

1 STATE OF SOUTH CAROLINA
2 COUNTY OF LEE

COURT OF COMMON PLEAS

3 UNITED STATES OF AMERICA,
4 ACTING THROUGH THE FARMERS HOME
5 ADMINISTRATION, UNITED STATES
6 DEPARTMENT OF AGRICULTURE,

Plaintiff(s),

CERTIFIED COPY

vs.

Case No.: 2009-CP-31-131

7
8 MAXIE LEE THOMAS, JR., a/k/a MAXIE
9 LEE THOMAS, DECEASED, AND ALL OTHER HEIRS
10 AT LAW AND/OR MAXIE LEE THOMAS, JR.,
11 a/k/a MAXIE LEE THOMAS, DECEASED, HIS
12 HEIRS, PERSONAL REPRESENTATIVES, EXECUTORS,
13 ADMINISTRATORS, SUCCESSORS AND ASSIGNS, AND
14 ANY SPOUSE IF HE HAS AND ALL PERSONS ENTITLED
15 TO CLAIM UNDER OR THROUGH HIM OR ANY OF THEM;
16 ALL PERSONS UNKNOW CLAIMING ANY RIGHT, TITLE,
17 ESTATE, INTEREST IN OR LIEN UPON THE REAL
18 ESTATE DESCRIBED IN THE COMPLAINT HEREIN;
19 ALSO ANY PERSONS WHO MAY BE IN THE MILITARY
20 SERVICE OF THE UNITED STATES OF AMERICA, BEING
21 A CLASS DESIGNATED AS JOHN DOE; AND ANY
22 UNKNOWN MINORS OR PERSONS UNDER A DISABILITY
23 BEING A CLASS DESIGNATED AS RICHARD ROE, LAURA
24 ANN TONEY, AND BRITTANY NICOLE THOMAS,
25

Defendant(s).

H E A R I N G

BEFORE THE HONORABLE STEPHEN BRYAN DOBY

DATE: Wednesday, June 22, 2016
TIME: 10:23 a.m.
LOCATION: Lee County Courthouse
123 South Main Street
Bishopville, South Carolina
REPORTED BY: CAROLL ANNE BOUTAHAR
Certified Verbatim Reporter

2

1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFF,
3 UNITED STATES OF AMERICA:

3

4 TYLER JACKSON PEACE & SILVER LLC
5 BY: TAYLOR A. PEACE, ESQUIRE
6 1331 Elmwood Avenue, Suite 300
7 Columbia, South Carolina 29201
8 tpeace@tjpslaw.com
9 803.779.4997.

8

9 LAURA ANN TONEY, PRO SE

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1 THE COURT: We're here on the case of United
2 States of America acting through Farmers Home
3 Administration versus Maxie Lee Thomas, et al.

4 We have present today Mr. Peace; Ms. Laura
5 Toney, who is a defendant in this matter. Also
6 present is my assistant, Cherylyn Harris.

7 This is a hearing that I scheduled as a
8 result of a motion that was filed by Ms. Toney
9 alleging that I had a conflict of interest and that I
10 should recuse myself from this matter.

11 I would note that we previously had a
12 hearing in this matter in -- I can't remember off the
13 top of my head what day it was.

14 MR. PEACE: April 13, Your Honor.

15 THE COURT: April 13, 2016.

16 Ms. Toney, this is your motion. I'll be
17 glad to hear from you in regards to that.

18 MS. TONEY: Your Honor, as I stated in the
19 motion, the Jennings Law Firm has represented me, my
20 husband, and my entire family for a number of years in
21 a number of capacities: car accident, home insurance
22 claim, loan closing.

23 My husband, who was a home builder, did all
24 of his loan closings here. As a matter of fact, deeds
25 and a number of activities.

4

1 And I thought for the best interest of
2 myself and the law firm of Jennings and Jennings it
3 might be best if you recuse yourself and maybe
4 appoint a special referee to hear this case.

5 THE COURT: Okay.

6 I would note and call attention to an
7 amended motion to recuse that was filed on May 3,
8 2016. I would also call attention to a memorandum of
9 law in support of motion for a new trial and
10 application and notice of conflict of interest that
11 was filed on April 25, 2016, by Ms. Toney.

12 Those are the filings that I'm aware of that
13 would impact this issue. Are there other exhibits or
14 memorandums that you have filed, Ms. Toney, that I
15 need to see or look at?

16 MS. TONEY: Well, my file is so big I
17 didn't get an opportunity to file them, but you're
18 talking about a number of 30 or 40 years of
19 representation by the Jennings Law Firm where you
20 represented myself and my husband and my family, and I
21 didn't have an opportunity to copy all of the files
22 pertaining to the representation from the Jennings Law
23 Firm.

24 THE COURT: You had also indicated in your
25 motion that -- and you styled it, at least on the

1 memorandum, as a motion for a new trial as well. Do
2 you want to address that particular issue also?

3 MS. TONEY: Well, I received papers and
4 documents from Mr. Peace --

5 THE COURT: Yes, ma'am.

6 MS. TONEY: -- for an order of foreclosure
7 and sale of the home. And I was not present during
8 that particular time. I think it took place when I
9 was in the hospital. Matter of fact, I was at
10 Carolinas Hospital Systems in Florence. And it was
11 based on that, thinking that a hearing was held
12 without me being present. And for that reason, I
13 wanted a new trial.

14 THE COURT: Well, actually, what was given
15 to me indicated -- and I'm not sure where it came from
16 or how it came to be sent to me, but there was a
17 doctor's excuse that was --

18 MS. TONEY: Right.

19 THE COURT: -- furnished to me from
20 somewhere. I'm not sure --

21 MS. TONEY: Carolinas Hospital System.

22 THE COURT: That did not indicate that you
23 were in the hospital. It indicated that you had been
24 to the doctor.

25 MS. TONEY: I was in the emergency room.

6

1 THE COURT: I forgot the exact...

2 MS. TONEY: I was in the emergency room at
3 Carolinas Hospital System.

4 MR. PEACE: Your Honor, if I may, I have a
5 copy of the record related to that foreclosure hearing
6 with me. The Court included that as an exhibit. It
7 was designated at the hearing as Court's Exhibit 2.

8 THE COURT: All right.

9 MR. PEACE: I hand the Court a copy of that.

10 THE COURT: Ms. Toney, is that what you had
11 furnished to me previously?

12 MS. TONEY: Yes, Carolinas Hospital System.
13 Yes. And on the excuse --

14 THE COURT: Is that the basis for your new
15 trial motion as well?

16 MS. TONEY: Yes.

17 THE COURT: All right. This indicates that
18 you were in the hospital on April 13 of 2016, and
19 it doesn't indicate that you were admitted to the
20 hospital. It looks like you had gotten a work excuse
21 for April 13 and April 14. The doctor did not
22 indicate any problem other than dizziness and doesn't
23 indicate that you could not attend a court hearing on
24 the trial date.

25 MS. TONEY: If you would give me an

1 opportunity, I would go back and get that from the
2 doctor because I was so dizzy I couldn't even stand up.
3 I mean, I was -- I suffer from vertigo. I mean, I
4 could not even -- and, matter of fact, I went to the
5 emergency room with my brother and took sick in the
6 emergency room. My brother was the purpose of me
7 going to the emergency room that day.

8 THE COURT: Okay. So is that the basis for
9 your motion for a new trial?

10 MS. TONEY: Yes, and also I have a motion
11 here that I would like to present to the Court.

12 THE COURT: All right. Before we do that,
13 let me hear from you fully on the motion to recuse
14 myself.

15 MS. TONEY: Mm-hmm.

16 THE COURT: Your motion is based on the fact
17 that my law firm had previously represented you or
18 your husband or your mother, I think you indicated --

19 MS. TONEY: Mm-hmm.

20 THE COURT: -- on matters not related to
21 this particular litigation. Is that correct?

22 MS. TONEY: Mm-hmm. Right.

23 THE COURT: Okay. So you're not saying that
24 the Jennings and Jennings Law Firm has a conflict, and
25 therefore I have a conflict, because there was

8.

1 representation with this particular litigation.

2 MS. TONEY: Right.

3 THE COURT: Your motion is based on the fact
4 that Jennings and Jennings Law Firm, for which I have
5 been a member since 1992, had represented you in the
6 past.

7 MS. TONEY: Right.

8 THE COURT: Okay. Is there anything about
9 that representation that would have impacted this
10 litigation in any manner?

11 MS. TONEY: Well, you know, being that it
12 was a conflict, being that you represented me, like I
13 said, in numerous occasions, in numerous ways.

14 And I'm so --

15 (There was an interruption in the
16 proceeding.)

17 THE COURT: I will note that during the
18 middle of our hearing, Ms. Toney fell ill and has been
19 taken by rescue squad to the hospital, and therefore
20 we will adjourn the hearing today.

21 (The hearing was adjourned at 10:44 a.m.)

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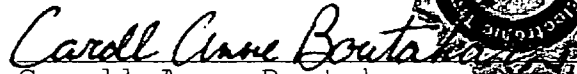
CERTIFICATE OF REPORTER


I, Carroll Anne Boutahar, Certified Verbatim Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing proceeding was taken before me on the date and at the time and location stated on page 1 of this transcript; that all statements made on the record at the time of the proceeding were recorded by me and were thereafter transcribed; that the foregoing proceeding as typed is a true, accurate, and complete record of the proceeding to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the case pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 12th day of July, 2016, at Columbia, Richland County, South Carolina.


Carroll Anne Boutahar
Certified Verbatim Reporter,
Notary Public
South Carolina at Large
My Commission Expires:
December 13, 2012



1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEE

3 - - -

4 United State of America,
5 acting through the Farmers
6 Home Administration, United
7 States Department of Agriculture,

CERTIFIED COPY

Plaintiff,

7

vs.

CASE NO. 2009-CP-31-131

8

9 Maxie Lee Thomas, Jr. a/k/a
10 Maxie Lee Thomas, deceased,
11 and all other heirs at law
12 and/or distributees of Maxie
13 Lee Thomas, deceased, his heirs,
14 personal representatives, executors,
15 administrators, successors and
16 assigns, and any spouses if any
17 he has, and all persons entitled to
18 claim under or through him or any
19 of them; all persons unknown
20 claiming any right, title, estate,
21 interest in or lien upon the real
22 estate described in the Complaint
23 herein; also any persons who may be
24 in the military service of the
25 United State of America, being a
class designated as Joe Doe; and
any unknown minors or persons under
a disability being a class designated
as Richard Roe, Laura Ann Toney, and
Brittany Nicole Thomas,

Defendants.

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FORECLOSURE HEARING

BEFORE HONORABLE S. BRYAN DOBY, MASTER IN EQUITY

CERTIFIED COPY

DATE: Wednesday, April 13, 2016

TIME: 10:38 a.m. - 11:24 a.m.

LOCATION: Lee County Courthouse
Bishopville, South Carolina.

TAKEN BY: Attorneys for the Plaintiff

REPORTED BY: Laura Chamblee
Registered Professional Reporter

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1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFF:

3

4 TYLER CASSELL JACKSON PEACE & SILVER, LLC
5 BY: TAYLOR A. PEACE, ESQUIRE
6 tpeace@tcjps.com
7 1331 Elmwood Avenue
8 Suite 300
9 Columbia, South Carolina 29201

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14 (INDEX AT REAR OF TRANSCRIPT)

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P R O C E E D I N G S :

THE COURT: Ms. Toney has filed several different things. We are here on the case of 2009-131. It is captioned United States of America versus Maxie Lee Thomas, et al, including Ms. Laura Ann Toney. I would note for our record today that nobody has appeared on behalf of the Defendants.

I got two things that were filed by Ms. Toney or at least sent to me. First of all, did you receive a letter dated April 8, 2016 at least raising whether or not I have a conflict in this matter because of prior representation of my firm of Ms. Toney, her husband Milton Toney, and her mother Carrie B. Thomas? Did you receive that?

MR. PEACE: I did not, Your Honor. However, if the Court -- If you have some conflict of interest, we would waive whatever conflict. We would take the position that we believe Your Honor can be impartial in these matters. Whatever conflict of interest that Ms. Toney has, it would seem to be that that would be, if anything, if there was any partiality on the Court regarding that conflict, it would be in Ms. Toney's favor and to our disadvantage. However, we take the position

1 that the Court can be impartial in this matter in
2 whatever conflict there is or may be, and we're
3 willing to waive that conflict.

4 THE COURT: Well, I have not done any
5 investigation to determine what my law firm has
6 done for Ms. Toney. I don't think her husband
7 Milton Toney is a party to this action, or at least
8 I don't believe so, and I don't think her mother
9 Carrie B. Thomas is a party to this action.

10 MR. PEACE: They're not, Your Honor. She is
11 only a party to this action by virtue of her
12 interest that she may have as part of, or devisee
13 of, the Maxie Lee Thomas estate.

14 THE COURT: All right. Are you aware of any
15 conflict that would arise with the Maxie Lee Thomas
16 estate that my firm has engaged in some
17 representation of any of the heirs in regards to
18 that particular estate, I guess, would be the real
19 question?

20 MR. PEACE: We're not, Your Honor. We -- it
21 was not your firm. We know Ms. Toney's firm [sic]
22 was represented by another lawyer or law firm whose
23 name slips my mind at the moment. However, it was
24 not Jennings & Jennings.

25 THE COURT: Okay. What Ms. Toney has cited as

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1 being the basis for my recusal indicates -- She's
2 actually cited the rules dealing with a lawyer then
3 representing someone in a matter, and that lawyer
4 then representing another person in the same or
5 substantially related matter, which would create
6 the lawyer having some interest that would be
7 material, adverse to a former client, is what she
8 has cited. Obviously I'm not dealing with the
9 rules for a lawyer. I'm dealing with the judicial
10 rules. And they would roughly be the same -- the
11 same conflict.

