

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity
The Honorable Joseph M. Strickland

Appellate Case No. 2015-000367

Royals Portfolio, LLC, an assignee of Bank of America, N.A., formerly known as NationsBank, N.A., which is Successor in Merger to NCNB South Carolina, Respondent,

v.

Charlie Kelly and Dorothy Simpson, Appellants.

APPELLANTS' RETURN TO RESPONDENT'S MOTION TO STRIKE

Pursuant to Rule 240(e), SCACR, Appellants Charlie Kelly and Dorothy Simpson submit this response in opposition to Respondent's motion to strike portions of Appellants' Designation and Initial Brief. For the reasons stated below, the matters designated and citations to them in the Initial Brief are proper, and the Court should deny Respondent's motion.

PROCEDURAL AND FACTUAL BACKGROUND

Respondent filed this foreclosure action in November 2012 in the Court of Common Pleas for Richland County. Eight months later, on July 10, 2013, Respondent filed a motion for summary judgment with three exhibits attached—(1) excerpt from the deposition of Appellant Kelly, (2) excerpt from the deposition of Appellant Simpson, and (3) affidavit of William B. Buland. (Exh. A, public record of case filings; Exh. B, Plaintiff's Motion for Summary Judgment and attached exhibits). Respondent moved for summary judgment "as to the defendants' default, defendants' liability, the amount of the judgment indebtedness, and the right to foreclose on the real property."

(Exh. B, p. 1). These same issues were contested at the underlying trial. *See* Initial Br. of App. pp. 8-9.

On January 15, 2014, the lower court entered an order referring the case in its entirety to the Master-in-Equity. (Exh. C). In September 2014, the Master held a non-jury trial, at which the Appellants contested the foreclosure and made a motion to stay the proceedings until Respondent complied with Supreme Court Administrative Order No. 2011-05-02-01. *See* Initial Br. of App. p. 1. The Master ruled against Appellants as to both issues and entered a judgment of foreclosure and Order Denying Defendants' Motion to Stay Foreclosure Action. *See* Notice of Appeal. Appellants appealed from both orders. *Id.*

ARGUMENT

Appellants' Designation of Matter to be Included in the Record on Appeal designates Respondent's motion for summary judgment and the attached deposition transcripts of Appellants. (App. Designation p. 2). Respondent seeks to strike these designations and citations to them in Appellants' brief, alleging the motion and exhibits "were not presented to the lower court." (Resp't Mot. p. 1). This is incorrect, and the Court should deny Respondent's motion to strike.

Under Rule 210(c), SCACR, the "Record shall not, however, include matter which was not presented to the lower court or tribunal." "[W]here relevant, the record should contain *written motions* and memoranda." Jean Hoefler Toal et al., Appellate Practice in South Carolina 411 (3d ed., South Carolina Bar 2016) (emphasis added). Filings that are part of the lower court's record and file are "presented to the lower court" and are properly designated in a record on appeal and cited in a brief. Rule 210(c), SCACR; Rule 208(b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal . . .").

There are two orders on appeal in this case: (1) the Master's Decree and Judgment of Foreclosure and Sale, and (2) the Order Denying Defendants' Motion to Stay Foreclosure Action. *See* Notice of Appeal. The Order Denying Defendants' Motion to Stay Foreclosure Action specifically states "the Court considered only *the documents filed in this case*, the testimony presented and documents introduced at the hearing." (Exh. D, p. 1) (emphasis added). The motion for summary judgment and attached exhibits are "documents filed in this case." As such, they were "presented to the lower court" and, according to an Order on appeal, were "considered" by the Court. Rule 210(c), SCACR. Therefore, they are properly designated in Appellants' Designation of Matter to be Included in the Record on Appeal and properly cited in Appellants' brief. *Id.*; Rule 208(b)(4), SCACR. For this reason alone, the Court should deny Respondent's motion.

Furthermore, that the motion was filed prior to referral to the Master and neither the circuit court nor the Master formally ruled on the motion does not make it improper to designate as part of the Record on Appeal because it is plainly part of the filed court record transferred to the Master upon referral. "When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers. The order of reference in this case in no way limits the master's powers." *Smith Cos. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993) (internal citation omitted). In this case, the order of reference does not limit the Master's powers. (Exh. C). Therefore, the Master received the case in the same status as the circuit court, including receiving all filings of record for its review and consideration. In this case, that includes receipt of copies of Respondent's motion for summary judgment and attached exhibits.

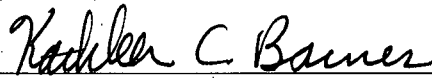
Finally, Respondent acknowledges that it provided a full, original copy of Appellant Simpson's deposition to the Master at trial. (Mot. p. 3; Exh. E, Trial Tr. p. 54-56). Respondent did not provide the Master with only those portions read and did not request that the Master consider only those portions read. That counsel for Respondent only read some lines of the deposition pages into the transcript does not mean that the Master, who followed along with a full copy of the deposition transcript, did not read or consider other lines and pages of the deposition. Respondent "presented to the lower court" at a non-jury trial a full copy of Appellant Simpson's deposition and, therefore, it is proper matter to be included in the designation of matter for the record on appeal and cited in Appellants' brief. Rule 210(c), SCACR; Rule 208(b)(4), SCACR.

CONCLUSION

For the reasons stated above, Appellants request the Court deny Respondent's motion to strike portions of Appellants' Designation and Initial Brief.

August 29, 2016

Respectfully submitted,



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Attorneys for Appellants

EXHIBIT A



Richland County 5th Judicial Circuit Public Index



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 [City of Columbia Municipal Ct](#) |
 [S.C. Judicial Department](#)
[Summary Ct Dockets](#)

Switch View

Royals Portfolio LLC , plaintiff, et al vs Charlie Kelly , defendant, et al

Case Number:	2012CP4007878	Court Agency:	Richland County Common Pleas	Filed Date:	11/28/2012
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Jury
Status:	Appeal	Assigned Judge:			
Disposition:	Judgment	Disposition Date:	01/26/2015	Disposition Judge:	Strickland, Joseph M.
Original Source Doc:		Original Case #:			
Judgment Number:	2012CP4007878	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Royals Portfolio LLC	Affidavit/Publication	Filing		08/02/2016-09:24		
Simpson, Dorothy	Motion to Use Cash Collateral (Bankruptcy)	Filing		01/06/2016-12:09		
Royals Portfolio LLC	Affidavit/Publication	Filing		12/30/2015-09:29		
Royals Portfolio LLC	Affidavit/Publication	Filing		05/05/2015-14:08		
Royals Portfolio LLC	Certificate Of Service	Filing		04/17/2015-16:31		
Royals Portfolio LLC	Motion/Motion Filing Fee	Filing		04/16/2015-14:59		
Kelly, Charlie	Motion to Stay Sale	Motion		04/16/2015-13:50	04/16/2015-13:50	
Simpson, Dorothy	Affidavit of Undertaking For Dorothy Simpson	Filing		04/16/2015-11:43		
Kelly, Charlie	Affidavit of Undertaking For Charlie Kelly	Filing		04/16/2015-11:43		
Kelly, Charlie	Filing/Notice of Appeal	Filing		02/23/2015-16:16		
Royals Portfolio LLC	Verification/Verified	Filing		01/29/2015-13:06		
Simpson, Dorothy	Judgment/Deficiency	Judgment		01/26/2015-15:28		
NCNB South Carolina	Judgment/Deficiency	Judgment		01/26/2015-15:28		

NCNB South Carolina	Judgment/Deficiency	Judgment		01/26/2015-15:28	
Kelly, Charlie	Judgment/Deficiency	Judgment		01/26/2015-15:28	
NationsBank N A	Judgment/Deficiency	Judgment		01/26/2015-15:28	
Simpson, Dorothy	Judgment/Deficiency	Judgment		01/26/2015-15:28	
Kelly, Charlie	Judgment/Deficiency	Judgment		01/26/2015-15:28	
NationsBank N A	Judgment/Deficiency	Judgment		01/26/2015-15:28	
Simpson, Dorothy	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Bank of America N A	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Bank of America N A	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Kelly, Charlie	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Royals Portfolio LLC	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Simpson, Dorothy	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Kelly, Charlie	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Royals Portfolio LLC	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Royals Portfolio LLC	TMS# 37200-06-04	Filing		01/26/2015-15:26	
Royals Portfolio LLC	2800 McCords Ferry Road Eastover SC	Filing		01/26/2015-15:26	
Royals Portfolio LLC	Master/Decree and Judgment Of Foreclosure & Sale	Order		01/26/2015-15:25	
Royals Portfolio LLC	Order Denying Defendants' Motion To Stay Foreclosure Action/	Order		01/26/2015-13:23	01/26/2015-13:23
Royals Portfolio LLC	Affidavit of Robert Eisman	Filing		10/09/2014-13:50	01/26/2015-13:50
Royals Portfolio LLC	Affidavit of Attorney Fees	Filing		10/09/2014-13:50	01/26/2015-13:50
Royals Portfolio LLC	Certificate Of Service	Filing		10/09/2014-09:45	01/26/2015-09:45
Kelly, Charlie	Letter in Regards to Affidavit Filed For Robert Eisman	Filing		10/03/2014-09:08	01/26/2015-09:08
Kelly, Charlie	Motion For Continuance	Motion		09/09/2014-11:36	01/26/2015-11:36
Royals Portfolio LLC	Motion/Motion Filing Fee	Filing		09/09/2014-11:05	01/26/2015-11:05
Kelly, Charlie	Notice of Substitution of Counsel	Filing		06/24/2014-14:23	01/26/2015-14:23
Royals Portfolio LLC	Summons and Order Of Appointment/Judge Strickland	Order		06/13/2014-10:02	01/26/2015-10:02
Royals Portfolio LLC	Affidavit of Eddy L. Lane	Filing		05/13/2014-10:09	01/26/2015-10:09
Kelly, Charlie	Motion For Continuance	Motion		04/21/2014-16:23	01/26/2015-16:23
Royals Portfolio LLC	Motion/Motion Filing Fee	Filing		04/21/2014-10:11	01/26/2015-10:11
Royals Portfolio LLC	Form 4 Order this matter is hereby Referred to Master-in-Equ	Order		01/15/2014-15:02	01/26/2015-15:02
Royals Portfolio	Counsel's Certification	Filing		01/10/2014-	01/26/2015-

