they -- nobody has authority by the Note and Mortgage to foreclose on me for a tax issue. And the default was actually created by SunTrust, the servicer. Because when I sent in my pay- -- they billed me all at one time in September of 2010 for that full, you know, however much it was for the taxes. And I called them, I said, you know, I've told you guys I can't pay -- I didn't have it in January all of it now ---

THE COURT: I don't want to cut you off, but I am.

MS. LANIER: Okay.

THE COURT: Because were arguing something that wasn't argued for ---

MS. LANIER: I understand.

THE COURT: --- whatever reason. This is -- again, not the Rule 59.

MS. LANIER: But they refused to take my mortgage payments.

THE COURT: Okay.

MS. LANIER: And that's how the default happened.

THE COURT: Okay.

MS. LANIER: Because they wouldn't work with me on the taxes. And then that's when we found out that Wells Fargo -- I found out in February, when they filed the lawsuit, that Wells Fargo ---

THE COURT: All right.

MS. LANIER: --- was the person behind all this.

THE COURT: Thank you. Yes, sir?

MR. HERSHON: Yes, Your Honor, I was not -- you know, I have -- I substituted in after the hearing, so, you know, I'll be honest, I haven't reviewed that transcript. But the Court's correct, I mean in terms of it not

being raised at a prior hearing or not being put into the record at a prior hearing in some form, is certainly an issue that's perhaps forecloses that being hurt here today. I think additionally, just think about, you know, what -- about the series of arguments is that again, there's no damages here that are -- in this case that are being sought by SunTrust against the defendants here. You know, the case would end at this point if their motion is denied. And so, you know, as an additional argument beyond what happened last time, I just don't see a situation where any of this has caused any damage. You know, it's a secondary argument. I don't see anything where this has caused any damage to them because there's not going to be any judgment in SunTrust's favor -- monetary judgment resulting from this case.

THE COURT: All right. Anything further?

MS. LANIER: I disagree, because if you rule ---

THE COURT: All right. Hang on. I'm going to address that. Is there anything else that you've raised in your motion that you want to make sure you get on the record? Because I'm

going to address that argument ---

MS. LANIER: I do want to let you know that I contacted SunTrust Mortgage after this supposed payoff that happened, to ask them, as per Title 29, Chapter 3, to send me my retired Note. And I was told they never had the Note in their possession. So, that goes back to the standing issue. But honestly, I just want this case simply dismissed without all the bells and whistles preventing me from doing anything further. Because if I find out that the loan was in fact at zero balance and that is proven, and I find out that they accepted a payment from BB&T illegally, then that money must be mine because it's certainly not theirs.

THE COURT: All right.

MS. LANIER: So, if -- there is some -- you know, there's ramifications of what we do today that allows me to go forward if I have been wronged by these people from the very beginning.

THE COURT: All right. Address that, and then I'm going to ---

MR. HERSHON: Yes, Your Honor. I mean, this is a

2011 case that she's -- that has had a final or- -- summary judgment; and then after this, this has a potential for a final order. The time for that stuff -- to find out that information was during discovery. This is not a time to extend this case further to allow her to find additional stuff.

THE COURT: Well, no, I actually thought about something different. All right. Have a seat.

MR. HERSHON: Yes, sir.

THE COURT: All right. What I understood you just then said was the payment that you were referring to was the second mortgage paying off the first ---

MR. HERSHON: Yes, sir.

THE COURT: --- not the payment stream. Okay.

MR. HERSHON: I misunderstood.

THE COURT: Okay. I'm going to --- all right.

MS. LANIER: And I might -- may I ask -- add one more thing. I just think that there are 10 areas of material dispute that would keep them from -- preclude them from getting summary judgment on this. And I believe that we talked about several of those in the

hearing. And I had lots more to talk about, but again, because of the bankruptcy case ...

THE COURT: Again, the transcript and rules of evidence as opposed to argument. Evidence of material of fact are not created by argument.

MS. LANIER: Okay.

THE COURT: For example, if you -- what you just said. I called SunTrust, they said they never had the Mortgage. That's not evidence because it wasn't in then. That's not evidence because it's hearsay, your offering it for the proof of the fact of the matter asserted. That's argument, that's not evidence.

MS. LANIER: Okay.

THE COURT: I have to make a ruling based on argument that is based on correct legal evidence. All right. So you can't create an issue of fact just by theories and argument, it has to be with properly done evidence in front of me. Here's where -- here's what I am going to do. And this is a little unusual, what I am going to order, but the case -- there is a recent case that has -- that I am analogizing from. There is a case

from Judge Crosby in Georgetown where foreclosure happens, foreclosure is ordered, deed goes out, people file a Motion to Vacate, Rule 60, all this stuff. They don't post a bond, which is required to stop a sale from going through. Judge Crosby rules, I've issued a deed, none of this matters anymore; case over. Mortgage satisfied, case over. It's moot. Court of Appeals rules, you're right, case over, it's moot. Supreme Court majority says no, when they filed the Motion to Vacate and the appeal and all that, that stopped it. They didn't address having to post bond. Justice Pleicones wrote a concurring opinion, which he said in a famous footnote, I think the results right, we're reversing the Court of Appeals, it's gone back down for Judge Crosby to hear; because even though the deed and the property may be gone, if they did the foreclosure wrong there's still a remedy. Even though you've lost your land and lost your dirt, there's this case law that says, if you want to save your dirt, post bond. Post the bond, that stops the sale. If you don't post a bond,

dirt's gone. But if they've foreclosed improperly, you can get damages. I think that's what Justice Pleicones' thing was. Similarly, as I'm hearing the argument here is, what I hear Ms. Lanier say here is, is I acknowledge the second paid off the first. There is no more Note and Mortgage in this case; it's done. Can't go forward. Even if I reverse this, we're done. They don't have another mortgage, it's satisfied. Right? So, first of all, the post-hearing memo I want is, is it moot. Does it matter because the Note -- it has been paid off. Somewhere, there is a judicial sale where the second bid in. Right?

MS. LANIER: Uh-huh.

THE COURT: Second bid in. And somewhere, Mr. Hershon, your client got a check to pay it off and y'all have -- I'm assuming, are in the process of doing the stamp, Note and Mortgage, and complying with all that; satisfying it and getting it off record. So, it's satisfied. So, does that mean all the stuff's over? Does it matter? If I were to reverse this, does it matter? Because it's

paid off. What do we go back to then? I mean, do we go back to anything -- does it matter when the debt's gone? Now, what Ms. Lanier is arguing, well it does if some point in the future I decide that the payoff was wrong, you gave a wrong payoff on my first mortgage, and actually they paid you -- I'm just making numbers -- they paid you $40,000, they should've only paid you 10. If they paid you 40 and the only should have paid you 10, that 30 should be mine. Because, you did your accounting wrong. You're -- either it was a conspiracy or you just did bad math or poor record-keeping or whatever. So what I'm asking is, is -- what I heard Ms. Lanier saying is, I'm fine with dismissing this so long as I protect my right to -- if within newly discovered evidence rules and statutes of limitation ---

MS. LANIER: Uh-huh.

THE COURT: Because arguably -- and I'm not -- you're your lawyer. We've had this talk a lot of times, all right. You would admit that, right?

MS. LANIER: Uh-huh. Yes, sir.

THE COURT: Okay, please note for the record -- did she say yes, sir? And they're all nodding their heads. Okay. Not the first time we've been in court. All right? I can't tell you law but, we've talked about newly discovered evidence, we've talked about when the statutes of limitation start right now ---

MS. LANIER: Yes, sir.

THE COURT: Let me ask you Mr. Hershon. Hypothetical situation. Let's assume I do nothing but, say, a form order that says denied: her motion is denied. Mortgage paid off, all this stuff doesn't matter. And I'm not -- and this is theoretical discussion. This is not binding you. This is not taking a position. Theoretically then, if she then did discover something within whatever the statute of limitations is, because she's aware of the issue now. All right? She knows this issue exists at some point from when the second mortgage paid it off. She knew or should have known it was an issue. So if it's a three-year statute or a five -- whatever the statute of limitations is, she's got a statute of limitations. Her right to

file a second suit, is it affected at all by what we do here? No. Because if she's got an independent right to file a suit, doesn't she have a right to file a separate suit because it has nothing to do with this suit?

MR. HERSHON: Yeah, I would agree on that. Be- ---

MS. LANIER: I wouldn't get strapped with res judicata -- I mean ---

THE COURT: No, no, no. Because res judicata is this Note and Mortgage. Your thing that you have told us here is -- is paid off, they paid it off wrong. Now, I'm not giving you legal advice, I'm not saying it couldn't happen, what I'm saying is, is that in context from what y'all do after today is not -- hang on. Buy a calendar. All right. By December 11th this is what I want: I want an email from Plaintiff, because Plaintiff always has to do the email, to the Lanier's and to me that says one of three things -- maybe two. It says these things: we've talked, one, we can't resolve anything, we're going to have reply memos, a follow-up memo on all these issues that were raised to you on or before January 9th, assuming that's a Friday.

MS. LANIER: I want to say it's a Saturday. Can I ---

MR. HERSHON: How about the 16th?

MS. LANIER: May I ask you to push that out one week because of travel?

THE COURT: The 16th then. All right. What's January the 16th? January the 16th is a ...

MR. HERSHON: Assuming this is January of '16, the 16th is a Saturday.

THE COURT: All right. Let's do a -- you got a calendar?

MR. HERSHON: Your Honor, January the 15th is a Friday.

MS. LANIER: The 15th, and then the 22nd ---

THE COURT: All right. Let's make it on the 19th, that's a Tuesday. Because stuff shouldn't ever be do on a Monday or Friday, that's just wrong.

MS. LANIER: Exactly.

THE COURT: We'll make it on Tuesday.

MS. LANIER: Especially not on a Friday the 13th.

THE COURT: All right, the 19th. And this is what I want y'all to say. Memos are due then or, B, Ms. Lanier has satisfied herself by talking with lawyers that she's not res

judicata'd or collaterally estopped if she finds out her theory of wrong payment, she is not bound by this.

MS. LANIER: Can I ask a question? How would that ---

THE COURT: Hold on.

MS. LANIER: How would that -- go ahead.

THE COURT: Let me finish. Or, we draft an order that says this case dismissed but without prejudice for Ms. Lanier to file a suit relating to overpayment by date inserted. You know, sort of like a -- not a hold harmless but a -- like a covenant. Not a covenant not to sue, but we agree as part of the dismissal she has all her legal rights to file a suit by a certain date specifically on this issue. Yes, ma'am?

MS. LANIER: Several of the counterclaims that were raised that we didn't get to go into because of the bankruptcy issue would likely still arise. So, would I be prevented from ---

THE COURT: Well, that's what y'all have got to talk about because the ---

MS. LANIER: That's what the damages ---

THE COURT: All right.

MS. LANIER: --- would come out of.

THE COURT: Because the counterclaim -- and that's -- that was the reason for me giving the Judge Crosby case. Because even -- and this is the question I'm asking: Is there a law that says your counterclaims come out of the enforcement of this foreclosure? Is there a case that says once debt's gone, counterclaims are gone? Or do counterclaims survive the debt being gone? That ought to be an easy question to find because it would seem like that -- an answer because it would seem like that would be a common fact pattern. Do the counterclaims that come out of the mortgage stuff, do they go away when the mortgage goes away? All right? I think there's a case on that. So, that's kind of the issues. We're going to brief it all and read back through the transcript and issue all the stuff and write a memo addressing all this stuff; again, talking about what evidence is, what evidence was argued in the transcript as opposed to argument. Or, can we craft something that we're satisfied with that says this is dismissed, it's paid off, we reserve

the right to file, until this date, anything? You know, because we've checked it, we're happy with our numbers. So, I mean, if y'all can draft something that drafts you out of this, if you don't do the research memo then do it, if not, go back and read the transcript, and just a standard order on what was argued in front of us, what is the difference between argument and evidence and all that. So, does that kind of make sense?

MS. LANIER: Yes, sir.

MR. HERSHON: It does, Your Honor, except, my concern -- and I can feel that the Court can make a ruling today on -- on the motion is -- on their motion is, you know, the lack of evidence that's in front of the Court to support any of these counterclaims.

THE COURT: Well, let me ask you this. You said something earlier, you haven't read the transcript.

MR. HERSHON: I haven't read the transcript. I've reviewed the records that I have from ---

THE COURT: Okay.

MR. HERSHON: --- the po- -- so I cannot base it on -- I can base it on what I have in terms of

the rec- -- what has been filed here in Lexington County in the Clerk's office from what's the record -- from my understanding would be the documentation of record in this case. I don't see any -- I mean, if I'm wrong -- I can look again, Your Honor, but I don't see any affidavits ---

THE COURT: Well, that's what I'm asking you to do because it was not a five-minute hearing when we had this earlier; it was not a five-minute hearing. Go back and review the transcript. Because what she said is it was all there or you didn't let me say it. There are rules about you didn't let me say it too. I mean, if it was there, it was there. All right?

MS. LANIER: In prior motions that weren't heard and ---

THE COURT: Well, I understand. But if you file a bunch of stuff in this one gets heard and disposed of, then you don't go back in here the other -- necessarily all the other motions. And motions -- anyway. Anyways, what's before us is what was ruled on here. You don't get to add new stuff. You don't get to say, and I want to talk about other

motions, this, that and this. You have to stick to what we argued. All right. So, that's your choices. Y'all got a couple weeks to talk about this and if you can resolve it through a motion -- I mean a consent order, do that. If not, then you've got to do research that says, A, it doesn't matter: it doesn't matter because we've satisfied the Note and Mortgage, the games over. Here's the appellate case that says counterclaims die with the Note and Mortgage, so it's all over. If there's law that doesn't say that then the law will say no, counterclaims can survive the Note and Mortgage being done. That's one thing. And then, not only find it legally survives, you've got to find factually that I was wrong in granting the summary judgment in that there was proper evidence in front of me that created the requisite issue of fact based on what the standard was. The standard for summary judgments, and I'll remind again both parties, has changed a little bit. Just when it didn't matter that we never really understood what a scintilla was -- you know,

if there's a scintilla of evidence -- they changed the rule. They modified the rule. They said yes, scintilla's for preponderance, but if there's a cause of action that your pleading like fraud that requires clear and convincing, and are an elevated standard, you've got to have more than a scintilla. Well we didn't even know what a scintilla was, how are we going to know what more of a scintilla is. All of these causes of action have different standards. If they're preponderance, then that's what you use, a scintilla. And if they're not preponderance then you say, this stuff required clear and convincing, we don't have something beyond a scintilla that -- for those things. So, that's what you've got to do. I have to rule on what was properly argued and properly before me, not argument. There's a place for argument, but argument has to be based on proper facts. So, that's why -- you know, there's a couple legal issues, and if the legal issue say one, two, three; case over. I mean if the case says -- there's an appellate case that says either published or

unpublished, because even though unpublished, you can't say it's precedent but you can always read that case and say, you know, it's unpublished, it just goes for this case, but the logic seems good to me. So if there's a case that says once the Note and Mortgage are satisfied, no more counterclaims, then find that case if it's there. If there's a case that says they survived, then you're into the, did we create facts; through a review of the transcript. Or, in lieu of doing all that, if you say dismiss the case and we reserve the right to file a lawsuit if we discover wrong payoff, that we can prove payoff was wrong and they got money that should've been ours, that's -- I don't know what the equitable thing is. You got paid the money and I should've been paid money, there's an equitable theory on that: That you reserve the right to, this date, file a lawsuit about it. So, y'all figure out what's really at play here and how best to handle it. All right, does that make sense?

MR. HERSHON: Yes, Your Honor.

THE COURT: Okay. If you'll do two emails. The

first email is today when you send an email to both of us that says, had the hearing, this is what we're going to do by these dates. You know, by the -- two weeks from now we're going to tell you if we're going to do this and this. So, send an email first describing what the plan is and then we'll go from there. We just want to make sure were on the same page.

MR. HERSHON: Yes, Your Honor.

THE COURT: Okay. Anything further? All right. As always, you can request a copy of the transcript if you get his card and you pay him. All right. Okay. Because you're paying him because it was your motion.

MS. LANIER: Yes, sir.

THE COURT: If you want to get a copy of the transcript you've got to pay for it too, because we have no court reporter in Lexington. All right, done?

MR. HERSHON: Yes, Your Honor.

THE COURT: All right. Thank y'all.

(There being nothing further, the hearing concluded at 11:40 a.m.)

Motion for Summary Judgment Filed by Appellee

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON SunTrust Mortgage, Inc., [X] Plaintiff, vs. Cathy G. Lanier, et al., [ ] Defendants. check box above indicating submitting party	IN THE COURT OF COMMON PLEAS CASE NO. 2011-CP-32-00156 **MOTION AND ORDER INFORMATION FORM AND COVER SHEET**

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendants
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	Cathy G. Lanier Randy D. Lanier 172 Belle Chase Drive Lexington, SC 29072 PRO SE DEFENDANTS John A. Pincelli P.O. Box 12245 Columbia, SC 29211 ATTORNEY FOR DEFENDANT BRANCH BANKING AND TRUST COMPANY

[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 Summary Judgment and Motion in Opposition to Motion to Amend
Estimated Time Needed: 30 minutes Court Reporter Needed: YES [X] 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 — Date Submitted: 9/13/12

SECTION III: Motion Fee

[X] 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: _____ Date File:
(print name)

[ ] MOTION FEE COLLECTED:
[ ] CONTESTED – AMOUNT DUE:

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON SunTrust Mortgage, Inc., PLAINTIFF, v. Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, and Job Development Loan Fund, Inc., DEFENDANTS.	IN THE COURT OF COMMON PLEAS C/A No.: 2011-CP-32-00156 **PLAINTIFF'S NOTICE OF MOTION AND MOTION IN OPPOSITION TO DEFENDANT'S MOTION TO AMEND AND ASSERT COUNTERCLAIMS, MOTION FOR SUMMARY JUDGMENT AS TO COUNTERCLAIMS, AND MEMORANDUM OF LAW**

L10-09485

TO: CATHY G. LANIER AND RANDY D. LANIER, PRO SE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE, that the attorney for the Plaintiff will, on the 10th day after service hereof, or as soon thereafter as counsel may be heard, move before the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order denying Defendants' Cathy G. and Randy D. Lanier (hereinafter "Defendants") Motion to Amend Answer and Assert Counterclaims and Motion to Dismiss and granting the Plaintiff Summary Judgment on the asserted counterclaims.

Defendants' Motions to Amend and Dismiss should be denied and Plaintiff's Motion for Summary Judgment on the asserted counterclaims should be granted for the reasons stated in the following Memorandum of Law.

I. INTRODUCTION AND FACTS

On or about August 11, 1997 for value received, Defendants did execute and deliver to Heritage Federal Savings and Loan Association, a certain promissory note in writing for the sum of Four Hundred Twenty-Five Thousand And 00/100 Dollars ($425,000.00) secured by a mortgage encumbering three parcels generally described as Parcel 1, 213 Lake Villa Road,

Lexington, SC 29072, Parcel 2, 211 Lake Villa Road, Lexington, SC 29072, and Parcel 3, 2651 Knox Station Road, Chester, SC 29706 (hereinafter collectively "the Properties"). *See* **Exhibits "A" and "B."** Thereafter, through a series of corporate mergers and name changes, Heritage Federal Savings and Loan Association became SunTrust Bank, who then assigned said mortgage unto SunTrust Mortgage Inc., the present lien holder and Plaintiff herein. Defendants have been in default on said note and mortgage since approximately September 1, 2010 and are currently indebted to Plaintiff on said note and mortgage.