12 So, not having been presented with any
13 information that would lead me to believe that I
14 have a conflict in this matter -- And certainly
15 just prior representation of Ms. Toney would not
16 create a conflict, it would have to be in this same
17 litigation or something substantially related to
18 that litigation to create that conflict, as I
19 understand it. So, while Ms. Toney is not present
20 today, I do not perceive a conflict. And without
21 her here to tell me specifically what that conflict
22 is, I'm not going to recuse myself in this matter
23 unless somebody can tell me something more than
24 what I've got right now. So, that's my ruling on
25 that.

1 Have you seen that particular fax as
2 well? And I tell you what, I'm going to make that
3 letter of Ms. Toney an Exhibit in this case also.
4 I'll get you a copy of that. We'll call that as
5 Court's Exhibit Number 1.

6 (Court Exhibit Number 1 was subsequently
7 marked for identification. The original was
8 retained by the Court.)

9 MR. PEACE: I did receive it around 9:45 this
10 morning.

11 THE COURT: I got it this morning. I can't
12 tell you -- When I got in morning, my secretary
13 gave it to me, so I can't tell you when I got it.
14 I don't know whether -- It was faxed; there may be
15 some time stamp on it as to when I received it.
16 One of the things I did note in there was that
17 apparently she went to the doctor. The excuse
18 itself looks like it's dated 4/14.

19 MR. PEACE: I see that, Your Honor.

20 THE COURT: The doctor -- Or at least the date
21 for the caregiver signature looks like 4/14 to me,
22 so I'm not sure exactly what's going on with this.
23 The trip to the doctor apparently occurred on
24 4/12/2016. Based on that, it doesn't tell me that
25 she's unable to participate in a court proceeding.

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It says please excuse patient from work Wednesday, 4/13, and Thursday, 4/14, but it doesn't say why. The only thing listed down there is dizziness. And I'm not willing to continue it based on -- based on that.

MR. PEACE: We'll just make one additional note for the record.

THE COURT: Okay.

MR. PEACE: That the -- that Ms. Toney's residence is here in Bishopville; however, it looks like that doctor's excuse came from somewhere in Florence along with no emergency or ambulance -- anything stating that she was taken there by ambulance. So while she may be dizzy, apparently at that time she was not dizzy enough so that she could not drive herself to Florence.

THE COURT: Well, it looks like she went to Carolina's Hospital on a -- it says for dizziness is the reason for the visit, but it also looks like the emergency room visit. So it was -- It's not apparently inpatient treatment at the hospital; it was just the emergency room visit that she made. So I'm not willing to continue it based on that. And I'm going to make that Court's Exhibit Number 2. And I will get you a copy of that as well.

1 (Court Exhibit Number 2 was subsequently
2 marked for identification. The original was
3 retained by the Court.)

4 THE COURT: All right. Now let me ask you
5 about this then. It looks like there is an appeal
6 that was filed in this matter. It appears to me
7 there was an order that was issued by Judge Cothran
8 if I remember it correctly.

9 MR. PEACE: Yes, sir.

10 THE COURT: He dated it October 22. It looks
11 like it was filed November 5, 2015. It looks like
12 Ms. Toney has appealed that particular order.

13 MR. PEACE: That's not exactly correct. This
14 case has somewhat become a procedural nightmare.
15 What happened was D.J. Tyler who was previous
16 counsel in this case filed a motion for summary
17 judgment back in March of 2014.

18 THE COURT: Right.

19 MR. PEACE: The order -- Argued the motion for
20 summary judgment March 21, 2014. Along with that
21 was a motion to dismiss a jury trial demand that
22 was included in Ms. Toney's answer. About the time
23 that Mr. Tyler left the practice of law entirely,
24 Judge Cothran's law clerk at that time, Russell
25 Parker, contacted our firm and said, I need you to

10

1 draft this order. We drafted the order, sent it to
2 Judge Cothran's law clerk for his review. And we
3 sent it to Ms. Toney after Judge Cochran signed it.

4 She then filed a motion to vacate. I
5 think she captioned it notice of ex parte
6 application motion to vacate, based on an
7 allegation that she did not receive a copy of the
8 proposed order prior to the Court signing it. At
9 that time we already had a foreclosure hearing
10 scheduled with Your Honor. We ended up postponing
11 that. I contacted Mr. Toney and asked, this is
12 what we're willing to do. We're willing to vacate
13 the order to allow you to have time to give comment
14 on it, to which we heard nothing. We heard
15 crickets until about late -- mid to late September
16 when we heard from Judge Cothran's law clerk again
17 that said, We want to have a hearing on this
18 motion. Can you be here October 1? We said
19 certainly.

20 On September 28 they called us again and
21 said, We've tried to contact Ms. Toney numerous
22 times. We hear nothing from her. Just be here on
23 October 1st. We came. At that time, according to
24 the transcript which I have if the Court would like
25 to see it, Judge Cothran indicated that he had

1 tried to contact Ms. Toney several times.
2 Telephone, email, letter. They didn't hear
3 anything --

4 THE COURT: Okay.

5 MR. PEACE: -- until the day of the hearing,
6 October 1, when she called Judge Cothran's current
7 law clerk, Ryan White, and said that she could not
8 be there because of -- because she was studying for
9 her Masters.

10 The Court then issued that order. After
11 that order was issued, we received a notice of
12 appeal of the order for summary judgment, along
13 with an objection to the order that was filed
14 October 1 -- or I believe it was filed October 8.

15 So what is on appeal is the order for
16 summary judgment and the dismissal of the jury
17 trial demand. However, in the -- In her appeal
18 brief, in her motion to vacate, it all concerns
19 alleged procedural irregularities regarding the
20 order for summary judgment. None of the contents
21 or the merits of that order are actually on appeal.

22 So we would take the position that those
23 issues that are contained in the order for summary
24 judgment, the merits of it, the meat of it, are not
25 on appeal and are final because no order for

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1 summary judgment -- or no appeal has ever been
2 taken on those issues. She didn't raise it in her
3 motion to vacate, and she didn't raise it on her
4 appeal, and she didn't show up for her own motion.

5 Even if the Court -- even if Your Honor
6 decides, well, the appeal may have some bearing,
7 Judge Jeffrey Young bifurcated this case in 2010.
8 Said that the foreclosure and defenses related
9 thereto may go forward but any issues related to
10 Ms. Toney's counterclaims which are legal would be
11 bifurcated. The order for summary judgment handled
12 those counterclaims which are legal in nature and
13 request damages.

14 So while it is on appeal, we take the
15 position that the stay is not -- is not in play
16 with regard to the actual foreclosure or defenses
17 related thereto.

18 THE COURT: Is there an order -- What order
19 would I look at to say that I've still got the
20 right to go forward on the foreclosure,
21 irrespective of whatever her counterclaims that she
22 may have asked for a jury trial on? What order
23 would I look at or gain that authority from?

24 MR. PEACE: The order to bifurcate from June
25 of -- from January of 2010. It referred this

1 matter to Your Honor. Specifically, Judge Young
2 ordered that Plaintiff's foreclosure action and any
3 defenses related thereto are referred to the Master
4 in Equity for Lee County pursuant up to Rule 42(b)
5 SCRCF. At the bottom of that, item one states the
6 foreclosure action may proceed immediately. And
7 the counterclaim of Defendant Laura Ann Toney for
8 damages shall remain with the circuit court.

9 THE COURT: All right. So your position is
10 that any issues that were appealed were simply
11 having to do with her counterclaim, not necessarily
12 with the foreclosure, and this order of January 18,
13 2010 filed January 26, 2010 bifurcating this case
14 allow me to proceed?

15 MR. PEACE: Correct, Your Honor. And on top
16 of the fact that her appeal -- Her appeal does
17 not -- in the motion to vacate raises no issues
18 that go to the merits of the order for summary
19 judgment. The only thing that's on appeal is a
20 potential procedural matter in the order denying
21 the amended notice of ex parte communication. For
22 ease of reference, the order filed November 4
23 indicates that for -- whatever procedural
24 irregularity there is did not cause Ms. Toney any
25 prejudice. She failed to present any evidence to

14

1 indicate that -- failed to present any grounds by
2 which the order for summary judgment should be
3 vacated.

4 THE COURT: Okay. She never appealed that
5 2010 order from Judge Young?

6 MR. PEACE: She did. However, the Court --
7 Chief Justice Few or -- yeah, Chief Judge Few --

8 THE COURT: At the time Chief Judge Few, now
9 Justice Few.

10 MR. PEACE: -- found that the order to
11 bifurcate was not immediately appealable. So that
12 appeal was dismissed. She filed a petition for a
13 rehearing that was subsequently denied. And then
14 she filed for cert with the Supreme Court, which
15 they denied cert as well. And actually -- She's
16 actually been sanctioned by the Court of Appeals
17 concerning frivolous filings in this case.

18 THE COURT: All right. So I've got then the
19 Court of Appeals saying that it was interlocutory;
20 there was no right to appeal immediately from that
21 particular order?

22 MR. PEACE: Correct, Your Honor.

23 THE COURT: That simply being a procedural
24 matter and not a substantive matter?

25 MR. PEACE: Correct. Let me see if I can --

1 THE COURT: So if I were to hold a hearing
2 today, your position would be then that I'm not
3 barred from doing that. She would have a right
4 then, obviously, to raise that issue on any
5 subsequent appeal from this particular order?

6 MR. PEACE: Can you repeat that one more time?

7 THE COURT: Yeah. Because it was found to be
8 premature, her appeal would then lie -- for the
9 bifurcation, her appeal would lie after any order
10 that I would issue in this case.

11 MR. PEACE: That would be what Chief Judge
12 Few's order indicates.

13 THE COURT: Okay. This is not a part of the
14 record. I'm going to make a copy of that a part of
15 the record and I'll call it Court's Exhibit Number
16 3 -- number 4. The order to bifurcate I was going
17 to make number 3. And I'll make this order from
18 the Court of Appeals decision from the Court of
19 Appeals number 4.

20 (Court Exhibit Numbers 3-4 were subsequently
21 marked for identification. The originals were
22 retained by the Court.)

23 THE COURT: All right. Having made that
24 determination, are you ready to proceed?

25 MR. PEACE: We are, Your Honor.

16

1 THE COURT: If you will call your first
2 witness then.

3 MR. PEACE: We would like to Ms. Kimberly
4 Ahtonen.

5 THE COURT: How do you spell your name?

6 THE WITNESS: A-H-T-O-N-E-N.

7 MR. PEACE: Judge, for the record I would like
8 to go ahead, if we could, go ahead and place all of
9 Exhibits in. So that way I can have Ms. Ahtonen
10 just flip through them as we go along.

11 THE COURT: Do you want to mark them for
12 identification at this point?

13 MR. PEACE: I will.

14 THE COURT: Do you already have them in the
15 order you want those heard in?

16 MR. PEACE: I do.

17 KIMBERLY AHTONEN, being first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. PEACE:

21 Q Ms. Ahtonen, can you state your name for the
22 record, please.

23 A Kimberly Ahtonen.

24 Q And what is your involvement in this case?

25 A I am employed by USDA Rural Development as a

1 single family housing specialist in our state office.

2 Q What state office, where are you located?

3 A Columbia, South Carolina.

4 Q Columbia, South Carolina. What do you do
5 there?

6 A We coordinate the single family housing
7 program for the whole state and oversee what's going on
8 in the field offices that handle our local cases. And
9 we review the field offices to make sure everything is
10 going good and that all the documents are being stored
11 properly.

12 Q Okay. The documents that are being stored
13 properly, is this -- is this loan part of that file?

14 A Yes.

15 Q Are these files that you would store?

16 A Yes.

17 Q Are you familiar with this file?

18 A I am.

19 Q Would you keep certain documents in the
20 ordinary course of your business?

21 A Yes, sir.

22 Q What would those documents be?

23 A In this case we've got tons of documents
24 because it starts from when the loan was made, the
25 application where he applied for the loan, the loan

18

1 closing documents, any servicing documents. Back when
2 he first got his loan, we actually serviced the files
3 from the local offices. So any servicing letters and
4 such would be in the file. We would have the mortgage,
5 promissory note, the HUD statement, anything regarding
6 the file. And then when it got to the point of
7 foreclosure, we would have the foreclosure documents in
8 our file.

9 Q So you're familiar with this particular file?

10 A I am familiar with that file. I was in the
11 local office that serviced that file years ago.

12 Q Years ago. And you reviewed the file prior to
13 today?

14 A I have.

15 (Exhibit A was previously marked for
16 identification.)

17 BY MR. PEACE:

18 Q Okay. Ms. Ahtonen, can you identify what has
19 been previously marked as Exhibit A for me?

20 A This is a promissory note.

21 Q The promissory note that relates to this file?

22 A It is.

23 Q Who is it by and between?

24 A It would be between Mr. Maxie Lee Thomas and
25 the United States government.

1 MR. PEACE: Your Honor, I would like to submit
2 these for identification purposes at this time.

3 THE COURT: Okay.

4 (Exhibits B, C, and D were previously marked
5 for identification.)

6 BY MR. PEACE:

7 Q Can you tell me what this document is?

8 A This is the mortgage.

9 Q The mortgage that relates to this particular
10 file?

11 A It is. It's between Maxie Lee Thomas and the
12 United States government.

13 MR. PEACE: Your Honor, I would like to submit
14 this for submission as Exhibit B.

15 THE COURT: So we've got A is the note.

16 MR. PEACE: Yes, sir.

17 THE COURT: And B is the mortgage?

18 MR. PEACE: Yes, Judge.

19 BY MR. PEACE:

20 Q And can you identify that document for me?

21 A That is the acceleration notice or demand for
22 payment.

23 Q Who is it to?

24 A It says Brittany Thomas, 71 Broad Acres Road,
25 Bishopville, South Carolina 29010.

20

1 Q Can you tell me the date this was sent?

2 A It was as of April 3, 2009.

3 MR. PEACE: Your Honor, I would like to submit
4 this demand as Exhibit C.

5 THE COURT: Okay.

6 BY MR. PEACE:

7 Q Can you identify this document for me?

8 A This is the affidavit of proof statement of
9 account. And that's the statement of account for Maxie
10 Lee Thomas as of April 13, 2016.