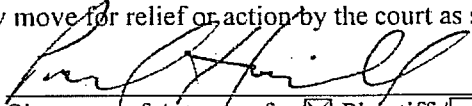
LLC	Regarding Compliance With South Caro			09:50	09:50
Harrill, Paul D.	Notice of Motions Roster Publication Sent	Action		12/18/2013-09:03	01/26/2015-09:03
Harrill, Paul D.	Notice of Motions Roster Publication Sent	Action		12/18/2013-09:03	01/26/2015-09:03
Harrill, Paul D.	Notice of Motions Roster Publication Sent	Action		12/18/2013-09:03	01/26/2015-09:03
Harrill, Paul D.	Notice of Motions Roster Publication Sent	Action		12/18/2013-09:03	01/26/2015-09:03
Schumacher, William Frederick IV	Notice of Motions Roster Publication Sent	Action		12/18/2013-09:03	01/26/2015-09:03
Schumacher, William Frederick IV	Notice of Motions Roster Publication Sent	Action		12/18/2013-09:03	01/26/2015-09:03
Schumacher, William Frederick IV	Notice of Motions Roster Publication Sent	Action		12/18/2013-09:03	01/26/2015-09:03
Schumacher, William Frederick IV	Notice of Motions Roster Publication Sent	Action		12/18/2013-09:03	01/26/2015-09:03
Royals Portfolio LLC	Motion/Motion Filing Fee	Filing		11/27/2013-15:26	01/26/2015-15:26
Royals Portfolio LLC	Motion to Compel Discovery Responses	Motion		11/27/2013-09:14	01/15/2014-09:14
Royals Portfolio LLC	Motion/Motion Filing Fee	Filing		11/26/2013-16:29	01/26/2015-16:29
Royals Portfolio LLC	Motion to Strike Jury Trial Deman of Defendants	Motion		11/26/2013-13:37	01/26/2015-13:37
Royals Portfolio LLC	Order/Order Filing Fee	Filing		11/25/2013-10:55	01/26/2015-10:55
Harrill, Paul D.	Notice of Case Roster Publication Sent	Action		11/14/2013-13:09	01/26/2015-13:09
Schumacher, William Frederick IV	Notice of Case Roster Publication Sent	Action		11/14/2013-13:09	01/26/2015-13:09
Royals Portfolio LLC	Motion/Motion Filing Fee	Filing		07/31/2013-14:57	01/26/2015-14:57
Kelly, Charlie	Motion to Compel Plaintiff to Comply With Supreme Court Admi	Motion		07/31/2013-10:11	01/15/2014-10:11
Royals Portfolio LLC	Affidavit of William B. Buland	Filing		07/10/2013-16:49	01/26/2015-16:49
Royals Portfolio LLC	Motion/Motion Filing Fee	Filing		07/10/2013-15:23	01/26/2015-15:23
Royals Portfolio LLC	Motion For Summary Judgment	Motion		07/10/2013-16:47	01/15/2014-16:47
Royals Portfolio LLC	Verification/Verified	Filing		02/26/2013-13:36	01/26/2015-13:36
Royals Portfolio LLC	Reply to Counterclaim of Defendants	Filing		02/14/2013-14:32	01/26/2015-14:32
Simpson, Dorothy	Answer & Counterclaim of Dorothy Simpson and Charlie Kelly	Filing		01/15/2013-09:06	01/26/2015-09:06
Royals Portfolio LLC	Service/Affidavit Of Service on Charlie Kelly	Filing		12/03/2012-15:58	01/26/2015-15:58
Royals Portfolio LLC	Service/Affidavit Of Service on Dorothy Simpson	Filing		12/03/2012-15:58	01/26/2015-15:58
Royals Portfolio	Certificate/Certificate	Filing		11/28/2012-	01/26/2015-

LLC	of Exemption from ADR			15:54	15:54	
Royals Portfolio LLC	Lis Pendens Filed	Filing		11/28/2012-13:55	01/26/2015-13:55	
Royals Portfolio LLC	Summons & Complaint	Filing		11/28/2012-13:50	01/26/2015-13:50	

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 ROYALS PORTFOLIO, LLC,)
 Plaintiff,)
 vs.)
)
 CHARLIE KELLY, et al.,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 CASE NO.: 2012-CP-40-7878
 MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET

Plaintiff's Attorney: Paul D. Harrill, Bar No. 15268 Address: McNair Law Firm, P.O. Box 11390, Columbia, SC 29211 Phone: 803-799-9800 Fax 803-753-3278 E-mail: pharrill@mcnair.net Other: _____	Defendant's Attorney: Brian Boger, Bar No. _____ Address: Law Offices of Brian L. Boger, P.O.Box 65, Columbia, SC 29202 Phone: 803-252-2880 Fax _____ E-mail: phil@brianboger.com Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Summary Judgment Estimated Time Needed: 30 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	July 8, 2013 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCF) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2012-CP-40-07878

ROYALS PORTFOLIO, LLC, an assignee
of Bank of America, N.A., formerly known
as NationsBank, N.A., which is Successor
by Merger to NCNB South Carolina,

Plaintiff,

v.

CHARLIE KELLY and
DOROTHY SIMPSON,

Defendants.

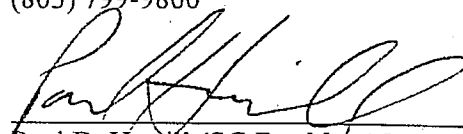
**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**TO: BRIAN L. BOGER, ESQUIRE and WILLIAM SCHUMACHER, ESQUIRE,
ATTORNEYS FOR THE DEFENDANTS CHARLIE KELLY AND DOROTHY
SIMPSON:**

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, the Plaintiff Royals Portfolio, LLC, by and through its undersigned counsel, hereby moves for summary judgment against the defendants herein, either in the entirety or partially as to the defendants' default, defendants' liability, the amount of the judgment indebtedness, and the right to foreclose on the real property. This motion is based upon and supported by the pleadings filed herein, the defendants' discovery responses, the deposition transcripts of the defendants, the attached affidavit of William B. Buland, and any memorandum submitted in support hereof.

McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By:



Paul D. Harrill (SC Bar No. 15268)
Attorneys for the Plaintiff

July 8, 2013
Columbia, South Carolina

DEPOSITION
TRANSCRIPT

CHARLIE KELLY

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

ROYALS PORTFOLIO, LLC AN ASSIGNEE
OF BANK OF AMERICA, N.A., FORMERLY
KNOWN AS NATIONSBANK, N.A., WHICH
IS SUCCESSOR BY MERGER TO
NCNB SOUTH CAROLINA,

Plaintiff(s),

vs.

Case No. 2012-CP-40-07878

CHARLIE KELLY AND DOROTHY SIMPSON,

Defendant(s).

D E P O S I T I O N

WITNESS: CHARLIE KELLY

DATE: Thursday, June 20, 2013

TIME: 1:14 p.m.

LOCATION: McNair Law Firm
1221 Main Street
Columbia, South Carolina

TAKEN BY: Attorneys for the Plaintiff

REPORTED BY: BRADLEY H. THOMAS
Registered Professional Reporter
Certified Realtime Reporter

COMPUSCRIPTS, INC.
A Full-Service Court Reporting Agency
Post Office Box 7172
Columbia, South Carolina 29202
803-988-0086
1-888-988-0086

1 APPEARANCES:

2 ATTORNEY FOR THE PLAINTIFF:

3 MCNAIR LAW FIRM, P.A.
4 BY: PAUL D. HARRILL, ESQUIRE
5 1221 Main Street, Suite 1800
6 P.O. Box 11390
7 Columbia, South Carolina 29211
8 803.799.9800
9 pharrill@mcnair.net

10 ATTORNEYS FOR THE DEFENDANTS:

11 LAW OFFICES OF BRIAN L. BOGER
12 BY: WILLIAM SCHUMACHER, IV, ESQUIRE
13 1331 Elmwood Avenue, Suite 210
14 P.O. Box 65
15 Columbia, South Carolina 29202
16 914.285.0700
17 bill@brianboger.com

18 ALSO PRESENT: DOROTHY SIMPSON
19 ODELL SIMPSON

20 (INDEX AT REAR OF TRANSCRIPT)

21
22
23
24
25

1 CHARLIE KELLY, being first duly sworn,
2 testified as follow:

3 EXAMINATION

4 BY MR. HARRILL:

5 Q. Mr. Kelly, we've met a couple times. My
6 name is Paul Harrill. I think you recall I
7 represent Royals Portfolio.

8 A. Yes, sir.

9 Q. Okay. You just sat through your
10 daughter's deposition, correct?

11 A. That's correct.

12 Q. All right. Try to make sure you answer me
13 out loud. Okay?

14 A. Right.

15 Q. If you just nod, he can't take it down.
16 All right. Did you listen carefully to what she was
17 saying and my questions to her and her answers?

18 A. Yes, sir.

19 Q. Okay. Did you disagree with any of the
20 answers she gave?

21 A. I agree with everything she said.

22 Q. Okay.

23 A. That's all I'm going to say.

24 Q. Okay. Did she leave out anything that you
25 thought she should have answered?

1 A. Yes, sir.

2 Q. Okay. Tell me, if you can remember, some
3 things she left out she should have said.

4 A. Well, I can't -- since my wife passed --
5 you know that?

6 Q. Yes.

7 A. I can't remember as good as had, but what
8 happened, her stick to all business for me and my
9 wife. So I don't know too much about it because I
10 used to work and lay bricks and stuff like that.

11 Q. Yes, sir.

12 A. You understand? I be in and out, you
13 know.

14 Q. Yes, sir.

15 A. That's the only thing I --

16 Q. Okay.

17 A. I can't verify -- I can verify I know of
18 it, but I don't know, you know, really the meaning,
19 you know.

20 Q. Yes, sir. So you're saying she dealt with
21 a lot more of the specifics?

22 A. Right. Right. Right.

23 Q. Making the payments and that sort of
24 thing?

25 A. Right. Right. I mean, everything.

1 Q. Okay.

2 A. That's my heart string.

3 Q. Yes, sir. Let me -- let me show you
4 something I'm just interested about here. Let me
5 show you. This is a plat. And we've referred to
6 this, I think, at times as the Myrtle Crest plat.
7 Do you know who Myrtle Crest is?