Defendants were previously indebted to Bayview Loan Servicing, LLC (hereinafter "Bayview") and Branch Banking and Trust Company of South Carolina (hereinafter "BB&T") by virtue of a separate Judgment of Foreclosure and Sale entered on October 7, 2011. As a result of that action, Randy D. Lanier filed for Chapter 13 bankruptcy on November 3, 2011, which action, after a hearing, was dismissed on November 7, 2011. *See* attached Order filed January 3, 2012, **Exhibit "C."** Defendants did not appeal the dismissal and the time to file an appeal has expired. Defendants again filed for Chapter 13 bankruptcy on November 8, 2011, which action, after a hearing, was dismissed with prejudice. *See* **Exhibit "C."** Defendants were also prohibited from filing another cause under Chapters 11, 12, and 13 of the bankruptcy code for the period of one year. *See* **Exhibit "C."**

On March 25, 2011, Defendants filed an Answer. *See* **Exhibit "D."** On June 2, 2011, Defendants filed an Amended Answer without consent of the Plaintiff or leave of the court. *See* **Exhibit "E."** On February 14, 2012, Defendants filed an appeal from Judge Waites' Bankruptcy Order, **Exhibit "C"**, and a motion to stay the foreclosure sale. On February 28, 2012, after considering Defendants' second motion to stay the foreclosure sale, the court issued an order denying Defendants' motion to stay. On March 2, 2012, the court denied Defendants' appeal of

the order denying stay and Defendants' Motion to Reconsider, filed March 1, 2012. On July 12, 2012, Defendants subsequently filed a second Motion to Amend Answer, **Exhibit "F,"** and a third Motion to Amend Answer on August 7, 2012, **Exhibit "G,"** alleging counterclaims against Plaintiff and requesting the dismissal of this action. For the following reasons, Defendants' Motion to Amend Answer to allege counterclaims and Motion to Dismiss should be denied and Plaintiff's Motion for Summary Judgment on the asserted counterclaims should be granted.

II. DISCUSSION

A. DEFENDANTS LACK STANDING TO ASSERT COUNTERCLAIMS AGAINST PLAINTIFF.

1. *Defendants lack standing to assert counterclaims against Plaintiff because Defendants failed to set forth counterclaims in their bankruptcy schedules and, moreover, are prohibited from filing for relief under Chapters 11, 12, and 13 under the Bankruptcy Code for the period of one year.*

On November 8, 2011, Defendants filed a Chapter 13 Voluntary Bankruptcy Petition and accompanying Schedules and Statements attached as **Exhibit "H."** In paragraph 21 of Schedule B, Defendant was required to set forth "[o]ther contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims." *See* **Exhibit "H."** Next to this paragraph, Defendants checked the box under the column "None," indicating Defendants had no counterclaims to assert against Plaintiff in regards to the current foreclosure action. Defendants made this statement under penalty of perjury. *See* **Exhibit "H"** page 34. On November 7, 2011 Defendants' first Chapter 13 case was dismissed and on January 3, 2012, Defendants' second Chapter 13 case was dismissed with prejudice. *See* **Exhibit "C."** The Order explains that Defendants sought bankruptcy in bad faith and in order to impede the

foreclosure actions. *See id.*

When a debtor files for bankruptcy, an estate is created that is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C.A. § 541(a). Unless the bankruptcy court orders otherwise, the debtor is required to file a list of all creditors and a schedule of assets and liabilities. *Id.* § 541(a)(1)(A)-(B)(i). "Legal and equitable interests" has been broadly defined and includes causes of action. *In re Educators Group Health Trust*, 25 F.3d 1281, 1283-84 (5th Cir. 1994). When the causes of action giving rise to the debtors' counterclaims begin before the present case commences and initial pleadings are filed, the debtor must list those causes of action on his bankruptcy petition. *See In re Iredale*, 429 B.R. 853, 856 (Bankr. D. S.C. 2010). *See MidFirst Bank v. Brooks*, No. 2008-UP-196 (S.C. Ct. App. March 20, 2008). Whether the debtor knew about the possible counterclaims at the time he filed the bankruptcy petition is immaterial. *See id.*

When the bankruptcy case is closed, "any assets, including claims, that were scheduled by the debtor but not disposed of are deemed abandoned and revert to the debtor." *Tyler House Apartments, Ltd. V. United States*, 38 Fed. Cl. 1, 6 (1997). Claims that are not set forth on the schedules, however, remain under the control of the bankruptcy trustee. *See id.* "If a cause of action belongs to the estate, then the trustee has exclusive standing to assert the claim." *Educators Group Health Trust*, 25 F.3d at 1284. Therefore, a debtor may not amend his cause of action to include counterclaims he no longer possesses. *See Iredale*, 429 B.R. at 855-56. Further, a debtor's persistence in alleging counterclaims of this kind may be construed as bad faith. *See id.* at 856.

In the present case, Plaintiff initiated this foreclosure action on January 14, 2011. Assuming Defendants' alleged counterclaims arise out of the present foreclosure action, at the

time Defendants filed for bankruptcy in 2011, Defendants were required to list them on their itemized bankruptcy schedule. Defendants assert in their first and second Motions to Amend and Dismiss various counterclaims against Plaintiff, none of which they claimed on Schedule B. Therefore, since Defendants' bankruptcy cases were disposed of in 2011, Defendants' causes of action remain under the control of the bankruptcy trustee, and only the bankruptcy trustee has standing to assert the claims against Plaintiff. Accordingly, Defendants have no standing to assert counterclaims against Plaintiff and Defendants' Motions to Amend and Dismiss should be denied.

Moreover, according to the Order dated January 1, 2012, Defendants are prohibited from filing for bankruptcy under Chapters 11, 12, and 13 for the period of one year and are precluded from claiming any possible grievances not barred by res judicata and judicial estoppel against Plaintiff during that term. *See* **Exhibit "C."**

III. CONCLUSION

The evidence propounded by Plaintiff establishes that there is no genuine issue of material fact on the matter of the alleged counterclaims possessed by Defendants. Defendants are barred from asserting counterclaims against Plaintiff. Therefore, Defendants' Motions to Amend and Dismiss should be denied and Plaintiff's Motion for Summary Judgment on the issue of the alleged counterclaims should be granted.

[SIGNATURE PAGE TO FOLLOW]

KORN LAW FIRM, P.A.

Dean A. Hayes, SC Bar No: 66066
Chris S. Truluck, SC Bar No: 77829
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 231-2022
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

September 12, 2012
Columbia, South Carolina
N:\PD\F 10-09485

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	C/A No.: 2011-CP-32-00156
SunTrust Mortgage, Inc., PLAINTIFF, v.	**CERTIFICATE OF SERVICE**
Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, and Job Development Loan Fund, Inc., DEFENDANTS. L10-09485	

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 AND MOTION IN OPPOSITION TO DEFENDANTS' MOTION TO AMEND, MOTION FOR SUMMARY JUDGMENT AS TO COUNTERCLAIMS AND MEMORANDUM OF LAW** were served on counsel for the defendants by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Cathy G. Lanier
Randy D. Lanier
172 Belle Chase Drive
Lexington, SC 29072
PRO SE DEFENDANTS

John A. Pincelli
P.O. Box 12245
Columbia, SC 29211
ATTORNEY FOR DEFENDANT BRANCH BANKING AND TRUST COMPANY

this 14th day of September, 2012.

KORN LAW FIRM, P.A.

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

Columbia, South Carolina

Motion to Compel

EXHIBIT A

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**11TH JUDICIAL CIRCUIT**
COUNTY OF LEXINGTON	)	
	)	**CASE NO.: 2011-CP-32-156**
	)	
Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1,	)	**FINAL REQUEST FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES**
Plaintiff(s),	)	
	)	**AND**
Vs.	)	**MOTION TO COMPEL**
	)	
Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, And Job Development Loan Fund, Inc.,	)	**REQUEST TO CORRECT IMPROPERLY FILED MOTION THAT RESULTED IN AN ORDER BY COURT AND JUDGE WITHOUT JURISDICTION**
Defendants.	)	

To: Plaintiff Wells Fargo Bank, NA, Suntrust Bank, and any successors or assigns making claim to properties located at 211 Lake Villa Road, Lexington, SC; 213 Lake Villa Road, Lexington, SC, and 2651 Knox Station Road, Chester, SC:

Motion for Production of Documents

Defendants Cathy G Lanier and Randy D Lanier, pursuant to Rule 34 of FrCivP, request that you allow the inspection and copying of the following documents and other items at your office at 10:00 AM on the thirtieth (30th) day after service of this upon you:

1. Each and every document, record and material that you have or can obtain about defendants. All recorded and written records in any way about or pertaining to Cathy G Lanier, Randy D Lanier or properties located at the addresses shown above, held or in possession of Wells Fargo Bank, Suntrust Bank and any named Plaintiffs including Attorneys' offices in South Carolina or nationwide.

INCOMPLETE

2. Each and every document, record and material that you have or can obtain about this action or pertaining to it.

INCOMPLETE

3. Each and every document, recorded and written material about or pertaining to Defendants Cathy G and Randy D Lanier and this action held or obtainable by Plaintiff and/or its attorney and any other entity involved in this action.

INCOMPLETE

4. A full accounting of all charges, fees, late charges, interest and principal payments due since the inception of the purported loan. This would include all documentation prior to the modification issued August 11, 1997. This audit and investigation must be conducted by a certified public neutral party, and be validated so that it is accurate to the penny.

NOT PRODUCED

5. All information and calculations related to any interest rate or fee adjustments over the life of the loan, as well as all prior adjustments before modification performed on August 11, 1997.

NOT PRODUCED

6. A full accounting of all payments made by Defendants Cathy G and Randy D Lanier, including a detailed breakdown of how those payments were applied to interest, principal, escrow or other fees.

NOT PRODUCED

7. Separate documentation of all late charges, attorney fees or any assessment other than principal, interest or legally allowed escrow since the application of illegally force-placed insurance that was deemed inappropriate by the SC Department of Insurance.

INCOMPLETE, but it is interesting to note that the law firm involved in this case apparently took it upon themselves, in an obvious effort to run up expenses and fees, to hire someone to cut grass at the property. We had noticed that someone was coming over and cutting the grass on the 213 Lake Villa Road property only, and surmised these must be the people who thought they were purchasing the property at 211 Lake Villa Road by way of the tax certificate purchased, and had the lots mixed up. We now find, due to the discovery documents received, that this service was being provided by the bank, and ironically, it corroborates that the only property they think they have a legal claim to, is the 213 Lake Villa Road property, as the 211 property adjacent to it was left untouched.

8. A certified copy, sworn to under penalty of perjury by a "C" level company officer of the **original issue, unaltered, genuine (free from fraud or forgery) wet ink signature, contract** signed between alleged debtor and alleged creditor, for the alleged debt claimed.

NOT PRODUCED

9. A certified as true and correct copy, sworn to under penalty of perjury, of the "contract" that Wells Fargo, Suntrust or others claiming security interest in these properties, has with Korn Law Firm to collect the purported "debt." Purported "oral" contracts not reduced to a written record are not acceptable.

NOT PRODUCED

10. A signed and sworn statement before notary public under penalty of perjury by a person having firsthand knowledge of the indebtedness and stating that the reported indebtedness was a legal indebtedness under all applicable state and federal laws, and furthermore swearing that this purported debt is not now nor ever has been part of any tax write-off scheme nor insurance claim.

NOT PRODUCED

11. The original genuine (free from fraud of forgery) "wet ink signature" complete credit application that Defendants Laniers allegedly signed to secure the purported "loan" including the CUSIP number assigned to said application.

NOT PRODUCED

12. A signed and sworn statement before a notary public under penalty of perjury from the document custodian, having firsthand knowledge of the purported "indebtedness," stating that the original, wet ink signature "credit" application and subsequent original note that was bifurcated, was not illegally converted, securitized and transferred/sold into a pool of like assets via a real estate mortgage investment conduit (REMIC).

NOT PRODUCED

13. A certified as true and correct copy, sworn to under the penalty of perjury, of the actual accounting where Wells Fargo Bank or any entity now claiming a security interest in the purported loan, incurred a log of an alleged debt and/or evidence that any of these entities actually loaned "money," "funds" or "credit," incurred any liability or gave anything of value.

NOT PRODUCED

14. Provide signed verification of each transaction that is part of the alleged cumulative debt.

NOT PRODUCED

15. Provide a certified as true and correct copy of the contract or other instrument through which Wells Fargo Bank or any entity now claiming a security interest in the purported loan authorized/ assigned/ or transferred to Korn Law Firm as third-party collection agent the collection of the alleged "debt."

NOT PRODUCED

16. A certified as true and correct copy, sworn to under the penalty of perjury, of the actual accounting where Wells Fargo Bank or any entity now claiming a security interest in the

purported loan incurred a log of an alleged debt and/or evidence that Wells Fargo Bank or any entity now claiming a security interest in the purported loan actually loaned money or credit, incurred any liability or gave anything of value.

NOT PRODUCED

17. Provide a true and correct copy of the instrument by which Wells Fargo Bank or any entity now claiming a security interest in the purported loan was authorized as a mixed-ownership government corporation with authority to hypothecate credit of the United States (31 U.S.C. § 9101).

NOT PRODUCED

18. Provide the delegation of authority from the Director of the Office of Management Budget to Korn Law Firm that authorizes that company to settle accounts of the United States (Public Law 104-316).

NOT PRODUCED

19. Provide a certified as true and correct copy, sworn to under penalty of perjury by the CFO of Wells Fargo Bank or any entity now claiming a security interest in the purported loan of the 1099-OID filed with the Internal Revenue Service evidencing Wells Fargo Bank or any entity now claiming a security interest in the purported loan as the "issuer" and source of "funds" of the purported "contract(s)."

NOT PRODUCED

20. Admissible verified calculation per GAAP (books must balance), sworn to under penalty of perjury of what Defendants Laniers purportedly owe.

NOT PRODUCED

21. Identity of the original purported bona fide "creditor" who allegedly advanced their "credit" or "funds" to Defendants Laniers.

NOT PRODUCED

22. Admissible verified, substantiated evidence per South Carolina and Federal Evidence Rules, that the above named purported bona fide "creditor" put any assets at risk or provided valuable consideration to Defendants Laniers, (consideration is a necessary element to a lawful contract).

NOT PRODUCED

23. A sworn, certified copy of any **assignment contract and/or purchase and sale agreement**, signed by all competent parties, for any alleged bona fide holder in due course who claims to be a successor real party in interest with legal standing to bring a claim.

NOT PRODUCED

24. A sworn "**Proof of Loss**" by an officer with personal First-Hand Knowledge, Proof of Election of "Specific Charge-Off Method" or "Nonaccrual-Experience Method" with EVIDENCE OF TAX ACCOUNTING per IRS Pub. 535 Ch. 10.

NOT PRODUCED

25. A completed and notarized IRS Form 56 providing fiduciary relationship and responsibility, and identifying any unauthorized activity, theft and tax evasion.

NOT PRODUCED

26. A completed IRS W9 by alleged creditor identifying their Federal ID number.

NOT PRODUCED

27. An "Assurance of Due Performance," by a "C" level corporate officer with first-hand knowledge of the alleged debt, stating that all material facts regarding the alleged account and the alleged debt were correctly and fully disclosed to the alleged debtor.

NOT PRODUCED

28. An independent CPA Affidavit assuring alleged creditor did not write-off the alleged debt on their corporate taxes, did not collect bad debt insurance on the alleged debt, credit default swap insurance and did not charge-off the alleged debt on any credit bureau report.

NOT PRODUCED

29. The whereabouts or location of any/all competent first hand, credible, fact witnesses, including any/all attorneys, that can be deposed under oath as to the purported "indebtedness" Plaintiffs claim Defendants Laniers owe.

NOT PRODUCED

30. Admissible verified proof that Korn Law Firm is licensed to collect on Plaintiffs' behalf in the STATE OF SC.

NOT PRODUCED

31. Admissible verified proof of Plaintiffs' purported attorney's license to do business in SOUTH CAROLINA and the name of Plaintiffs' Registered Agent(s) for service of process.

NOT PRODUCED

32. All transfers, assignments or other legal documents proving an interest in the above-named properties to any of the Plaintiffs listed in the original Complaint or others that have been included due to legal or illegal actions by Plaintiffs. The entire chain of transfer to wherever the security is now must be promptly provided.

NOT PRODUCED

33. All documents and logs from purported loan originator that were transferred in any manner to servicer or new owner, related to the release of liens on parcels listed above. In other words, we request all letters, file notes, telephone logs, computer records, email transmissions or other communication that transpired as a result of the mortgage records being moved from the originating entity (Heritage Federal Savings & Loan) to any other entity to date. This should

serve to explain why the servicer, Suntrust Mortgage, repeatedly assures Defendants Laniers that their only claim is to 213 Lake Villa Road, and provide evidence that the other two properties must immediately be released from any liens associated with Suntrust, Wells Fargo, or whomever is now claiming to hold those liens.

NOT PRODUCED

34. Assurance and written proof, according to Title 62 of the Revised Statutes of the Fair Debt Collection Act, and other laws such as Real Estate Settlement Procedure Act 12 U.S.C. § 2601 et. Seq.; that any and all sales or transfers of this account or monetary instrument was conducted in accordance with proper laws and was a lawful sale with COMPLETE disclosure to all parties with an interest. This request requires signatures of both parties that constitute a loan. As you know, it takes two or more parties' signatures, meeting of the minds, and exchange of valuable consideration to create a valid contract.

NOT PRODUCED

35. Assurance and written proof that the claimed holder in due course of the monetary instrument/title/asset/note is holding such note in compliance with statutes, State and Federal laws and is entitled to the benefits of payments.

NOT PRODUCED

36. Assurance and written proof that all good faith and reasonable disclosures of transfers, sales, Power of Attorney, monetary instrument ownership, entitlements, full disclosure of actual funding source, terms, costs, commissions, rebates, kickbacks, fees, etc. were and still are properly disclosed to Defendants Laniers.

NOT PRODUCED

37. Assurance and written proof that each servicer and/or sub-servicer of this loan and/or agreement has serviced this loan and/or agreement in accordance with statute, law and the terms of the agreement, monetary instrument and/or title.

NOT PRODUCED

38. Assurance and written proof that this agreement and/or loan account has properly been credited, debited, adjusted, amortized and charged correctly; that the principal and fees have been properly calculated and applied to this loan.

NOT PRODUCED

39. Assurance and written proof that any principal balance has been properly calculated, amortized and accounted for; that no charges, fees or expenses, not obligated by Defendants Laniers in any agreement, have been charged, assessed or collected from this account.

NOT PRODUCED

40. Defendants Laniers request copies of pertinent documents, and answers, certified in writing, under penalty of perjury, to various servicing questions described below:

    For each record kept on computer or in any other electronic file or format, please provide a paper copy of all information in each field or record in each computer system, program or database used by Plaintiff(s) that contains any information on this account number or Defendants Laniers' names.

    1) Any certified or un-certified security, front and back, used for the funding of account **#33170952.**

    2) Any and all "Pool Agreement(s)," including account **#33170952** between **WELLS FARGO, NA, SUNTRUST BANK, MERS** and any government sponsored entity, hereinafter (GSE).

