

AMENDED RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
MASTERS AND SPECIAL REFEREES

Gordon G. Cooper, MASTER-IN-EQUITY

RECEIVED

OCT 03 2016

S.C. SUPREME COURT

Case No. 2012-CP-42-0899

Bayview Loan Servicing,
L.L.C.

Respondent,

v.

Scott A. Schledwitz, Roxanne J. Schledwitz a/k/a Roxanne Johnson
Schledwitz, Mortgage Electronic Registration Systems, Inc.
(MERS) as nominee for Taylor, Bean & Whitaker Mortgage Corp.,
The United States of America, by and through its agency, the
Internal Revenue Service, and The South Carolina Department of
Revenue, Defendants,

Of whom Scott A. Schledwitz and Roxanne Johnson Schledwitz are
the Appellants.

Appellant.

AMENDED RECORD ON APPEAL

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INDEX

Order of December 3, 2013.....	1
Complaint.....	14
Answer	49
Transcript Foreclosure Hearing.....	55
Defendant's Exhibits	
1.....	63
2.....	69
3.....	71
4.....	77
5.....	83
6.....	84
7.....	85
8.....	100
Final Brief of Appellant	49
Final Brief of Respondent	1
Certificate of Appellant.....	107

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Bayview Loan Servicing, LLC,

Plaintiff,

vs.

Scott A. Schledwitz, Roxanne J. Schledwitz
aka Roxanne Johnson Schledwitz, Mortgage
Electronic Registration Systems, Inc.
(MERS) as nominee for Taylor, Bean &
Whitaker Mortgage Corp., The United States
of America, by and through its agency, the
Internal Revenue Service, and The South
Carolina Department of Revenue,

Defendant(s).

(File No. 4028.02911)

RILEY POPE & LANEY, LLC
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS

C/A NO. 2011-CP-42-0899

12

**MASTER IN EQUITY'S ORDER OF
JUDGMENT OF FORECLOSURE AND
SALE DECREE**

(Non-Jury)

(Deficiency Demanded against Scott
Schledwitz)

Scott A. Schledwitz
Pro Se

Roxanne J. Schledwitz aka Roxanne Johnson
Schledwitz
Pro Se

George J. Conits, Esq.
Attorney for The United States of America, by
and through its agency, the Internal Revenue
Service

Milton G. Kimpson
Attorney for The South Carolina Department of
Revenue

This matter came before the Court on November 19, 2013 for a hearing on the Plaintiff's Motion for Summary Judgment. Present representing the Plaintiff was Jayme L. Shy Columbia. The action commenced with the filing of a Lis Pendens, Summons and Complaint. The Defendants were personally served with the Summons and Complaint, and timely filed an Answer. On July 17, 2013, Plaintiff filed and served a Motion for Summary Judgment.

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J. L. POPE

supported by an Affidavit and Exhibits to the Affidavit. The case referred to the undersigned, as Master-in Equity for Spartanburg County, on October 14, 2013.

Summary Judgment is warranted only if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." Bloom v. Ravoir, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. However, once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent must come forward with specific facts showing there is a genuine issue for trial. Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 558-59, 671 S.E.2d 79, 85 (Ct. App. 2008). The opponent cannot merely rely upon the pleadings, but must submit some additional evidence creating a genuine issue of material fact. Id.

In support of the Motion for Summary Judgment, Plaintiff submitted an Affidavit of a business records custodian for the Plaintiff. The Affidavit and Exhibits to the Affidavit established the authenticity, admissibility and terms of the Note and Mortgage, making Plaintiff the owner and holder, that the subject loan is not eligible for HMP, the date of the breach under the terms of the Note and Mortgage, as well as the debt and interest accrued. No counter-affidavits were filed. Defendants did serve a Request for Continuance on November 11, 2013.

Based upon the uncontested evidence presented to the court, the Court makes the following findings:

FINDINGS OF FACT:

- 1) The Lis Pendens was filed on February 24, 2012.
- 2) The Summons and Complaint were filed on February 24, 2012.
- 3) Service was made upon the Defendants as shown by the proof of service filed herein.
- 4) The Defendant Mortgage Electronic Registration Systems, Inc. (MERS) nominee for Taylor, Bean & Whitaker Mortgage Corp. is in default as shown. Default filed herein.