11 Q Okay.

12 MR. PEACE: And, Your Honor, I would like to
13 submit that as Exhibit D.

14 THE COURT: Okay.

15 MR. PEACE: And those are all the Exhibits we
16 would like to put in at this time.

17 THE COURT: All right. You want to put those
18 in as Exhibits and not just for identification?

19 MR. PEACE: Yes, Your Honor.

20 THE COURT: All right. We'll admit those as A
21 through D. You have that?

22 MR. PEACE: I do, Your Honor.

23 (Exhibits A-D were received in evidence.)

24 BY MR. PEACE:

25 Q I'm going to show you what's been previously

1 identified as Exhibit A. You stated that the note is
2 between the USDA and Maxie Lee Thomas; is that right?

3 A Yes, sir.

4 Q What's the date on that note?

5 A August 10, 1984.

6 Q And what is the amount that's due?

7 A \$40,000.

8 Q Is there an interest rate on that?

9 A 11.875 percent.

10 Q And what -- why did Mr. Thomas take out this
11 promissory note?

12 A To purchase the home.

13 Q What home? Where is it located?

14 A It's on Broad Acres Road in Bishopville.

15 Q All right. How was this note to be repaid, or
16 how was this loan to be repaid?

17 A It says it would be repaid in 393 payments
18 starting on November 10, 1984 at \$406 a month.

19 Q When was the last payment supposed to be made?
20 Let me ask it a different way. When was the note to
21 be -- when was everything supposed to be paid off?

22 A I'm trying to find that now. Thirty-three
23 years from November 10, 1984.

24 Q Would that be around -- So it's 33 years
25 from --

22

1 A I see it on the mortgage. It's August 10,
2 2017.

3 Q All right. So we have a 33-year repayment
4 period; is that right?

5 A That's right.

6 Q What happens if Mr. Thomas does not make the
7 payments, or what -- what happens if he doesn't make his
8 payments?

9 A He goes into default.

10 Q What are -- Does the note contain any
11 provisions regarding default?

12 A Yes, on page 2.

13 Q Can you tell me what those provisions are?

14 A Failure to pay when due any debt evidenced
15 hereby or perform any covenant or agreement hereunder
16 shall constitute default under any other instrument
17 evidencing a debt of Borrower owing to, insured, or
18 guaranteed by the government, or securing or otherwise
19 relating to such debt; and default any such other
20 instrument shall constitute default hereunder. Under
21 any such default, the government at its option may
22 declare all or part of any such indebtedness immediately
23 due and payable.

24 Q Are there any other remedies?

25 A (Witness shakes head negatively.)

1 Q Okay.

2 THE COURT: Why don't you give a verbal
3 response.

4 THE WITNESS: No.

5 BY MR. PEACE:

6 Q Sorry about that. And who signed this note?

7 A Maxie Lee Thomas.

8 Q Let me show you what's previously been marked
9 as Exhibit B. Can you tell me what is this?

10 A The mortgage.

11 Q What is the purpose of that mortgage?

12 A This is to secure the government's interest in
13 this property.

14 Q And you previously stated that the loan was
15 made so he could purchase the property; is that right?

16 A Correct.

17 Q Can you tell me what payments were to be made
18 under the loan or under the mortgage?

19 A It says that he should -- the date of the
20 instrument was August 10, 1984 for a principle amount of
21 \$40,000 with an annual rate of interest 11.875, and that
22 the final date of payment would be August 10, 2017.

23 Q That \$40,000, that's the same thing referenced
24 in the note?

25 A Yes.

24

1 Q What happens, or does the -- does the
2 mortgage -- does the mortgage contain any default
3 provisions?

4 A Yes, number 17.

5 Q Can you tell me what the remedies on default
6 are?

7 A Basically foreclosure action.

8 Q Does the note provide for the -- or the
9 mortgage provide for the collection of any attorney's
10 fees related to the foreclosure or collection?

11 A Yes, it does, in number 11.

12 Q All right. You said the date of the
13 instrument was August 10, 1984; is that right?

14 A August 10, 1984.

15 Q Does it appear that Maxie Lee Thomas signed
16 that mortgage?

17 A It's got his signature.

18 Q Who else signed the document?

19 A It's got two witnesses. It looks like Margie
20 McCutchen and Ed Hucks -- Edward Hucks.

21 Q Go ahead and flip to the next page if you
22 will. Can you tell me who signed this page?

23 A It looks like Margie McCutchen and Edward
24 Hucks. Margie McCutcheon signed as a notary public.

25 Q All right. Go on to the next page. Do you

1 know who closed the loan?

2 A I believe I remember it was attorney Baskin,
3 who is no longer alive.

4 Q Okay. Do you remember what his first name
5 was, or do you know what the law firm was?

6 A Baskin & Baskin I think.

7 Q Okay. Can you identify this document for me
8 please, Ms. Ahtonen?

9 A This is the deed.

10 Q You have this in your file?

11 A We would.

12 MR. PEACE: Your Honor, I would like to submit
13 this as Plaintiff's Exhibit E.

14 (Exhibit E was marked for identification.)

15 THE WITNESS: And that does say Baskin &
16 Baskin, Attorney at Law, Bishopville, South
17 Carolina.

18 BY MR.. PEACE:

19 Q And can you tell me the date of this
20 instrument, of this deed? If you can't, that's fine. I
21 understand it's a poor copy.

22 A I see it on the last page. It says August 10,
23 1984.

24 Q Okay. So that would have been about the
25 same -- that would have been the same date as the note

26

1 mortgage; is that right?

2 A Yes.

3 Q Is it your understanding that a lawyer closed
4 this loan?

5 A Yes, sir.

6 Q And that all these documents were executed at
7 or around the same time?

8 A Yes, sir.

9 Q Why don't you tell me a little bit about the
10 history of this particular loan and what you know about
11 it, and kind of what's -- kind of what happened.

12 A Basically it hasn't been paid on in a long
13 time. It's been multiple times accelerated due to
14 different complaints and whatnot filed by Ms. Toney is
15 why it's gone on so long. I think you'll see on the
16 statement of account that the next payment due is
17 actually 1999.

18 Q Is Mr. Thomas -- Do you have any
19 communications with him?

20 A No, he's been deceased since 2005.

21 Q Since 2005. I notice on the demand that we
22 marked as Exhibit C it says Brittany Thomas. Can you
23 tell me about that?

24 A Brittany Thomas is his daughter. When he
25 originally died, she is who came into the office and

1 brought his death certificate and a paper from the
2 probate court saying that she was the personal
3 representative for the estate.

4 Q Has that subsequently changed?

5 A Yes. In 2006 Ms. Toney produced a will and a
6 new personal representative form from the probate court
7 saying she was now the personal representative for the
8 estate.

9 Q So y'all -- Did y'all provide Ms. Toney with
10 notice that the loan had been accelerated?

11 A Yes.

12 Q So you said the last payment was when? When
13 is the next payment due?

14 A Let me find that and tell you exactly. August
15 10, 1999.

16 Q Okay. Okay. Can you tell me how much is due?

17 A At this time \$221,719.83.

18 Q Can you tell me what of that is principle?

19 A \$36,379.03.

20 Q And what of that is interest?

21 A \$64,110.48.

22 Q How does that all add up to \$221,000?

23 A There's also subsidy granted with a direct
24 USDA program.

25 Q Tell me about that.

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1 A What we do is we subsidize the payments. If
2 the person can only afford to pay a partial amount of
3 that payment per month, and we do that by reviewing
4 their income every year. And if they are only able to
5 pay a partial amount of that, then the government is
6 actually paying part of their payment for them. Over
7 time the part that the government is paying for them is
8 what we call the subsidy to be recaptured. Basically
9 that amount has to be repaid before their mortgage gets
10 released.

11 Q Anything else included in that \$221,000?

12 A There's fees assessed in the amount of
13 \$83,352.04.

14 Q Do you know what those fees assessed consist
15 of?

16 A That would be things like the attorney fees,
17 late fees, taxes that we've been paying over the years.
18 Could be a multitude of things such as that in just
19 keeping this property.

20 Q Keeping the property up?

21 A Over these years, yes.

22 Q What kind of actions have y'all taken to keep
23 the property up?

24 A Well, the taxes have had to be paid every
25 year. And, you know, that's going on at least eleven

1 years now that we've been having to do that since he's
2 been deceased.

3 Q Okay.

4 A Attorney fees, and there's been multiple
5 attorneys involved in this over the years. With all the
6 counterclaims and that kind of thing, you know, they've
7 really added up.

8 MR. PEACE: Your Honor, I have an affidavit of
9 attorney's fees related to that.

10 THE COURT: You want to make that F?

11 MR. PEACE: Yes, Your Honor.

12 (Exhibit F was marked for identification.)

13 BY MR. PEACE:

14 Q Based on what we've talked about here today
15 are you of the opinion, or is it your belief, that this
16 loan is in default?

17 A Yes.

18 Q And that the USDA has accelerated the entire
19 amount due --

20 A Yes.

21 Q -- per the note and mortgage? Okay. Have --
22 What remedy is the USDA seeking?

23 A Default.

24 Q Okay. Is it seeking foreclosure?

25 A Yes.

30

1 Q Is the USDA requesting a deficiency in this
2 matter?

3 A Yes.

4 Q Is it asking to have -- Is it asking to have
5 the property sold at public auction?

6 A Yes.

7 Q At the next public auction?

8 A Yes.

9 MR. PEACE: I have nothing further for you,
10 Ms. Ahtonen.

11 THE COURT: So your deficiency would simply be
12 against then now the estate of Maxie Lee Thomas,
13 Jr., is that what you're asking?

14 THE WITNESS: Yes.

15 THE COURT: I mean that's the only person that
16 signed the note at this point.

17 THE WITNESS: Yes.

18 THE COURT: Has there been a claim filed with
19 the estate at this point?

20 MR. PEACE: Yes, Your Honor. However, that's
21 another outstanding issue that -- that's kind of
22 another outstanding issue. Ms. Toney has been, as
23 Ms. Ahtonen said, was appointed as personal
24 representative. However, that case has been
25 stricken from the active roster numerous times for

1 burglary -- or at least nominally captioned as
2 burglary cause of action, those issues were
3 retained by the circuit court. The balance of the
4 counterclaims would be included in the referral to
5 me then, is that --

6 MR. PEACE: Correct.

7 THE COURT: Okay.

8 MR. PEACE: That is our position.

9 THE COURT: Well, obviously whatever was
10 referred, she hasn't presented any evidence to --

11 MR. PEACE: Correct.

12 THE COURT: -- further her claims. Therefore,
13 I will find that for lack of prosecution the causes
14 of action, except for numbers 1 and 4, I find for
15 the Plaintiff in those because of a lack of
16 evidence nor prosecution on this particular
17 Defendant's behalf. Okay. That's yours, I
18 believe. Does that cover everything?

19 MR. PEACE: That covers everything.

20 THE COURT: Okay. You know you've got to
21 submit the order under the e-file now?

22 MR. PEACE: Correct.

23 THE COURT: And I am going to issue my own
24 order dealing with the alleged conflict of
25 interest.

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1 MR. PEACE: Okay.

2 THE COURT: So you don't have to do that. The
3 balance, including her -- Ms. Toney's request to
4 have this continued because of illness, I'm going
5 to let you deal with that in the order as well, in
6 the regular order.

7 MR. PEACE: Okay.

8 THE COURT: I'm going to admit then Exhibits A
9 through F, and I'm going to turn those over to our
10 court reporter today. And we'll adjourn the
11 hearing. I'm going to hold Court Exhibits 1
12 through 4. I'll give you a copy of those.

13 THE REPORTER: Do you want a transcript of
14 this?

15 MR. PEACE: To be safe, I do.

16 (The proceedings concluded at 11:24 a.m.)

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CERTIFICATE OF REPORTER

I, Laura Chamblee, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing proceedings was taken before me on the date and at the time and location stated on page 1 of this transcript; that the foregoing proceedings as typed is a true, accurate and complete record made at the time of the hearing to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 14th day of April 2016, at Hartsville, Darlington County, South Carolina.

Laura Chamblee

Laura Chamblee,
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
December 22, 2018

36

1

I N D E X

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PAGE

4

KIMBERLY AHTONEN

5

EXAMINATION:

6

BY MR. PEACE

16

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CERTIFICATE OF REPORTER

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E X H I B I T S

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EXH. NO.

DESCRIPTION

PAGE

12

Court 1

April 8, 2016 letter re: conflict
of interest

7

13

Court 2

April 13, 2016 letter requesting
continuance

9

14

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Court 3

Order to bifurcate

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Court 4

SC Court of Appeals order

15

17

Exh. A

Promissory note

18

18

Exh. B

Mortgage

19

19

Exh. C

Notice of Acceleration

19

20

Exh. D

Affidavit of Proof Statement
of Account

19

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Exh. E

Title to real estate

25

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Exh. F

Affidavit of attorney fees

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1 failure to actually deal with the claims and to
2 file closing documents. That's -- As of right now,
3 Maxie Lee Thomas is still the owner of record.

4 THE COURT: All right. Very good. Anything
5 else from this witness?

6 MR. PEACE: Nothing further, Your Honor.

7 THE COURT: Okay. Anything else you want to
8 submit?

9 MR. PEACE: Not at this time. However, would
10 at least like to go ahead and put on the record
11 that based on Ms. Toney's answer and counterclaim
12 and her failure to appear, she's not produced any
13 evidence as to several of her defenses or at least
14 that are considered counterclaims. In
15 particular --

16 THE COURT: Well, now am I dealing with those,
17 or am I simply dealing with the foreclosure,
18 because I thought circuit court retained
19 jurisdiction over the counterclaim issues?

20 MR. PEACE: Well, I think that's part of what
21 may -- what may or may not still be outstanding.
22 In the order for summary judgment, which has not
23 been appealed, or the merits of the order for
24 summary judgment that have not been appealed, the
25 Court -- Judge Cothran found summary judgment as to

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1 Ms. Toney's what I'll call first and fourth
2 counterclaims. Those being violation of Fair Debt
3 Collection Practices Act, as well as the fourth
4 cause of action for burglary or violation of SC
5 Code 27-5-110.