3) Any and all "Deposit Agreement(s)" regarding any "Pool Agreement" including account **#33170952, between WELLS FARGO, NA, SUNTRUST BANK, MERS** and any GSE.

4) Any and all "Servicing Agreement(s)" between **WELLS FARGO, NA, SUNTRUST BANK,** MERS and any GSE.

5) Any and all "Custodial Agreement(s)" between, **WELLS FARGO, NA, SUNTRUST BANK,** MERS and any GSE.

6) Any and all "Master Purchasing Agreement" between **WELLS FARGO, NA, SUNTRUST BANK,** LOAN **#33170952** and MERS, and any GSE.

7) Any and all **DEED OF TRUST/SECURITYAGREEMENT** between **WELLS FARGO, NA or SUNTRUST BANK,** LOAN **#33170952** and MERS, and any GSE.

8) Any and all "Commitment to Guarantee" agreement(s) between **WELLS FARGO, NA or SUNTRUST BANK, #33170952** and MERS, and any GSE.

9) Any and all "Release of Document" agreement(s) between **WELLS FARGO, NA** or **SUNTRUST BANK,** LOAN **#33170952** and MERS, and any GSE.

10) Any and all "Master Agreement for Servicer's Principle and Interest Custodial Account" between **WELLS FARGO, NA or SUNTRUST BANK** LOAN **#33170952** and MERS, and any GSE.

11) Any and all "Servicers Escrow Custodial Account" between **WELLS FARGO, NA** or SUNTRUST BANK LOAN **#33170952** and MERS, and any GSE.

12) Any and all "Release of Interest" agreement(s) between **WELLS FARGO, NA** or SUNTRUST BANK LOAN **#33170952** and MERS, and any GSE.

13) Please send to the Purchaser a copy of any and all document(s) establishing any Grantor for this Title **and** any NOTE.

14) All assignments, transfers, allonge, or other document evidencing a transfer, sale or assignment of this loan, monetary instrument or other document that secures payment by Defendants Laniers to this obligation in this account from the inception of this account to the present date.

15) The front and back of each and every canceled check, money order, draft, debit or credit notice issued to any Servicers of this account for payment of any monthly payment, other payment, late charge, fee or expense on this account.

16) The front and back of each and every canceled check, draft, or debit notice issued for payment of closing costs, fees and expenses listed on any and all disclosure statements(s) including, but not limited to, appraisal fees, etc.

17) Front and back copies of all payment receipts, checks, money, orders, drafts, automatic debits and written evidence of payments made by others or Defendants Laniers on this account.

18) All letters, statements and documents sent to Defendants Laniers by Plaintiff(s)' company.

19) All letters, statements and documents sent to Defendants Laniers by your agents, attorneys or representatives of Plaintiff(s)' company.

20) All agreements, contracts and understandings with vendors that have been paid for any charge on this account from the inception of this account to the present date.

21) All account servicing records, payment payoffs, payoff calculations, payment records, transaction histories, account histories, accounting records, ledgers, and documents that relate to the accounting of this account from the inception of this account until present date.

22) All account servicing transaction records, ledgers, registers and similar items detailing how this account has been serviced from the date of inception of this account until present date.

NONE OF THE NUMBERED DOCUMENTS OR INFORMATION WERE PRODUCED

Further, In order to conduct the audit and review of this account, and to determine all proper amounts due, Defendants Laniers need the following answers to questions concerning the servicing and accounting of this account from its inception to the present date. Accordingly, can you please provide, in writing, the answers to the questions listed below.

ACCOUNT ACCOUNTING & SERVICING SYSTEMS

1) Please identify each account accounting and servicing system used by any Plaintiffs ever claiming a security interest and any sub-servicers or previous servicers from the inception of this account to the present date, so that experts can decipher the data provided.
2) For each account accounting and servicing system identified by any Plaintiffs ever claiming a security interest and any sub-servicers or previous servicers from the inception of this account to the present date; please provide the name and address of the company or party that designed and sold the system.
3) For each account accounting and servicing system used by any Plaintiffs ever claiming a security interest and any sub-servicers or previous servicers from the inception of this account to the present date, please provide the complete transaction code list for each system so that this account can be adequately audited.

NONE OF THE INFORMATION REQUESTED IN THIS SECTION WAS PRODUCED

DEBITS & CREDITS

1) In a spreadsheet form or in letter form in columnar format, please detail for Defendants Laniers each and every credit on this account and the date such credit was posted to this account, as well as the date any credit was received. This data must be provided back to the

original mortgage, prior to the modification issued on August 11, 1997. The original mortgage was issued on April 30, 1990.

2) In a spreadsheet form or in letter form in a columnar format, please detail for each and every debit on this account and the date debit was posted to this account as well as the date any debit was received.
3) For each debit or credit listed, please provide Defendants Laniers with the definition for each corresponding transaction code Plaintiff(s)' utilize.
4) For each transaction code, please provide Defendants Laniers with the master transaction code last used by any Plaintiffs ever claiming a security interest or previous servicers.

NONE OF THE INFORMATION IN THIS SECTION WAS PRODUCED

LATE FEES

For purposes of questions below dealing with late fees, please consider the terms late fees and late charges to be one in the same.

1) Have you reported the collection of late fees on this account as interest in any statement to Defendants Laniers or to the IRS? Yes or No?
2) Have any previous servicers or sub-servicers of this loan reported the collection of late fees on this account as interest in any statement to Defendants Laniers or to the IRS? Yes or No?
3) Do you consider the payment of late fees as liquidated damages to you for not receiving payment on time? Yes or No?
4) Are late fees considered interest? Yes or No?
5) Please detail for Defendants Laniers in writing what expenses and damages you incurred for any payment made that was late.
6) Were any of these expenses or damages charged or assessed to this account in any other

way? Yes or No?

7) If yes, please describe what expenses or charges were charged or assessed to this account?

8) Please describe for Defendants Laniers in writing what expenses any Plaintiffs ever claiming a security interest or other undertook due to any payment made, which was late or returned to Defendants Laniers?

9) Please describe for Defendants Laniers in writing what damages any Plaintiffs ever claiming a security interest or others undertook due to any payment made, which was late or returned to Defendants Laniers?

10) Please identify for Defendants Laniers in writing the provision, paragraph, section or sentence of any note, or any agreement signed authorizing the assessment or collection of late fees?

11) Please detail and list for Defendants Laniers in writing each separate late fee assessed to this account and for which corresponding payment period or month such late fee was assessed from the inception of this account to present date.

12) Please detail and list for Defendants Laniers in writing each separate late fee collected from this account and for which corresponding payment period or month such late fee was collected from the inception of this account to the present date.

13) Please detail and list for Defendants Laniers in writing any adjustments in late fees assessed and on what date such adjustments were made and the reason for such adjustments.

14) Has interest been charged on any late fee assessed or charged to this account? Yes or No?

15) Is interest allowed to be assessed or charged on late fees to this account? Yes or No?

16) Have any late charges been assessed to this account? Yes or No?

17) If yes, how much in total late charges have been assessed to this account from the inception of this account until present date? **PLEASE PROVIDE THE AMOUNT.**

18) Please provide Defendants Laniers with the exact months or payment dates Plaintiff(s) or other previous servicers of this account claim Defendants Laniers have been late with a payment from the inception of this account to the present date.

19) Have late charges been collected on this account from the inception of this account until present date? Yes or No?

20) If yes, how much in total late charges have been collected on this account from the inception of this account until present date?

NONE OF THE INFORMATION IN THIS SECTION WAS PRODUCED

This request is continuing in nature and applies to documents as described above that hereafter are obtained by Plaintiff(s).

NOTES: The few documents provided to the Laniers have answered a few questions and served to corroborate the facts described by the Laniers. Even though it is clear that whatever transfer may have occurred as a result of the numerous mergers from Heritage Federal to Suntrust/Wells Fargo, listed ONLY the 213 Lake Villa Road property as the alleged mortgaged property, the notes and letters (some with evidence of forgery) produced by the various banks in trying to rectify the mistake only made the mistake worse. The Lanier's request to Heritage Federal was to release the 211 Lake Villa Road property and the Chester property. However, at some point, one of the involved banks after Heritage Federal confused the issue, and assumed the Laniers were trying to remove both lake properties, leaving only the Chester farm under lien. Even one of the documents states that the bank at that time (there are no identifying dates or names to determine which bank this document pertains to) did not want the Chester property in its portfolio and requested that it be removed. However, someone later added the word "Denied" to this internal request,

apparently based on the mistaken thought that the request was to retain ONLY the Chester property under lien.

RELIEF REQUESTED

Therefore, Defendants Laniers respectfully request the following:

1. That Plaintiff(s) be compelled to provide the above-requested information. Defendants Laniers have requested most of this information in a Qualified Written Request dated March 24, 2011, and Plaintiffs' deficient response consisted of a computer printout of a payment history dating to 2009 and a copy of the mortgage. Plaintiffs were notified of their deficiency, and failed to respond in any manner.
2. That Plaintiffs be required to correct and withdraw actions resulting in the Substitution of Plaintiff Order granted by a court and judge without jurisdiction in this matter.
3. That an Order stating that failure by Plaintiff to completely disclose information requested above will result in this foreclosure case being dismissed in its entirety in compliance with Civil Rule 17.
4. For a temporary restraining order, preliminary and permanent injunction preventing Plaintiff(s), or anyone acting under or in concert with them, from collecting on the subject loan and from causing the Properties to be sold or assigned to a third party.
5. For an order stating that Plaintiff(s) must not report to any credit reporting agency anything of a negative nature against Defendants, and that they must repair any previously reported negative information.
6. For such other and further relief as the Court may deem just and proper.

Respectfully,

Cathy G. Lanier
172 Belle Chase Drive
Lexington, SC 29072
803-315-3636
803-359-7031 (fax)
cathy@tsisc.com
Pro Se

Randy D. Lanier
172 Belle Chase Drive
Lexington, SC 29072
803-315-7949
803-359-7031 (fax)
Pro Se

Lexington, SC
November 28, 2012

April 22, 2013 letter from Cathy Lanier to the Court

(34)

172 Belle Chase Drive
Lexington, SC 29072
April 22, 2013

The Honorable James O. Spence
Lexington County Judicial Center
205 E Main St Suite 204
Lexington, SC 29072-3557

Hand-Delivered and emailed to Judge Spence
Emailed and mailed by USPS to Dean Hayes, Korn Law Firm

RE: Case No: 2011-CP-26-0517

Dear Judge Spence,

I sent you an email earlier with the bulk of this information, and as promised, have pasted in the entirety of the text of that email for your records. Please read below the email for information discovered after it was assembled.

Judge Spence,

You had asked for a status on today's date, after granting Korn Law Firm an additional grace period to comply with my Motion to Compel them to produce documents proving their standing to represent any of the Plaintiffs in this matter, as well as to produce documentation proving that any of the Plaintiffs have standing to pursue a foreclosure in this matter. Please accept this email as my status:

After waiting nearly 5 months for discovery documents, I still do not have them in hand as of today. We have both been led to believe that these documents have been in possession of Korn Law Firm now for many months, but they have again waited until the last minute of your deadline and unrealistically expected to be able to email all this documentation, or so they say. I believe this is yet another dilatory tactic to buy them more time to attempt to prove something for which there is no evidence or proof. Because of this blatant disregard of the law, I respectfully urge you to dismiss this case immediately, with prejudice against Korn and the Plaintiffs.

However, if you do agree to grant them additional time to produce what was asked of them in late November, and asked again, by you, to produce by today, I offer this brief analysis of what they have shown to me today:

Item 8 of their response indicates that they will not produce the original note for my or a documentation expert's examination. That alone indicates to me that, in all likelihood, they do not HAVE the original note, as I would have no way to verify that the document that was shown to me over a year ago was the original or not. I do recall it appearing to have signatures, but in today's world of high quality copiers and scanners, it could well have been a copy, as there were no endorsements on the note as I can recall. The lack of endorsements would show it has not been monetized, and therefore has created no burden on the originating bank, any of the current Plaintiffs, or any other financial institution. I demand to have the opportunity to have this document examined by a documents expert, and also to see the full audit of this document. I do know that the document shown to me had no indication of any transfers from Heritage Federal, so even if it was an original, the proper chain of title

has not been maintained to those Plaintiffs currently making claim to my property, so it is worthless. The law is not vague regarding this matter. If you do not CURRENTLY hold the original note with appropriate transfers to you having taken place in the public record, you have no claim.

In their response, they have also indicated they are refusing to show certain documents that are very necessary to this case, also indicating those documents are missing from the file, and invalidating the loan. It is also suspicious, that until receiving this email just a short while ago, the only correspondence from any of those involved in this case is a letter I received in the mail on Saturday from Suntrust, urging me to contact them for a loan modification. This, to me, admits they know they have no note, they have no standing, and are trying to trick me into executing a new note with them to give them claim to something for which they have no current claim.

Item 9 in their response indicates they will not prove that Korn Law Firm has the right to represent the Plaintiffs in this matter. I have a right to know that whomever is serving as a debt collector has the authority to collect debts on behalf of the Plaintiff, so this response is unacceptable as well.

Judge Spence, I basically stopped reading their "response" after seeing those two matters so casually dismissed. I would aver that Korn Law Firm and the Plaintiffs in this case are taking a lackadaisical approach to what is a very serious matter to me, and attempting to railroad me into a situation that is unfair and would result in someone with no proof of claim taking my property. At what point does this end? This is very disruptive to my and my husband's lives and we want to be able to put this behind us and move on. Will you please consider my request to dismiss this foreclosure and award us quiet title so we can move forward with our lives?

Thank you for your consideration,

Respectfully,

Cathy Lanier
803-315-3636

I will copy the entire text of this email into letter format and deliver it to the Courthouse to be placed in the record, and will bring you a copy as well. I was just anxious to let you know the status by today's deadline.

Shortly after sending the email, I opened my mail received today. I have included a scanned copy of a correspondence awarding us $400 as a settlement for deficient mortgage servicing and foreclosure processes from the consulting company hired by federal banking regulators, specifically the Office of Comptroller of the Currency and the Board of Governors of the Federal Reserve System. They have, in effect, admitted criminal wrongdoing in the handling of our situation, and have sent us a check in an attempt to settle. Given the sheer number of people impacted by SunTrust's misdeeds, for our share to be $400, there must have been one heck of a fine issued to SunTrust. Please accept this as further evidence of wrongdoing on SunTrust's part, not only to us,

but apparently to a whole lot of other people. Awarding us clear deed to our property would seem an inadequate punishment for all their criminal acts, but it would surely allow us to sleep at night and move on with our lives. I sincerely hope you will consider helping teach these mortgage companies a lesson. They are abusing your court and our lives, and you have the power to put a stop to it, at least in our small case.

Respectfully,

Cathy G. Lanier
803-315-3636

Paying Agent – Rust Consulting, Inc.
P.O. Box 8064
Faribault, MN 55021-9464

IMPORTANT PAYMENT AGREEMENT INFORMATION ENCLOSED

T

* 0 4 0 0 0 5 9 9 1 2 - 6 2 7 2 9 7 *

CATHY G LANIER
172 BELLE CHASE DR
LEXINGTON, SC 29072-7945

Independent Foreclosure Review

April 19, 2013

Your payment is enclosed.

Reference Number: 0400059912
Property Address:
213 LAKE VILLA RD
LEXINGTON SC 29072

Si usted habla español, tenemos representantes que pueden asistirle en su idioma.

Dear Cathy G Lanier,

You were recently sent a notice that you are eligible to receive a payment as a result of an agreement between federal banking regulators and SunTrust in connection with an enforcement action related to deficient mortgage servicing and foreclosure processes.

This letter includes your check. It also explains the amount of the payment, why you are receiving a payment, how to cash the check, and other important information and disclosures.

Your payment is: $400.00.

Why you are receiving a payment

Earlier this year, SunTrust entered into an agreement with federal banking regulators—the Office of Comptroller of the Currency and the Board of Governors of the Federal Reserve System. This agreement resolved the Independent Foreclosure Review required by the regulators. Additional information about this agreement can be found at www.occ.gov and www.federalreserve.gov.

Regulators determined your payment amount based on the stage of your foreclosure process and other considerations related to your foreclosure.

How to cash the check

You must cash or deposit the check within 90 days, or the check will be void. All borrowers listed on the check must sign it to cash it.

The payment amount is final.

There is no process to appeal the payment.

Continued on reverse side

OCC2013 A 12T1 000002270

Fund 1 Independent Foreclosure Review Payment QSF
Loan Servicer: SunTrust
P.O. Box 8064
Faribault, MN 55021-9464

The Huntington National Bank
Westerville, OH 43081

56-1512
441

Check No. 0627297

DATE	CLAIM NUMBER	AMOUNT
April 19, 2013	0400059912	$400.00

VOID AFTER NINETY (90) DAYS
NOT VALID FOR AMOUNT OTHER THAN $400.00
Payee's signature required on back in order for this instrument to be valid.

Pay: FOUR HUNDRED DOLLARS AND NO CENTS
Pay to the order of: CATHY G LANIER
RANDY D LANIER

Paul V

Authorized Signature

⑈0627297⑈ ⑆044115126⑆ 018930012 73⑈

Important information

- By cashing or depositing the check, you do not waive any legal claims against your servicer and you may pursue additional actions related to your foreclosure.
- Cashing or depositing the check may affect your taxes or public assistance benefits. Neither the paying agent —Rust Consulting, Inc., nor the regulators can advise you on tax liability or any effect on public assistance. If you have questions, you may consult a tax advisor or qualified individual or organization. You may also visit www.independentforeclosurereview.com/taxinfo for information about potentially taxable components of your payment. If required, tax documentation, such as a Form 1099, will be sent to you in January 2014.
- You may be eligible for foreclosure prevention assistance. To explore your options, contact a SunTrust specialist at 1-800-634-7928.
- If you need additional help with foreclosure prevention, please contact the Homeowner's HOPE Hotline at 1-888-995-HOPE (4673) (or at www.makinghomeaffordable.gov) and they can put you in touch with a U.S. Department of Housing and Urban Development approved nonprofit organization that can provide **free assistance.**
- Please refer this letter to your attorney or authorized representative, if you are represented by an attorney or other authorized third-party representative regarding a foreclosure, bankruptcy case involving this mortgage loan, or the Independent Foreclosure Review.
- This payment does not mean that you necessarily suffered financial injury or harm.

Other disclosures

This letter is not an attempt to collect a debt or to impose personal liability for any obligation, including, without limitation, any obligation that was discharged, or is subject to an automatic stay in bankruptcy under Title 11 of the United States Code.

Information you provided as part of the Independent Foreclosure Review may not be used for any other purpose. If you would like SunTrust's internal records to include updated contact or personal information for future correspondence or notices, then you must separately provide your new contact or personal information directly to the servicer by calling 1-800-634-7928.

If you have any questions, please call the paying agent—Rust Consulting, Inc.—at 1-888-952-9105, Monday through Friday, 8 a.m. - 10 p.m. ET or Saturday, 8 a.m. - 5 p.m. ET.

Si tiene preguntas, puede llamar al número de teléfono 1-888-952-9105 para hablar con un representante.

Assistance is also available from the toll-free number in more than 200 languages, including Chinese, Korean, Vietnamese, Tagalog, Hmong, and Russian.