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M. ROSE BLANCHARD
Notice

5) The Defendants and all attorneys of record were notified of the time, date, and place of the hearing in this matter.

6) According to the affidavit filed herein, a good faith investigation did not determine that the defaulting property owners are in the military service and therefore entitled to protection under the Servicemembers' Civil Relief Act (SCRA) of 2003, or any amendments thereto.

7) For value received, Scott A. Schledwitz made, executed and delivered a note ("Note") dated November 23, 2005, promising thereby to pay to the order of Taylor, Bean & Whitaker Mortgage Corp. the sum of One Hundred Sixty Thousand and 00/100 (\$160,000.00) Dollars, with interest at the rate of 7.2500% per annum, with a current rate of 8.5000% per annum. Other terms and conditions are stated in the Note, which is of record herein.

8) To better secure the payment of the Note described above, Scott A. Schledwitz and Roxanne Johnson Schledwitz made, executed, and delivered to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Taylor, Bean & Whitaker Mortgage Corp. a certain real estate mortgage ("Mortgage") in writing, dated November 23, 2005, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was filed in the Office of the Register of Mesne Conveyances/Register of Deeds for Spartanburg County on November 30, 2005, in Book 3565 at Page 239. That thereafter, the Mortgage was assigned unto Plaintiff, which assignment is dated March 12, 2012 and recorded March 26, 2012 in Book 4563 at Page 517.

9) The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagors and constitutes a purchase money first mortgage lien on the mortgaged premises.

10) The Plaintiff is the real party in interest pursuant to SCRCP 17(a) and is entitled to enforce the terms of the subject Note and Mortgage.

11) The titleholders of record of the subject property as of the filing of the Complaint in this action are Scott A. Schledwitz and Roxanne Johnson Schledwitz, who are original mortgagors.

12) Any notice required by the terms of the Notes and/or Mortgages or by applicable federal statutes has been given to the applicable Defendants prior to the commencement of this action.

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H. BLANCHARD

13) The loan evidenced by the Note and Mortgage is serviced by a servicer participating in the Home Affordable Modification Program (HAMP). It is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. Based on the allegations in the Complaint that the subject loan is not eligible for HAMP modification, the Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.

14) As stated in the Certification of Exemption from Administrative Order 2011-05-02-01 filed herein, the real property which is the subject of this action is not an "owner occupied dwelling" as defined in the Order.

15) The Note payments which became due on December 1, 2008, and subsequent months, have not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of its attorney for collection by foreclosure.

16) In 2009, Scott A. Schledwitz and Roxanne Johnson Schledwitz filed for Bankruptcy and an Adversary in the United States Bankruptcy Court, District of South Carolina.

17) The Schledwitz's Adversary, Case No. 09-AP-80164, was dismissed because Taylor, Bean & Whitaker Mortgage Corp. had a pending Chapter 11 Bankruptcy case in Florida, Case No. 09-BK-07047.

18) The Schledwitz's Bankruptcy, Case No. 09-Bk-00666, was dismissed on May 26, 2011 for failure by Scott A. Schledwitz and Roxanne Johnson Schledwitz to make timely payments.

19) In the Taylor, Bean & Whitaker Mortgage Corp. Chapter 11 Bankruptcy case in Florida, Case No. 09-BK-07047, via Order dated August 31, 2009, the portfolio containing the subject loan was transferred to Bayview Loan Servicing, LLC.

20) Therefore, the Court finds that the foreclosure case may proceed.

21) The sum of \$3,119.00 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. The inclusion of services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

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JACULEY

22) The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of the within action, including an attorney's fee, secured by the Note and Mortgage, is as follows:

(a) Principal amount due as of December 1, 2008	\$155,759.84
(b) Interest from November 1, 2008 to December 1, 2012 at a current rate of 9.5000%	\$59,318.51
Interest from December 2, 2012 to May 31, 2013 at a current rate of 8.5000%	\$6,604.69
Interest from May 31, 2013 to November 19, 2013 at a <i>per diem</i> interest rate of \$36.27	\$6,238.44
(c) Advances	
Escrow Advance	\$16,178.20
Suspense	-\$472.58
Recoverable Balance	\$2,859.50
(e) Costs of collection prior to hearing (service of process, filing fees, etc.)	\$1,521.00
(f) Attorneys Fee	\$3,119.00
Total debt secured by Note and Mortgage, including interest to date shown	\$251,126.60

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 8.5000% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

23) The *per diem* interest due from November 19, 2013 is \$36.27.