8 A. Myrtle Crest?

9 Q. Yeah. Do you remember that name at all?

10 A. Yeah, I remember.

11 Q. Isn't that the company that bought
12 Pinewood Care?

13 A. Right.

14 Q. Okay.

15 A. Oh, yeah. Sure.

16 Q. All right. I'm just looking at the plat
17 here. Down there by your hand do you see where it
18 says U.S. Highway 601?

19 A. Yes, sir.

20 Q. Well, first answer me this. Does this
21 document -- and this is a survey, like an overhead
22 view.

23 A. Right.

24 Q. You understand?

25 A. I understand.

1 Q. Does this fairly accurately in your mind
2 show how Pinewood Care and then the residence down
3 there near the highway?

4 A. Oh, yeah. I was born and raised there,
5 you know. I've got to know.

6 Q. Okay.

7 A. This land was bought from my wife's
8 grandmama.

9 Q. Okay. Let me get this marked.

10 A. Age make a lot of difference. After you
11 get older it makes a lot of difference. And then a
12 lot of worries. I went through a lot of worries,
13 you know, since -- you know, since this has been
14 going on.

15 Q. Yes, sir. Hold on just a second and let
16 me get this marked. Okay?

17 A. Yes, sir.

18 (Exhibit No. 1 was marked for
19 identification.)

20 BY MR. HARRILL:

21 Q. This has been marked as Exhibit 1 to your
22 deposition. Now, down here there's a part that's
23 labeled Parcel B. Do you see that?

24 A. Yes, sir.

25 Q. Okay. Is that your residence, 2800

1 McCords Ferry Road?

2 A. Yes, sir. Right here.

3 Q. Yeah. That's that building there, that's
4 the house, right?

5 A. Right.

6 Q. Okay. And that's where you live?

7 A. Right. Right.

8 Q. Okay.

9 A. I built it.

10 Q. I understand. And you worked with bricks,
11 right?

12 A. Yeah, bricks. I'm something like a
13 general contractor. I worked with one company 37
14 years.

15 Q. And you built that house yourself?

16 A. Built it myself. Dig the footing with a
17 flashlight.

18 Q. Good gracious. That's impressive. All
19 right. Let me ask you this. This -- you see this
20 piece over here that kind of juts out from the
21 house, this piece of land that goes and it connects
22 with 601? Do you see where I'm talking about?

23 A. Yeah. Well, see, what happened, this been
24 bought from another man, you know, over on the side
25 of this. This don't go with it. It's separate.

1 Q. You're saying -- and let me -- I'll tell
2 you what. On the exhibit I'm going to mark it so we
3 can know it's clear what we're talking about. Okay?

4 A. Okay.

5 Q. I'm going to just outline it in red.
6 Okay?

7 A. Okay.

8 Q. All right. I've marked that in red now.

9 A. Right.

10 Q. Do you see that piece I'm talking about?

11 A. Right. Right. Right.

12 Q. Okay. We have referred to that sometimes
13 in this litigation and in other things that happened
14 before as the access parcel.

15 A. Right.

16 Q. Is that -- is that piece of land that's
17 outlined in red, is that used to access the house
18 from Highway 601?

19 A. Well, it's right beside it.

20 Q. Right beside it?

21 A. Uh-huh.

22 Q. Yes, sir. Do you all use that to come
23 into the residence sometimes?

24 A. Come right down by the house?

25 Q. Yes, sir. Yes, sir. I'm just asking

1 though when you're coming and going either with a
2 car or otherwise do you go down through the access
3 parcel to go out to the highway sometimes?

4 A. Ain't but one way in.

5 Q. I mean, is that the only way in?

6 A. One way in.

7 Q. That's the only way in?

8 A. And one way in and that's the only way
9 out.

10 Q. Okay. And we're talking about the area
11 outlined in red here?

12 A. Right.

13 Q. Okay.

14 A. Ain't but one way into it.

15 Q. What about this over here, do you ever use
16 this driveway that goes back to --

17 A. No.

18 Q. -- what was Pinewood?

19 A. No, sir.

20 Q. Okay.

21 A. No, sir. Like I say, ain't but one way
22 in.

23 Q. All right. How long is this parcel in
24 red, what I'm going to call the access parcel, how
25 long has that been used to -- you know, for you all

1 to come in and get to the house?

2 A. It were -- it's been used since -- see, at
3 first I built the building -- at first I built the
4 building before you get down to this building.

5 Q. Okay...

6 A. Okay. So what they did, we went and
7 bought -- they went building down -- all the way
8 down as far as you could go on someone else's
9 property. Do you see what I'm saying?

10 Q. Yes, sir, I think so.

11 A. So that really --

12 Q. Okay. Well, what --

13 A. But --

14 Q. Go ahead.

15 A. But this -- excuse me. But this has never
16 been -- this has always been -- I'm going to make
17 the story short. We never would have thought we
18 would have come into this, me and my wife, when we
19 built the building, but Ms. Francis Stewart was the
20 one -- I reckon you remember her, an older white
21 lady. Her passed away. And we never thought about
22 building this building until her said, "Well, you
23 all ought to increase your business." You
24 understand?

25 Q. Yes, sir.

1 A. So when we increase it that's when these
2 fellows went. So that's all I got to say.

3 Q. Is that -- are you saying is that when you
4 built the big building back here or the house?

5 A. No.

6 Q. The big building?

7 A. No, sir. The big building went all the
8 way far back.

9 Q. Yes, sir.

10 A. Went on down the one way in.

11 Q. You've got the big, then the Pinewood
12 Care?

13 A. Right.

14 Q. The big one back here?

15 A. Right. Right.

16 Q. And then that --

17 A. Right. So this building -- the building I
18 already built before you get down to that, but you
19 couldn't get in. You couldn't get no other way, but
20 that way right on it. You see what I'm saying?

21 Q. And so are you saying you built something
22 before the house here?

23 A. Right. Right.

24 Q. Is it this building here?

25 A. Right. This building here.

1 Q. Okay. This one behind --

2 A. Right.

3 Q. When you're coming in off of 601 --

4 A. Right.

5 Q. -- it's up past it?

6 A. Right.

7 Q. Okay.

8 A. So you go all the way down.

9 Q. All right. And did you use this access
10 parcel in red to get back there at that time?

11 A. No.

12 Q. Okay.

13 A. Ain't but one -- still ain't but one way
14 to get down there.

15 Q. And how is that?

16 A. Huh?

17 Q. I'm just trying to make sure I understand.

18 Are you saying that the access parcel in red is the
19 only way to get in and out?

20 A. The only way to get down to both of the
21 buildings.

22 Q. Okay. And how long has that been the only
23 way to get in and out of there?

24 A. I reckon about 20 years, 15 or 20.

25 Q. Okay. Was it --

1 A. How long my wife been dead now?

2 Q. You really -- you can't ask her
3 unfortunately. Okay.

4 A. Yeah.

5 Q. That's okay.?

6 A. That's about as far as I can go.

7 Q. Was there another way to get in before?

8 A. No. No other way to get in.

9 Q. Okay. And this access parcel, you all use
10 that to come in and out and have done that on a
11 daily basis, I guess; is that right?

12 A. Now, this little area right here, this
13 area right here, it had a little short place where
14 to park a car or big garage right -- you know.

15 Q. I'm not understanding what you're telling
16 me.

17 A. Huh?

18 Q. I'm not sure I'm understanding what you're
19 telling me. Can you try to say that again?

20 A. Yeah. I think what you're looking at,
21 this is a garage right here. You still have to come
22 back out.

23 Q. There's a garage --

24 A. You couldn't go no further. That's --
25 that went down about -- as far as you could go down

1 in there is about 14 feet.

2 Q. Okay. But this -- this red outlined
3 access parcel, that's the only way in and out of the
4 property?

5 A. Only way in and out.

6 Q. And when I'm saying the property and
7 you're saying the property, we're talking about your
8 house here, right, and the building behind it?

9 A. I've got a big garage right, you know --
10 you can't go no further down here. This garage is
11 right in this area.

12 Q. Okay. But I want you to make sure you're
13 answering the question I'm trying to ask you.

14 A. Right.

15 Q. Is this the only way in and out of the
16 property, this access parcel?

17 A. Only way. Ain't but one way.

18 Q. Okay. And you don't use this other
19 driveway here --

20 A. Huh-uh.

21 Q. -- that goes back to Pinewood Care?

22 A. No, sir.

23 Q. Okay. All right. Do you know who owns
24 the land called the access parcel?

25 A. Owned the land?

1 Q. Yeah. Do you know who owns that? Is that
2 part of your residence?

3 A. The motel, it's in the back, you know.

4 Q. Down the road?

5 A. Around the road.

6 Q. Okay. Do you know who owns this access
7 parcel that I've outlined in red? No?

8 A. No, sir.

9 Q. Okay. All right. Do you know who owns
10 the land just beyond it on the other side from your
11 house?

12 A. No, sir.

13 Q. Okay.

14 MR. HARRILL: I don't have any other
15 questions.

16 MR. SCHUMACHER: No questions.

17 (Whereupon, the taking of the
18 deposition was ended at 1:26 p.m.)

19

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25

DEPOSITION
TRANSCRIPT

DOROTHY SIMPSON

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

ROYALS PORTFOLIO, LLC AN ASSIGNEE
OF BANK OF AMERICA, N.A., FORMERLY
KNOWN AS NATIONSBANK, N.A., WHICH
IS SUCCESSOR BY MERGER TO
NCNB SOUTH CAROLINA,

Plaintiff(s),

vs.

Case No. 2012-CP-40-07878

CHARLIE KELLY AND DOROTHY SIMPSON,

Defendant(s).

D E P O S I T I O N

WITNESS: DOROTHY SIMPSON

DATE: Thursday, June 20, 2013

TIME: 11:44 a.m.

LOCATION: McNair Law Firm
1221 Main Street
Columbia, South Carolina

TAKEN BY: Attorneys for the Plaintiff

REPORTED BY: BRADLEY H. THOMAS
Registered Professional Reporter
Certified Realtime Reporter

COMPUSCRIPTS, INC.
A Full-Service Court Reporting Agency
Post Office Box 7172
Columbia, South Carolina 29202
803-988-0086
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8

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9

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13

14

15 ALSO PRESENT: CHARLIE KELLY
ODELL SIMPSON

16

17 (INDEX AT REAR OF TRANSCRIPT)

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1 DOROTHY SIMPSON, being first duly sworn,
2 testified as follow:

3 EXAMINATION

4 BY MR. HARRILL:

5 Q. Good morning, Ms. Simpson.

6 A. Good morning.

7 Q. We met a couple times before, but I'll
8 remind you. I'll Paul Harrill and I represent
9 Royals Portfolio, LLC in this litigation that's
10 pending. You understand that, correct?