提供中文幫助。	Trợ giúp bằng tiếng Việt.	Pab muaj cov neeg hais lus Hmoob pab rau koj.
한국어 도움을 제공합니다.	Available ang tulong sa wikang Tagalog.	Помощь на русском языке.

Sincerely,

Paying Agent—Rust Consulting, Inc.

A 12T1 000002270

Schedule B of Defendant's Bankruptcy Petition

In re Cathy G Lanier, Debtor

Case No. _____ (If known)

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.	X			
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Joint Checking account, Regionsl Bank, Lexington, SC	J	800.00
3. Security deposits with public utilities, telephone companies, landlords, and others.		SCE&G (public Utility); Windstream (Telephone)	J	300.00
4. Household goods and furnishings, including audio, video, and computer equipment.		Computer equipment used in business; furniture; personal residence	J	8,000.00
5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		Clothihg; Personal Residence	J	7,000.00
7. Furs and jewelry.		Wedding jewelry; inherited fur	J	12,000.00
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			

EXHIBIT C PAGE 11 OF 61

In re Cathy G Lanier, Debtor

Case No. _____ (If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		Interest in Technology Solutions, Inc. Company has shown losses for last 6 years	W	-2,000,000.00
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A – Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

EXHIBIT C PAGE 12 OF 61

B 6B (Official Form 6B) (12/07) -- Cont.

In re Cathy G Lanier, Debtor

Case No. _____ (If known)

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		2 cars used for transportation to work; Located at personal residence	J	50,000.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			
		30 continuation sheets attached Total➤		$ -1,921,900.00

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

EXHIBIT C PAGE 13 OF 61

In re Cathy G Lanier, Debtor

Case No. _____ (If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under: *(Check one box)*
- ☐ 11 U.S.C. § 522(b)(2)
- ☑ 11 U.S.C. § 522(b)(3)

☑ Check if debtor claims a homestead exemption that exceeds $146,450.*

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Personal Residence	11 USC 522(b) (3)	950,000.00	950,000.00
2 cars	11 USC 522(b) (3)	50,000.00	50,000.00
Personal property: Furniture, clothing, jewelry	11 USC 522(b) (3)	19,000.00	19,000.00
Computer equipment vital to business	11 USC 522(b) (3)	8,000.00	8,000.00

* *Amount subject to adjustment on 4/1/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

EXHIBIT C PAGE 14 OF 61

Assignment of the Mortgage dated March 16, 2012

2012-03-23 10:37:08:447
REC FEE: $7.00 ST FEE: $0.00
CO FEE: $0.00 Pages: 2
Lexington County R.O.D. Debra M. Gunter
MORTGAGE ASST Bk:Pg 15409:303

Exhibit N

Recording Requested By:
SUNTRUST MORTGAGE, INC.

When Recorded Return To:

SUNTRUST MORTGAGE, INC.
1001 SEMMES AVE.
RVW-5033
RICHMOND, VA 23224

CORPORATE ASSIGNMENT OF MORTGAGE

Lexington, South Carolina
SELLER'S SERVICING #:0033170952 "LANIER"

Date of Assignment: March 16th, 2012
Assignor: SUNTRUST BANK AS SUCCESSORS IN INTEREST TO HERITAGE FEDERAL SAVINGS AND LOAN ASSOCIATION at 303 PEACHTREE CENTER AVE, ATLANTA, GA 30308
Assignee: SUNTRUST MORTGAGE, INC. at 1001 SEMMES AVENUE, RICHMOND, VA 23224

Executed By: RANDY D LANIER AND CATHY G LANIER To: HERITAGE FEDERAL SAVINGS AND LOAN ASSOCIATION
Date of Mortgage: 08/11/1997 Recorded: 08/25/1997 in Book/Reel/Liber: 4297 Page/Folio: 150 as Instrument No.: 1997035343 ReRecorded 09/22/1998 in Book/Reel/Liber: 4869 Page/Folio: 49 as Instrument No.: 1998045503 In the County of Lexington, State of South Carolina.

Property Address: SEE EXHIBIT "A" ATTACHED, LEXINGTON, SC 29072

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Mortgage having an original principal sum of $425,000.00 with interest, secured thereby, with all moneys now owing or that may hereafter become due or owing in respect thereof, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's beneficial interest under the Mortgage.

TO HAVE AND TO HOLD the said Mortgage, and the said property unto the said Assignee forever, subject to the terms contained in said Mortgage.

SUNTRUST BANK AS SUCCESSORS IN INTEREST TO HERITAGE FEDERAL SAVINGS AND LOAN ASSOCIATION
On March 16th, 2012

By: Lancaster
Sandra Lancaster
Vice President

WITNESS
Dorothy West

WITNESS
Brandon Pair

STATE OF Virginia
COUNTY OF Richmond (City)

On March 16th, 2012, before me, Chiquita L Cross, a Notary Public in and for City of Richmond in the State of Virginia, personally appeared Sandra Lancaster, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

CHIQUITA L. CROSS
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES NOV 30 2013

BK4297PG156

LEGAL DESCRIPTION EXHIBIT 'A'

0013689 Bk: 0871 Pg: 0167

PARCEL 1: All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being located in the County of Lexington, State of South Carolina, said lot being shown on a plat prepared for Cemita, Inc. by Associated Engineers and Surveyors, dated June 26, 1972, and recorded in the office of the RMC for Lexington County in Plat Book 122-G at Page 115; and being more particularly shown on a plat prepared for Randy D. Lanier and Cathy G. Lanier by Survey & Mapping Services of South Carolina, Inc., dated May 7, 1997, to be recorded, and according to said latter plat, having the following boundaries and measurements, to-wit: On the North by a 20' Private Road (Lake Villa Road) whereon it measures in a broken line a distance of 70.46 feet; on the East by property now or formerly Lanier whereon it measures 139.22 feet; on the Southwest by the waters of Lake Murray whereon it measures 176.35 feet; and on the Northwest by property now or formerly BB&T whereon it measures 106.40 feet; all measurements being a little more or less.

Being the same property conveyed to the mortgagors herein by deed of Charles Edwin Puryear and Jan M. Puryear, dated and recorded simultaneously herewith

TMS: 3418-2-14

PARCEL 2: All that certain piece, parcel or lot of land, together with any improvements thereon, situate, lying and being near the City of Columbia, in the County of Lexington, State of South Carolina, and being shown and designated as Lot 11 on a plat for D. E. Efird by Richard M. Lee dated May 7, 1957, and recorded in the Office of the RMC for Lexington County in Plat book 77-G at Page 83; and being more particularly shown on a plat prepared for Randy D. Lanier and Cathy G. Lanier by Robert E. Collingwood, Jr., dated August 4, 1987, and recorded in the Office of the RMC for Lexington County in Plat Book 200-G at Page 270, and having the same boundaries and measurements as shown on said latter plat, reference to which is hereby craved for a more complete and accurate description, all measurements being a little more or less.

Being the same property conveyed to the mortgagors herein by deed of John W. Preston, Jr. and Claudia S. Preston, recorded 8-14-87 in Deed Book 916, Page 189.

TMS: 3418-3-11

PARCEL 3: All that certain piece, parcel or lot of land, with dwelling house and all other improvements thereon, containing 131.736 acres, more or less, lying and being situate on the eastern side of Secondary Road S-12-35, known as Knox Station Road, in the County of Chester, State of South Carolina. Said parcel being more particularly shown on a plat thereof made by Ashmark Land Surveyors dated June 26, 1972, recorded in Plat Cabinet B, Slide 178, Page 7, Office of the Clerk of Court for Chester County, South Carolina, and having the courses and distances, metes and bounds as shown on said plat which is incorporated hereto by reference.

Being the same property conveyed to the mortgagors herein by deed of James A. Gibson, recorded 8-13-92 in Deed book 625, Page 138

TMS: 107-00-00-026-000

DERIVATION: RECORD BK 4297 PAGE 167

Appellees Second Motion to Amend, dated July 12, 2012

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS 11TH JUDICIAL CIRCUIT 2012 JUL 12 A 11: 01 CASE NO.: 2011-CP-32-156
Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1, Plaintiffs, Vs. Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, And Job Development Loan Fund, Inc., Defendants.	RESPONSE TO CERTIFICATION OF MORTGAGOR NON-COMPLIANCE (Administrative Order 2011-05-02-01) MOTION TO AMEND ANSWER MOTION TO DISMISS ALL FORECLOSURE ACTIONS BY PLAINTIFFS REQUEST FOR JURY TRIAL

COPY

Defendants Cathy G. Lanier and Randy D. Lanier, having gained information as of February, 2012 that was not available to them at the time of their original answer to the Foreclosure Complaint, respectfully amend their answer and offer the following history of this case to show why Plaintiff has no standing or right to bring this action, and has perjured itself in its submission of the Certification of Mortgagor Non-Compliance. Defendants apologize for the lack of dates in the recounts of the earlier portions of the history, as they no longer have access to records going back that far. Defendants have requested this information from Plaintiffs, but have received none of it, indicating also that their records are inaccurate and incomplete. This proves they have no ability to verify the amount owed on any mortgage they claim to own, and without verification, they cannot proceed to a foreclosure action.

- One of the subject properties, 211 Lake Villa Road, Lexington, SC was originally mortgaged in August of 1987 with Heritage Federal Savings and Loan. Defendants were instructed to make

payments to Heritage Federal Bank ("Heritage Federal") at a later date. Due to their good relationship with Heritage Federal, additional properties were added to the same loan. First was 2651 Knox Station Road, Chester, SC, and next was the adjoining property to the original property, 213 Lake Villa Road, Lexington, SC.

- Due to the fact that Defendants had pre-paid a great deal of principal for this loan, Heritage Federal was in the process of releasing two of the properties (211 Lake Villa Road and 2651 Knox Station Road) when Defendants received notice to begin making payments to Central Carolina Bank ("Central Carolina"), and did so, even though there was never a transfer, an assignment or any legal instrument recorded to indicate this mortgage had been sold, assigned or transferred. Defendants were not notified of a transfer or assignment, but were simply provided a new name and address for payment purposes.
- At some point after that, Defendants were similarly instructed to make payments to Suntrust Bank ("Suntrust") as a result of their merger with Central Carolina Bank. Defendants did so, but there was still never a transfer, an assignment or any legal instrument recorded to indicate this mortgage had been sold, assigned or transferred. There was no official notice of a transfer or assignment sent to Defendants.
- Defendants never received the promised mortgage satisfactions removing the two afore-mentioned properties from Heritage Federal, and assumed that process had been "lost in the shuffle" of the sales and/or mergers that moved the loan to Central Carolina and subsequently to Suntrust. Defendants contacted Suntrust and were given the name of Chandra Smith to contact to complete this process. On March 19, 2007, Defendants faxed a letter (see Exhibit A) to Ms. Smith giving her the history and asking for the mortgage satisfactions on the two properties that Heritage Federal was in the process of releasing from the lien. Defendants later learned that Ms.

Smith was not the appropriate contact, and were passed around among a number of others before arriving at a Sami Asad, who replied to the request by email. In all communications with Suntrust, the only property they listed as being under the lien was 213 Lake Villa Road, clearly indicating that Heritage Federal had, in fact, removed the other two properties as they indicated they would do, prior to the sale and/or merger that moved the payments to Central Carolina and subsequently to Suntrust. Suntrust representatives admitted they had no record of the other two properties on their computer systems, but for some reason would not comply with our request to clean up the paperwork. On April 6, 2007, after having received a runaround from Suntrust, and now receiving an email indicating that it would cost Defendants a great deal of expense to have Suntrust correct an error that was clearly Suntrust's error, Defendants wrote to Sterling Edmunds, Jr. the President and CEO of Suntrust to attempt to get this matter cleaned up once and for all (see Exhibit B).

- Mr. Edmunds referred Defendants to others within Suntrust, but they were adamant about Defendants paying to perform unnecessary appraisals, property evaluations, etc. to clean up a mess Suntrust inherited and was bound to correct by law. Defendants eventually just gave up the fight, all the while continuing to pay the mortgage payments according to the terms of the note with Heritage Federal, and paying additional principal as well.
- In late 2008, due to the banking and economic crisis that dealt a huge blow to small businesses, Defendants' businesses were in a decline. Without reason or warning, current lines of credit being paid according to the terms of their agreements were closed, thereby removing all source of cash-flow funding required to sustain Defendants' businesses. Defendants contacted all creditors to attempt to refinance or restructure mortgages to be able to weather the storm. One of those contacted was Suntrust. At the time, Defendants had paid the mortgage payments for over 22 years without fail, had never made a late payment, were not behind on payments to

Suntrust, and had paid enough principal in advance for there to be a less than $165.000 balance on the mortgage (which is not verified. because Suntrust has failed to provide the full accounting requested and required in order to proceed with a foreclosure) The mortgage was tremendously over-collateralized with three (3) properties totaling a conservative estimate of $2M because Suntrust had refused to release the two properties that Heritage Federal had authorized to be released from the lien. In fact, the only reason Defendants contacted Suntrust at all, was to try to work out an arrangement to pay a large escrow for property taxes that Suntrust had informed Defendants would come due in September of 2010, in one payment exceeding $8,000. Defendants spent the better part of 2010 trying to find the authorized person at Suntrust to discuss a loan modification to allow the real estate taxes due for the properties to be rolled into the loan, keeping the payments the same. With their excellent payment history, still having never missed or been late with a payment for the principal and interest required, they assumed this would be a routine request. However, the situation was quite different. Defendants would be told they were working with the person with the authority to help them, only to find that was not the case after months of sending documentation and requested information. Finally, Defendants received a notice that their required payment for the escrowed tax payments would be due in one payment in September of 2010. Again, Defendants requested that this escrow be spread over more months, or added to the end of the loan, extending the time to pay, but again, nothing was offered by Suntrust to prevent a default by Defendants.

- In September of 2010, Defendants sent only the $1400 payment to cover interest and principal (plus a bit more principal), as they could not afford the tax escrow of over $8000 in addition to the regular payment. That payment was returned, with a letter indicating that any and all payments for less than the amount including the escrow would be returned.

- At that point, on November 19, 2010, Defendants wrote a letter to James M. Wells, III, the President, CEO and Chairman of the Board for Suntrust, requesting that he step in and apply some logic to this situation (see Exhibit C). Defendants were offering many reasonable solutions, were able to continue to pay the interest and principal required, but simply needed help dealing with the huge escrow owed. One of the solutions was to have Suntrust finally rectify the mistake made that was tying up the two properties that were supposed to be released from the lien, so Defendants could sell one of those properties to pay off the Suntrust mortgage in full. However, in late November of 2010, Defendants received a phone call from someone from Suntrust's executive team, indicating **that Suntrust had no authority to do what Defendants were asking, because it did not own Defendants' loan** (emphasis added). When Defendants then requested to know who owned their loan, they were told that Suntrust was not at liberty to divulge that information. Defendants informed the caller that it was their right to know the owner of their mortgage, and if necessary would seek legal assistance to find out. The caller then said she would pass that information along and send a letter to Defendants with the information or how to obtain it. Again, there was nothing on record in the Lexington County or Chester County Registrars of Deeds to indicate the loan had ever been transferred to Suntrust, much less to yet another party.
- In December of 2010, Defendants were notified that the owner of their loan was Wells Fargo, and were provided a mailing address to contact them. This letter (see Exhibit D) also refers to force-placed insurance that was being charged to the Defendants, even though Defendants had removed the structure on the property in anticipation of building a new home there, and it is impossible to insure a vacant lot. The premium for this illegally placed insurance made up a significant percentage of the escrow demanded by Suntrust that caused Defendants to be in default. Defendants subsequently had to file a formal complaint with the SC Department of

Insurance to force Suntrust to remove the force-placed insurance. and Defendants learned of a potential "inside deal" with the insurer that implied that Suntrust was engaged in a scheme to defraud the public by charging for unwarranted or excess insurance through a business affiliate of their company. The SC Department of Insurance concurred with Defendants' findings, and forced Suntrust to reimburse the force-placed insurance premiums and remove their fraudulent insurance. There was indication that sanctions may be applied to both Suntrust and their affiliate insurance company, but Defendants have no way to verify whether or not that occurred.

- Defendants contacted Wells Fargo by phone to try to learn who to work with to resolve this issue, but the only response received was a notice of their intention to foreclose on all three properties because Suntrust had returned mortgage payments that did not include the escrow amount. To date, Defendants have never received a communication, either written or verbal, from Wells Fargo directly, so it was impossible to engage in any sort of negotiation to work out a resolution to this issue. It is clear they are in the business to simply take property from people who are making every effort to do the right thing, and Defendants' three (3) properties must seem to be a prize to them – valued at over $2M, with an outstanding (but unverified) loan balance of less than $165,000. Defendants were in a position to keep the mortgage current by paying the interest and principal amounts, but their payment in September of 2010 was returned, with a letter indicating that all subsequent payments not containing the full amount of the escrowed taxes and illegally placed insurance would be returned. In effect, Suntrust, obviously acting as an agent or third-party debt collector for Wells Fargo, would not allow Defendants to pay toward their loan.
- In January of 2011, a complaint and Lis Pendens was filed against Defendants by the Plaintiff Wells Fargo, NA, but all information brought forth made it clear that Suntrust was, in fact, trying to enforce a security interest in this loan. It even appeared that Suntrust had hired Korn

Law Firm (third party debt collector) to enforce this action on behalf of Suntrust. Defendants answered this complaint and requested various documents proving Suntrust's standing to bring a foreclosure action against Defendants. Defendants sent Plaintiffs, via Korn Law Firm, a Qualified Written Request (as per RESPA) in an attempt to sort out who, exactly owned the loan in question, so they could deal with the real party in interest. Suntrust responded to the QWR, and their response was insufficient to answer any of Defendants' questions.

- In August of 2011, Defendants received an email from Korn Law Firm asking for private and personal information to be completed for Suntrust. Defendant Cathy Lanier responded indicating that she would need to see proof that Suntrust was, in fact, the authority that could make decisions on these matters, as she had been informed before that Suntrust was not, in fact, that authority. None of the forms sent to Defendants by Korn Law Firm referred to Wells Fargo in any way, yet they were still being presented as the owner of the loan. (see Exhibit E)
- Defendants requested to see the original loan documents and all assignment, transfers, etc. indicating any standing of Suntrust or Wells Fargo to enforce an action against Defendants. Defendant, Cathy Lanier was invited to Korn Law Firm in October of 2011 to view what was represented to her over the phone and by email, the original note proving Suntrust's and/or Wells Fargo's standing to enforce the note. Ms. Lanier viewed the note, and found that it might likely be the original "wet ink" note, but it was the note with Heritage Federal Savings and Loan only. Markings on the note showed it had been altered without knowledge of the Defendants, thereby making it void. Additionally, attorneys for the Plaintiffs could not produce any documentation whatsoever showing a legal transfer or assignment of interest in this note to any of the entities claiming to be the real party in interest throughout the life of the loan. Specifically, there was no transfer from Heritage Federal Savings and Loan, to Heritage Federal Bank, to Central Carolina Bank, to Suntrust, or to Wells Fargo. A recent search at the

Lexington County Registrar of Deeds' website has located a recently filed Assignment of Mortgage (filed on March 23, 2012, see Exhibit F) that was clearly done in anticipation of this new action to try to establish standing and fraudulently prove Suntrust to be the real party in interest, where there is not a clear audit of deed or mortgage to prove same. This document shows an assignment directly from Heritage Federal Savings and Loan to Suntrust, which clearly is fraudulent. By the time Suntrust was involved with this loan, both Heritage Federal Savings and Loan, and its immediately successor, Heritage Federal Bank, were dissolved. The new document also fails to attribute any ownership to Wells Fargo, clearly exempting them from this case, even though Suntrust has specified in writing that Wells Fargo is the legal owner of this mortgage, and it is Wells Fargo that appears to be bringing this action. This filing is therefore fraudulent, and meant to perpetrate the fraud by Wells Fargo and Suntrust, to claim ownership of a security interest in these properties, where there is none. None of these parties have proven any damage in this matter either, indicating that in all likelihood, this mortgage was paid in full and satisfied even prior to an action being filed by Suntrust and Wells Fargo, which private agreements with these banks, as well as Defendants' records, indicate.