24) The Plaintiff is seeking foreclosure of the mortgage and has demanded the right to a personal or deficiency judgment against Scott Schledwitz pursuant to Rule 71(b) SCRCP. However, Plaintiff reserves the right to waive the deficiency at the time of the sale.

25) Pursuant to 28 U.S.C. §2410(c), the defendant, the United States of America, has a right of redemption on proper application to redeem the within property for 120 days from the date of sale of the subject property.

26) The following Defendants claims or may claim a lien upon or interest in subject property or are otherwise involved in this matter. In the event there is a surplus from sale of the subject property, the validity, priority and amount of such liens will be determined at

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a hearing subsequent to the sale, in accordance with Rule 71(c), SCRPC. The Clerk of Court/Register of Deeds is hereby ordered to release said liens in so much as it pertains to the property which is the subject of this action:

The United States of America, by and through its agency, the Internal Revenue Service, by virtue of any liens of record, including, but not limited to, a Notice of Federal Tax Lien against Scott A. Schledwitz and Roxanne J. Schledwitz, Identifying No. 161481704, for delinquent taxes in the amount of \$63,213.62, said lien being dated March 9, 2004 and recorded on April 7, 2004 in Federal Tax Lien Book 8 at Page 253. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's purchase money mortgage.

Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Taylor, Bean & Whitaker Mortgage Corp. by virtue of a mortgage given by Scott A. Schledwitz and Roxanne Johnson Schledwitz to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Taylor, Bean & Whitaker Mortgage Corp. in the original principal amount of \$40,000.00, dated November 23, 2005, and recorded on November 30, 2005 in Book 3565 at Page 255. Any such interest in or lien upon the property is junior and subordinate to Plaintiff's mortgage.

The South Carolina Department of Revenue by virtue of any liens of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Scott A. Schledwitz and Roxanne J. Schledwitz, bearing Tax Lien/Warrant No. 3-51272528-3 and File/Identifying No. 75072111, in the amount of \$2,177.69, dated June 17, 2011, and recorded on July 1, 2011 in State Tax Lien Book S-73 at Page 901. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's mortgage.

The South Carolina Department of Revenue by virtue of any liens of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Scott A. Schledwitz and Roxanne J. Schledwitz, bearing Tax Lien/Warrant No. 3-51272529-0 and File/Identifying No. 77049643, in the amount of \$480.45, dated June 17, 2011, and recorded on July 1, 2011 in State Tax Lien Book S-73 at Page 902. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's mortgage.

CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

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J. L. CHURLEY

1) The Plaintiff's Mortgage should be declared a purchase money first mortgage lien and Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

2) The Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.

3) The Court also finds the real property is not an "owner occupied dwelling" as defined in the May 2, 2011 Administrative Order, and is therefore exempt from said Order.

4) The Defendants named herein, and all persons whosoever claiming under Defendants, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.

5) Pursuant to Rule 53, SCRCP, this Order shall constitute a final judgment.

6) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$251,126.60, as set out in the Findings of Fact *supra*.

7) The amount due in the preceding paragraph (the "Total Debt" as set out in the Findings of Fact *supra*, and later accrued interest on the principal), shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the rate of 8.5000% per annum. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the judgment figures set forth herein. It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee awarded. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by statement and shall be adjudicated by the Court without further finding.