11 A. Yes, sir.

12 Q. Okay. And do you understand that the
13 action that we're here about today is a foreclosure
14 action?

15 A. Yes, sir.

16 Q. Okay. The court reporter has gone over a
17 couple of instructions with you. So I won't repeat
18 those, but I want to just go over a couple of things
19 with you as well. Okay?

20 A. Yes, sir.

21 Q. Try to make sure that you answer all the
22 questions out loud.

23 A. Yes, sir.

24 Q. If you shrug or nod or shake your head or
25 any of that stuff, that's not a response that can be

1 typed down. Okay?

2 A. Yes, sir.

3 Q. So try to make sure you do those things.
4 And I'll try to prompt you if you slip up and just
5 nod or shake your head or something, but if you'll
6 try to do that, that will be helpful.

7 If you have any questions during the
8 course of the deposition today, the rules require
9 that you direct those to me. Okay. So if it's
10 something about the procedure or you have some
11 question about what we're doing, you direct those
12 questions to me. Okay?

13 A. Yes, sir.

14 Q. If there's some kind of an objection that
15 your lawyer makes and he instructs you not to answer
16 a question, then that's something that you and he
17 can discuss. Okay?

18 A. Yes, sir.

19 Q. But that's a different issue. And then
20 the lawyers can take that up as well. Otherwise if
21 your lawyer, Mr. Schumacher, makes any objections, I
22 request that you let him state his objection and
23 then try to remember the question and then still
24 answer the question. Okay?

25 A. Yes, sir.

1 Q. That's kind of how we do it. He has to
2 put his objection on the record, but then that
3 doesn't mean you don't answer the question, unless
4 he tells you not to. Okay?

5 A. Yes, sir.

6 Q. And if I ask you a question during the
7 proceedings that you don't understand or is
8 confusing to you in any way, please ask me to
9 rephrase it or repeat the question because I want to
10 make sure you understand all the questions. Okay?

11 A. Yes, sir.

12 Q. And I don't want you to answer one if
13 you're confused about it. Okay?

14 A. Yes, sir.

15 Q. Okay. I'm going to get just some very
16 brief background on you and I'll try to go through
17 these quickly. I'm not looking for a life history,
18 but I just want to get some general background.
19 Okay?

20 A. Yes, sir.

21 Q. Can you state your full name?

22 A. Dorothy Simpson.

23 Q. Do you have a maiden or middle name?

24 A. Dorothy Mae Simpson.

25 Q. M-a-e?

1 A. Uh-huh.

2 Q. And you are married currently?

3 A. Yes, sir.

4 Q. And your husband's name?

5 A. Odell Simpson.

6 Q. Where do you all live?

7 A. We live in Eastover, South Carolina.

8 Q. What's your address there?

9 A. That's 2800 McCords Ferry Road.

10 Q. All right. Do you have children?

11 A. I have four children.

12 Q. All right. Are they over the age of 18?

13 A. Yes, sir.

14 Q. All right. Would you just --

15 MR. HARRILL: Go off the record for a
16 second.

17 (Off-the-record discussion.)

18 BY MR. HARRILL:

19 Q. Would you give me your children's names?

20 Well, let's say this. The children that you have
21 that are here in Richland County?

22 A. All of my kids are in Richland County.

23 Q. All right. Would you give me their four
24 names then?

25 A. Inga Simpson, Octavius Simpson, Kelly

1 Simpson, and Estrada Simpson.

2 Q. Now, have any of those taken a married
3 name?

4 A. No.

5 Q. They all still go by Simpson?

6 A. Yes, sir.

7 Q. Are any of them married?

8 A. No, sir.

9 Q. All right. Ms. Simpson, are you employed?

10 A. I'm self-employed.

11 Q. Give me generally the nature of what you
12 do.

13 A. I am a caregiver. I have two elderly
14 veterans that I take care of.

15 Q. Okay. And where do you take care of them?

16 A. In my home.

17 Q. And that's 2800 McCords Ferry?

18 A. Yes, sir.

19 Q. And that address and that home is the
20 property that's the subject of this foreclosure
21 action?

22 A. Yes, sir.

23 Q. Okay. Now, prior to McCords Ferry didn't
24 you have another residence?

25 A. That was off Leesburg Road, 125

1 Steeplechase Road North, Columbia, South Carolina
2 29209.

3 Q. All right. And when did you last live at
4 that address?

5 A. That was back in, I think it was, 2006.

6 Q. Okay. So since 2006 you've been living at
7 what I'll just call the property, 2800 McCords Ferry
8 Road?

9 A. Yes, sir.

10 Q. All right. Has Mr. Kelly been living
11 there --

12 A. Yes, sir.

13 Q. -- that entire time?

14 A. Yes, sir.

15 Q. And Mr. Kelly, I'm meaning Charlie Kelly.

16 A. Yes, sir.

17 Q. Okay. Did you ever have an opportunity or
18 have you ever had an opportunity to review the
19 complaint that was filed and served in this action?

20 A. Yes, sir.

21 Q. Okay. And you know that there were, I
22 guess, a handful of exhibits, A through K, attached
23 to that?

24 A. Yes, sir.

25 Q. All right. And so you understand, do you

1 not, that Royals Portfolio is claiming that you're
2 in default under the terms of the note and the
3 mortgage?

4 A. Yes, sir.

5 Q. Okay. And do you also understand that
6 there are two bases for them claiming that you're in
7 default?

8 A. Yes, sir.

9 Q. Okay. The first -- and just tell me if
10 you disagree or agree. The first they are claiming
11 is that you have failed to make some payments when
12 due?

13 A. Failed to make one payment that was due.

14 Q. Okay. And you're aware that that's what
15 they're claiming?

16 A. Yes, sir.

17 Q. And you disagree with that; is that right?

18 A. I agree with the one payment.

19 Q. Say that again.

20 A. I agree with the one payment.

21 Q. That you've missed one payment?

22 A. Yes, sir.

23 Q. Okay. And then the second basis upon
24 which Royals is claiming that there's default is
25 that you failed to pay the real estate taxes on the

1 property?

2 A. Yes, sir.

3 Q. Okay. Do you agree that that is accurate,
4 that you did not pay the real estate taxes?

5 A. Yes, sir.

6 MR. HARRILL: Get that one marked.

7 (Exhibit No. 1 was marked for
8 identification.)

9 BY MR. HARRILL:

10 Q. Ms. Simpson, I've handed you Exhibit 1 to
11 your deposition. And that is a document entitled
12 Agreement Regarding Existing Debt. Do you see that?

13 A. Yes, sir.

14 Q. Okay. Would you flip through that and
15 just familiarize yourself with that document. And
16 what I first and foremost want to know is whether or
17 not that bears your signature back on Page 8 of the
18 document?

19 A. Yes, sir.

20 Q. Okay. And does that also appear to be
21 Mr. Kelly's signature up above yours?

22 A. Yes, sir.

23 Q. All right. Were you there in the same
24 room when the document was signed?

25 A. Yes, sir.

1 Q. All right. So you signed it together?

2 A. Yes, sir.

3 Q. All right. Do you have any reason to
4 believe that the document that you're holding in
5 your hand is not a copy of the original document
6 called Agreement Regarding Existing Debt?

7 A. No, sir.

8 Q. I understand that you would maybe want to
9 compare it to an original, but you have no reason to
10 think this isn't a copy of the one that you signed,
11 right?

12 A. That is a copy.

13 Q. Yes. Okay. Let me hand you another
14 document, Ms. Simpson.

15 (Exhibit No. 2 was marked for
16 identification.)

17 BY MR. HARRILL:

18 Q. All right. This is Exhibit 2 to your
19 deposition. And it is entitled Acknowledgment of
20 Existing Liens and Mortgage of Real Estate. Do you
21 see that?

22 A. Yes, sir.

23 Q. Would you review that document also and
24 then tell me if that document was signed by you?

25 A. Yes, sir.

1 Q. Okay. And I'll ask you the same thing I
2 did about the note. Do you have any reason to
3 believe that this is not a copy of the original
4 document that you signed called Acknowledgment of
5 Existing Liens and Mortgage of Real Estate?

6 A. No, sir.

7 Q. All right. Let me go back and ask you
8 about the agreement regarding existing debt that's
9 Exhibit 1. Do you agree that -- and for reference
10 and maybe helping you, I'm looking at Page 2, it's
11 letter I.

12 A. Page 2?

13 Q. Yes. Do you agree that for the purpose of
14 this transaction you agreed with Royals Portfolio
15 that what we'll call the stipulated existing debt
16 was \$400,000 on a prior existing loan?

17 A. Yes, sir.

18 Q. Okay. And that's set forth there in, I
19 guess, it's Recital I to that document? Are you
20 still considering my question?

21 A. I thought you were finished. Excuse me.

22 Q. I asked you a question I thought. I just
23 asked you if it was set forth in Recital I there
24 that the parties had stipulated to \$400,000 as the
25 debt that remained from a prior loan?

1 A. Yes, sir.

2 Q. Okay. And was it your understanding when
3 you signed this agreement that Royals was agreeing
4 to basically require that you only pay \$125,000
5 instead of the \$400,000 as long as you made timely
6 payments on the loan?

7 A. Yes, sir.

8 Q. Okay. All right. Now, a little bit ago
9 you said you agreed that you had not made one
10 payment on the loan. Can you tell me what payment
11 that was?

12 A. That payment was a payment, I think, that
13 was due back in 2010. And it was brought to my
14 attention that it was not made and we in turn made
15 that payment.

16 Q. Was that -- was your making of the payment
17 after a demand letter had been sent to you?

18 A. It wasn't a demand letter. It was a
19 letter indicating that that payment was due.

20 Q. Okay. Do you recall who wrote that
21 letter? Was it me or was it somebody else?

22 A. It was Paul Harrill.

23 Q. That would be me. Okay. Let me hand you
24 this document. I'm going to get it marked in a
25 moment, but it is a letter. Up at the top it says

1 it's from Royals Portfolio, LLC and it's dated
2 January 27, 2012. Do you recall receiving this
3 letter?