6 In particular, Judge Cothran found that
7 the Fair Debt Collection Practices Act only relates
8 to a debt collector. And a debt collector is
9 defined in federal statute as not being someone who
10 owns their own debt. In this case, the USDA is the
11 holder of the note and mortgage; they were the
12 originator of the note and mortgage. This has not
13 gone to any servicer or other debt collector. So
14 therefore, under federal statute the USDA cannot
15 have violated the Fair Debt Collection Practices
16 Act. Also, as to --

17 THE COURT: But my question, to go back,
18 though is, it looks like the only thing that's been
19 referred to me was the foreclosure action.

20 MR. PEACE: And the defenses related thereto.
21 And that's the thing. Judge Cothran found that the
22 first and fourth counterclaims are actually
23 counterclaims. The remainder are actually defenses
24 to the foreclosure action.

25 THE COURT: So her Fair Debt Collection and

Exhibit 4

Gary P. Rish, PC

ATTORNEY AT LAW
P.O. BOX 508
IRMO, SOUTH CAROLINA 29063-0508
(803) 749-1764
FAX (803) 781-8758

2015-002380

July 9, 2009

Clerk of Court, Lee County
P. O. Box 387
Bishopville, SC 29010

RE: USDA vs. Maxie Lee Thomas, Jr., aka Maxie Lee Thomas,
deceased, et al.
2009-CP-31-131

Dear Clerk:

Please find enclosed an Order of Service by Publication to be executed by you and filed in your office, together with my Affidavit of Service by Publication in regards to the above matter. If you find the same to be satisfactory, please note the filing information on the enclosed copy and return it to me in the envelope provided.

With my kindest regards, I am

Sincerely,

GARY P. RISH, PC

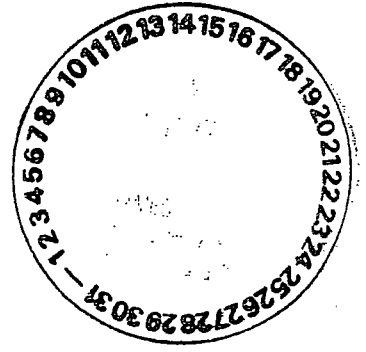
S/

Gary P. Rish

GPR/bd

Enclosures

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) 2009-CP-31-131
 COUNTY OF LEE)



United States of America, acting)
 through the Farmers Home)
 Administration, United States)
 Department of Agriculture,)

Plaintiff,)

vs.)

Maxie Lee Thomas, Jr., aka Maxie)
 Lee Thomas, deceased and all other)
 heirs at law and/or distributees of)
 Maxie Lee Thomas, Jr., aka Maxie)
 Lee Thomas, deceased, his heirs,)
 personal representatives,)
 representatives, executors,)
 administrators, successors and)
 assigns, and any spouses if any he)
 has, and all persons entitled to)
 claim under or through him or any)
 of them; all persons unknown)
 claiming any right, title, estate,)
 interest in or lien upon the real)
 estate described in the Complaint)
 herein; also, any unknown adults)
 being as a class designated as)
 John Doe and any unknown infants or)
 persons being under disability)
 being as a class designated as)
 Richard Roe, Laura Ann Toney and)
 Brittany Nicole Thomas)

Defendants.)

ORDER FOR SERVICE
 BY PUBLICATION

It appearing to my satisfaction from the Affidavit
 filed herewith by reference made a part of the Order, and from
 the verified Complaint which is filed in the Office of the Clerk
 of Court for Lee County, South Carolina, that the above-entitled

action has been commenced and is now pending; that this Court has jurisdiction of the parties hereto, and that a cause of action exists in favor of the above-named Plaintiff against the above-named Defendant(s) as fully set forth in said Complaint.

It further appears that all unknown Defendants as set forth in the caption are necessary and proper parties to said action, which is one to foreclose a mortgage of real estate as more particularly described in the Complaint herein. That the Plaintiff is unable, after due diligence, to determine the identity or location of said unknown Defendant(s), nor is the Plaintiff able to make service of the Summons in said action upon the unknown Defendant(s). That the said unknown Defendant(s) cannot be found within this State, although diligent efforts have been made.

Now, on motion of Gary P. Rish, Attorney for the Plaintiff herein, it is

ORDERED, that the service of the Summons in said action upon all unknown Defendant(s) be made by publication thereof in the Lee County Observer which newspaper is hereby designated as being most likely to give notice to all unknown Defendant(s) once a week for Three (3) consecutive weeks.

It is further ordered that a copy of the Lis Pendens, Notice of Filing and Notice to Appoint Guardian ad Litem be

published once a week for Three (3) consecutive weeks along with
the publication of the Summons herein above set forth.

James Deiss

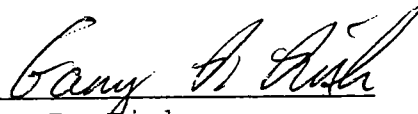
Clerk of Court
Lee County

Bishopville, SC

15 day of July, 2009

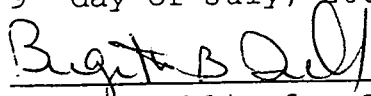
above-named, for the purpose of foreclosing a mortgage of real estate as set out more fully in the Complaint herein.

That there are certain unknown Defendant(s) listed in the caption to this action which are necessary and proper parties to the complete adjudication of the issues raised in the Complaint and that these parties or persons must be served by publication; that the Deponent does not have knowledge of their precise names nor addresses, and they cannot be found within the State of South Carolina although diligent efforts have been made to determine the names, identity, addresses, or location of any purported unknown Defendant(s) listed in the caption to this case.



Gary P. Fish
Attorney for Plaintiff

SWORN to before me this
9th day of July, 2009



Notary Public for SC
My Commission Expires: 1-23-2011

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION COVER SHEET

United States of America, acting through)
the Farmers Home Administration, United)
State Department of Agriculture.)

Plaintiff(s)

vs.

Maxie Lee Thomas, Jr., aka Maxie Lee Thomas)
et al.,)

Defendant(s)

-CP-

Submitted By: Gary P. Rish
Address: P. O. Box 508, Irmo, SC 29063

SC Bar #: 64229
Telephone #: 803-749-1764
Fax #: 803-781-8758
Email: grish1@bellsouth.net

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 (Proof of ADR/Exemption Attached).

NATURE OF ACTION (Check One Box Below)

- | Contracts | Torts-Professional Malpractice | Torts-Personal Injury | Real Property |
|--|--|---|--|
| <input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | <input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
<input type="checkbox"/> Notice/File Med Mal (230)
<input type="checkbox"/> Other (299) | <input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful death (360)
<input type="checkbox"/> Other (399) | <input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input checked="" type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript of Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Other (799) | Administrative Law/Relief
<input type="checkbox"/> Reinstate Driver's License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Administrative Law Judge (980)
<input type="checkbox"/> Public Service Commission (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) |
| Special/Complex/Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out of State Depositions (650)
<input type="checkbox"/> Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: 6/22/2009

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.

STATE OF SOUTH CAROLINA)
LEE COUNTY)

IN THE COURT OF COMMON PLEAS
3rd JUDICIAL CIRCUIT

United States of America, acting)
through the Farmers Home)
Administration, United States)
Department of Agriculture.)

CERTIFICATE OF EXEMPTION/WITHDRAWAL
FROM ARBITRATION AND MEDIATION

Plaintiff,)

vs.)

Maxie Lee Thomas, Jr., aka)
Maxie Lee Thomas, deceased,)
et al.,)

Defendants.)

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE:

- monetary relief requested in this case exceeds \$25,000;
- this is a class action;
- there is a substantial claim for injunction or declaratory relief requested in this case;
- this case involves (check one or more of the following)
 - title to real estate;
 - wills, trusts and decedents' estates;
 - mortgage foreclosure;
 - partition;
- this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
- monetary relief requested in this case is unspecified but exceeds \$25,000;
- this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue;
- this action is appellate in nature;
- this is a post-conviction relief matter;
- this is forfeiture proceeding brought by the State; or
- this is a contempt of court proceedings.

June 22, 2009



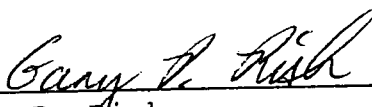
Gary P. Rish
Attorney for Plaintiff

NOTE: Motion must be presented to the court, a hearing held, and a finding made, for exemption or withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d), Rules of Circuit Court Arbitration.

NOTICE

TO THE DEFENDANTS ABOVE NAMED:

TAKE NOTICE that the Summons in the above mentioned action, of which the foregoing is a copy, together with the Complaint therein was filed in the Office of the Clerk of Court for Lee County on the ____ day of _____, 2009.



Gary P. Fish
Attorney for Plaintiff

Irmo, SC

June 22, 2009

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

United States of America, acting)
through the Farmers Home)
Administration, United States)
Department of Agriculture,)

Plaintiff,)

vs.)

SUMMONS
NON-JURY

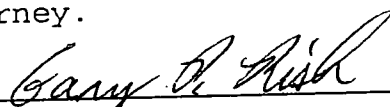
Maxie Lee Thomas, Jr., aka Maxie)
Lee Thomas, deceased and all other)
heirs at law and/or distributees of)
Maxie Lee Thomas, Jr., aka Maxie)
Lee Thomas, deceased, his heirs,)
personal representatives,)
representatives, executors,)
administrators, successors and)
assigns, and any spouses if any he)
has, and all persons entitled to)
claim under or through him or any)
of them; all persons unknown)
claiming any right, title, estate,)
interest in or lien upon the real)
estate described in the Complaint)
herein; also, any unknown adults)
being as a class designated as)
John Doe and any unknown infants or)
persons being under disability)
being as a class designated as)
Richard Roe, Laura Ann Toney and)
Brittany Nicole Thomas)

Defendants.)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the
Complaint in this action, a copy of which is herewith served upon
you, and to serve a copy of your Answer to the said Complaint on
the Plaintiff or its attorney, Gary P. Rish, PO Box 508, Irmo,

South Carolina, 29063, within thirty (30) days after the service hereof, exclusive of the day of such services; and, if you fail to answer the Complaint within the time aforesaid, a Judgment by Default will be rendered against you for the relief demanded in the Complaint. Your answer must be in writing and signed by you or your attorney and must state your address or the address of your attorney, if signed by your attorney.



Gary P. Rish
Attorney for Plaintiff
PO Box 508
Irmo, SC 29063
(803) 749-1764

Irmo, South Carolina

June 22, 2009

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

United States of America, acting)
through the Farmers Home)
Administration, United States)
Department of Agriculture,)

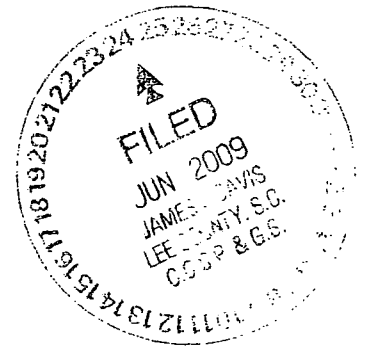
Plaintiff,)

vs.)

COMPLAINT
NON-JURY

Maxie Lee Thomas, Jr., aka Maxie)
Lee Thomas, deceased and all other)
heirs at law and/or distributees of)
Maxie Lee Thomas, Jr., aka Maxie)
Lee Thomas, deceased, his heirs,)
personal representatives,)
representatives, executors,)
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assigns, and any spouses if any he)
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claim under or through him or any)
of them; all persons unknown)
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John Doe and any unknown infants or)
persons being under disability)
being as a class designated as)
Richard Roe, Laura Ann Toney and)
Brittany Nicole Thomas,)

Defendants.)



The Plaintiff above-named, complaining of the Defendants
above-named, herein alleges:

1. That the Plaintiff is a Government agency duly organized and existing under and by virtue of the laws of the United States of America.

2. That upon information and belief, the Defendant, Maxie Lee Thomas, Jr., aka Maxie Lee Thomas, deceased was a resident of the County of Lee, State of South Carolina; that the remaining Defendants are made parties hereto by virtue of the fact that they may have or claim to have some right, title, interest in or lien upon the real property hereinafter more fully described, all as more fully hereinafter alleged; that the subject of this action is real property located in the County of Lee, State of South Carolina. That Laura Ann Toney and Brittany Nicole Thomas are joined as Defendants by virtue that they may be living heirs of Maxie Lee Thomas, Jr., aka Maxie Lee Thomas.

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

4. That heretofore, on or about August 10, 1984, Maxie Lee Thomas executed and delivered unto United States of America, acting through the Farmers Home Administration, United States Department of Agriculture certain Promissory Note in writing, wherein and whereby he promised to pay the sum of Forty Thousand and 00/100 (\$40,000.00) Dollars, according to the terms and

conditions set out therein, a copy of which is attached hereto and incorporated herein by reference.

5. That in order to secure said note, the said Maxie Lee Thomas did on the same date, made, executed and delivered to United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, Its Successors and assigns, a certain mortgage covering the premises located in the County and State aforesaid and in said mortgage described as follows:

ALL that certain piece, parcel or lot of land situate, lying and being in Bishopville Township, County of Lee, State of South Carolina, described as Lot No. 20 on a plat of Broad Acres Subdivision, prepared by J. P. Edwards, RLS, date November 4, 1971, and recorded in Plat Book M at Page 104 in the Office of the Clerk of Court for Lee County, SC and being bounded and described as follows: On the Southwest by land, now or formerly, of A. B. Baskin Estate and measuring thereon 120 feet, more or less; on the Southeast by Lot No. 21 according to said plat and measuring thereon 251.32 feet, more or less; on the Northeast by Broad Acres Drive and fronting thereon 120 feet, more or less; and on the Northwest by Lot No. 19 according to said plat and measuring thereon 251.32 feet, more or less.