- Defendants were contacted several times by Suntrust in an effort to have them divulge personal and private information, even after Suntrust admitted they had no authority to negotiate on behalf of the lender, Wells Fargo. Defendants requested many times for Suntrust to prove their standing and ownership, otherwise they would only deal with the party claiming to own their loan, Wells Fargo. To date, Defendants have received no correspondence from Wells Fargo at all. Yet Korn Law Firm, acting as a third-party debt collector, has stated that Defendants have "failed, refused, or voluntarily elected not to participate in any foreclosure intervention process." Defendants have yet to receive from Wells Fargo, the named Plaintiff in this action, any offer of foreclosure intervention, therefore the Certification of Mortgagor Non-Compliance

is fraudulent. Korn Law Firm has committed perjury and their Certification is without merit. As outlined above, Defendants wasted months (nearly a year) attempting to deal with Suntrust to resolve this issue, even prior to a payment problem, only to be told, in writing, that Suntrust had no authority to negotiate these matters. Defendants simply insisted (as they are guaranteed by law) that they be allowed to deal directly with Wells Fargo, who has and continues to claim (by virtue of their being the Plaintiffs in this action) ownership of this loan.

Therefore, Defendants respectfully request that Plaintiffs be enjoined from proceeding toward any foreclosure action, based on the following:

PLAINTIFFS HAVE FAILED TO SHOW THAT THEY ARE THE REAL PARTY IN INTEREST

Defendants have requested over and over for nearly 18 months, any proof showing that Wells Fargo and/or Suntrust has standing to enforce an action against Defendants concerning the loan between Defendants and Heritage Federal Savings and Loan. Nothing has been produced to show either of these parties have any ownership or security interest in this loan. "Nothing is owed when the proper chain of title does not exist as determined by the Massachusetts Supreme Court when presented with similar issues." *US Bank National Association, Trustee v. Antonia Ibanez, and a consolidated case for ABFC 2005-OPTI Trust, ABFC Asset Backed Certificates, Series 2005-OPTI; in re Kang Jin Hwang,* 396 B.R. 757, 768 (Bankr. C.D. Cal 2008).

A Movant must have both constitutional and prudential standing and be the real party in interest under Fed. R. Civ. P. 17, in order to be entitled to lift-stay relief [citing: *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)]. Constitutional standing under Article III requires, at a minimum, that a party must have suffered some actual or threatened injury as a result of the defendant's conduct, that the injury be traced to

the challenged action, and that it is likely to be redressed by a favorable decision. *Valley Forge Christian Coll. V. Am. United for Separation of Church and State*, 454 U.S 464. 472 (1982).

Beyond the Article III requirements of injury in fact. causation, and redress ability, movant must also have prudential standing, which is a judicially-created set of principles that places limits on the class of person who may invoke the courts' powers. See *Warth v. Seldin*, 422 U.S. 490, 499 (1975). As a prudential matter, a plaintiff must assert "his own legal interest as the real party in interest," *Dunmore v. United States*, 358 F.3rd 1107, 1112 (9th Cir. 2004), as found in Fed. R. Civ. P. 17, which provides "an action must be prosecuted in the name of the real party in interest."

PLAINTIFFS HAVE PROVIDED NO TESTIMONY OR EVIDENCE AND ARE ATTEMPTING TO UTILIZE A THIRD-PARTY DEBT COLLECTOR

According to *Heintz v. Jenkins* (1995) 514 US 291, 299, "A debt collector is moving an action in its own behalf and its own interest and cannot represent a third party. See also, Wilson v. *Draper & PLLC* 443 F.3d 373 (2006). Korn Law Firm is also in violation of Title 15 USCA Ch. 41 part V Section 1692i(b). A debt collector moved an initial communication to collect a debt (Notice to Vacate January 4th, 2010). See *Goldman v F Cohen* 445 F3d 152 (2006). The Supreme Court has said in *Sicox v. Lang* (1889) 78 Cal. 118, 122: "The practice of attorneys verifying for their clients should be discouraged, and to that end, the provisions of the Code should receive a strict construction." Therefore, the Attorney Firm must be enjoined from any action in further unlawful acts against Defendants. See *State ex rel. State Bar of Wisconsin v. Bonded Collections, Inc.*, 36 Wis. 2d 643 (1967), *Carroll v. Wolpoff & Abramson* 961 F.2d (1962).

Based on the facts stated within and the blatant misrepresentation by Korn Law Firm as to their standing and the standing of their client (believed to be Suntrust), Korn Law Firm has grossly abused the judicial foreclosure laws of this state and is not entitled to any claim.

PLAINTIFFS AND THEIR ATTORNEY HAVE COMMITTED FRAUD, PERJURY, MISREPRESENTATION, OR OTHER MISCONDUCT OF AN ADVERSE PARTY

Civil Rule 60 (b) 3 indicates the facts of this case warrant a reversal of any action taken and/or a dismissal of any pending actions based on: (3) fraud, misrepresentation, or other misconduct of an adverse party. The naming of a party that is not a real party in interest to this lawsuit, can be considered nothing less than fraud. Plaintiffs have also misrepresented their standing, substantial facts of the case, and have perjured themselves.

VIOLATION OF TRUTH IN LENDING ACT – 15 U.S.C. §1601 *et seq.*

The loan transaction at issue is a consumer credit transaction subject to the provisions of TILA. Heritage Federal Savings and Loan, Heritage Federal Bank, Central Carolina Bank, Wells Fargo and Suntrust are "creditors" as that term is defined by 15 U.S.C. §1602. The transaction between Plaintiffs and these Defendants was a consumer loan transaction wherein the Plaintiffs extended credit to the Defendants and such credit was secured by an interest purportedly held by the Plaintiffs in the Property.

As a consumer credit transaction, the Plaintiffs were required to provide to Defendants mandatory Truth-in-Lending disclosure statements and notice of the borrower's right to rescind, specifying the date on which the three-day rescission period expires. If the lending institution fails to provide the rescission information, the borrower may rescind the loan within three years after it was consummated. 15 U.S.C. §1635(a) and (f); 12 CFR §226.23(b)(5). If the borrower timely exercises her right to rescind, the security interest giving rise to the right of rescission becomes void. *Ibid.*

In the course of the transaction described herein, Plaintiffs violated TILA in numerous ways, including, but not limited to: Failing to provide required disclosures prior to consummation of the transaction; failing to make required disclosures clearly and conspicuously in writing; failing to timely deliver to Defendants certain notices required by statute; placing terms prohibited by statute

into the transaction; and failing to disclose all finance charge details and the annual percentage rate based upon properly calculated and disclosed finance charges and amounts financed.

Records from the transaction indicate that Plaintiffs extended credit to Defendants without regard to their ability to pay. and even falsified relevant income and asset data to get the loan approved. Defendants are informed and believe and thereon allege that Plaintiffs have a pattern and practice of extending credit to consumers under high rate mortgages without regard to the consumers' repayment ability.

Because of these violations, Defendant has a continuing right to rescind the loan transaction for up to three years after consummation of the transaction. Defendants hereby give notice of rescission by and through this Complaint.

Because of these violations, Plaintiffs are liable to Defendants in the amount of twice the finance charge, actual damages to be established at trial, and costs in accordance with 15 U.S.C. § 1640(a). Defendants are also entitled: Rescission of the loan transaction; an order requiring Plaintiffs to take all actions necessary to terminate any security interest in the Property created under the transaction and a declaration by the Court that the security interest is void; expungement of any foreclosure instruments, including but not limited to any Notice of Default, relating to the transaction from any public record; removal of any derogatory information reported to any credit reporting agency or credit reporting bureau relating to the transaction; the return to Defendants of any money given by Defendants to anyone, including Plaintiffs, in connection with the loan transaction; statutory damages; costs and reasonable attorney's fees; and such other relief as the Court may deem just and proper.

As a result of Plaintiffs' misconduct, Defendants have suffered and continue to suffer damages in an amount to be proven at trial, which they are entitled to recover. Moreover, Plaintiffs'

misconduct was willful, malicious, and outrageous, and therefore punitive damages are warranted and demanded.

As a result of Plaintiffs' misconduct, the loan was void and unenforceable as of its inception, and therefore Defendants are entitled to rescind the loan agreement and promissory note and do hereby demand rescission.

As a result of Plaintiffs' misconduct, Defendants are entitled to declaratory and injunctive relief preventing Plaintiffs from taking any action to collect on the loan, and/or to foreclose upon the Properties, and/or to transfer the Properties.

VIOLATION OF RESPA – 12 U.S.C. §2601 *et seq.*

The loan transaction between Plaintiffs and Defendants is a mortgage loan covered by RESPA. Defendants are not certain at this time exactly which of Plaintiffs was actually the servicer of the loan at any given time, although they believed that the loan servicer was Suntrust at the time of the foreclosure. However, due to the conspiratorial nature of the misdeeds alleged herein, and also due to Plaintiffs' general failure to properly advise Defendants as to the roles and identities of the various entities that were purportedly handling their loan at any given time, these allegations are made as to all Plaintiffs.

Plaintiffs violated RESPA at the time of closing on the sale of the Properties by failing to correctly and accurately comply with disclosure requirements. Plaintiffs violated RESPA, 12 U.S.C. §2605(e)(2) by failing and refusing to provide a written explanation or response to Defendants' Qualified Written Request not later than 60 days after receipt of the request. Defendants are informed and believe, and thereon allege, that Plaintiffs have engaged in a pattern or practice of non-compliance with the requirements of the mortgage servicer provisions of RESPA as set forth in 12 U.S.C. §2605.

As a result of Plaintiffs' failure to comply with RESPA. Defendants have suffered and continue to suffer damages and costs of suit. Defendants are entitled to recover statutory damages of $1,000.00, actual damages in an amount to be determined at trial, and costs and reasonable attorney's fees.

VIOLATION OF FAIR DEBT COLLECTIONS ACT – 15 U.S.C.1692e

In violation of U.S.C. 1692e, 807, Plaintiffs engaged in the false representation of

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

Plaintiff also violated section (5) by threatening to take an action that cannot legally be taken. Plaintiffs also violated section (14) by failing to divulge the true name of the organization collecting the debt, or the owner of the debt.

Plaintiffs also failed to comply with U.S.C. 1692e, 809, by failing to provide verification and validation of the debt they claimed to be owed to them.

SLANDER OF TITLE

Plaintiffs disparaged Defendants' exclusive valid title in 2011, by and through the preparing, posting, publishing and recording of the documents previously described herein, including, but not limited to, the foreclosure Complaint. Said Plaintiffs knew or should have known that such documents were improper in that at the time of the execution and delivery of said documents, Plaintiffs had no right, title or interest in the properties. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Defendants' legal title to the properties. By posting, publishing, and recording, said documents, Plaintiffs' disparagement of Defendants' legal title was made to the world at large. Similarly, the law firm retained by

Plaintiffs is also culpable, as they are in the business of collection of consumer debts, either on behalf of itself or others, and are therefore under the authority of the Fair Debt Collection Practices Act Titles 15 and 18 U.S.C. which requires Korn Law Firm to verify actual ownership and factual. legal debt. Further evidence of Korn Law Firm to verify information is the listing of Job Development Loan Fund, Inc. as a Defendant in this matter. Any tie of these properties to JDLF expired over 20 years ago, as the small loan secured by the original property on the Heritage Federal Savings and Loan mortgage, was paid off within six (6) months of its origination.

As a direct and proximate result of Plaintiffs' conduct in publishing these documents, Defendants' title to the properties has been disparaged and slandered, and there is a cloud on Defendants' title, and Defendants have suffered, and continue to suffer, damages in an amount to be proved including loss of business and business goodwill. As a further proximate result of Plaintiffs' conduct, Defendants have incurred, and will continue to incur, expenses, including reasonable attorney's fees, in order to clear title to the properties. Moreover, these expenses are continuing, and Defendants will incur additional charges for such purpose until the cloud on Defendants' title to the Properties has been removed. The amounts of future expenses and damages are not ascertainable at this time.

As a further direct and proximate result of Plaintiffs' egregious conduct, Defendants have suffered loss of business, humiliation, mental anguish, anxiety, depression, and emotional and physical distress, resulting in the loss of sleep and other injuries to their health and well-being, and continue to suffer such injuries on an ongoing basis. The amount of such damages shall be proven upon request by the court.

At the time that the false and disparaging documents were created and published by the Plaintiffs, Plaintiffs knew the documents were false and created and published them with the malicious intent to injure Defendants and deprive them of their exclusive right, title, and interest in

the properties, and to obtain the properties for their own use by unlawful means. Plaintiffs committed perjury before the court by asserting they had ownership based on void and false documents.

The conduct of the Plaintiffs in publishing the documents described above was fraudulent, oppressive, and malicious. Therefore, Defendants are entitled to an award of punitive damages in an amount sufficient to punish Plaintiffs for their malicious conduct and deter such misconduct in the future.

INEQUITABLE FORECLOSURE ATTEMPT, LACK OF GOOD FAITH AND FAIR DEALING

Historically, equitable courts developed to provide a forum of justice for litigants when law courts, which contained rigid principles and restrictive technicalities, were deficient. *See* Hedges v. Lysek, 84 So. 2d 28, 31 (Fla. 1955). As such, equity courts were created to do justice between the litigants. *See e.g.* Banks v. Shaw, 144 Fla. 550, 198 So. 341 (1940); Atlantic Nat. Bank of Jacksonville v. Simpson, 136 Fla. 809, 188 So. 636 (1938). Therefore, "a court of equity is a court of conscience; it should not be shackled by rigid rules of procedure and thereby preclude justice being administered according to good conscience." Demorizi v. Demorizi, 851 So.2d 243, 246 (Fla. 3d DCA 2003), *appeal dismissed* 851 So. 2d 168 (Fla. 3d DCA 2003) (quoting Wicker v. Board of Public Instruction of Dade County, 106 So.2d 550, 558 (Fla.1958)). Finally, with respect to foreclosures, "the general rule is that...[the] foreclosure must not be unconscionable or inequitable." Pezzimenti v. Cirou, 466 So.2d 274, 276 (Fla. 2d DCA 1985). By the Plaintiffs' failure to release the two properties authorized by Heritage Federal to be released, and by filing an action including all three properties together, Plaintiffs have attempted to place the court in a position of awarding an inequitable and unconscionable foreclosure.

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the properties, and to obtain the properties for their own use by unlawful means. Plaintiffs committed perjury before the court by asserting they had ownership based on void and false documents.

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Defendants have not waived their appraisal rights, under Section 29-3-680, as any purported waiver would be against public policy pursuant to SCN Mortgage Corp v. White, 312 SC 384, 440 S.E.2d 868 (1994). The Supreme Court of South Carolina held it was against public policy to require a waiver of this right in advance. Therefore, Defendants reserve the right to prove that the attempt to foreclose on all three (3) properties for such a small debt claimed, and yet to be verified, is inequitable and unlawful. The value of any one (1) of the three (3) properties named in this action, far exceeds the debt claimed to be owed by Plaintiffs. By attempting to foreclose on multiple properties Plaintiffs are committing theft. Individual properties must be foreclosed upon one parcel at a time because the amount secured by Plaintiffs exceed any one parcel.

SUBJECT PROPERTY OUTSIDE OF JURISDICTION FOR LEXINGTON COUNTY, SC

One of the subject properties in this action is located in Chester County, SC, and is therefore not in the jurisdiction of the courts of Lexington County, SC, where this action appears to have been filed.

FAILURE TO COMPLY WITH SC SUPREME COURT ADMINISTRATIVE ORDER 2011-05-02-01 OR TO OFFER SOLUTIONS UNDER HAMP

SC Supreme Court Administrative Order 2011-05-02-01 clearly requires that for all mortgage foreclosures filed after May 9, 2011, the Mortgagee's attorney shall serve on the Mortgagor, along with the summons and complaint, a notice of the Mortgagor's right to foreclosure intervention. Although the original complaint in this matter was served earlier than that date, it was withdrawn. Defendants have not been served a new foreclosure complaint, and the notice of the Certification of Mortgagor Non-Compliance is the first notification of continued action by these Plaintiffs against Defendants. If there has been a new foreclosure complaint filed, it has not been

served on Defendants according to FRCP, therefore Mortgagor's attorney has failed to comply with the Administrative Order.

Further, Mortgagor's attorney has submitted a fraudulent Certification of Mortgagor Non-Compliance because Defendants have never been offered foreclosure intervention by the real party in interest to this mortgage.

Defendants have also not been offered any of the options under the HAMP program.

UNFAIR BUSINESS PRACTICES – SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

Defendants are informed and believe and thereon allege that Plaintiffs committed unlawful, unfair and/or fraudulent business practices, as defined by South Carolina Unfair Trade Practices Act by engaging in the unlawful, unfair, and fraudulent business practices alleged herein.

As a result of Plaintiffs' wrongful conduct, Defendants have suffered various damages and injuries.

Defendants seek injunctive relief enjoining Plaintiffs from engaging in the unfair business practices described herein.

Defendants further seek restitution, disgorgement of sums wrongfully obtained, costs of suit, reasonable attorney's fees, and such other and further relief as the Court may deem just and proper.

FRAUD AND SWINDLE 19 U.S.C. §1346 ANY SCHEME OR ARTIFICE TO DEFRAUD; 18 U.S.C. §1001 STATEMENT OR ENTRIES GENERALLY

As alleged herein, Plaintiffs have made several representations to Defendants with regard to important facts.

These representations made by Plaintiffs were false.

Plaintiffs knew that these representations were false when made, or these representations were made with reckless disregard for the truth.

Plaintiffs intended that Defendants rely on these representations.

Defendants reasonably relied on said representations.

As a result of Defendants' reliance, they were harmed and suffered damages. Defendants' reliance on Plaintiffs' false representations were a substantial factor in causing Defendants harm.

Plaintiffs are guilty of malice, fraud or oppression, and Plaintiffs' actions were malicious and done willfully, in conscious disregard of the rights and safety of Defendants, in that the actions were calculated to injure Defendants.[1] As such, Defendants are entitled to recover, in addition to actual damages, punitive damages to punish Plaintiffs and to deter future misconduct. Defendants will present their damages for determination at a hearing for that purpose.

CIVIL CONSPIRACY

Defendants are informed and believe, and thereon allege, that Plaintiffs conspired and agreed to implement a scheme to defraud and victimize Defendants through the predatory lending practices and other unlawful acts alleged herein.

Defendants are informed and believe and thereon alleged that Plaintiffs did the acts and things alleged herein pursuant to and in furtherance of their conspiracy to defraud and victimize Defendants, and use tainted court processes to steal Defendants' properties.