4 A. Yes, sir.

5 Q. Okay. What did you do when you received
6 this letter?

7 A. I took it to my attorney.

8 Q. And who was that?

9 A. That was Eddy Lane.

10 Q. Do you know if you or Ms. Lane made any
11 response after reviewing this letter?

12 A. Ms. Lane indicated to me that she would
13 take care of this, but she asked me a few questions
14 and she stated that she would take care of it.

15 Q. Do you have a copy of any letters or
16 anything that she may have written, if she wrote a
17 letter in response?

18 A. I think I do in some of my notes, my
19 records rather.

20 Q. Okay. And you've not produced anything by
21 way of documents to me yet, right?

22 A. Recently or --

23 Q. Yes, recently.

24 A. Yes, sir.

25 Q. You have?

1 A. Yes, sir. I sent --

2 Q. Go ahead.

3 A. I sent you a letter requesting a payoff
4 recently.

5 Q. Yeah, that's fine. What I mean is I
6 sent -- excuse me. I'll show it to you in a few
7 moments, but I sent some discovery requests in this
8 litigation which say things like I request that you
9 give me certain documents and identify the documents
10 that I'd like you to send me. You've not responded
11 to any request like that or given me anything as far
12 as a discovery response in this litigation yet,
13 right?

14 A. I don't understand your question. Can you
15 rephrase that for me, please?

16 Q. Yeah. You've not produced anything to me
17 in response to any formal request I've made in this
18 litigation, have you?

19 A. Not to my knowledge, no.

20 Q. Okay. All right. But you think that
21 perhaps Ms. Lane wrote a letter in response to the
22 January 27, 2012, letter?

23 A. Yes, sir.

24 Q. Okay.

25 MR. HARRILL: Let's get that marked

1 as Exhibit 3, that letter.

2 (Exhibit No. 3 was marked for
3 identification.)

4 (Off-the-record discussion.)

5 (Exhibit No. 4 was marked for
6 identification.)

7 BY MR. HARRILL:

8 Q. Let me hand you Exhibit No. 4. And this
9 is a letter to you and Mr. Kelly. And this one is
10 from me and it's dated March 20, 2012. Please tell
11 me if you've seen that before.

12 A. Yes, sir.

13 Q. You actually received that, correct?

14 A. Yes, sir.

15 Q. Do you recall what you did after receiving
16 that document?

17 A. I took it to my attorney.

18 Q. And again that was Ms. Lane?

19 A. Yes, sir.

20 Q. Do you know if Ms. Lane did anything in
21 response to this?

22 A. The only thing that I know, she said she
23 would try and handle it, she would take care of it.

24 Q. And did you understand this letter from me
25 to be a notice that Royals believed that you were in

1 default for failure to make timely payments under
2 the agreement?

3 A. Yes, sir.

4 Q. And at the time that you received this did
5 you disagree with that?

6 A. Yes, sir.

7 Q. Do you still disagree with it?

8 A. With some of the payments that they
9 indicated that wasn't made on time I disagree with.

10 Q. Okay. But there's one you agree was not
11 made on time?

12 A. Yes, sir.

13 Q. And you subsequently paid that?

14 A. Yes, sir.

15 Q. Did you pay that payment after this letter
16 that I'm showing you, Exhibit 4?

17 A. It was after, I think.

18 Q. Okay. All right. Did you read this
19 entire letter, Exhibit 4, when you got it?

20 A. Yes, sir.

21 Q. Did you understand that Royals was saying
22 that because of the default they were accelerating
23 the balance of the loan so that that \$400,000
24 stipulated existing debt was now due and owing?

25 A. Yes, sir.

1 Q. Okay. All right. And did you also read
2 down on the second page, second to last paragraph
3 where it says, I'm going to paraphrase it a little
4 bit, you feel free to state it however you would
5 like to, that if you make any partial payments
6 toward that total debt, which was identified up
7 above, that those would just be applied to the total
8 debt and not be applied to bring the note current?
9 Did you understand that?

10 A. Yes, sir.

11 (Exhibit No. 5 was marked for
12 identification.)

13 BY MR. HARRILL:

14 Q. All right. I'm going to hand you Exhibit
15 5, which is another letter from me. This one is
16 dated December 14, 2012. Again I'd ask you to tell
17 me whether you remember receiving that letter?

18 A. Yes, sir.

19 Q. Okay. And do you recall what you did
20 after receiving that letter?

21 A. I took it to my attorney, Eddy Lane.

22 Q. And do you recall if she did anything in
23 response to receiving that letter?

24 A. I think this was the time -- this was
25 December. I think she called me into her office and

1 we talked.. And I think this was the time that
2 Mr. Schumacher stepped in.

3 Q. Okay. So it was shortly after that letter
4 that Ms. Lane stopped representing you?

5 A. Exactly, yes, sir.

6 Q. And then Mr. Schumacher began representing
7 you after that?

8 A. Yes, sir.

9 Q. Okay. And do you recall -- I'm not trying
10 to be tricky here. It's right on the document. Do
11 you recall when the litigation was filed in this
12 case and when you were served with it? You can look
13 on that and see if that --

14 A. I'm not sure of the date, but I know it
15 was back -- I think it was back in November of 2011.

16 Q. Okay. And you think you got served
17 sometime in November, around that time?

18 A. Yes, sir.

19 Q. Now, did you say 2011?

20 A. 2012.

21 Q. Right. Okay. All right. Ms. Simpson, I
22 think we've already covered this, but you
23 acknowledge that Royals Portfolio made the real
24 estate tax payment for the property for, I think,
25 the tax year 2012?

1 A. Yes, sir.

2 Q. Okay. Why did you not make that payment
3 or Mr. Kelly?

4 A. That payment -- I forgot all about that
5 payment. It's not like I did it intentionally, but
6 I didn't. I just -- I just forgot about it.

7 Q. Okay. All right. Would you look on
8 Exhibit 2 for me. That's the mortgage.

9 A. Which one was that?

10 Q. Acknowledgment of existing liens and
11 mortgage of real estate.

12 A. Yes, sir. Okay.

13 Q. Okay. Do you understand that this is
14 granting -- this document grants Royals Portfolio a
15 mortgage over your residence, 2800 McCords Ferry
16 Road?

17 A. Yes, sir.

18 Q. Okay. I request that you turn to Page 4
19 and look at the paragraph numbered 4 that says Taxes
20 and Assessments.

21 A. Yes, sir.

22 Q. Okay. Do you agree that the mortgage
23 requires that you and Mr. Kelly as the mortgagor
24 will pay all taxes on the property?

25 A. Yes, sir.

1 Q. Okay. And that was an agreement you all
2 made when you signed this document, right?

3 A. Yes, sir.

4 Q. And would you turn over to Page 5 and look
5 at Paragraph 8, which is entitled Default.

6 A. Yes, sir.

7 Q. Okay. And that says, "The occurrence of
8 any of the following events shall be deemed a
9 Default under this Mortgage." Do you see that?

10 A. Yes, sir.

11 Q. And the first one listed is, "Failure of
12 Mortgagor to pay any sum secured by this Mortgage
13 when due." Do you agree that that's what that says?

14 A. Yes, sir.

15 Q. And then B, it says, "Failure of Mortgagor
16 to observe or perform any covenant or agreement set
17 forth in this Mortgage or the Agreement." Do you
18 agree that's what B says?

19 A. Yes, sir.

20 Q. Okay. And so wouldn't you agree that by
21 failing to make the tax payments that you failed to
22 observe or perform an agreement set forth in the
23 mortgage here?

24 A. Yes, sir. But I didn't do it
25 intentionally. I did it because I forgot. ..

1 Q. Okay. All right. Ms. Simpson, can you
2 tell me the names of any persons that you know of
3 that would be potential witnesses in a trial of this
4 case?

5 A. I know Attorney Eddy Lane.

6 Q. Go ahead. You can just name them off,
7 anybody that you can think of.

8 A. Odell Simpson. And that's about -- that's
9 about it.

10 Q. Okay. And I would assume yourself and
11 Mr. Charlie Kelly?

12 A. Yes, sir.

13 Q. All right. What would your husband Odell
14 Simpson be able to testify about that would be
15 relevant to the litigation?

16 A. He was very familiar with the payments and
17 the taxes per se.

18 Q. Okay. Anything else?

19 A. And just, you know, the terms of the -- of
20 the mortgage.

21 Q. And I meant to ask you something, and I'm
22 going to go back and ask it, about Exhibits 1 and 2
23 again. And if I refer to the note at any point,
24 I'll be referring to this agreement regarding
25 existing debt, Exhibit No. 1.

1 A. Okay.

2 Q. Okay. And if I just say mortgage, I'm
3 going to be referring to Exhibit 2, which is the
4 acknowledgment of existing liens and mortgage of
5 real estate. Okay?

6 A. Okay.

7 Q. With regard to Exhibit 1, the agreement
8 regarding existing debt, you were represented by
9 Eddy Lane at the time you and Mr. Kelly signed this
10 document, were you not?

11 A. Yes, sir.

12 Q. Okay. And she reviewed this with you and
13 for you?

14 A. Yes, sir.

15 Q. Okay. And she provided you advice about
16 the document?

17 A. Yes, sir.

18 Q. Prior to signing it?

19 A. Yes, sir.

20 Q. Okay. And the same with Exhibit 2, the
21 mortgage, Ms. Lane was representing you when you
22 signed that document?

23 A. Yes, sir.

24 Q. And she reviewed it for you?

25 A. Yes, sir.

1 Q. And she provided you advice, you know,
2 before and when you signed this document?

3 A. Yes, sir.

4 Q. All right. Ms. Simpson, you all haven't
5 retained an expert witness for this case, have you?

6 A. No, sir.

7 Q. Okay. Did you assist your lawyers in
8 preparing the answer that was filed in this case?

9 A. Yes, sir.

10 Q. Okay. Have you seen the answer that was
11 filed and served on me?

12 A. Yes, sir.

13 Q. I just want to ask you a couple questions
14 about it. You have alleged a defense in your answer
15 that the plaintiff, which is Royals Portfolio, has
16 failed to mitigate its damages. Do you know what
17 you're referring to there?