This being the identical property conveyed unto Maxie Lee Thomas by deed of A. B. Baskin, Jr., Eldridge Baskin, Louise Baskin Stevenson and Virginia Baskin Fletcher recorded August 10, 1984 in the Office of the Clerk of Court for Lee County in Deed Book N-3 at Page 21. Thereafter on October 21, 2005, Maxie Lee Thomas died leaving Laura Ann Toney and Brittany Nicole Thomas as his sole heirs at law. See Estate #2005-ES31-139 filed in the Office of the Probate for Lee County.

TMS #029-00-00-059-000
Property Address: 71 Broad Acres Drive, Bishopville, SC

6. That thereafter, on August 10, 1984, said Mortgage was recorded in the Office of the Clerk of Court for Lee County in

Mortgage Book 102 at Page 279, a copy of said Mortgage being attached hereto and incorporated herein by reference. That the Plaintiff is now the owner and holder thereof.

7. That The United States of America, acting through the Farmers Home Administration, United States Department of Agriculture is the present owner and holder of the subject Note and Mortgage.

8. That according to the terms and conditions of the Note and Mortgage, it is provided that in the event of default in payment of any installment for a period of thirty days, the holder of the Note may, at its option, declare the remainder of said debt immediately due and payable; and if the same be placed in the hands of an attorney for collection, the maker to pay all costs of collection, including reasonable attorney fees.

9. That further, under the terms of said Mortgage, the mortgagor(s) covenanted to keep the building, structures and other improvements now or hereafter erected or placed on the premises insured in an amount not less than the principal amount of the Note aforesaid against all loss or damage by fire, windstorm, tornado and water damage, as may be required by the mortgagee, with loss, if any, payable to the mortgagee as his interest may appear; to deposit with the mortgagee policies with standard mortgagee clause, without contribution, evidencing such

insurance. The Mortgage further provide that the mortgagee may advance moneys that should have been paid by the mortgagor(s) in order to protect the lien or security hereof, and mortgagor(s) agree(s) without demand to forthwith repay such moneys, together with interest at the rate stated in the note and shall be considered as so much additional indebtedness secured hereby.

10. That the monthly installments due on said Note and Mortgage are in default as of August 10, 1999 that the conditions of said Note and Mortgage have been broken, demand for payment made but refused, and the Plaintiff elects to and does hereby declare the entire balance of said indebtedness due and payable; that there is now due on said Note and Mortgage as of May 22, 2009 the sum of One Hundred Twenty-Five Thousand One Hundred Forty-Nine and 26/100 (\$125,149.26) Dollars, including any sums advanced for insurance, together with interest at the rate stated in the note from the date of maturity, reasonable attorney fees, and the costs of this action.

11. That upon information and belief, Maxie Lee Thomas, Jr., aka Maxie Lee Thomas died intestate while residing in the State of South Carolina, County of Lee.

12. That the Plaintiff does not have sufficient knowledge or information to determine whether there is a surviving spouse or any other heirs at law and/or distributees of Maxie Lee

Thomas, Jr., aka Maxie Lee Thomas, deceased. That there may be additional heirs at law or distributees of Maxie Lee Thomas, Jr., aka Maxie Lee Thomas, deceased, unknown to this Plaintiff, and the Defendant, John Doe, is named to represent any unknown adult heirs; that the Defendant, Richard Roe, is named to represent any unknown infants or persons under disability who might have any right, title or interest in or claim upon the premises herein sought to be foreclosed.

13. That the Plaintiff demands no personal or deficiency Judgment and any right to the same is specifically waived. The default under the terms of the loan documents has not been cured.

14. That Laura Ann Toney and Brittany Nicole Thomas are joined as Defendants by virtue of the Estate of Maxie Lee Thomas, Jr., 2005-ES31-139 opened in the Office of the Probate Court for Lee County.

15. That the Plaintiff's loan is not owned or guaranteed by Fannie Mae (FNMA) or Freddie Mac (FMLC) or held by any servicing agency who has signed any agreement to participate in the Home Affordable Modification Program and as a result Plaintiff's loan is not subject to the Home Affordable Modification Program.

WHEREFORE, Plaintiff prays Judgment:

(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 cost of this action.

(2) That the said Plaintiff's mortgage be declared a first mortgage and that the said Plaintiff have Judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and for the costs of property maintenance, securing thereof, if any, plus 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:

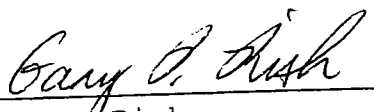
First, to the costs and expenses of the within action and said sale.

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

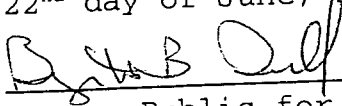
Third, the surplus, if any, be distributed according to law.

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF LEXINGTON)

PERSONALLY, appeared before me, Gary P. Rish, who, being duly sworn, says that he is the attorney for and makes this Affidavit upon behalf of the said Plaintiff, that he has read the foregoing Complaint and that the allegations therein contained are true of his own knowledge, except those matters therein contained on information and belief, and as to those, he believes them to be true; deponent further states that the reason why this verification is not made by the Plaintiff is that the action is bounded upon written instruments for the payment of money only and such instruments are in the possession of deponent, which said instruments, together with an examination of records on file in the Office the Clerk of Court for Lee County, form the source of deponent's information and the grounds of his belief; and also based upon information furnished to your deponent by the Plaintiff.



Gary P. Rish

SWORN to before me this
22nd day of June, 2009


Notary Public for South Carolina
My Commission Expires: 1-23-2011

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

AFFIDAVIT OF PROOF STATEMENT OF ACCOUNT AS TO:

Borrower's Name(s): Maxie L. Thomas
RD Loan Number(s): 6311365#

STATE OF MISSOURI
COUNTY OF ST LOUIS

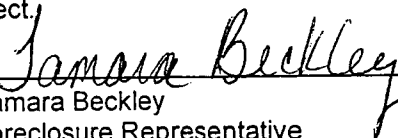
Personally appeared before me the undersigned authority, Tamara Beckley, Foreclosure Representative, Rural Development (RD) who upon oath deposes and says that she is an employee of the United States Department of Agriculture, an agency of the United States of America, and further states as follows:

1. That affiant is the RD Officer charged with legal custody of the accelerated RD loan file.
2. That affiant has personally reviewed **Maxie L. Thomas** borrower Rural Development's accelerated RD loan account and file, and according to the records maintained and kept in this office, the borrower(s) as of **May 22, 2009**, owe(s) the unpaid balance of **\$125,149.26** which includes principal, interest accrued to date and other pending fees and charges to the account as provided by the loan instruments and applicable law. Interest continues to accrue at the rate of **\$11.84** per day as provided by the loan instruments. The payment is due the **10th** of every month and is currently delinquent for **August 10, 1999 through May 22, 2009**.
3. The account is delinquent as of **May 22, 2009** in the amount of **\$56,698.81**.

Breakdown of the unpaid balance:

Loan Number		6311365#
Principal Balance	\$	36,379.03
Interest	\$	34,332.01
Total Subsidy Granted	\$	37,878.28
Escrow	\$	0.00
Late Charges	\$	0.00
Fees Assessed	\$	16,559.94
Appraisal Costs	\$	0.00
Escrow Credits	\$	0.00
TOTAL	\$	125,149.26

Affiant has personal knowledge of the above-stated facts, is competent to testify to same, and declares that the foregoing is true and correct.



Tamara Beckley
Foreclosure Representative
St. Louis, MO
Rural Development
United States Department of Agriculture

Sworn to and subscribed before me this **22nd** day of May 2009.



Notary Public for Missouri
My commission Expires: **Feb. 24, 2010**



6311365-101002

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

Form FmHA 440-16
(Rev. 11-10-75)

KIND OF LOAN

Type: R.H.

Pursuant to:

Consolidated Farm and Rural Development Act.

Title V of the Housing Act of 1949.

PROMISSORY NOTE

STATE SOUTH CAROLINA

COUNTY LEE

CASE NO. [REDACTED]

Date AUGUST 10, 19 84

FOR VALUE RECEIVED, the undersigned (whether one or more persons, herein called "Borrower") jointly and severally promise to pay to the order of the United States of America, acting through the Farmers Home Administration,

United States Department of Agriculture, (herein called the "Government") at its office in BISHOPVILLE, SOUTH CAROLINA

THE PRINCIPAL SUM OF FORTY THOUSAND AND NO/100
DOLLARS (\$ 40,000.00), plus INTEREST on the UNPAID PRINCIPAL of ELEVEN & SEVEN EIGHTHS PERCENT (11.875 %) PER ANNUM.

Payment of the said Principal and Interest shall be as agreed between the Borrower and the Government using one of four alternatives as indicated below: (check one)

I. Principal and Interest payments shall be deferred. The first installment shall be all accrued interest and shall be due on _____, 19 ____ . Payment of Principal and later accrued Interest shall be in _____ installments as indicated in the box below;

II. Principal and Interest payments shall be deferred. The interest accrued to November 10, 19 84 shall be added to the Principal. Such new Principal and later accrued Interest shall be payable in 393 regular amortized installments on the dates indicated in the box below. Borrower authorizes the Government to enter the amount of such new Principal herein \$ 40,157.93 and the amount of such regular installments in the box below, when such amounts have been determined.

III. Payment of Interest shall not be deferred. Installments of accrued Interest shall be payable on the _____ of each _____ beginning on _____, 19 ____, through _____, 19 ____, Principal and later accrued Interest shall be paid in _____ installments as indicated in the box below;

IV. Payments shall not be deferred. Principal and Interest shall be paid in _____ installments as indicated in the box below:

\$ 406.00 on DECEMBER 10, 19 84, and

\$ 406.00 thereafter on the _____ of each _____

until the PRINCIPAL and INTEREST are fully paid except that the FINAL INSTALLMENT of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and PAYABLE THIRTY-THREE (33) YEARS from the DATE of this NOTE. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

2015-002380

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

United States of America, acting)
through the Farmers Home)
Administration, United States)
Department of Agriculture,)

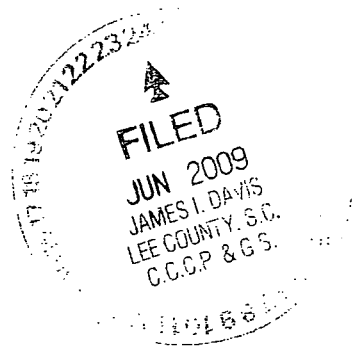
Plaintiff,)

vs.)

NOTICE TO APPOINT
GUARDIAN AD LITEM

Maxie Lee Thomas, Jr., aka Maxie)
Lee Thomas, deceased and all other)
heirs at law and/or distributees of)
Maxie Lee Thomas, Jr., aka Maxie)
Lee Thomas, deceased, his heirs,)
personal representatives,)
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persons being under disability)
being as a class designated as)
Richard Roe, Laura Ann Toney and)
Brittany Nicole Thomas,)

Defendants.)



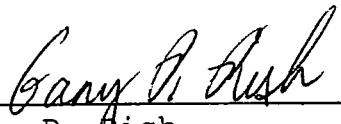
TO THE MINORS ABOVE NAMED, UNKNOWN INFANTS, MINORS, OR PERSONS UNDER DISABILITY, THEIR GENERAL OR TESTAMENTARY GUARDIANS, IF ANY, AND TO THE PERSON OR PERSONS WITH WHOM SAID DEFENDANTS RESIDE:

YOU WILL PLEASE TAKE NOTICE that unless you apply for the appointment of a Guardian ad Litem to represent the minor(s)

interest in the above entitled matter within thirty (30) days from the date of service hereof, the undersigned will make application for the appointment of such Guardian ad Litem, all in accordance with Rule 17, South Carolina Rules of Civil Procedure.

Irmo, South Carolina

June 22, 2009



Gary P. Rish
Attorney for Plaintiff
P. O. Box 508
Irmo, SC 29063

STATE OF SOUTH CAROLINA)
LEE COUNTY)

IN THE COURT OF COMMON PLEAS
3rd JUDICIAL CIRCUIT

United States of America, acting)
through the Farmers Home)
Administration, United States)
Department of Agriculture.)

CERTIFICATE OF EXEMPTION/WITHDRAWAL
FROM ARBITRATION AND MEDIATION

Plaintiff,)

vs.)

Maxie Lee Thomas, Jr., aka)
Maxie Lee Thomas, deceased.)
et al.,)

Defendants.)

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE:

monetary relief requested in this case exceeds \$25,000;

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there is a substantial claim for injunction or declaratory relief requested in this case;

this case involves (check one or more of the following)

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wills, trusts and decedents' estates;

mortgage foreclosure;

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June 22, 2009



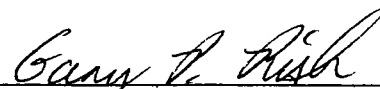
Gary P. Rish
Attorney for Plaintiff

NOTE: Motion must be presented to the court, a hearing held, and a finding made, for exemption or withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d), Rules of Circuit Court Arbitration.

NOTICE

TO THE DEFENDANTS ABOVE NAMED:

TAKE NOTICE that the Summons in the above mentioned action, of which the foregoing is a copy, together with the Complaint therein was filed in the Office of the Clerk of Court for Lee County on the 21 day of June, 2009.



Gary P. Fish
Attorney for Plaintiff

Irmo, SC

June 22, 2009

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

United States of America, acting)
through the Farmers Home)
Administration, United States)
Department of Agriculture,)

Plaintiff,)

vs.)

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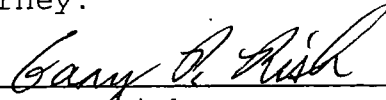
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YOU ARE HEREBY SUMMONED and required to answer the
Complaint in this action, a copy of which is herewith served upon
you, and to serve a copy of your Answer to the said Complaint on
the Plaintiff or its attorney, Gary P. Rish, PO Box 508, Irmo,



South Carolina, 29063, within thirty (30) days after the service hereof, exclusive of the day of such services; and, if you fail to answer the Complaint within the time aforesaid, a Judgment by Default will be rendered against you for the relief demanded in the Complaint. Your answer must be in writing and signed by you or your attorney and must state your address or the address of your attorney, if signed by your attorney.