Defendants are informed and believe that Plaintiffs committed acts in furtherance of the conspiracy, and/or lent aid and encouragement to their co-conspirators and/or ratified and adopted the acts of their co-conspirators, and are thus jointly and severally liable for all harm to Defendants resulting from the conspiracy, see Salinas v. United States, 118 S. Ct. 469 (1997) at pg. 470: "...conspiracy is distinct evil, dangerous to the public, and so punishable in itself."

[1] South Carolina allows punitive damages, except in actions against the state or other governmental entity and in product liability actions based on strict liability. Punitive damages are allowed upon a showing by clear and convincing evidence of malice, ill will, a conscious indifference to the rights of others, or a reckless disregard thereof. *King v. Allstate Ins. Co.*, 251 S.E. 2d 762 (S.C. 1979). S.C. Code § 15-33-135.

As the direct and proximate result of Plaintiffs' conspiracy to defraud and victimize Defendants, Defendants have suffered damages, including, but not limited to, direct monetary loss, consequential damages, and emotional distress.

In conspiring to defraud and victimize Defendants, and in committing the wrongful acts alleged herein, Plaintiffs acted with malice, oppression, and fraud including perjury by written testimony in a court of law, thus justifying an award of exemplary damages in an amount sufficient to punish their wrongful conduct and deter such misconduct in the future.

RICO – 18 U.S.C. §§1961 *et seq.*

Wells Fargo is an enterprise engaged in and the activities of which affect interstate commerce. Suntrust and Korn Law Firm are persons within the meaning of 18 U.S.C. § 1961(3), and as persons associated with Wells Fargo, conducted and participated, directly and indirectly, in the conduct of the affairs of said enterprise through a pattern of racketeering activity in violation of 18 U.S.C.A. § 1962(c).

The predicate acts which constitute this pattern of racketeering activity were part of a scheme to wrongfully foreclosure upon the Properties without legal right, and therefore acquire title to the Properties through deception and fraud, for the profit of the enterprise, as described herein. For the purpose of executing this scheme, the Plaintiffs placed in post offices and/or in authorized repositories matter and things to be sent or delivered by the Postal Service, caused matter and things from the Postal service or commercial interstate carriers, including, but not limited to, default and foreclosure related notices. These notices were false, misleading, and contrary to law, as described herein; and were deliberately designed to compel Defendants either to part with large sums of money or to abandon the Properties, for the profit of the enterprise.

For the purpose of executing this scheme to defraud Defendants and obtain money by means of false pretenses, Plaintiffs also transmitted and received messages by wire, including, but not

limited to telephone and internet communications. In such communications, Plaintiffs sought to convince Defendant either to part with large sums of money or to abandon the Properties, for the profit of the enterprise, asserting the falsehood that Plaintiffs had the right to foreclose upon the security interest in the Properties.

These acts of racketeering, occurring within ten years of one another, constitute a pattern of racketeering activity within the meaning of 18 U.S.C.A. § 1962, in that, as a direct and proximate result of Plaintiffs' complained of acts, Defendants have suffered and continue to suffer damages, including but not limited to, monetary damages and emotional distress, in an amount to be proven at trial.

By reason of the Defendants' violation of 18 U.S.C.A. § 1962, Defendants are entitled, pursuant to 18 U.S.C.A. § 1964©, to threefold the damages sustained, costs of suit, and reasonable attorney's fees.

QUIET TITLE

Defendants claim an interest adverse to Plaintiffs' interest in the Properties, in the form of the Deed of Trust recorded pursuant to the loan transaction and Defendants are seeking to quiet title against the claims of Plaintiffs under such Deed.

Defendants desire and are entitled to a judicial declaration quieting title in Defendants' names as of August 10, 1987, the date on which the loan transaction was consummated.

IMPOSITION OF CONSTRUCTIVE TRUST

Since August 1987, Defendants have been the rightful owners of legal title to the Properties. In contravention of Defendants' ownership rights and interests in the Properties, Plaintiffs purported to obtain legal title to the Properties by means of an unjustified and fraudulent foreclosure action. Plaintiffs refuse to acknowledge Defendants' status as the rightful owner of the Properties. Plaintiffs hold whatever interest it claims in the Properties in trust for Defendants.

RELIEF REQUESTED

Therefore, Defendants respectfully request the following:

1. That Plaintiffs in this case be, from now and forever forward, enjoined from foreclosure action against Defendants, and a satisfaction of mortgage/lien be issued for the subject mortgage.
2. That Defendants be allowed to participate in a Trial by Jury to present damages and harm done to Defendants, for the purpose of seeking restitution and punitive damages against Plaintiffs.
3. That judgment be entered in their favor and against Plaintiffs, and each of them.
4. For a temporary restraining order, preliminary and permanent injunction preventing Plaintiffs, or anyone acting under or in concert with them, from collecting on the subject loan and from causing the Properties to be sold or assigned to a third party.
5. For an order stating that Plaintiffs must not report to any credit reporting agency anything of a negative nature against Defendants, and that they must repair any previously reported negative information.
6. For an order stating that Plaintiffs engaged in unfair business practices.
7. For an order stating that the Notice of Default, Lis Pendens and other documents filed by Plaintiffs constitute slander of title to Defendants and the Properties.
8. For an order and judgment quieting title to the Property.
9. For damages, disgorgement, and injunctive relief under South Carolina's common and statutory law of unfair business practices.
10. For compensatory and statutory damages, attorney's fees and costs according to proof at trial.

11. For exemplary damages in an amount sufficient to punish Plaintiffs' wrongful conduct and deter future misconduct.

12. For such other and further relief as the Court may deem just and proper.

Respectfully,

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Lexington, SC
July 12, 2012

Appellant's Fourth Motion to Amend dated September 6, 2012

F10-09485

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	11TH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	CASE NO.: 2011-CP-32-156
Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1,	)	RESPONSE AND COUNTERCLAIM TO ORDER SUBSTITUTING PLAINTIFF AND AMENDMENT CAPTION
Plaintiff(s),	)	
Vs.	)	MOTION TO AMEND ANSWER
Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, And Job Development Loan Fund, Inc.,	)	MOTION TO DISMISS ALL FORECLOSURE ACTIONS BY PLAINTIFF(S) AND ENJOIN PLAINTIFFS AND ANYONE ACTING ON THEIR BEHALF FROM PURSUING A FORECLOSURE OR RELATED ACTION
Defendants.	)	
	)	REQUEST FOR JURY TRIAL

2012 SEP -6 A 9:56

COPY

Defendants Cathy G. Lanier and Randy D. Lanier, having gained information as of August, 2012 that was not available to them at the time of their original answer to the Foreclosure Complaint, respectfully amend their answer and offer the following history of this case to show why Plaintiff(s) have no standing or right to bring this action, and have perjured themselves in their dealings with Defendants, or in the filing of the Order Substituting Plaintiff and Amending Caption (Order). Plaintiff(s) have still not responded to requests by Defendants to provide records of the transactions they describe in the Order, but Defendants are certain that none of the rules and regulations pertaining to appropriate filings and notices have been followed to date, up to and including the fraudulently filed NEW transfer filed just as recently as March, 2012. Even in the face of the serious wrongdoings that have been pointed out to attorneys for Plaintiff (whomever it may be interpreted to be at this point), Plaintiff(s) filed a transfer without notice to Defendants, clearly in violation of RESPA laws that went into effect in January of 2011.

SCANNED

Defendants restate and reiterate all points and issues, in their entirety, as brought forth in the prior Response and Motion filed with the Lexington County Clerk of Court on July 12, 2012, as well as the amendment filed on August 7, 2012. It continues to appear that neither the Plaintiff (whichever one you choose at this time), nor its law firm, a third-party collector, truly knows who is the real party in interest to this purported mortgage loan, and therefore this foreclosure action must be dismissed.

The following outlines just a few of the serious irregularities that have occurred in this case:

- Defendants have shown proof (see Exhibit A) of a notification well after the fact, of a transfer to Wells Fargo, NA of this loan. After dealing with Suntrust for nearly a year to try to resolve the problem with the escrow described in previous answers and motions, Suntrust let Defendants know that Suntrust HAD NO AUTHORITY to enter into a refinance or loan modification, because SUNTRUST WAS ONLY THE SERVICER OF THE MORTGAGE, AND WELLS FARGO WAS THE OWNER.
- So now, we are asked to believe, in this new recital of the various hands that have been on this mortgage (none of which were noticed to Defendants over the years), that Wells Fargo was not, apparently ever, associated with this loan! So, either the Suntrust personnel who verified Wells Fargo's ownership to avoid working with Defendants to overcome the escrow problem, perjured themselves, or now Suntrust, as represented by Korn Law Firm has perjured itself in its historical representation of the true assignments and transfers that have taken place associated with the mortgage loan.
- At this point, it is impossible for anyone, least of all the Defendants in this matter, to ascertain to whom their mortgage belonged at any given time since the first transfer from Heritage Federal

Savings and Loan. Therefore, Defendants have been fraudulently "jerked around" in this matter, to the point of absurdity. For there now to be a statement that Suntrust was, all along, the owner of and real party in interest to this loan, after having Wells Fargo bring the action, and having Korn Law Firm argue for over a year that the loan was, in fact, owned by Wells Fargo, is an amazing display of the arrogance that has overtaken the mortgage and its third-party collectors' industries. Exhibit A verifies Wells Fargo's involvement as the reason Suntrust could not work with Defendants over the escrow issue. Fortunately, Defendants are now quite familiar with the underhanded tactics and subterfuge utilized by mortgage lenders, and hope they can rely on the Court to take action against them. Defendants have filed a suit in District Court bringing forth facts and testimony about similar situations, but this new angle to completely delete the involvement of Wells Fargo after it is proven they had involvement in this matter, truly exceeds all commonly utilized tactics to cover up the lies that are being told.

- Given the lack of care and incompetence of the parties bringing this action, it is now very clear to Defendants why the originally-approved mortgage satisfactions for 2 of the 3 properties under lien by whomever is claiming to own this loan, were never issued. The only analogy Defendants can draw to describe this issue is that of the famous skit called "Who's on First?" There clearly is serious default in the chain of title for this mortgage, and the hastily-filed but not noticed assignment from March of 2012, only reinforces the underhanded and fraudulent behavior going on by the Plaintiff(s) and their law firm.

Therefore, Defendants respectfully request that Plaintiff(s) be enjoined from proceeding toward any foreclosure action, based on the following:

PLAINTIFF(S) HAVE FAILED TO SHOW THAT THEY ARE THE REAL PARTY IN INTEREST

Defendants have requested over and over for nearly two years, any proof showing that Wells Fargo and/or Suntrust has standing to enforce an action against Defendants concerning the loan between Defendants and Heritage Federal Savings and Loan. Nothing has been produced to show either of these parties has any ownership or security interest in this loan. "Nothing is owed when the proper chain of title does not exist as determined by the Massachusetts Supreme Court when presented with similar issues." *US Bank National Association, Trustee v. Antonia Ibanez, and a consolidated case for ABFC 2005-OPTI Trust, ABFC Asset Backed Certificates, Series 2005-OPTI; in re Kang Jin Hwang,* 396 B.R. 757, 768 (Bankr. C.D. Cal 2008).

A Movant must have both constitutional and prudential standing and be the real party in interest under Fed. R. Civ. P. 17, in order to be entitled to lift-stay relief [citing: *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)]. Constitutional standing under Article III requires, at a minimum, that a party must have suffered some actual or threatened injury as a result of the defendant's conduct, that the injury be traced to the challenged action, and that it is likely to be redressed by a favorable decision. *Valley Forge Christian Coll. V. Am. United for Separation of Church and State*, 454 U.S 464, 472 (1982).

Beyond the Article III requirements of injury in fact, causation, and redress ability, movant must also have prudential standing, which is a judicially-created set of principles that places limits on the class of person who may invoke the courts' powers. See *Warth v. Seldin*, 422 U.S. 490, 499 (1975). As a prudential matter, a plaintiff must assert "his own legal interest as the real party in interest," *Dunmore v. United States*, 358 F.3rd 1107, 1112 (9th Cir. 2004), as found in Fed. R. Civ. P. 17, which provides "an action must be prosecuted in the name of the real party in interest."

PLAINTIFF(S) HAVE PROVIDED NO TESTIMONY OR EVIDENCE AND ARE ATTEMPTING TO UTILIZE A THIRD-PARTY DEBT COLLECTOR

According to *Heintz v. Jenkins* (1995) 514 US 291, 299, "A debt collector is moving an action in its own behalf and its own interest and cannot represent a third party. See also, Wilson v. *Draper & PLLC* 443 F.3d 373 (2006). Korn Law Firm is also in violation of Title 15 USCA Ch. 41 part V Section 1692i(b). A debt collector moved an initial communication to collect a debt (Notice to Vacate January 4th, 2010). See *Goldman v F Cohen* 445 F3d 152 (2006). The Supreme Court has said in *Sicox v. Lang* (1889) 78 Cal. 118, 122: "The practice of attorneys verifying for their clients should be discouraged, and to that end, the provisions of the Code should receive a strict construction." Therefore, the Attorney Firm must be enjoined from any action in further unlawful acts against Defendants. See *State ex rel. State Bar of Wisconsin v. Bonded Collections, Inc.*, 36 Wis. 2d 643 (1967), *Carroll v. Wolpoff & Abramson* 961 F.2d (1962).

Based on the facts stated within and the blatant misrepresentation by Korn Law Firm as to their standing and the standing of their client, whomever it may be, Korn Law Firm has grossly abused the judicial foreclosure laws of this state and is not entitled to any claim.

PLAINTIFF(S) AND THEIR ATTORNEY HAVE COMMITTED FRAUD, PERJURY, MISREPRESENTATION, OR OTHER MISCONDUCT OF AN ADVERSE PARTY

Civil Rule 60 (b) 3 indicates the facts of this case warrant a reversal of any action taken and/or a dismissal of any pending actions based on: **(3)** fraud, misrepresentation, or other misconduct of an adverse party. The naming of a party that is not a real party in interest to this lawsuit, can be considered nothing less than fraud. Plaintiff(s) have also misrepresented their standing, substantial facts of the case, and have perjured themselves.

VIOLATION OF TRUTH IN LENDING ACT – 15 U.S.C. §1601 *et seq.*

The loan transaction at issue is a consumer credit transaction subject to the provisions of TILA. Heritage Federal Savings and Loan, Heritage Federal Bank, South Bank, Central Carolina Bank, National Bank of Commerce, Wells Fargo and Suntrust are "creditors" as that term is defined

by 15 U.S.C. §1602. The transaction between Plaintiff(s) and these Defendants was a consumer loan transaction wherein the Plaintiff(s) extended credit to the Defendants and such credit was secured by an interest purportedly held by the Plaintiff(s) in the Property.

As a consumer credit transaction, the Plaintiff(s) were required to provide to Defendants mandatory Truth-in-Lending disclosure statements and notice of the borrower's right to rescind, specifying the date on which the three-day rescission period expires. If the lending institution fails to provide the rescission information, the borrower may rescind the loan within three years after it was consummated. 15 U.S.C. §1635(a) and (f); 12 CFR §226.23(b)(5). If the borrower timely exercises her right to rescind, the security interest giving rise to the right of rescission becomes void. *Ibid.*

In the course of the transaction described herein, Plaintiff(s) violated TILA in numerous ways, including, but not limited to: Failing to provide required disclosures prior to consummation of the transaction; failing to make required disclosures clearly and conspicuously in writing; failing to timely deliver to Defendants certain notices required by statute; placing terms prohibited by statute into the transaction; and failing to disclose all finance charge details and the annual percentage rate based upon properly calculated and disclosed finance charges and amounts financed.

Records from the transaction indicate that Plaintiff(s) extended credit to Defendants without regard to their ability to pay, and even falsified relevant income and asset data to get the loan approved. Defendants are informed and believe and thereon allege that Plaintiff(s) have a pattern and practice of extending credit to consumers under high rate mortgages without regard to the consumers' repayment ability.

Because of these violations, Defendant has a continuing right to rescind the loan transaction for up to three years after consummation of the transaction. Defendants hereby give notice of rescission by and through this Complaint.

Because of these violations, Plaintiff(s) are liable to Defendants in the amount of twice the finance charge, actual damages to be established at trial, and costs in accordance with 15 U.S.C. § 1640(a). Defendants are also entitled: Rescission of the loan transaction; an order requiring Plaintiff(s) to take all actions necessary to terminate any security interest in the Property created under the transaction and a declaration by the Court that the security interest is void; expungement of any foreclosure instruments, including but not limited to any Notice of Default, relating to the transaction from any public record; removal of any derogatory information reported to any credit reporting agency or credit reporting bureau relating to the transaction; the return to Defendants of any money given by Defendants to anyone, including Plaintiff(s), in connection with the loan transaction; statutory damages; costs and reasonable attorney's fees; and such other relief as the Court may deem just and proper.

As a result of Plaintiff(s)' misconduct, Defendants have suffered and continue to suffer damages in an amount to be proven at trial, which they are entitled to recover. Moreover, Plaintiff(s)' misconduct was willful, malicious, and outrageous, and therefore punitive damages are warranted and demanded.

As a result of Plaintiff(s)' misconduct, the loan was void and unenforceable as of its inception, and therefore Defendants are entitled to rescind the loan agreement and promissory note and do hereby demand rescission.

As a result of Plaintiff(s)' misconduct, Defendants are entitled to declaratory and injunctive relief preventing Plaintiff(s) from taking any action to collect on the loan, and/or to foreclose upon the Properties, and/or to transfer the Properties.

VIOLATION OF RESPA – 12 U.S.C. §2601 *et seq.*

The loan transaction between Plaintiff(s) and Defendants is a mortgage loan covered by RESPA. Defendants are not certain at this time exactly which of Plaintiff(s) was actually the servicer of the loan at any given time, although they believed that the loan servicer was Suntrust at the time of the foreclosure. However, due to the conspiratorial nature of the misdeeds alleged herein, and also due to Plaintiff(s)' general failure to properly advise Defendants as to the roles and identities of the various entities that were purportedly handling their loan at any given time, these allegations are made as to all Plaintiff(s).

Plaintiff(s) violated RESPA at the time of closing on the sale of the Properties by failing to correctly and accurately comply with disclosure requirements. Plaintiff(s) violated RESPA, 12 U.S.C. §2605(e)(2) by failing and refusing to provide a written explanation or response to Defendants' Qualified Written Request not later than 60 days after receipt of the request. Defendants are informed and believe, and thereon allege, that Plaintiff(s) have engaged in a pattern or practice of non-compliance with the requirements of the mortgage servicer provisions of RESPA as set forth in 12 U.S.C. §2605.

As a result of Plaintiff(s)' failure to comply with RESPA, Defendants have suffered and continue to suffer damages and costs of suit. Defendants are entitled to recover statutory damages of $1,000.00, actual damages in an amount to be determined at trial, and costs and reasonable attorney's fees.

VIOLATION OF FAIR DEBT COLLECTIONS ACT – 15 U.S.C.1692e

In violation of U.S.C. 1692e, 807, Plaintiff(s) engaged in the false representation of

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

Plaintiff also violated section (5) by threatening to take an action that cannot legally be taken. Plaintiff(s) also violated section (14) by failing to divulge the true name of the organization collecting the debt, or the owner of the debt.

Plaintiff(s) also failed to comply with U.S.C. 1692e, 809, by failing to provide verification and validation of the debt they claimed to be owed to them.