18 A. Can you rephrase that for me?

19 Q. Yeah, sure. In your answer there's an
20 allegation by you and Mr. Kelly that, I'll just read
21 it to you, it's Paragraph 55 of your answer, it
22 says, "Plaintiff's claims are barred in whole or in
23 part by its failure to mitigate damages." Do you
24 know the basis for that allegation?

25 A. Can you just break that down a little bit

1 for me a little bit more so I can give --

2 Q. Yeah. Your answer is saying that my
3 client is not entitled to recover anything. And one
4 of the reasons that you're saying that in this
5 defense is you say they have not mitigated their
6 damages, which generally means, and Mr. Schumacher
7 can jump in and correct me if I'm wrong, but
8 generally means they failed to do things to minimize
9 their damages. Kind of minimize it is another way
10 to -- sort of another word for mitigate. They
11 didn't do things that could have avoided or
12 minimized their damages.

13 So do you know what the basis is for
14 saying that Royals Portfolio didn't mitigate its
15 damages?

16 A. There has been times where Royals
17 Portfolio seemed to be a harassing team.

18 Q. What way do they do that?

19 A. When payments were sent in to them they
20 would -- they would either say the payments are late
21 or -- and I know the payments weren't late. It was
22 just like a harassment ever since we started with
23 Royals Portfolio.

24 Q. Okay. Did they write you letters to that
25 effect?

1 A. They would write my attorney, Ms. Lane,
2 Eddye Lane.

3 Q. Were there letters other than what I've
4 given you here today that were sent?

5 A. I would have to talk with her about that
6 because she -- she kept -- she has everything.

7 Q. Okay. Do you recall whether there were
8 more letters and how many letters that were sent by
9 Royals Portfolio?

10 A. I don't know exactly how many, but each
11 time -- each time there was a payment sent it was
12 just -- it was just they are mainly people that -- I
13 don't know. I just -- I don't know.

14 Q. Okay. Your next defense is called unclean
15 hands. That's an equitable defense and it says
16 plaintiff's complaint is barred, meaning Royals is
17 not entitled to anything, by the doctrine of unclean
18 hands. Do you know what you're referring to there?

19 A. Can you break that down a little bit more
20 for me?

21 Q. I don't know if I can. It's essentially
22 the same thing except you're saying that Royals is
23 not entitled to anything based upon the doctrine of
24 unclean hands.

25 A. One thing I have noticed with Royals, I

1 don't know whether they want us to be under them for
2 the rest of our lives. We have tried to work with
3 them in getting them out of our hair and with
4 payments and so forth. We do our best to make sure
5 that these payments are in on time. And it's -- to
6 me it's just a form of harassment. And I don't
7 think -- I really don't think we've done anything
8 just too much to say that we are in trouble.

9 Q. All right. Your next defense you've
10 raised is one that is entitled Good Faith and Fair
11 Dealing and it states that Royals has a duty to act
12 in good faith and deal fairly essentially. Okay.
13 And it says that Royals has breached and continues
14 to breach this duty through its actions. Can you
15 tell me what actions you're talking about?

16 A. Royals -- with the modifications that has
17 been presented to us, Royals has changed the
18 modifications so differently, even adding other
19 things in the modification to make things worse for
20 us.

21 Q. Okay. And you thought that was in bad
22 faith?

23 A. Yes, sir.

24 Q. Anything else?

25 A. We have asked Royals several times in

1 working with them to try and pay them out to get
2 them off of our back. They made no attempt to
3 settle with us. We even has asked for a payoff
4 several times to try to get this thing behind us.

5 Royals has given us three modifications
6 that they have added other things to, such as
7 increasing the payment amount, making the payment
8 dates shorter. Whereas the payments were due at one
9 time, they are making it like shorter where you
10 can't make the payment, taking the payment higher.
11 And I feel that if Royals was with us or want to get
12 this behind us, they would try to work with us to
13 get them paid out.

14 Q. Do you understand that in the agreement
15 regarding existing debt that if you and Mr. Kelly
16 defaulted on, you know, this document, that Royals
17 could then pursue the stipulated existing debt
18 amount, which was the 400,000, as opposed to the 125
19 they agreed to take through monthly payments?

20 A. I understand all of that, but I have tried
21 to -- through my attorney to get money so that we
22 could just pay Royals out for what we owe them
23 besides going through the stipulated debt.

24 Q. So, in other words, you've tried to do it
25 based on what the note amount was, the 125?

1 A. The reduced amount.

2 Q. Okay. And that's the payoff you've wanted
3 from them, correct?

4 A. Yes, sir. That's the payoff that we've
5 been working toward during the time that we were
6 making the payments, the reduced payment. And I
7 tried through my attorney to get them to come to a
8 settlement that we can pay the reduced payment off,
9 but it seems as if they are unwilling to cooperate
10 because they have never gave -- given us an amount
11 that we owe them as to the reduced amount.

12 Q. So is it your understanding that even in
13 documents, draft modification agreements that have
14 been provided, that there's never been a number put
15 in there as to the amount of the existing debt?

16 A. There has been a number put in there as to
17 the existing debt with the reduced payment amount,
18 but there has never been a number put in there with
19 attorney fees, et cetera.

20 Q. Well, you've been given at least an
21 estimate of attorneys' fees, correct? Are you aware
22 of that?

23 A. I think I have, but there has also been a
24 stipulation with Royals as to the attorney fees
25 along with a balloon payment that I am not aware of.

1 Q. Okay. I gotcha. As far as saying tell us
2 what the balloon payment will be?

3 A. Yes, sir. Tell us what the balloon
4 payment would be, tell us what the attorney fees
5 will be, and give us a figure or a payment as to
6 everything that we owe behind the reduced payment.

7 Q. So let me make sure I understand. It is
8 the -- are the actions that you're upset about with
9 regard to Royals primarily its unwillingness to work
10 with you to try to resolve this dispute?

11 A. Exactly. Yes, sir.

12 Q. Have you been making payments for the last
13 several months on the loan?

14 A. I have been making payments the entire
15 time on the loan.

16 Q. Okay. So you've never stopped making
17 monthly payments on the loan?

18 A. No, sir.

19 Q. Okay. You are still sending a payment in
20 the -- whatever that note amount was in the note
21 here, you're still sending that amount to Royals
22 every month?

23 A. I am sending that amount to
24 Mr. Schumacher.

25 Q. Okay.

1 A. And that started back in January of 2013.

2 Q. Okay. Do you know if he's forwarding that
3 to Royals or is it your understanding he's holding
4 that?

5 A. I think he's holding it.

6 Q. Okay. Do you know if Royals was ever put
7 on notice that you were doing that?

8 A. Not -- no.

9 Q. All right. Let me ask you about the
10 counter-claim you've asserted in this answer.
11 You've asserted a counter-claim based upon the
12 unfair trade practices. There's a statute called
13 the Unfair Trade Practices Act. And you have
14 essentially alleged that the activities of Royals
15 Portfolio constitute an unfair trade practice.
16 Okay?

17 A. Yes, sir.

18 Q. One of the things that you say -- one such
19 action you say is not properly crediting defendants
20 for payments that they made?

21 A. Yes, sir.

22 Q. Okay. When do you think that has
23 occurred?

24 A. That has been going on for awhile.

25 Q. Now, do you think they are not crediting

1 you at all or are they just saying it didn't come in
2 a timely fashion?

3 A. Timely.

4 Q. So they are not crediting you soon enough
5 is what you're saying?

6 A. What I'm saying, like when I say it has
7 been going on, they would indicate that they
8 received payments late. And I know the payments
9 hadn't been late because I would backtrack the
10 payments to see when the payments were actually
11 received by Royals.

12 Q. Okay. All right. Are you aware of any
13 other acts by Royals that you think are unfair or
14 deceptive?

15 A. Yes, sir.

16 Q. Okay. What actions do you think are
17 unfair or deceptive?

18 A. The actions are since this litigation
19 started in working with Mr. Schumacher we have tried
20 our best to settle this and get it behind us and
21 move on, but it seems as though we didn't get any
22 help from Royals. It's like they want us to be
23 under their wings, I guess, the rest of our life
24 because we have indicated to them that we can pay
25 them off, to give us a payoff. That has never been

1 sent to my attorney. I have requested it. I
2 haven't received anything as of yet.

3 And I feel that as time go on attorney
4 fees are adding up. I feel at this time it's more
5 so a money thing. And I'm willing to do the best I
6 can to pay Royals.

7 Q. All right. Have you ever offered to pay
8 Royals the entire balance due plus attorneys' fees,
9 interest, you know, any default interest or
10 anything, any other things that would be added to
11 the loan? Have you ever offered to do that?

12 A. I have asked my attorney to do that and he
13 has given -- he has told me that he has done that.
14 And as of this day with the payoff, we really don't
15 know what it is. And we have asked several times to
16 try and find that out to get them paid and to move
17 on with our lives.

18 Q. Now, I want to go back because I thought I
19 misunderstood you, but when you started telling
20 me -- giving me your answer you said, "We've tried
21 to settle this"?

22 A. We have tried to --

23 Q. I'm just trying to -- I thought I heard
24 you say sell this, but I think you meant -- you said
25 settle and I misheard?

1 A. Settle, S-e-t-t-l-e.

2 Q. Okay. I just wanted to make sure I
3 understood correctly and the court reporter got --
4 he probably got it right, but my aging ears must
5 have heard it wrong. That's fine.

6 Okay. Anything else that you think Royals
7 has done that was unfair and deceptive?

8 A. Well, I felt -- I feel that this is the
9 worst scenario with it because they won't even give
10 us a payoff amount as we requested. I mean,
11 something like this you would have -- why? I mean,
12 why? Here we're willing to pay this off to try to
13 work with Royals and we can't get a payoff. And
14 we've been paying our payments ever since September
15 of 2009 up until now and we are asking for a payoff
16 and we can't get one.

17 Q. All right. You've also alleged that you
18 have suffered ascertainable loss due to the unlawful
19 actions of Royals. Tell me what losses you've
20 suffered.

21 A. I have suffered so much ever since we
22 entered into the modification. Even before the
23 modification when my father went into bankruptcy.

24 Q. Now, you mean -- when you say the
25 modification, you mean the agreement regarding the

1 existing debt?