Gary P. Rish
Attorney for Plaintiff
PO Box 508
Irmo, SC 29063
(803) 749-1764

Irmo, South Carolina

June 22, 2009

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

United States of America, acting)
through the Farmers Home)
Administration, United States)
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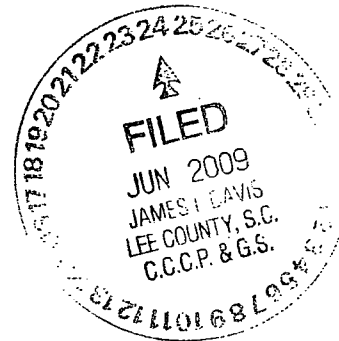
Plaintiff,)

vs.)

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NON-JURY

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Lee Thomas, deceased and all other)
heirs at law and/or distributees of)
Maxie Lee Thomas, Jr., aka Maxie)
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persons being under disability)
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Richard Roe, Laura Ann Toney and)
Brittany Nicole Thomas,)

Defendants.)



The Plaintiff above-named, complaining of the Defendants
above-named, herein alleges:

1. That the Plaintiff is a Government agency duly organized and existing under and by virtue of the laws of the United States of America.

2. That upon information and belief, the Defendant, Maxie Lee Thomas, Jr., aka Maxie Lee Thomas, deceased was a resident of the County of Lee, State of South Carolina; that the remaining Defendants are made parties hereto by virtue of the fact that they may have or claim to have some right, title, interest in or lien upon the real property hereinafter more fully described, all as more fully hereinafter alleged; that the subject of this action is real property located in the County of Lee, State of South Carolina. That Laura Ann Toney and Brittany Nicole Thomas are joined as Defendants by virtue that they may be living heirs of Maxie Lee Thomas, Jr., aka Maxie Lee Thomas.

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

4. That heretofore, on or about August 10, 1984, Maxie Lee Thomas executed and delivered unto United States of America, acting through the Farmers Home Administration, United States Department of Agriculture certain Promissory Note in writing, wherein and whereby he promised to pay the sum of Forty Thousand and 00/100 (\$40,000.00) Dollars, according to the terms and

conditions set out therein, a copy of which is attached hereto and incorporated herein by reference.

5. That in order to secure said note, the said Maxie Lee Thomas did on the same date, made, executed and delivered to United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, Its Successors and assigns, a certain mortgage covering the premises located in the County and State aforesaid and in said mortgage described as follows:

ALL that certain piece, parcel or lot of land situate, lying and being in Bishopville Township, County of Lee, State of South Carolina, described as Lot No. 20 on a plat of Broad Acres Subdivision, prepared by J. P. Edwards, RLS, date November 4, 1971, and recorded in Plat Book M at Page 104 in the Office of the Clerk of Court for Lee County, SC and being bounded and described as follows: On the Southwest by land, now or formerly, of A. B. Baskin Estate and measuring thereon 120 feet, more or less; on the Southeast by Lot No. 21 according to said plat and measuring thereon 251.32 feet, more or less; on the Northeast by Broad Acres Drive and fronting thereon 120 feet, more or less; and on the Northwest by Lot No. 19 according to said plat and measuring thereon 251.32 feet, more or less.

This being the identical property conveyed unto Maxie Lee Thomas by deed of A. B. Baskin, Jr., Eldridge Baskin, Louise Baskin Stevenson and Virginia Baskin Fletcher recorded August 10, 1984 in the Office of the Clerk of Court for Lee County in Deed Book N-3 at Page 21. Thereafter on October 21, 2005, Maxie Lee Thomas died leaving Laura Ann Toney and Brittany Nicole Thomas as his sole heirs at law. See Estate #2005-ES31-139 filed in the Office of the Probate for Lee County.

TMS #029-00-00-059-000

Property Address: 71 Broad Acres Drive, Bishopville, SC

6. That thereafter, on August 10, 1984, said Mortgage was recorded in the Office of the Clerk of Court for Lee County in

Mortgage Book 102 at Page 279, a copy of said Mortgage being attached hereto and incorporated herein by reference. That the Plaintiff is now the owner and holder thereof.

7. That The United States of America, acting through the Farmers Home Administration, United States Department of Agriculture is the present owner and holder of the subject Note and Mortgage.

8. That according to the terms and conditions of the Note and Mortgage, it is provided that in the event of default in payment of any installment for a period of thirty days, the holder of the Note may, at its option, declare the remainder of said debt immediately due and payable; and if the same be placed in the hands of an attorney for collection, the maker to pay all costs of collection, including reasonable attorney fees.

9. That further, under the terms of said Mortgage, the mortgagor(s) covenanted to keep the building, structures and other improvements now or hereafter erected or placed on the premises insured in an amount not less than the principal amount of the Note aforesaid against all loss or damage by fire, windstorm, tornado and water damage, as may be required by the mortgagee, with loss, if any, payable to the mortgagee as his interest may appear; to deposit with the mortgagee policies with standard mortgagee clause, without contribution, evidencing such

insurance. The Mortgage further provide that the mortgagee may advance moneys that should have been paid by the mortgagor(s) in order to protect the lien or security hereof, and mortgagor(s) agree(s) without demand to forthwith repay such moneys, together with interest at the rate stated in the note and shall be considered as so much additional indebtedness secured hereby.

10. That the monthly installments due on said Note and Mortgage are in default as of August 10, 1999 that the conditions of said Note and Mortgage have been broken, demand for payment made but refused, and the Plaintiff elects to and does hereby declare the entire balance of said indebtedness due and payable; that there is now due on said Note and Mortgage as of May 22, 2009 the sum of One Hundred Twenty-Five Thousand One Hundred Forty-Nine and 26/100 (\$125,149.26) Dollars, including any sums advanced for insurance, together with interest at the rate stated in the note from the date of maturity, reasonable attorney fees, and the costs of this action.

11. That upon information and belief, Maxie Lee Thomas, Jr., aka Maxie Lee Thomas died intestate while residing in the State of South Carolina, County of Lee.

12. That the Plaintiff does not have sufficient knowledge or information to determine whether there is a surviving spouse or any other heirs at law and/or distributees of Maxie Lee

Thomas, Jr., aka Maxie Lee Thomas, deceased. That there may be additional heirs at law or distributees of Maxie Lee Thomas, Jr., aka Maxie Lee Thomas, deceased, unknown to this Plaintiff, and the Defendant, John Doe, is named to represent any unknown adult heirs; that the Defendant, Richard Roe, is named to represent any unknown infants or persons under disability who might have any right, title or interest in or claim upon the premises herein sought to be foreclosed.

13. That the Plaintiff demands no personal or deficiency Judgment and any right to the same is specifically waived. The default under the terms of the loan documents has not been cured.

14. That Laura Ann Toney and Brittany Nicole Thomas are joined as Defendants by virtue of the Estate of Maxie Lee Thomas, Jr., 2005-ES31-139 opened in the Office of the Probate Court for Lee County.

15. That the Plaintiff's loan is not owned or guaranteed by Fannie Mae (FNMA) or Freddie Mac (FMLC) or held by any servicing agency who has signed any agreement to participate in the Home Affordable Modification Program and as a result Plaintiff's loan is not subject to the Home Affordable Modification Program.

WHEREFORE, Plaintiff prays Judgment:

(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 cost of this action.

(2) That the said Plaintiff's mortgage be declared a first mortgage and that the said Plaintiff have Judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and for the costs of property maintenance, securing thereof, if any, plus 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:

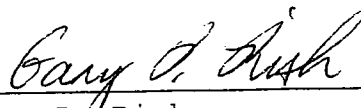
First, to the costs and expenses of the within action and said sale.

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

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

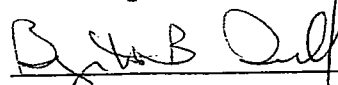
STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF LEXINGTON)

PERSONALLY, appeared before me, Gary P. Rish, who, being duly sworn, says that he is the attorney for and makes this Affidavit upon behalf of the said Plaintiff, that he has read the foregoing Complaint and that the allegations therein contained are true of his own knowledge, except those matters therein contained on information and belief, and as to those, he believes them to be true; deponent further states that the reason why this verification is not made by the Plaintiff is that the action is bounded upon written instruments for the payment of money only and such instruments are in the possession of deponent, which said instruments, together with an examination of records on file in the Office the Clerk of Court for Lee County, form the source of deponent's information and the grounds of his belief; and also based upon information furnished to your deponent by the Plaintiff.



Gary P. Rish

SWORN to before me this
22nd day of June, 2009



Notary Public for South Carolina
My Commission Expires: 1-23-2011

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

AFFIDAVIT OF PROOF STATEMENT OF ACCOUNT AS TO:

Borrower's Name(s): Maxie L. Thomas
RD Loan Number(s): 6311365#

STATE OF MISSOURI
COUNTY OF ST LOUIS

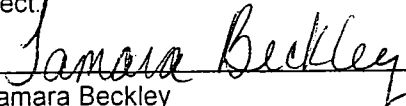
Personally appeared before me the undersigned authority, Tamara Beckley, Foreclosure Representative, Rural Development (RD) who upon oath deposes and says that she is an employee of the United States Department of Agriculture, an agency of the United States of America, and further states as follows:

1. That affiant is the RD Officer charged with legal custody of the accelerated RD loan file.
2. That affiant has personally reviewed **Maxie L. Thomas** borrower Rural Development's accelerated RD loan account and file, and according to the records maintained and kept in this office, the borrower(s) as of **May 22, 2009**, owe(s) the unpaid balance of **\$125,149.26** which includes principal, interest accrued to date and other pending fees and charges to the account as provided by the loan instruments and applicable law. Interest continues to accrue at the rate of **\$11.84** per day as provided by the loan instruments. The payment is due the **10th** of every month and is currently delinquent for **August 10, 1999** through **May 22, 2009**.
3. The account is delinquent as of **May 22, 2009** in the amount of **\$56,698.81**.

Breakdown of the unpaid balance:


Loan Number		6311365#
Principal Balance	\$	36,379.03
Interest	\$	34,332.01
Total Subsidy Granted	\$	37,878.28
Escrow	\$	0.00
Late Charges	\$	0.00
Fees Assessed	\$	16,559.94
Appraisal Costs	\$	0.00
Escrow Credits	\$	0.00
TOTAL	\$	125,149.26

Affiant has personal knowledge of the above-stated facts, is competent to testify to same, and declares that the foregoing is true and correct.



Tamara Beckley
Foreclosure Representative
St. Louis, MO
Rural Development
United States Department of Agriculture

Sworn to and subscribed before me this **22nd** day of May 2009.



Notary Public for Missouri
My commission Expires: *Feb. 24, 2010*



6311365

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

Form FmHA 440-16
(Rev. 11-10-75)

KIND OF LOAN	
Type: <u>R.H.</u>	
Pursuant to:	
<input type="checkbox"/> Consolidated Farm and Rural Development Act.	
<input checked="" type="checkbox"/> Title V of the Housing Act of 1949.	

PROMISSORY NOTE

STATE	<u>SOUTH CAROLINA</u>
COUNTY	<u>LEE</u>
CASE NO.	<u>[REDACTED]</u>

Date AUGUST 10, 19 84.

FOR VALUE RECEIVED, the undersigned (whether one or more persons, herein called "Borrower") jointly and severally promise to pay to the order of the United States of America, acting through the Farmers Home Administration,

United States Department of Agriculture, (herein called the "Government") at its office in _____

BISHOPVILLE, SOUTH CAROLINA

THE PRINCIPAL SUM OF FORTY THOUSAND AND NO/100

DOLLARS (\$ 40,000.00), plus INTEREST on the UNPAID PRINCIPAL OF ELEVEN & SEVEN EIGHTHS PERCENT (11.875 %) PER ANNUM.

Payment of the said Principal and Interest shall be as agreed between the Borrower and the Government using one of four alternatives as indicated below: (check one)

I. Principal and Interest payments shall be deferred. The first installment shall be all accrued interest and shall be due

on _____, 19 ____ . Payment of Principal and later accrued Interest shall be in _____ installments as indicated in the box below;

II. Principal and Interest payments shall be deferred. The interest accrued to November 10, 19 84

shall be added to the Principal. Such new Principal and later accrued Interest shall be payable in 393 regular amortized installments on the dates indicated in the box below. Borrower authorizes the Government to enter the amount of

such new Principal herein \$ 40,157.93 and the amount of such regular installments in the box below, when such amounts have been determined.

III. Payment of Interest shall not be deferred. Installments of accrued Interest shall be payable on the _____

of each _____ beginning on _____, 19 ____, through _____, 19 ____.

Principal and later accrued Interest shall be paid in _____ installments as indicated in the box below;

IV. Payments shall not be deferred. Principal and Interest shall be paid in _____ installments as indicated in the box below:

\$ <u>406.00</u>	on <u>DECEMBER 10</u> , 19 <u>84</u> , and
\$ <u>406.00</u>	thereafter on the _____ of each _____
until the PRINCIPAL and INTEREST are fully paid except that the FINAL INSTALLMENT of the entire indebtedness	
evidenced hereby, if not sooner paid, shall be due and PAYABLE <u>THIRTY-THREE</u> (<u>33</u>) YEARS	
from the DATE of this NOTE. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.	

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to the Borrower as requested by Borrower and approved by the Government. Approval of the Government is mandatory provided the advance is requested for a purpose authorized by the Government. Interest shall accrue on the amount of each advance from its actual date as shown on the reverse hereof. Borrower authorizes the Government to enter the amount and date of such advance in the Record of Advances.

Every payment made on any indebtedness evidenced by this note shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations (7 C.F.R. 1861.2) of the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

Borrower agrees that the Government at any time may assign this note and insure the payment thereof, and in such case, though the note is not held by the Government, Borrower shall continue to pay to the Government, as collection agent for the holder, all installments of principal and interest as scheduled herein.

If this note is held by an insured lender, prepayments made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Borrower hereby certifies that he is unable to obtain sufficient credit elsewhere to finance his actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near his community for loans for similar purposes and periods of time; and that the loan evidenced hereby shall be used solely for purposes authorized by the Government.