SLANDER OF TITLE

Plaintiff(s) disparaged Defendants' exclusive valid title in 2011, by and through the preparing, posting, publishing and recording of the documents previously described herein, including, but not limited to, the foreclosure Complaint. Said Plaintiff(s) knew or should have known that such documents were improper in that at the time of the execution and delivery of said documents, Plaintiff(s) had no right, title or interest in the properties. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Defendants' legal title to the properties. By posting, publishing, and recording, said documents, Plaintiff(s)' disparagement of Defendants' legal title was made to the world at large. Similarly, the law firm retained by Plaintiff(s) is also culpable, as they are in the business of collection of consumer debts, either on behalf of itself or others, and are therefore under the authority of the Fair Debt Collection Practices Act Titles 15 and 18 U.S.C. which requires Korn Law Firm to verify actual ownership and factual, legal debt. Further evidence of the incompetence and failure to verify pertinent information is Korn Law Firm's listing of Job Development Loan Fund, Inc. as a Defendant in this matter. Any tie of these properties to JDLF expired over 20 years ago, as the small loan secured by the original property on the Heritage Federal Savings and Loan mortgage, was paid off within six (6) months of its origination. There is an appropriately filed Mortgage Satisfaction proving this on record at the

Lexington County Register of Deeds, available to the public, and certainly available to a law firm with greater access to such records. That mortgage satisfaction is attached here as Exhibit B.

As a direct and proximate result of Plaintiff(s)' conduct in publishing these documents, Defendants' title to the properties has been disparaged and slandered, and there is a cloud on Defendants' title, and Defendants have suffered, and continue to suffer, damages in an amount to be proved including loss of business and business goodwill. As a further proximate result of Plaintiff(s)' conduct, Defendants have incurred, and will continue to incur, expenses, including reasonable attorney's fees, in order to clear title to the properties. Moreover, these expenses are continuing, and Defendants will incur additional charges for such purpose until the cloud on Defendants' title to the Properties has been removed. The amounts of future expenses and damages are not ascertainable at this time.

As a further direct and proximate result of Plaintiff(s)' egregious conduct, Defendants have suffered loss of business, humiliation, mental anguish, anxiety, depression, and emotional and physical distress, resulting in the loss of sleep and other injuries to their health and well-being, and continue to suffer such injuries on an ongoing basis. The amount of such damages shall be proven upon request by the court.

At the time that the false and disparaging documents were created and published by the Plaintiff(s), Plaintiff(s) knew the documents were false and created and published them with the malicious intent to injure Defendants and deprive them of their exclusive right, title, and interest in the properties, and to obtain the properties for their own use by unlawful means. Plaintiff(s) committed perjury before the court by asserting they had ownership based on void and false documents.

The conduct of the Plaintiff(s) in publishing the documents described above was fraudulent, oppressive, and malicious. Therefore, Defendants are entitled to an award of punitive damages in

an amount sufficient to punish Plaintiff(s) for their malicious conduct and deter such misconduct in the future.

INEQUITABLE FORECLOSURE ATTEMPT, LACK OF GOOD FAITH AND FAIR DEALING

Historically, equitable courts developed to provide a forum of justice for litigants when law courts, which contained rigid principles and restrictive technicalities, were deficient. *See* Hedges v. Lysek, 84 So. 2d 28, 31 (Fla. 1955). As such, equity courts were created to do justice between the litigants. *See e.g.* Banks v. Shaw, 144 Fla. 550, 198 So. 341 (1940); Atlantic Nat. Bank of Jacksonville v. Simpson, 136 Fla. 809, 188 So. 636 (1938). Therefore, "a court of equity is a court of conscience; it should not be shackled by rigid rules of procedure and thereby preclude justice being administered according to good conscience." Demorizi v. Demorizi, 851 So.2d 243, 246 (Fla. 3d DCA 2003), *appeal dismissed* 851 So. 2d 168 (Fla. 3d DCA 2003) (quoting Wicker v. Board of Public Instruction of Dade County, 106 So.2d 550, 558 (Fla.1958)). Finally, with respect to foreclosures, "the general rule is that...[the] foreclosure must not be unconscionable or inequitable." Pezzimenti v. Cirou, 466 So.2d 274, 276 (Fla. 2d DCA 1985). By the Plaintiff(s)' failure to release the two properties authorized by Heritage Federal to be released, and by filing an action including all three properties together, Plaintiff(s) have attempted to place the court in a position of awarding an inequitable and unconscionable foreclosure.

Defendants have not waived their appraisal rights, under Section 29-3-680, as any purported waiver would be against public policy pursuant to SCN Mortgage Corp v. White, 312 SC 384, 440 S.E.2d 868 (1994). The Supreme Court of South Carolina held it was against public policy to require a waiver of this right in advance. Therefore, Defendants reserve the right to prove that the attempt to foreclose on all three (3) properties for such a small debt claimed, and yet to be verified, is inequitable and unlawful. The value of any one (1) of the three (3) properties named in this

action, far exceeds the debt claimed to be owed by Plaintiff(s). By attempting to foreclose on multiple properties Plaintiff(s) are committing theft. Individual properties must be foreclosed upon one parcel at a time because the amount secured by Plaintiff(s) exceed any one parcel.

SUBJECT PROPERTY OUTSIDE OF JURISDICTION FOR LEXINGTON COUNTY, SC

One of the subject properties in this action is located in Chester County, SC, and is therefore not in the jurisdiction of the courts of Lexington County, SC, where this action appears to have been filed. That property must be removed from this and any related foreclosure action in Lexington County.

FAILURE TO COMPLY WITH SC SUPREME COURT ADMINISTRATIVE ORDER 2011-05-02-01 OR TO OFFER SOLUTIONS UNDER HAMP

SC Supreme Court Administrative Order 2011-05-02-01 clearly requires that for all mortgage foreclosures filed after May 9, 2011, the Mortgagee's attorney shall serve on the Mortgagor, along with the summons and complaint, a notice of the Mortgagor's right to foreclosure intervention. Although the original complaint in this matter was served earlier than that date, it was withdrawn. Defendants have not been served a new foreclosure complaint, and the notice of the Certification of Mortgagor Non-Compliance is the first notification of continued action by these Plaintiff(s) against Defendants. If there has been a new foreclosure complaint filed, it has not been served on Defendants according to FRCP, therefore Mortgagor's attorney has failed to comply with the Administrative Order.

Further, Mortgagor's attorney has submitted a fraudulent Certification of Mortgagor Non-Compliance because Defendants have never been offered foreclosure intervention by the real party in interest to this mortgage.

Defendants have also not been offered any of the options under the HAMP program.

UNFAIR BUSINESS PRACTICES – SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

Defendants are informed and believe and thereon allege that Plaintiff(s) committed unlawful, unfair and/or fraudulent business practices, as defined by South Carolina Unfair Trade Practices Act by engaging in the unlawful, unfair, and fraudulent business practices alleged herein.

As a result of Plaintiff(s)' wrongful conduct, Defendants have suffered various damages and injuries.

Defendants seek injunctive relief enjoining Plaintiff(s) from engaging in the unfair business practices described herein.

Defendants further seek restitution, disgorgement of sums wrongfully obtained, costs of suit, reasonable attorney's fees, and such other and further relief as the Court may deem just and proper.

FRAUD AND SWINDLE 19 U.S.C. §1346 ANY SCHEME OR ARTIFICE TO DEFRAUD; 18 U.S.C. §1001 STATEMENT OR ENTRIES GENERALLY

As alleged herein, Plaintiff(s) have made several representations to Defendants with regard to important facts.

These representations made by Plaintiff(s) were false.

Plaintiff(s) knew that these representations were false when made, or these representations were made with reckless disregard for the truth.

Plaintiff(s) intended that Defendants rely on these representations.

Defendants reasonably relied on said representations.

As a result of Defendants' reliance, they were harmed and suffered damages. Defendants' reliance on Plaintiff(s)' false representations were a substantial factor in causing Defendants harm.

Plaintiff(s) are guilty of malice, fraud or oppression, and Plaintiff(s)' actions were malicious and done willfully, in conscious disregard of the rights and safety of Defendants, in that the actions

were calculated to injure Defendants.[1] As such, Defendants are entitled to recover, in addition to actual damages, punitive damages to punish Plaintiff(s) and to deter future misconduct. Defendants will present their damages for determination at a hearing for that purpose.

CIVIL CONSPIRACY

Defendants are informed and believe, and thereon allege, that Plaintiff(s) conspired and agreed to implement a scheme to defraud and victimize Defendants through the predatory lending practices and other unlawful acts alleged herein.

Defendants are informed and believe and thereon allege that Plaintiff(s) did the acts and things alleged herein pursuant to and in furtherance of their conspiracy to defraud and victimize Defendants, and use tainted court processes to steal Defendants' properties.

Defendants are informed and believe that Plaintiff(s) committed acts in furtherance of the conspiracy, and/or lent aid and encouragement to their co-conspirators and/or ratified and adopted the acts of their co-conspirators, and are thus jointly and severally liable for all harm to Defendants resulting from the conspiracy, see Salinas v. United States, 118 S. Ct. 469 (1997) at pg. 470: "...conspiracy is distinct evil, dangerous to the public, and so punishable in itself."

As the direct and proximate result of Plaintiff(s)' conspiracy to defraud and victimize Defendants, Defendants have suffered damages, including, but not limited to, direct monetary loss, consequential damages, and emotional distress.

In conspiring to defraud and victimize Defendants, and in committing the wrongful acts alleged herein, Plaintiff(s) acted with malice, oppression, and fraud including perjury by written

[1] South Carolina allows punitive damages, except in actions against the state or other governmental entity and in product liability actions based on strict liability. Punitive damages are allowed upon a showing by clear and convincing evidence of malice, ill will, a conscious indifference to the rights of others, or a reckless disregard thereof. *King v. Allstate Ins. Co.*, 251 S.E. 2d 762 (S.C. 1979). S.C. Code § 15-33-135.

testimony in a court of law, thus justifying an award of exemplary damages in an amount sufficient to punish their wrongful conduct and deter such misconduct in the future.

RICO – 18 U.S.C. §§1961 *et seq.*

Wells Fargo and Suntrust are enterprises engaged in and the activities of which affect interstate commerce. Korn Law Firm are persons within the meaning of 18 U.S.C. § 1961(3), and as persons associated with Wells Fargo and Suntrust, conducted and participated, directly and indirectly, in the conduct of the affairs of said enterprise through a pattern of racketeering activity in violation of 18 U.S.C.A. § 1962(c).

The predicate acts which constitute this pattern of racketeering activity were part of a scheme to wrongfully foreclose upon the Properties without legal right, and therefore acquire title to the Properties through deception and fraud, for the profit of the enterprise, as described herein. For the purpose of executing this scheme, the Plaintiff(s) placed in post offices and/or in authorized repositories matter and things to be sent or delivered by the Postal Service, caused matter and things from the Postal service or commercial interstate carriers, including, but not limited to, default and foreclosure related notices. These notices were false, misleading, and contrary to law, as described herein; and were deliberately designed to compel Defendants either to part with large sums of money or to abandon the Properties, for the profit of the enterprise.

For the purpose of executing this scheme to defraud Defendants and obtain money by means of false pretenses, Plaintiff(s) also transmitted and received messages by wire, including, but not limited to telephone and internet communications. In such communications, Plaintiff(s) sought to convince Defendant either to part with large sums of money or to abandon the Properties, for the profit of the enterprise, asserting the falsehood that Plaintiff(s) had the right to foreclose upon the security interest in the Properties.

These acts of racketeering, occurring within ten years of one another, constitute a pattern of racketeering activity within the meaning of 18 U.S.C.A. § 1962, in that, as a direct and proximate result of Plaintiff(s)' complained of acts, Defendants have suffered and continue to suffer damages, including but not limited to, monetary damages and emotional distress, in an amount to be proven at trial.

By reason of the Plaintiff(s)' violation of 18 U.S.C.A. § 1962, Defendants are entitled, pursuant to 18 U.S.C.A. § 1964©, to threefold the damages sustained, costs of suit, and reasonable attorney's fees.

QUIET TITLE

Defendants claim an interest adverse to Plaintiff(s)' interest in the Properties, in the form of the Deed of Trust recorded pursuant to the loan transaction and Defendants are seeking to quiet title against the claims of Plaintiff(s) under such Deed.

Defendants desire and are entitled to a judicial declaration quieting title in Defendants' names as of August 10, 1987, the date on which the loan transaction was consummated.

IMPOSITION OF CONSTRUCTIVE TRUST

Since August 1987, Defendants have been the rightful owners of legal title to the Properties. In contravention of Defendants' ownership rights and interests in the Properties, Plaintiff(s) purported to obtain legal title to the Properties by means of an unjustified and fraudulent foreclosure action. Plaintiff(s) refuse to acknowledge Defendants' status as the rightful owner of the Properties. Plaintiff(s) hold whatever interest it claims in the Properties in trust for Defendants.

JURY TRIAL

Section of guarantees a jury trial for any dispute involving more than twenty ($20) dollars. Plaintiff(s) in this case have attempted to usurp Defendants' rights by specifying a "non-jury mortgage foreclosure" on their documents. In the event this Motion to Dismiss and Enjoin

Plaintiff(s) from further actions in this matter is not granted, Defendants request the ability to outline this outrageous case in front of a jury of their peers.

RELIEF REQUESTED

Therefore, Defendants respectfully request the following:

1. That Plaintiff(s)' Order Substituting Plaintiff be stricken from the record, and Plaintiff(s) be prosecuted for filing fraudulent, false and misleading documents in a court in Lexington County.
2. That foreclosure case be dismissed in its entirety in compliance with Civil Rule 17.
3. That Plaintiff(s) in this case be, from now and forever forward, enjoined from foreclosure action against Defendants, and a satisfaction of mortgage/lien be issued for the subject mortgage, and all three (3) properties liened in the subject mortgage.
4. That Defendants be allowed to participate in a Trial by Jury to present damages and harm done to Defendants, for the purpose of seeking restitution and punitive damages against Plaintiff(s).
5. That judgment be entered in their favor and against Plaintiff(s), and each of them.
6. For a temporary restraining order, preliminary and permanent injunction preventing Plaintiff(s), or anyone acting under or in concert with them, from collecting on the subject loan and from causing the Properties to be sold or assigned to a third party.
7. For an order stating that Plaintiff(s) must not report to any credit reporting agency anything of a negative nature against Defendants, and that they must repair any previously reported negative information.
8. For an order stating that Plaintiff(s) engaged in unfair business practices.
9. For an order stating that the Notice of Default, Lis Pendens and other documents filed by Plaintiff(s) constitute slander of title to Defendants and the Properties.

10. For an order and judgment quieting title to the three (3) Properties.

11. For damages, disgorgement, and injunctive relief under South Carolina's common and statutory law of unfair business practices.

12. For compensatory and statutory damages, attorney's fees and costs according to proof at trial.

13. For exemplary damages in an amount sufficient to punish Plaintiff(s)' wrongful conduct and deter future misconduct.

14. For such other and further relief as the Court may deem just and proper.

Respectfully,

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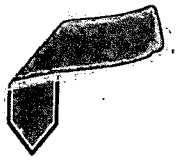
Lexington, SC
September 6, 2012

Suntrust's Motion in Opposition to Motion to Amend dated September 14, 2012



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FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

2012 SEP 14 P 2:41

SunTrust Mortgage, Inc.,

PLAINTIFF,

v.

Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, and Job Development Loan Fund, Inc.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-32-00156

PLAINTIFF'S NOTICE OF MOTION AND MOTION IN OPPOSITION TO DEFENDANT'S MOTION TO AMEND AND ASSERT COUNTERCLAIMS, MOTION FOR SUMMARY JUDGMENT AS TO COUNTERCLAIMS, AND MEMORANDUM OF LAW

L10-09485

TO: CATHY G. LANIER AND RANDY D. LANIER, PRO SE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE, that the attorney for the Plaintiff will, on the 10th day after service hereof, or as soon thereafter as counsel may be heard, move before the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order denying Defendants' Cathy G. and Randy D. Lanier (hereinafter "Defendants") Motion to Amend Answer and Assert Counterclaims and Motion to Dismiss and granting the Plaintiff Summary Judgment on the asserted counterclaims.

Defendants' Motions to Amend and Dismiss should be denied and Plaintiff's Motion for Summary Judgment on the asserted counterclaims should be granted for the reasons stated in the following Memorandum of Law.

I. INTRODUCTION AND FACTS

On or about August 11, 1997 for value received, Defendants did execute and deliver to Heritage Federal Savings and Loan Association, a certain promissory note in writing for the sum of Four Hundred Twenty-Five Thousand And 00/100 Dollars ($425,000.00) secured by a mortgage encumbering three parcels generally described as Parcel 1, 213 Lake Villa Road,

Lexington, SC 29072, Parcel 2, 211 Lake Villa Road, Lexington, SC 29072, and Parcel 3, 2651 Knox Station Road, Chester, SC 29706 (hereinafter collectively "the Properties"). *See* **Exhibits "A" and "B."** Thereafter, through a series of corporate mergers and name changes, Heritage Federal Savings and Loan Association became SunTrust Bank, who then assigned said mortgage unto SunTrust Mortgage Inc., the present lien holder and Plaintiff herein. Defendants have been in default on said note and mortgage since approximately September 1, 2010 and are currently indebted to Plaintiff on said note and mortgage.

Defendants were previously indebted to Bayview Loan Servicing, LLC (hereinafter "Bayview") and Branch Banking and Trust Company of South Carolina (hereinafter "BB&T") by virtue of a separate Judgment of Foreclosure and Sale entered on October 7, 2011. As a result of that action, Randy D. Lanier filed for Chapter 13 bankruptcy on November 3, 2011, which action, after a hearing, was dismissed on November 7, 2011. *See* attached Order filed January 3, 2012, **Exhibit "C."** Defendants did not appeal the dismissal and the time to file an appeal has expired. Defendants again filed for Chapter 13 bankruptcy on November 8, 2011, which action, after a hearing, was dismissed with prejudice. *See* **Exhibit "C."** Defendants were also prohibited from filing another cause under Chapters 11, 12, and 13 of the bankruptcy code for the period of one year. *See* **Exhibit "C."**

On March 25, 2011, Defendants filed an Answer. *See* **Exhibit "D."** On June 2, 2011, Defendants filed an Amended Answer without consent of the Plaintiff or leave of the court. *See* **Exhibit "E."** On February 14, 2012, Defendants filed an appeal from Judge Waites' Bankruptcy Order, **Exhibit "C"**, and a motion to stay the foreclosure sale. On February 28, 2012, after considering Defendants' second motion to stay the foreclosure sale, the court issued an order denying Defendants' motion to stay. On March 2, 2012, the court denied Defendants' appeal of

the order denying stay and Defendants' Motion to Reconsider, filed March 1, 2012. On July 12, 2012, Defendants subsequently filed a second Motion to Amend Answer, **Exhibit "F,"** and a third Motion to Amend Answer on August 7, 2012, **Exhibit "G,"** alleging counterclaims against Plaintiff and requesting the dismissal of this action. For the following reasons, Defendants' Motion to Amend Answer to allege counterclaims and Motion to Dismiss should be denied and Plaintiff's Motion for Summary Judgment on the asserted counterclaims should be granted.