2 A. Yes, sir.

3 Q. The Exhibits 1 and Exhibits 2?

4 A. Yes, sir.

5 Q. Okay. Go ahead. I'm sorry.

6 A. And the reason for that is my father is an
7 elderly man and he built his home and his only
8 source of income is his Social Security check, but
9 still he tried to -- he tried to make sure that
10 payments are sent in on time and taxes are paid.
11 And that causes me to worry about him because he's
12 an old person.

13 And something like this right here and
14 you're asking to -- asking someone to pay them out
15 and they can't give you -- they can't give you a
16 payment, that's terrible. It's not that we can't do
17 it. We can do it, but it takes away from me and --
18 because when he look at me it takes away from him
19 and also with my husband because I worry about this
20 all the time. And I need to move on with my life
21 because I do have a son. I do have a son that I
22 worry about because he's been in service and he's
23 not the best. My husband is not the best. And I
24 feel that we are getting the runaround for nothing.
25 I've been getting this -- when we first entered into

1 this I think one of the fellows from Royals
2 indicated that he was going to take our property
3 regardless.

4 Q. Who did he say that to?

5 A. He said that to myself and Ms. Lane. And
6 it was one of Royals' people.

7 Q. When was that said, do you remember?

8 A. That was during the time that we had to
9 take care of bankruptcy. I think my father even
10 heard when he said that.

11 Q. Did he say that to you all?

12 A. Yes, he did.

13 Q. Okay. And was that at a court hearing
14 or --

15 A. That was shortly after a court hearing, I
16 think, but Ms. Lane knows all about it because she
17 heard him too.

18 Q. I'm just trying to figure out where you
19 were when this happened.

20 A. We were at the courthouse downtown.

21 Q. Okay. So it was at the courthouse. I'm
22 just trying to figure out when you've actually seen
23 someone from Royals when you --

24 A. The beginning of this. The beginning.
25 The very beginning.

1 Q. Okay. Do you recall if I was there?

2 A. No, you weren't there.

3 Q. Okay. Are there any other ascertainable
4 losses other than what you've discussed with me that
5 you've suffered?

6 A. It's just the everyday thing. It's an
7 everyday thing. I mean, it's just every day is an
8 unhappy day.

9 Q. Ms. Simpson, do you have copies or the
10 ability to obtain copies of all the checks that
11 you've written or payments that you've sent to
12 Royals?

13 A. Yes, sir.

14 Q. Okay. And that's something that you can
15 provide to your lawyer and he can provide to me?

16 A. Yes, sir.

17 Q. Okay. Are you aware of any documents that
18 you have that would support some of these things
19 that we've talked about regarding the defenses and
20 the counter-claim that you've asserted?

21 A. Excuse me now?

22 Q. I'm just asking if you're aware of any
23 documents that would support the things that you've
24 told me in relation to these defenses? Like that
25 Royals has harassed you, are you aware of any

1 documents that would evidence that?

2 A. I think I can get -- go back and get some
3 of the -- I'm aware, but I just can't put my hand on
4 anything just now, but I can look in my folders.

5 Q. Okay. And would that be the same with
6 regard to each of the defenses regarding unclean
7 hands and failure to mitigate and unfair or
8 deceptive acts on their part?

9 A. Yes, sir.

10 Q. Okay. You would need to go back and look
11 and see what you've got?

12 A. Yes, sir. Yes, sir.

13 Q. Do you believe you have documents that
14 would support those things?

15 A. Yes, sir. I feel that I can find some of
16 them.

17 Q. Tell me what you think they are. Is it
18 letters or communications or what do you think you
19 have that would support that?

20 A. I think I have letters.

21 Q. Okay. Any other types of documents that
22 you know of that would support those defenses and
23 claims?

24 A. In looking back if I can find some other
25 things, I will submit them to you.

1 MR. HARRILL: All right. I don't
2 have any other questions. Thank you.

3 MR. SCHUMACHER: I have no questions.

4 (Whereupon, the taking of the
5 deposition was ended at 12:48 p.m.)

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AFFIDAVIT OF
WILLIAM B. BULAND

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2012-CP-40-07878

ROYALS PORTFOLIO, LLC, an assignee
of Bank of America, N.A., formerly known
as NationsBank, N.A., which is Successor
by Merger to NCNB South Carolina,

Plaintiff,

v.

CHARLIE KELLY and
DOROTHY SIMPSON,

Defendants.

STATE OF MARYLAND)
)
COUNTY OF MONTGOMERY)

AFFIDAVIT OF WILLIAM B. BULAND

PERSONALLY APPEARED before me the undersigned, who first being duly sworn,
deposes and states as follows:

1. I am William B. Buland, Director of Asset Management for Union Financial Corporation, general partner of Union Recovery Limited Partnership, a member of Royals Portfolio, LLC ("Royals").

2. In that capacity I have first hand knowledge of and am familiar with the loan and indebtedness that is the subject of this action.

3. I have reviewed the Complaint filed in this action and find the factual allegations contained therein to be true and accurate to the best of my knowledge.

4. As part of the resolution of a commercial debt, personal guarantees, and a bankruptcy filing by defendant Kelly, Royals and Defendants agreed to enter into an Agreement Regarding Existing Debt.

5. On or about September 9, 2009, Defendants executed and delivered to Royals, for good and valuable consideration, that Agreement Regarding Existing Debt dated September 9, 2009, whereby Defendants agreed that they owed Royals \$400,000.00 (the "Stipulated Existing Debt.")

6. Pursuant to the Agreement Regarding Existing Debt (the "Agreement"), Royals agreed to allow Defendants to satisfy the Stipulated Existing Debt by paying a lesser sum of approximately \$125,000.00, plus accruing interest and other costs and charges as set forth in the Agreement (the "Reduced Payment Sum"), but only if Defendants strictly complied with the terms of the Agreement.

7. Defendants agreed to pay Royals the Reduced Payment Sum under the terms set forth therein.

8. A true and authentic copy of the Agreement is attached to the Complaint as Exhibit J.

9. Royals agreed that upon full and prompt payment of the Reduced Payment Sum as required in the Agreement, Plaintiff would release Defendants from any further liability for the Stipulated Existing Debt.

10. In order to better secure the payment of the Agreement and indebtedness secured thereby, Defendants executed and delivered to Royals, its successors and assigns, an Acknowledgment of Existing Liens and Mortgage of Real Estate dated September 9, 2009, which is recorded in the records of Richland County, South Carolina, in Book 1556 at Page 3427 (the "Mortgage").

11. By way of the Mortgage, Simpson and Kelly not only recognized and acknowledged certain "Existing Liens" defined in the Mortgage and Complaint, but also granted

to Royals a mortgage on the Kelly Residence, including a piece referred to as the Access Parcel.

12. A true and authentic copy of the Mortgage is attached to the Complaint as Exhibit K.

13. The mortgage expressly secures the Agreement.

14. The Defendants have failed to make all payments as required under the Agreement.

15. Despite demand for payment, the indebtedness due and owing to the Royals on the Agreement has not been paid as provided for in the Agreement, and the Agreement and Mortgage are now in default.

16. The real estate taxes due and owing on the Property for the year 2011 were not paid by Defendants.

17. As a result, on November 27, 2012 Royals paid those real estate taxes in the amount of \$1,617.29, and that amount has been added to the amount secured by the Mortgage.

18. Defendants agreed to pay all real estate taxes that are due and owing on the Property and deliver proof of payment to Royals not less than 10 days before the real estate taxes become delinquent.

19. Defendants failure to pay timely the taxes due on the Property for 2011 constitutes an event of default under the terms of the Mortgage.

20. As a result of the default for failure to pay all amounts due on the debt servicing of the Reduced Payment Sum and as a result of the default for failure to pay real estate taxes when due, the entire remaining amount of the Stipulated Existing Debt is now due.

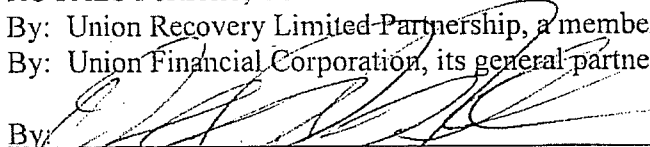
21. Pursuant to the terms of the Agreement, Defendants agreed to pay all costs and expenses of Royals, including attorney's fees and court costs, incurred in collection of the debt.

22. The Agreement has been referred to the undersigned attorneys for collection on behalf of the Plaintiff and Defendants have been given notice of such referral.

23. As of November 19, 2012, there was due and owing on the Mortgage pursuant to the terms of the Agreement, excluding attorneys' fees and costs, \$319,915.17.

24. Therefore, Defendants owe Royals on the Agreement as secured by the Mortgage the sum of \$319,915.17, plus attorney's fees and court costs, plus the real estate taxes advanced in the amount of \$1,617.29.

FURTHER AFFIANT SAYETH NOT.

ROYALS Portfolio, LLC
By: Union Recovery Limited Partnership, a member
By: Union Financial Corporation, its general partner
By: 
William B. Buland, Director of Asset Management

SWORN TO and SUBSCRIBED before me

this 8th day of July, 2013

 (SEAL)
Notary Public for Maryland

My Commission Expires:

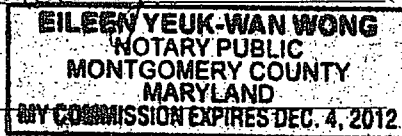


EXHIBIT C

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-40-07878

Royals Portfolio LLC

Charlie Kelly

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _Dismissed without prejudice
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

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

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

This Matter is Hereby Referred to the Master-in-Equity.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

2014 JAN 15 AM 9:09
C.C.P. & C.S.

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge G. V. Kelly Judge Code 2126 Date 1-14-14

For Clerk of Court Office Use Only

This judgment was entered on the 22 day of Jan, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of Jan, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Paul D. Harrill
ATTORNEY(S) FOR THE PLAINTIFF(S)

William Frederick Schumacher IV
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

EXHIBIT D

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-40-7878

ROYALS PORTFOLIO, LLC, an assignee of Bank of America, N.A., formerly known as NationsBank, N.A., which is Successor by Merger to NCNB South Carolina,

Plaintiff,

v.

CHARLIE KELLY; and
DOROTHY SIMPSON,

Defendants.

**ORDER DENYING
DEFENDANTS' MOTION TO STAY
FORECLOSURE ACTION**

FILED
2015 JAN 26 AM 11:40
JANUARY 26, 2015
C.C.P. & G.S.