Property constructed, improved, purchased, or refinanced in whole or in part with the loan evidenced hereby shall not be leased, assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. Unless the Government consents otherwise in writing, Borrower (a) will personally operate such property as a farm with his own and his family's labor if this is an FO loan, or (b) will personally occupy and use such property if this is an RH loan on a "nonfarm tract" or a section 504 RH loan.

REFINANCING AGREEMENT: If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept a loan in sufficient amount to pay this note in full and, if the lender is a cooperative, to pay for any necessary stock. This paragraph and the preceding paragraph shall not apply to any comaker signing this note pursuant to Section 502 of the Housing Act of 1949 to compensate for deficient repayment ability of other undersigned person(s).

DEFAULT: Failure to pay when due any debt evidenced hereby or perform any covenant or agreement hereunder shall constitute default under any other instrument evidencing a debt of Borrower owing to, insured or Guaranteed by the Government or securing or otherwise relating to such a debt; and default under any such other instrument shall constitute default hereunder. **UPON ANY SUCH DEFAULT,** the Government at its option may declare all or any part of any such indebtedness immediately due and payable.

This Note is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act or Title V of the Housing Act of 1949 and for the type of loan as is indicated in the "KIND OF LOAN" block above. This Note shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions hereof.

02/09/77

MON 08:40 FAX 8037755712

RURAL DEVELOPMENT

004

Presentment, protest, and notice are hereby waived.

Maxie Lee Thomas

Maxie Lee Thomas (SEAL)
(BORROWER)

(SEAL)
(SPOUSE)

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE	AMOUNT	DATE
(1) \$		(8) \$		(15) \$	
(2) \$		(9) \$		(16) \$	
(3) \$		(10) \$		(17) \$	
(4) \$		(11) \$		(18) \$	
(5) \$		(12) \$		(19) \$	
(6) \$		(13) \$		(20) \$	
(7) \$		(14) \$		(21) \$	
TOTAL				\$	

Gary P. Rish, PC

ATTORNEY AT LAW
P.O. BOX 508
IRMO, SOUTH CAROLINA 29063-0508
(803) 749-1764
FAX (803) 781-8758

June 16, 2009

Clerk of Court, Lee County
P. O. Box 387
Bishopville, SC 29010

RE: USDA vs. Maxie Lee Thomas, Jr., aka Maxie Lee Thomas,
deceased, et al.

Dear Clerk:

Enclosed please find a Civil Action Cover Sheet, Notice, Notice to Appoint Guardian ad Litem, Summons, Complaint and Lis Pendens to be filed in your office, together with my check in the amount of \$150.00 to cover the cost of filing. Please note the filing information on the copies and return them in the envelope provided.

With my kindest regards, I am

Sincerely,

GARY P. RISH, PC

S/

Gary P. Rish

GPR/bd

Enclosures

09-131

Gary P. Rish, PC

ATTORNEY AT LAW
P.O. BOX 508
IRMO, SOUTH CAROLINA 29063-0508
(803) 749-1764
FAX (803) 781-8758

July 9, 2009

Clerk of Court, Lee County
P. O. Box 387
Bishopville, SC 29010

RE: USDA vs. Maxie Lee Thomas, Jr, et al.
2009-CP-31-131

Dear Clerk:

Enclosed for filing, please find the original and One (1) copy of the Affidavit(s) of Service in regards to the above-captioned case. Please note the filing information on the enclosed cop(ies) and return the same to me in the envelope provided.

With my kindest regards, I am

Sincerely,

GARY P. RISH, PC

S/

Gary P. Rish

GPR/bd

Enclosures

Exhibit 5
2015-002380

STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
C/A NO.: 2009-CP-31-131

United States of America, acting through the
Farmers Home Administration, United
States Department of Agriculture,

Plaintiff,

vs.

Maxie Lee Thomas, Jr. a/k/a Maxie Lee
Thomas, deceased, and all other heirs at law
and/or distributees of Maxie Lee Thomas, Jr.
a/k/a Maxie Lee Thomas, deceased, his
heirs, personal representatives, executors,
administrators, successors and assigns, and
any spouses if any he has, and all persons
entitled to claim under or through him or any
of them; all persons unknown claiming any
right, title, estate, interest in or lien upon the
real estate described in the Complaint
herein; also any persons who may be in the
military service of the United States of
America, being a class designated as John
Doe; and any unknown minors or persons
under a disability being a class designated as
Richard Roe, Laura Ann Toney, and
Brittany Nicole Thomas,

Defendants,

AMENDED SUMMONS
(Non-Jury)
FORECLOSURE
(Deficiency Demanded)

TO THE DEFENDANTS ABOVE NAMED:

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

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the
Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your
Answer on the subscribers at their offices, 1331 Elmwood Avenue, Suite 300, Post Office Box
11656, Columbia, South Carolina 29211, within thirty (30) days after the service hereof,
exclusive of the day of such service; except that the United States of America, if named, shall
have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and
if you fail to do so, 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 Plaintiff.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the attached mortgage is perfected and Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default. In the alternative, Plaintiff will move before a judge of this Circuit on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling payment of all rents covered by such assignment directly to the Plaintiff, which motion is to be based upon the original Note, Subsidy and Mortgage and the Complaint attached hereto.

TYLER, CASSELL, JACKSON
PEACE & SILVER, L.L.P.



Donald W. Tyler, Jr.
S.C. Bar No. 14154
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
August 13, 2009

STATE OF SOUTH CAROLINA

COUNTY OF LEE

IN THE COURT OF COMMON PLEAS

C/A NO.: 2009-CP-31-131

United States of America, acting through the
Farmers Home Administration, United
States Department of Agriculture,

Plaintiff,

vs.

Maxie Lee Thomas, Jr. a/k/a Maxie Lee
Thomas, deceased, and all other heirs at law
and/or distributees of Maxie Lee Thomas, Jr.
a/k/a Maxie Lee Thomas, deceased, his
heirs, personal representatives, executors,
administrators, successors and assigns, and
any spouses if any he has, and all persons
entitled to claim under or through him or any
of them; all persons unknown claiming any
right, title, estate, interest in or lien upon the
real estate described in the Complaint
herein; also any persons who may be in the
military service of the United States of
America, being a class designated as John
Doe; and any unknown minors or persons
under a disability being a class designated as
Richard Roe, Laura Ann Toney, and
Brittany Nicole Thomas,

Defendants,

AMENDED COMPLAINT
(Non-Jury)
FORECLOSURE
(Deficiency Demanded)

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

The Plaintiff above named, complaining of the Defendants above named, alleges as follows:

1. The Plaintiff is the United States of America, United States Department of Agriculture, Rural Development.
2. Upon information and belief, Defendant Laura Ann Toney is a citizen and resident of the County of Lee, State of South Carolina and upon information and belief, Defendant

Brittany Nicole Thomas is a citizen and resident of the County of Lee, State of South Carolina .

3. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the South Carolina Code of Laws (1976), as amended.
4. Upon information and belief, the personal and real property which are the subject of this action are located in the County of Lee, State of South Carolina, and accordingly, this Court has jurisdiction over this cause.
5. Heretofore, on August 10, 1984, Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr. made, executed and delivered to Plaintiff a Promissory Note in the original principal sum of \$40,000.00 ("Note").
6. Thereafter Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr. executed in favor of Plaintiff a Subsidy Repayment Agreement ("Subsidy") for interest credits pursuant to 42 U.S.C. §1490(a).
7. In order to secure said Note and Subsidy, Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr. did on August 10, 1984 did make, execute and deliver to Plaintiff, their successors and assigns, a certain Mortgage (hereinafter "Mortgage"), covering the premises located in the County of Lee, State of South Carolina and described as follows:

All that certain piece, parcel or lot of land situate, lying and being in Bishopville Township, Lee County, S.C., described as Lot NO. 20 on a plat of Broad Acres Subdivision, prepared by J.P. Edwards, RLS dated November 4, 1971, and recorded in Plat Book M at Page 104 in the Office of the Clerk of Court for Lee County, S.C., and being bounded and described as follows, to wit: On the Southwest by lands now or formerly of A.B. Baskin Estate and measuring thereon 120 feet, more or less; on the Southeast by Lot No. 21 according to said Plat, and measuring thereon 251.32 feet, more or less; on the Northeast by Broad Acres Drive and fronting thereon 120 feet, more or

less; and on the Northwest by Lot No. 19 according to said Plat, and measuring thereon 251.32 feet, more or less.

Subject to Restrictive Covenants N-2-11 and D-39, Lee County, S.C. Registry.

Said Lot Nol. 20 being more recently described according to a Plat thereof made by Frank E. Hinson, Surveyor, dated January 28, 1984, and recorded in Plat Book U at Page 45, said Registry.

This being the same property conveyed to Maxie Lee Thomas by deed of A.B. Baskin, Jr., Eldridge Baskin, Louise Baskin Stevenson and Virginia Baskin Fletcher dated July 12, 1984 and recorded August 10, 1984 in Book N-3 at Page 21.

TMS#: 029-00-00-059-000

Property Address: 71 Broad Acres Road, Bishopville, South Carolina 29010

8. Plaintiff is informed and believes that the Mortgage constitutes a valid first mortgage lien upon the property described above.
9. On August 10, 1984 the said Mortgage was recorded in the Office of the ROD/Clerk of Court for Lee County in Mortgage Book 102 at Page 279.
10. The installments of principal and interest due under the Note, Subsidy and Mortgage have not been paid as required by the terms therein and the Plaintiff, as the holder of the said Note, Subsidy and Mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; there is now due and owing and unpaid upon the said Note, Subsidy and Mortgage the principal sum of \$36,379.03, plus accrued interest through July 24, 2009, in the sum of \$35,077.65, late charges / fees assessed in the amount of \$17,198.13, plus escrow costs in the sum of \$474.50, plus Subsidy Granted in the sum of \$37,878.28, for a total balance of \$127,007.59, together with pre-judgment interest at a per diem of \$11.84, with a reasonable sum as attorney's fees and costs of this action.
11. Plaintiff provided all applicable notices of default.

12. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.
13. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code §§29-3-650 and 29-3-660 is expressly demanded against the Estate of Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr.
14. Thereafter, Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr. died testate on or about October 21, 2005. Said decedent's estate is filed in the Office of the Probate Court for Lee County under file number 2005-ES-31-139. Pursuant to the Last Will and Testament of said decedent, the subject property was bequeathed to Defendant Laura Ann Toney. Defendant Brittany Nicole Thomas as beneficiary of the Estate of Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr., deceased, has or may claim to have an interest in the subject property; however, Defendant Brittany Lee Thomas is not a devisee.
15. Said decedent's estate was stricken by Order of the Honorable Catherine F. Harris, Probate Judge for Lee County dated November 13, 2007.
16. All other heirs at law and/or distributees of Maxie Lee Thomas, Jr. a/k/a Maxie Lee Thomas, deceased, his heirs, personal representatives, executors, administrators, successors and assigns, and any spouses if any he has, and all persons entitled to claim under or through him or any of them; all persons unknown claiming any right, title, estate, interest in or lien upon the real estate described in the Complaint herein; also any persons who may be in the military service of the United States of America, being a class designated as John Doe; and any unknown minors or persons under a disability being a class designated as Richard Roe, are defendants in this action by virtue of any interest

claimed under the law of intestate succession (S.C. Code §62-2-109) or under decedent's Will.

17. Plaintiff states that: (i) the Note, Subsidy and Mortgage are not owned, securitized or guaranteed by Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac); (ii) that Plaintiff is not a servicer participating in the Home Affordable Modification Program (HMP); and (iii) the Note, Subsidy and Mortgage are not subject to modification under the HMP.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

1. That the amount due upon said Note, Subsidy and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.
2. That the said Plaintiff's Mortgage be declared a valid first lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff, together with reasonable 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 said sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note, Subsidy and Mortgage, together with attorney's fees as aforesaid;

Third, the surplus, if any, be distributed according to law; and

4. For an Order directing and empowering the Sheriff of Lee 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 such other and further relief as this Court may deem just and proper.

TYLER, CASSELL, JACKSON
PEACE & SILVER, L.L.P.



Donald W. Tyler, Jr.
S.C. Bar No. 14154
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
August 13, 2009

**NOTICE AS REQUIRED BY THE
FAIR DEBT COLLECTION
PRACTICES ACT, ("THE ACT")
15 U.S.C. SECTION 1601 AS AMENDED**

1. The amount of the debt is as stated in the Complaint.
2. The Creditor is United States of America, acting through the Farmers Home Administration, United States Department of Agriculture.
3. The debt described in the Complaint attached hereto will be assumed to be valid by the Creditor's law firm unless you, the debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereon.
4. If you, the debtor, notify the Creditor's law firm in writing within thirty (30) 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 you, the debtor, by the Creditor's law firm.
5. If the Creditor named in the attached Complaint is not the original Creditor, and if you make a written request to the Creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be mailed to Tyler, Cassell, Jackson, Peace & Silver, L.L.P., Post Office Box 11656, Columbia, South Carolina 29211.
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.
8. This notice is an attempt to collect a debt and information obtained will be used for that purpose.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	COMMON PLEAS
LEE COUNTY)	
)	
UNITED STATES OF AMERICA, ACTING	)	3 RD JUDICIAL CIRCUIT
THROUGH THE FARMERS HOME)	
ADMINISTRATION, UNITED STATES	)	CASE NO: 09-31-131
DEPARTMENT OF AGRICULTURE	)	ANSWER AND
)	
PLAINTIFF	)	COUNTERCLAIM
)	
VS.	)	JURY TRIAL DEMANDED
)	
MAXIE LEE THOMAS, JR. AKA)	
MAXIE LEE THOMAS, DECEASED. ET.)	
LAURA ANN TONEY)	
)	
DEFENDANTS)	

CERTIFICATE OF MAILING

This is to verify that Laura Toney, the Defendant, mailed a copy of the Answer and Counterclaim and Request For Documents to Mr. Gary Rish, Attorney for the Plaintiff, by depositing it in the United States Mail on July 14, 2009.