II. DISCUSSION

A. DEFENDANTS LACK STANDING TO ASSERT COUNTERCLAIMS AGAINST PLAINTIFF.

1. *Defendants lack standing to assert counterclaims against Plaintiff because Defendants failed to set forth counterclaims in their bankruptcy schedules and, moreover, are prohibited from filing for relief under Chapters 11, 12, and 13 under the Bankruptcy Code for the period of one year.*

On November 8, 2011, Defendants filed a Chapter 13 Voluntary Bankruptcy Petition and accompanying Schedules and Statements attached as **Exhibit "H."** In paragraph 21 of Schedule B, Defendant was required to set forth "[o]ther contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims." *See* **Exhibit "H."** Next to this paragraph, Defendants checked the box under the column "None," indicating Defendants had no counterclaims to assert against Plaintiff in regards to the current foreclosure action. Defendants made this statement under penalty of perjury. *See* **Exhibit "H"** page 34. On November 7, 2011 Defendants' first Chapter 13 case was dismissed and on January 3, 2012, Defendants' second Chapter 13 case was dismissed with prejudice. *See* **Exhibit "C."** The Order explains that Defendants sought bankruptcy in bad faith and in order to impede the

foreclosure actions. *See id.*

When a debtor files for bankruptcy, an estate is created that is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C.A. § 541(a). Unless the bankruptcy court orders otherwise, the debtor is required to file a list of all creditors and a schedule of assets and liabilities. *Id.* § 541(a)(1)(A)-(B)(i). "Legal and equitable interests" has been broadly defined and includes causes of action. *In re Educators Group Health Trust*, 25 F.3d 1281, 1283-84 (5th Cir. 1994). When the causes of action giving rise to the debtors' counterclaims begin before the present case commences and initial pleadings are filed, the debtor must list those causes of action on his bankruptcy petition. *See In re Iredale*, 429 B.R. 853, 856 (Bankr. D. S.C. 2010). *See MidFirst Bank v. Brooks*, No. 2008-UP-196 (S.C. Ct. App. March 20, 2008). Whether the debtor knew about the possible counterclaims at the time he filed the bankruptcy petition is immaterial. *See id.*

When the bankruptcy case is closed, "any assets, including claims, that were scheduled by the debtor but not disposed of are deemed abandoned and revert to the debtor." *Tyler House Apartments, Ltd. V. United States*, 38 Fed. Cl. 1, 6 (1997). Claims that are not set forth on the schedules, however, remain under the control of the bankruptcy trustee. *See id.* "If a cause of action belongs to the estate, then the trustee has exclusive standing to assert the claim." *Educators Group Health Trust*, 25 F.3d at 1284. Therefore, a debtor may not amend his cause of action to include counterclaims he no longer possesses. *See Iredale*, 429 B.R. at 855-56. Further, a debtor's persistence in alleging counterclaims of this kind may be construed as bad faith. *See id.* at 856.

In the present case, Plaintiff initiated this foreclosure action on January 14, 2011. Assuming Defendants' alleged counterclaims arise out of the present foreclosure action, at the

time Defendants filed for bankruptcy in 2011, Defendants were required to list them on their itemized bankruptcy schedule. Defendants assert in their first and second Motions to Amend and Dismiss various counterclaims against Plaintiff, none of which they claimed on Schedule B. Therefore, since Defendants' bankruptcy cases were disposed of in 2011, Defendants' causes of action remain under the control of the bankruptcy trustee, and only the bankruptcy trustee has standing to assert the claims against Plaintiff. Accordingly, Defendants have no standing to assert counterclaims against Plaintiff and Defendants' Motions to Amend and Dismiss should be denied.

Moreover, according to the Order dated January 1, 2012, Defendants are prohibited from filing for bankruptcy under Chapters 11, 12, and 13 for the period of one year and are precluded from claiming any possible grievances not barred by res judicata and judicial estoppel against Plaintiff during that term. *See* **Exhibit "C."**

III. CONCLUSION

The evidence propounded by Plaintiff establishes that there is no genuine issue of material fact on the matter of the alleged counterclaims possessed by Defendants. Defendants are barred from asserting counterclaims against Plaintiff. Therefore, Defendants' Motions to Amend and Dismiss should be denied and Plaintiff's Motion for Summary Judgment on the issue of the alleged counterclaims should be granted.

[SIGNATURE PAGE TO FOLLOW]

FILED

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BETH A. CARRIGG
CLERK OF COURT

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ATTORNEYS FOR PLAINTIFF

September 12, 2012
Columbia, South Carolina
N:\PD\F 10-09485

Appellant's Motion for Reconsideration, Dated March 30, 2015Defendant's Exhibit 7

ORIGINAL

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
)	**11TH JUDICIAL CIRCUIT**
COUNTY OF LEXINGTON	**CASE NO.: 2011-CP-32-156**
)	
Wells Fargo Bank, N.A., successor in interest to Wells Fargo Bank Minnesota, National Association, as Trustee for Salomon Mortgage Loan Trust Series 2003-NBC1,	
Plaintiff(s),	**DEFENDANTS' CATHY G. LANIER AND RANDY D. LANIER'S MOTION FOR RECONSIDERATION OF ORDER DENYING DEFENDANTS' MOTIONS TO AMEND AND ASSERT COUNTERCLAIMS AND GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**
Vs.	
Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, And Job Development Loan Fund, Inc.,	
Defendants.	

Defendants Cathy G. Lanier and Randy D. Lanier (Defendants), respectfully move the Court to reconsider the decisions contained in the Order filed into the record on March 19, 2015, and served on Defendants on March 27, 2015. At issue is the ruling concerning the dismissed bankruptcy robbing Defendants of their right to plead counterclaims, as well as the dispute of material fact that still exists as to the accounting related to the subject loan, which should thereby preclude the granting of summary judgment in favor of Plaintiff.

Please refer to the attached Memorandum in Support of this motion for details.

WHEREFORE, Defendants respectfully request that this Court reconsider its prior decisions and reverse the following findings:

That Plaintiff not be granted Summary Judgment, as a dispute of material fact still exists and the finding of Summary Judgment is not proper; and

That a substitution of Plaintiff not be granted, as it represents not only prejudice against Defendants to not have been facing their true opponent throughout this case, but because Suntrust Mortgage has not provided proof of standing in any manner. They have not verified they are in

possession of the original note, nor have they provided any documentation showing a valid and legal chain of title from the original servicer of the mortgage in the trust, National Bank of Commerce; and

If necessary to pursue the claims regarding when the loan was paid off, that Defendants be allowed to amend their counterclaims to include this very valid claim; or in the alternative

Once the errors concerning the bankruptcy issue, the counterclaims and the substitution of plaintiff have been corrected, the case be dismissed with prejudice against Plaintiff, removing all language from the Order that would prevent Defendants from pursuing the valid claims related to the accounting problems and lack of standing of either Wells Fargo or Suntrust Mortgage.

Respectfully,

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Lexington, SC
March 30, 2015

FILED
2015 MAR 30 P 3:55

Suntrust's Memorandum in Opposition to the Motion to Reconsider dated January 19, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	CASE NO.: 2011-CP-32-0156
	)	
SunTrust Mortgage, Inc.,	)	
	)	
Plaintiff,	)	**SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO RECONSIDER**
	)	
vs.	)	
	)	
Cathy G. Lanier, Randy D. Lanier, Branch Banking and Trust Company, and Job Development Loan Fund, Inc.,	)	
	)	
Defendants.	)	
	)	

On December 10, 2012, Defendants Cathy G. Lanier and Randy D. Lanier (the "Laniers") filed a fifth Motion to Amend. A hearing was held on November 8, 2013, on both SunTrust Mortgage, Inc.'s ("SunTrust Mortgage) and the Laniers' pending motions. On May 20, 2014, the Laniers filed their sixth Motion to Amend, again requesting the Court to allow them to assert counterclaims against SunTrust Mortgage. On July 1, 2014, SunTrust Mortgage filed a memorandum in opposition to the Motion. The July 1, 2014 memorandum is hereby incorporated by reference. The Court thereafter entered an order denying the motions to amend and granting summary judgment to SunTrust Mortgage (denying the Laniers' motion to amend and granting SunTrust Mortgage summary judgment as to the Laniers' counterclaims) on March 18, 2015 (the "Order"). The Laniers filed a Motion for Reconsideration on March 30, 2015. A hearing on the Motion was held on November 18, 2015. Plaintiff SunTrust Mortgage hereby provides this supplemental memorandum, per the Court's request.

INTRODUCTION

An accurate and succinct summary of the procedural and factual history of this case is provided in the Order and the July 1, 2014 memorandum of law. In the interest of efficiency and judicial economy, those facts will not be repeated herein.

The Court should deny the Motion to Reconsider on several grounds. First and foremost, the Order contains no error of law, or any misapplication of law, and therefore the motion must be denied. The Order is also supported by the additional legal precedent set forth herein, so that the Motion to Reconsider should be denied as a matter of law.[1] Denial of the motion to reconsider will terminate this 2011 lawsuit.

A. The Laniers Lack Standing Due to Their Bankruptcy Filing

On November 8, 2011, the Laniers filed a petition for Chapter 13 bankruptcy. Within the schedules to attach to the bankruptcy petition, it is required that the petitioning parties list all claims of any nature, including counterclaims. The Laniers listed "None." The Laniers verified this information by signing the petition under penalty of perjury. *See* page 34 of Exhibit C to the July 1, 2014 memorandum of law.

The case law cited in the Order and the July 1, 2014 memorandum of law properly support that the Laniers cannot pursue the counterclaims (that existed pre-bankruptcy filing) that they have sought to assert post-bankruptcy petition.

Defendants attempt to distinguish the case at bar from the case law presented in the Order by stating that such cases do not apply because they involved Chapter 7, as opposed to Chapter 13, claims. The Laniers do this without citation to any authority for this position.

When a chapter 13 petition is filed, a bankruptcy estate is automatically created. 11 U.S.C. § 541; 11 U.S.C. § 1306. Section 541(a)(1) of the Bankruptcy Code broadly defines property of an estate as "all legal or equitable interests of the debtor in property as of the

[1] At the hearing, the Court requested whether there was case law to support the position that when counterclaims arise out of a foreclosure lawsuit, and the underlying mortgage is satisfied during the litigation, the counterclaims become moot or otherwise unsupportable. There does not appear to be South Carolina case law on point. However, in determining whether defendants were entitled to a jury trial on counterclaims raised in a foreclosure action that was subsequently dismissed, the South Carolina Court of Appeals implicitly ruled that a counterclaim in a foreclosure action survives the dismissal of the underlying foreclosure. *HSBC Mortgage Corp., USA v. Otterbein*, No. 2015-UP-029, 2015 WL 164426, at *1 (S.C. Ct. App. Jan. 14, 2015) (finding the defendants were entitled to a jury trial on their counterclaims for breach of contract and negligent misrepresentation following the dismissal of the plaintiff's foreclosure action). Therefore, denial of the Motion to Reconsider does not appear to be available on these grounds.

commencement of the case." Therefore, a pre-petition lawsuit is the property of the estate. *See* 11 U.S.C. §541(a)(1); *In re Iredale*, 429 B.R. 853, 855 (Bankr. D.S.C. 2010).

The Laniers do not have standing to bring any causes of action which existed at or prior to the time of the filing of the Chapter 13 bankruptcy petition; such right, under the statutory framework of the Bankruptcy Code, belongs solely to the trustee (because such property belongs to the bankruptcy estate). Without the trustee as no less than a co-plaintiff (or co-counterclaim plaintiff, in the present case), the Laniers cannot pursue their claims. *See In re Gardner*, 218 B.R. 338, 342 (Bankr. E.D. Pa. 1998) (finding that standing issue for Chapter 13 party alleviated due to appearance by trustee). As stated in *Gardner*, one purpose of this position is to prevent a party from petitioning for bankruptcy and hiding assets that should otherwise be used to make creditors whole. *Id. See also Richardson v. United Parcel Serv.*, 195 B.R. 737, 739 (E.D. Mo. 1996) (Chapter 13 debtor lacked standing to pursue action in own name). While in an unpublished opinion, the South Carolina Court of Appeals has agreed specifically with the position taken by this Court in its Order. *See MidFirst Bank v. Brooks*, No. 2008-UP-196, 2008 WL 9841165, at *3 (S.C. Ct. App. Mar. 20, 2008) (affirming Master-In-Equity's summary judgment order as "proper based on the determination that [appellant] lacked standing to assert the defenses and counterclaims that she raised in her responsive pleadings" because of her Chapter 13 bankruptcy action, despite her claim that such lack of disclosure was inadvertent).

For the reasons set forth above and in the Order, the Motion to Reconsider must be denied.

B. The Laniers Are Judicially Estopped from Asserting their Claims

In addition to the reasons set forth in the Order, the Motion to Reconsider should also be denied because the Laniers are judicially estopped from asserting their pre-petition bankruptcy claims.

Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (2004). The doctrine's function is to protect the integrity of the judicial process and the integrity of the courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. *Commerce Center of Greenville, Inc. v. W. Powers McElveen & Assocs.*, Inc., 347 S.C. 545, 556 S.E.2d 718 (Ct. App. 2001); *see also Cothran*, 357 S.C. at 215, 592 S.E.2d at 631 (stating purpose of doctrine is to ensure integrity of judicial process). Stated otherwise, judicial estoppel precludes a party from adopting a position in conflict with one earlier taken. *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 577 S.E.2d 202 (2003); *Commerce Center*, 347 S.C. at 554, 556 S.E.2d at 723.

In the instant matter, the Laniers signed a federal court filing – their bankruptcy petition – under penalty of perjury. The document admittedly has inaccuracies, including the failure to list any of the claims the Laniers desire to assert in this matter.

"A long-standing tenet of bankruptcy law requires one seeking benefits under its terms to schedule, for the benefit of creditors, all his interests and property rights." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 416 (3d Cir. 1988). "It is a generally recognized proposition that one cannot play fast and loose with the courts." *Payless Wholesale Dist., Inc. v. Albert Culver (P.R.) Inc.*, 989 F.2d 570, 571 (1st Cir. 1993) (internal quotation omitted). Numerous courts have held that omission or nondisclosure of a cause of action as an asset in a bankruptcy schedule provides an appropriate basis for imposition of judicial estoppel. *Id.* at 571-72; *Hay v. First Interstate Bank*, 978 F.2d 555, 557 (9th Cir. 1992); *Oneida*, 848 F.2d at 419-20; *Management Investors v. United Mine Workers*, 610 F.2d 384, 391-93 (6th Cir. 1979); *Jim Meagher Chevrolet, Inc. v. General Motors Corp.*, No. 4:93CV2385 GFG (E.D. Mo. Aug.

26, 1994); *In re H.R.P. Auto Center, Inc.*, 130 B.R. 247, 254-55 (Bankr. N.D. Ohio 1991). Judicial estoppel is specifically utilized by the courts to prevent the type of conduct sought here: assertion post-petition of claims against a creditor of the bankrupt party. *See Welsh v. Quabbin Timber, Inc.*, 199 B.R. 224, 229 (D. Mass. 1996) (plaintiff estopped from proceeding with action against bank which was a creditor in his bankruptcy case); *In re H.R.P. Auto Center, Inc.*, 130 B.R. 247, 254 (Bankr. N.D. Ohio 1991) (debtor estopped from asserting undisclosed counterclaim against major creditor); *In re Hoffman*, 99 B.R. 929, 935–36 (N.D. Iowa 1989) (estopping lender liability suit against one of plaintiff's primary bankruptcy creditors).

Even assuming the best of intentions by the Laniers, the amendments they seek impinge on the integrity of this Court. The Laniers are therefore judicially estopped from seeking any claims, and the Motion to Reconsider must be denied.

C. All Claims and Defenses Based on Oral Representations Are Barred by S.C. CODE ANN. § 37-10-107

In addition to the reasons set forth in the Order, to the extent the Laniers' claims are based on any oral representations, they are barred as a matter of law by the plain language of S.C. CODE ANN. § 37-10-107, also known as the "Lender Statute of Frauds". [2]

Section 37-10-107 provides in relevant part as follows:

> No person may maintain an action for legal or equitable relief or a defense based upon an alleged failure to perform a promise, undertaking, accepted offer, commitment, or agreement: to lend or borrow money . . . or to renew, modify, amend, or cancel a loan of money or any provision with respect to a loan of money, involving in any such case a principal amount in excess of fifty thousand dollars, unless the party seeking to maintain the action or defense has received a writing from the party to be charged containing the material terms and conditions of the promise, undertaking, accepted offer, commitment, or agreement, and the party to be charged, or its duly authorized agent, has signed the writing.

[2] In many instances, it is admittedly difficult to decipher if the Laniers have based their claims on oral or written communications; however, as the Laniers have produced no written evidence in support of their counterclaims, it is certainly a fair inference that such claims are based on oral communications.

The loan at issue is clearly within the scope of Section 37-10-107. Accordingly, the Laniers are barred by Section 37-10-107 from asserting any claims or defenses premised on verbal, unsigned representations by the lender regarding renewals or extensions of the Loans. As explained by the authors of the Model Act upon which Section 37-10-107 is based, "an oral promise surrounding the execution of a promissory note, mortgage, security agreement, guaranty agreement, surety agreement, or letter of credit should still be subject to the provisions of the statute." John L. Culhane, Jr., and Dean C. Gramlich, *Lender Liability Limitation Amendments to State Statutes of Frauds*, 45 Bus. Law. 1779, 1796 (1990). *See also Branch Bank & Trust Co. v. Tech. Solutions, Inc.*, No. 3:13-CV-01318-JFA, 2014 WL 691656, at *3 (D.S.C. Feb. 21, 2014) (affirmed on appeal) (because **the Laniers** (the same Laniers in the case at bar) failed to produce a document in support of their counterclaims in a foreclosure action, their counterclaims were within the statute of frauds and were dismissed); *Sea Cove Development, LLC v. Harbourside Community Bank*, 387 S.C. 95, 105, 691 S.E.2d 158, 163 (2010) (recognizing that Section 37-10-107 is based directly on the Model Act).

To the extent the Laniers make any claim based on oral representations, such claims are clearly barred, and S.C. CODE ANN. § 37-10-107 provides additional legal authority to deny the motion to reconsider.

D. Remainder of Order Does Not Require Reconsideration

The Court's findings and conclusions of law in the remainder of the Order do not require further supplementation, nor were they directly attacked by the Laniers at the latest hearing, which by and large focused on whether their bankruptcy filings precluded pursuit of the proposed counterclaims.

While the Laniers have appeared *pro se*, based on the volume and content of documents filed, and their many appearance in front of this Court and other courts, these are clearly

sophisticated and well-versed litigants. Seeking bankruptcy protection is a serious matter, and the Laniers must live with both the benefits and consequences of seeking such protection. The Motion to Reconsider should be denied for the reasons set forth above, as well as for the reasons sets forth in SunTrust Mortgage's July 1, 2014 memorandum of law and as set forth in the Order.

Respectfully submitted,

Lawrence M. Hershon
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Telephone: (803) 255-8000
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January 19, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that on this date, I served a copy of the foregoing ***SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO RECONSIDER*** via United States, first class mail, postage pre-paid, and addressed as follows:

Cathy G. Lanier and Randy D. Lanier
172 Belle Chase Drive
Lexington, SC 29072

This 19th day of January, 2016.

Randi M. Berlin

Certificate of Appellant

RECEIVED
AUG 22 2016
SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 17, 2016

/s/ Geoffrey K. Chambers
Geoffrey K. Chambers
CPERL Group, LLC
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