This foreclosure action case came before the Court for a merits hearing on September 10, 2014. Both the Plaintiff, Royals Portfolio, LLC ("Royals") and the Defendants presented evidence by way of testimony and written documents. At the conclusion of the hearing, Defendants made the subject motion to stay the case for further loss mitigation efforts under the South Carolina Supreme Court Administrative Order 2011-05-02-01 (the "Administrative Order"). After the conclusion of the hearing, Royals submitted the Affidavit of Robert Eisman in opposition to the Defendants' motion to stay. The Court notified the parties in a conference call on December 15, 2014, that it was excluding the Affidavit of Robert Eisman over the objection of Royals and would not consider it in reaching a decision on this issue. Therefore, the Court considered only the documents filed in this case, the testimony presented and documents introduced at the hearing. Based upon the findings set forth more fully below the Court hereby denies the Defendants' motion to stay the foreclosure proceeding further.

FINDINGS OF FACT

It is undisputed that the loan and mortgage that give rise to this foreclosure action originated as a commercial loan to Pinewood Care Home, Inc. by Bank of America or its predecessors. *See* Complaint, para. 5 (asserting this foreclosure involves “commercial loans”) and Answer, para. 5 (admitting). The loan was assigned to Royals, who now holds the note and mortgage over the subject property. The subject property is a house located in the Eastover area in Richland County. Testimony was read into the record from Defendant Dorothy Simpson’s deposition that she is “self-employed” and uses the house to take care of two elderly veterans. Testimony was also given that Ms. Simpson and Defendant Charlie Kelly currently reside at the subject property.

Defendants have moved for the case to be stayed for further “foreclosure intervention” pursuant to the Administrative Order. In the Administrative Order the South Carolina Supreme Court made it clear that the Home Affordable Modification Program (“HMP”) “is only applicable to such loans if the lender or servicer has agreed to participate in the HMP. Not all lenders or servicers have so agreed.” Royals, the mortgagee in the present case, has not agreed to participate in the HMP and is therefore not subject to its requirements. Therefore, it is apparent that the Administrative Order was not intended to apply to Royals in the present action.

Despite the apparent inapplicability to lenders (like Royals) who do not participate in HMP, the Administrative Order created confusion as to whom it applies. The Administrative Order provided certain terms and conditions that would apply to “all mortgage foreclosure proceedings concerning Owner–Occupied dwellings in this State.” Those requirements, if applicable to Royals, required only that Royals serve on the mortgagor a notice of the mortgagor’s right to foreclosure intervention, if any, and certify that the mortgagee has complied with the requirements of the Administrative Order before proceeding with a foreclosure hearing. Because Royals does not participate in HMP, Defendants had

no rights to foreclosure intervention. Despite the fact that Royals has not participated in HMP and Defendants had no rights to foreclosure intervention, the record reflects that Royals fully discharged its duties, if any, under the Administrative Order. *See* Counsel's Certification Regarding Compliance with South Carolina Supreme Court Administrative Order 2011-05-02-01 and the HMP, which was filed of record in this case on January 10, 2014.

Defendants motion to stay relies exclusively on the testimony at the foreclosure hearing of William Buland that the loan modification process was declined by Royals because this was a "commercial loan." However, regardless of Mr. Buland's testimony, the Certificate of Compliance (filed with the Court) satisfies the requirements of the Administrative Order.

CONCLUSIONS OF LAW

It appears that the Administrative Order was not intended to apply to this loan because it is a commercial loan that is not guaranteed by Fannie Mae or Freddie Mac, and Royals is an assignee of the loan that has not chosen to participate in HMP.

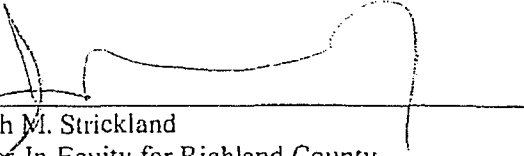
Nevertheless, Royals fully complied with the requirements, if any, imposed upon it by the Administrative Order and HMP. *See* Certificate of Compliance filed herein.

THEREFORE, IT IS HEREBY ORDERED that the Defendants motion at the conclusion of the merits hearing to stay the foreclosure proceedings until additional "loss mitigation efforts are complete" is hereby denied.

IT IS HEREBY FURTHER ORDERED that the Court will issue its ruling on the merits of the foreclosure hearing in a separate order.

IT IS SO ORDERED.

January 26, 2015
Columbia, South Carolina



Joseph M. Strickland
Master-In-Equity for Richland County

EXHIBIT E

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE #: 2012-CP-40-7878

Royals Portfolio, LLC,)
Plaintiff,)
v.)
Charlie Kelly and)
Dorothy Simpson,)
Defendants.)

COPY

HEARING

Wednesday, September 10, 2014
9:25 a.m. to 2:52 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 10th day of September, 2014, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

1 in the agreement that allows them to do that; that's
2 my question?

3 A: No. No, sir.

4 THE COURT: Nothing to allow that?

5 A: No.

6 THE COURT: Okay. All right. Thank you, sir. You may
7 come down.

8 A: Yes.

9 THE COURT: Watch your step coming down.

10 A: Do I leave all of this up here?

11 THE COURT: Yes, sir, please. All right. Mr. Harrill?

12 MR. HARRILL: Your Honor, I don't have any other
13 witnesses. I do -- I would like to read a few
14 portions of Ms. Simpson's deposition into the record,
15 if I could do that.

16 THE COURT: Well, Mr. Boger, are you going to call Ms.
17 Simpson?

18 MR. BOGER: I am going to call the Simpsons, Your Honor.

19 THE COURT: Oh, okay. Would you rather wait until she's
20 on the stand, or would you -- or do you want to call
21 her as your own witness? You can call her as an
22 adverse witness if you'd like.

23 MR. HARRILL: If you would prefer just to wait and do it
24 live, I'm happy to do that, Your Honor. What I don't
25 want to do is waive the right to put this in. If Mr.

1 Boger for some reason decides not to call her or
2 otherwise, then I want to make sure I get this in.

3 THE COURT: Well, I'm going to leave your strategy
4 decisions up to you, but under the Rules you can call
5 her yourself.

6 MR. HARRILL: Oh, I understand that.

7 THE COURT: Yeah, yeah.

8 MR. HARRILL: But I also know I can also use the
9 deposition for any purpose.

10 THE COURT: That's true.

11 MR. HARRILL: I just want to read in portions, and
12 sometimes that's easier and cleaner than, than doing
13 that. I know she's going to take the stand, but I --

14 THE COURT: Mr. Boger, you, and you object to that, is
15 that ---

16 MR. BOGER: I do. And I don't want to take that right
17 from him. I don't know how long it's going to take,
18 but I've got Ms. Lane sitting here. I'd like to get
19 her on the stand as quick as I can. She's been here
20 ---

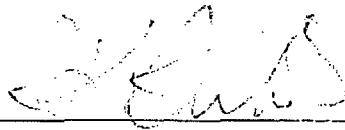
21 THE COURT: Well, no. The issue is though he's going to
22 read a deposition excerpt. My suggestion was, he can
23 use it when she's called, or you call Ms. Simpson
24 yourself. But you think you'd be better off just
25 reading what's in the ---

1 MR. HARRILL: It's, it's certainly I think my right, and
2 it's a cleaner way to do it, Your Honor ---
3 THE COURT: Okay.
4 MR. HARRILL: --- for the purposes of my case.
5 THE COURT: All right. Mr. Boger, your objection's
6 overruled. All right, please proceed, Mr. Harrill.
7 MR. HARRILL: All right. Your Honor ---
8 THE COURT: Now, now, hold on. Now, he can't cross-
9 examine you is what -- you understand that, right?
10 MR. HARRILL: Yeah.
11 THE COURT: He's not going to ask you questions about your
12 deposition.
13 MR. HARRILL: All right. And, Your Honor, would you like
14 to have the original?
15 THE COURT: All you're going to do is publish what she
16 said in her deposition?
17 MR. HARRILL: Yes, sir.
18 THE COURT: Okay. One moment, please. Okay, I have the
19 original in my hand. You may proceed, Mr. Harrill.
20 MR. HARRILL: Thank you, Your Honor. And I'm starting on
21 page seven, line nine. "Ms. Simpson, are you
22 employed?" Answer, "I'm self-employed." "Give me
23 generally the nature of what you do." Answer, "I'm a
24 caregiver. I have two elderly veterans that I take
25 care of." Question, "Okay. And where do you take

CERTIFICATE

I certify that the foregoing transcript, consisting of 154 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on September 10, 2014, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.



December 1, 2014

ROBIN K. REIBOLD

MY COMMISSION EXPIRES: 4-28-2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity
The Honorable Joseph M. Strickland

RECEIVED

AUG 30 2016

SC Court of Appeals

Appellate Case No. 2015-000367

Royals Portfolio, LLC, an assignee of Bank of America, N.A., formerly known as NationsBank, N.A., which is Successor in Merger to NCNB South Carolina, Respondent,

v.

Charlie Kelly and Dorothy Simpson, Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing *Appellants' Return to Respondent's Motion to Strike* has been served upon the following counsel of record by mailing one copy by United States Mail, addressed as shown below this 29 day of August, 2016.

Robert L. Widener
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211

Paul D. Harrill
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211

August 29, 2016

Kathleen C. Barnes
Kathleen Chewning Barnes, SC Bar No. 78854
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803-943-4529
Hampton, SC 29924
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BARNES

LAW FIRM | LLC

Kathleen C. Barnes

Admitted: Georgia | South Carolina

August 29, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court for the Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
AUG 30 2016
SC Court of Appeals

Via U.S. Mail

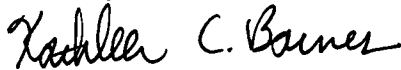
Re: *Royals Portfolio, LLC v. Charlie Kelly and Dorothy Simpson*
Appellate Case No. 2015-000367

Dear Mrs. Kitchings:

Enclosed for filing please find the original and seven copies of Appellants Charlie Kelly and Dorothy Simpson's Return to Respondent's Motion to Strike in the above-referenced case. Also enclosed is proof of service. Please file the documents and return a file-stamped copy to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am serving all counsel of record with a copy of the same. If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,



Kathleen C. Barnes

Enclosures

cc: Robert L. Widener
Paul D. Harrill
Brian Boger (via email only)
Phillip Curiale (via email only)