July 14, 2009

**CC: Mr. Gary Rish, Attorney for the Plaintiff
P.O. Box 508
Irmo, SC 29060**

**Mr. Douglas Barnett
Assistant United States Attorney
1441 Main Street
Columbia, SC 29201**

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

AFFIDAVIT OF PROOF STATEMENT OF ACCOUNT AS TO:

Borrower's Name(s): Maxie L. Thomas
RD Loan Number(s): 6311365 #

STATE OF MISSOURI
COUNTY OF ST LOUIS

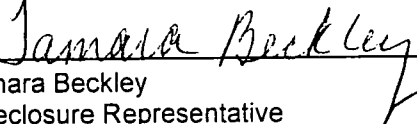
Personally appeared before me the undersigned authority, Tamara Beckley, Foreclosure Representative, Rural Development (RD) who upon oath deposes and says that she is an employee of the United States Department of Agriculture, an agency of the United States of America, and further states as follows:

1. That affiant is the RD Officer charged with legal custody of the accelerated RD loan file.
2. That affiant has personally reviewed **Maxie L. Thomas** borrower Rural Development's accelerated RD loan account and file, and according to the records maintained and kept in this office, the borrower(s) as of **July 24, 2009**, owe(s) the unpaid balance of **\$127,007.59** which includes principal, interest accrued to date and other pending fees and charges to the account as provided by the loan instruments and applicable law. Interest continues to accrue at the rate of **\$11.84** per day as provided by the loan instruments. The payment is due the **10th** of every month and is currently delinquent for **August 10, 1999** through **July 24, 2009**.
3. The account is delinquent as of **July 24, 2009** in the amount of **\$57,529.53**.

Breakdown of the unpaid balance:

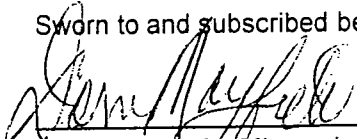
Loan Number		<u>6311365 #</u>
Principal Balance	\$	36,379.03
Interest	\$	35,077.65
Total Subsidy Granted	\$	37,878.28
Escrow	\$	474.50
Late Charges	\$	0.00
Fees Assessed	\$	17,198.13
Appraisal Costs	\$	0.00
Escrow Credits	\$	0.00
TOTAL	\$	<u>127,007.59</u>

Affiant has personal knowledge of the above-stated facts, is competent to testify to same, and declares that the foregoing is true and correct.

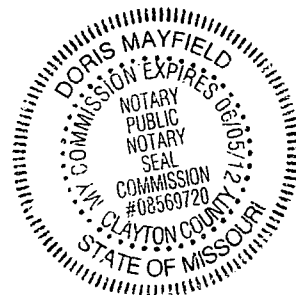


Tamara Beckley
Foreclosure Representative
St. Louis, MO
Rural Development
United States Department of Agriculture

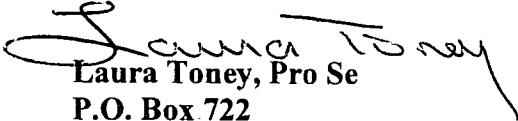
Sworn to and subscribed before me this **24th** day of July 2009.



Notary Public for Missouri
My commission Expires: **6-5-2012**



**Mr. Ronald Hall
1055 Sunset BLVD.
West Columbia, SC 29169**


**Laura Toney, Pro Se
P.O. Box 722
Bishopville, SC 29010
(803) 459-6006**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
LEE COUNTY	)	COMMON PLEAS
)	
UNITED STATES OF AMERICA, ACTING	)	3 RD JUDICIAL CIRCUIT
THROUGH THE FARMERS HOME)	
ADMINISTRATION, UNITED STATES	)	CASE NO: 09-31-131
DEPARTMENT OF AGRICULTURE	)	ANSWER AND
)	
PLAINTIFF	)	AMENDED COUNTERCLAIM
)	
VS.	)	JURY TRIAL DEMANDED
)	
MAXIE LEE THOMAS, JR. AKA)	
MAXIE LEE THOMAS, DECEASED. ET.)	
LAURA ANN TONEY, HEIR AND)	
PERSONAL REPRESENTATIVE)	
)	
DEFENDANTS)	

CERTIFICATE OF MAILING

This is to verify that Laura Toney, the Defendant, mailed a copy of the Amended Answer and Counterclaim to Tyler, Cassell, Jackson, Peace & Silver, Attorney by depositing it into the United States Mail addressed as follows: P.O. Box 11656, Columbia, SC 29211-1656.

November 23, 2009

Laura Toney
 Laura Toney, Pro Se
 P.O. Box 722
 Bishopville, SC 29010
 (803) 459-6006



STATE OF SOUTH CAROLINA	)	IN THE COURT OF
LEE COUNTY	)	COMMON PLEAS
)	
UNITED STATES OF AMERICA, ACTING	)	3 RD JUDICIAL CIRCUIT
THROUGH THE FARMERS HOME	)	CASE NO: 09-31-131
ADMINISTRATION, UNITED STATES)	
DEPARTMENT OF AGRICULTURE	)	AMENDED ANSWER AND
)	
PLAINTIFF	)	COUNTERCLAIM
)	
VS.	)	JURY TRIAL DEMANDED
)	
MAXIE LEE THOMAS, JR. AKA)	
MAXIE LEE THOMAS, DECEASED. ET.)	
LAURA ANN TONEY, HEIR AND)	
PERSONAL REPRESENTATIVE)	
)	
DEFENDANTS)	

The Defendant Answers as follows:

1. Each material allegation in Plaintiff's Complaint, except those specifically admitted herein are denied and Defendant demand strict proof thereof
2. The allegations in paragraph one are admitted.
3. The allegations in paragraph two are denied.
4. The allegations in paragraph three are denied without sufficient information.
5. The allegations in paragraph four are admitted.
6. The allegations in paragraph five are denied without further information.
7. The allegations in paragraph six are denied without sufficient information.
8. The allegations in paragraph seven are denied without sufficient information.
9. The allegations in paragraph eight are denied without sufficient information.
10. The allegations in paragraph nine are denied without sufficient information.

11. The allegations in paragraph ten are denied without sufficient information.
12. The allegations in paragraph 11 are denied without sufficient information.
13. The allegations in paragraph 12 are denied without sufficient information.
14. The allegations in paragraph 13 are denied without sufficient information.
15. The allegations in paragraph 14 are denied without sufficient information.
16. The allegations in paragraph 15 are denied without sufficient information.
17. The allegations in paragraph 16 are denied without sufficient information.
18. The allegations in paragraph 17 are denied without sufficient information.

COUNTERCLAIMS

19. The Defendant re-alleges the allegations contained in paragraphs 1-18.
20. The Defendant, Laura Toney, is the only person responsible for the estate of decedent. The Plaintiff failed to research to discover the proper parties to file the Lis Pendens against. The Defendant, Laura Toney, has submitted a Will to the Lee County Probate which names her as the only beneficiary of the decedent's estate. Brittany Thomas gave up all rights to the estate of Maxie Lee Thomas, Jr. The Defendant believes and is informed that by mailing Brittany Thomas information concerning this case is in violation of The Fair Debt Collection Laws.
22. The Defendant, Laura Toney, did not receive a "Right To Cure" from the Plaintiff.
23. After examination of the loan documents, the Defendant is informed and believes that the loan constitutes the Unauthorized Practice of Law. There is

no evidence that an attorney supervised any stages of the loan process. The loan appears to be a "Witness Only" loan, which is a felony in South Carolina.

24. The Plaintiff violated SC Code 27-5-110 which states, "No person shall make any entry into any lands and tenements but in case entry is given by law, and in such case not with multitude of people, but only in peaceable and easy manner."

The Plaintiff broke into the premises after knowledge of the decedent's death and changed the locks. The Plaintiff also discarded several items that had sentimental value. The lost totals \$50,000.00.

25. The Plaintiff submitted false information to the courts on the amount due on the mortgage. In 2006, the total amount due was \$59,000. The amount submitted in the June 22, 2009, was \$125,000.00. This is a major discrepancy. The Defendant believes that the Plaintiff is barred from filing a claim in State Court by the doctrine of judicial estoppel. The Plaintiff admitted a different figure for the amount due on the mortgage in Federal Court. South Carolina officially recognized the doctrine of judicial estoppel in *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E. 2d 472, 477 (1997). "Judicial Estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." The purpose of judicial estoppel is to protect the integrity of the court, not to protect litigants from allegedly improper or deceitful conduct by their adversaries.

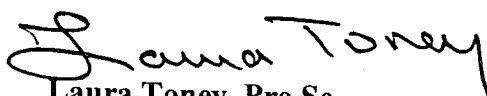
26. The mortgage was improperly notarized. The Notary was named in the Affidavit which bars her from being an impartial witness.
27. The deed is invalid which nulls and voids the note and mortgage. Tenancy by the Entirety, which was premised on the common law fiction that a man and woman merged into one person upon marriage, was recognized as valid estates in South Carolina until 1907. *Green v. Cannady*, 77 S.C. 193, 57 S.E. 832 (1907). In *Green v. Cannady*, the Supreme Court abolished tenancies by the entirety. Tenancy in Entirety is not recognized as a form of ownership and is illegal in the State of South Carolina. The decedent, Maxie Lee Thomas, Jr. was not married when this loan was originated. The Defendant, Laura Toney, is the heir to the house.

WHEREFORE, the Defendant prays that:

1. The court will null and void the foreclosure, mortgage and note;
2. The court will dismiss plaintiff's action; and declare the deed invalid; and
3. The court will award the Defendant an amount of \$500,000.00 in damages and other relief deemed just and proper.

November 23, 2009

CC: Tyler, Cassell, Jackson, Peace & Silver L.L.P.
P.O. Box 11656
1331 Elmwood Avenue, Suite 300
Columbia, SC 29211


Laura Toney, Pro Se
P.O. Box 722

Bishopville, SC 29010
(803) 459-6006

Exhibit
7

2015-002380

United States of America, acting through the
Farmers Home Administration, United
States Department of Agriculture,

Plaintiff,

vs.

ORDER ON MOTION TO RECUSE

Maxie Lee Thomas, Jr. a/k/a Maxie Lee
Thomas, deceased, and all other heirs at law
and/or distributees of Maxie Lee Thomas, Jr.
a/k/a Maxie Lee Thomas, deceased, his
heirs, personal representatives, executors,
administrators, successors and assigns, and
any spouses if any he has, and all persons
entitled to claim under or through him or any
of them; all persons unknown claiming any
right, title, estate, interest in or lien upon the
real estate described in the Complaint
herein; also any persons who may be in the
military service of the United States of
America, being a class designated as John
Doe; and any unknown minors or persons
under a disability being a class designated as
Richard Roe, Laura Ann Toney, and
Brittany Nicole Thomas,

Defendants,

THIS MATTER came before the undersigned on June 22, 2016 for a hearing as a result of a Motion filed by Ms. Toney alleging a conflict of interest and that this Court should recuse itself. The parties had a hearing the merits of the case on April 13, 2016.

Ms. Toney stated in the Motion that the Jennings Law Firm has represented her, her family and her mother and she thought it in the best interest of myself and my law firm that I recuse myself and appoint a Special Referee.

The Court would call attention to the Amended Motion to Recuse filed on May 3, 2016 and would also call attention to the Memorandum of Law filed on April 25, 201 by Ms. Toney. Those are the filings that I am aware of that would impact this issue. The Court inquired of the

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parties as to whether there were other exhibits or memorandums filed that it needed to be aware of.

Ms. Toney testified that the Motion to Recuse is based on the fact that my law firm previously represented her, her family and her mother on matters not related to this particular litigation and that she is not saying the Court has a conflict with this particular litigation, but just that the office of Jennings & Jennings represented her in the past. The undersigned is a member of the Jennings & Jennings Law Firm.

At the conclusion of the hearing Ms. Toney fell ill and was taken out of the courtroom by EMS.

However, the Court has carefully reviewed the Motion and argument of Mrs. Toney. This Court is aware of the Rules of Judicial Conduct and makes the following findings:

1. On January 18, 2010, the Honorable Jeffrey Young issued an Order Bifurcating this case and referring the foreclosure action to the undersigned as Master-in-Equity for Lee County. The matter goes through a long procedural history in the circuit court until a Notice of Hearing is filed by the Plaintiff's attorney setting a hearing date for April 15, 2016 at 3:00 PM. For the first time the Defendant, Laura Toney, filed a Motion to Recuse the undersigned and files an amended motion to recuse on May 3, 2016.
2. The Court serves a notice of hearing setting a hearing for June 22, 2016 for the specific purpose of addressing Mrs. Toney's Motion to Recuse. Mrs. Toney attended that hearing.
3. Having received Mrs. Toney's Motion to Recuse, and hearing arguments to that effect, the grounds for recusal are set forth in Mrs. Toney's motion. Having heard from Mrs. Toney in a hearing specifically set to provide her an opportunity to be heard and after reviewing the information that she has provided, I do not find that a conflict of interest nor grounds for recusal exists. Mrs. Toney has alleged that a law firm that the Court is a member of has previously represented her in matters unrelated to the present litigation. My complete review of the file does not show that the firm of Jennings & Jennings has had any involvement in the case as it is currently before the Court and Mrs. Toney has not alleged that to be the case.
4. Prior representation of Mrs. Toney is not in and of itself a ground for recusal. Canons of Judicial Conduct are specific in instances in which recusal must be initiated or granted by the Court and I do not find that any such grounds exist in this matter.

5. Based on the above findings, I do not find that recusal in this matter is required or necessary under the Rules of Judicial Conduct, specifically Canon 3E.

Based on the above, the Court is not recusing itself in this matter and will issue Orders as it deems appropriate as a result of the hearing that was held on April 15, 2016.

s/S. Bryan Doby
Master in Equity for Lee County

15 day of August, 2016
Bishopville, South Carolina

Attorney for Plaintiff:
Taylor A. Peace
S.C. Bar No. 100206
Tyler, Jackson, Peace & Silver, LLC
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 779-4997