8) The Defendants liable for the aforesaid judgment debt including interest at the rate of 8.5000% per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

9) On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity, at public auction, at 11:00 a.m. at the County Courthouse in Spartanburg, South Carolina, on some legal convenient sales day hereafter (and should the regular day of judicial sales fall on a legal

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holiday, then and in such event, the sales day shall be on some other day appointed by the Court), on the following terms, that is to say:

10) For cash. The Master in Equity, will require, at the time of the bid, a deposit of 5% of the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event of non-compliance, the deposit may be forfeited without further hearing and applied first to the costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within twenty (20) days, then the property may be re-sold on the same terms and conditions on some subsequent Sales Day, but at the risk of the defaulting bidders:

11) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 8.5000%.

12) Purchaser shall pay for any statutory commission on sale from the proceeds of sale, deed preparation, costs of recording the deed, and deed stamps.

13) A personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. §15-39-720. (1976), unless demand for deficiency judgment is waived in writing prior to the sale.

14) The sale shall also be subject to the Right of Redemption by the Defendant United States of America, pursuant to 28 U.S.C. §2410(c), for a period of 120 days from the date of sale of the subject property.

15) The Master in Equity, will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within twenty (20) days after the conclusion of the bidding, then the Master in Equity, may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until full compliance shall be secured.

16) In the event an agent of the Plaintiff does not appear at the time of sale, the property shall be withdrawn from sale and sold at the next available sales day upon the terms and

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conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

17) If Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity, only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

18) The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: If the proceeds of sale be insufficient to pay the amounts hereinbefore authorized to be paid out of said proceeds, with the costs and expenses, the Plaintiff's debt and interest, the parties hereto entitled to such deficiency have judgment therefore against Scott Schledwitz, pursuant to S.C. Code Ann. §29-3-660 (1976), and such judgment will be entered without further notice or hearing.

NEXT: Any surplus should be held pending further Order of this court.

19) In the event the successful bidder is other than the Defendants in possession of the subject property, upon full compliance and title by deed from the Court vested into such purchaser, and upon issuance of a Writ of Assistance by the Court, the Sheriff of Spartanburg County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful purchaser or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009.

20) In the event the successful purchaser is someone other than the Defendants in possession of the subject property, and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage is said property, and title by deed from the Court is vested into such purchaser, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not

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JULIA S. COLE

NOTICE OF SALE

2013-CP-42-0899

BY VIRTUE of a decree heretofore granted in the case of: Bayview Loan Servicing, LLC against Scott A. Schledwitz, Roxanne J. Schledwitz aka Roxanne Johnson Schledwitz, Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Taylor, Bean & Whitaker Mortgage Corp., The United States of America, by and through its agency, the Internal Revenue Service, and The South Carolina Department of Revenue, I, the undersigned Master in Equity for Spartanburg County, will sell on January 6, 2014, at 11:00 a.m. at Spartanburg County courthouse, 180 Magnolia Street in Spartanburg, South Carolina, to the highest bidder, the following described property, to-wit:

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. 25, containing 0.21 acres, more or less and fronting on S. Fairview Avenue Ext., as shown on survey prepared for Phyllis P. McElhane, dated October 9, 1991 and recorded in Plat Book 114, Page 364, RMC Office for Spartanburg County, SC. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

This being the same property conveyed to Scott A. Schledwitz and Roxanne Johnson Schledwitz by Deed of C. Blease Graham, III, dated November 23, 2005 and recorded November 30, 2005 in Deed Book 84M at Page 962 in the ROD Office for Spartanburg County, South Carolina.

TMS No. 7-13-13 016:00

Property Address: 423 S. Fairview Avenue Extension, Spartanburg, SC 29302

TERMS OF SALE: The successful bidder, other than the plaintiff, will deposit with the Master in Equity, at conclusion of the bidding, five per cent (5%) of said bid, in cash or equivalent, as evidence of good faith, same to be applied to purchase price in case of compliance, but to be forfeited and applied first to costs and then to plaintiff's debt in the case of noncompliance. Should the successful bidder fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within twenty (20) days, then the Master in Equity may resell the property on the same terms and conditions (at the risk of the said defaulting bidder). Should the Plaintiff, or one of its representatives, fail to be present at the time of sale, the property is automatically withdrawn from said sale and sold at the next available sales day upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or any Supplemental Order. The successful bidder will be required to pay for documentary stamps on the Deed and interest on the amount of the bid from the date of sale to the date of compliance with the bid at the rate of 9.5000%.

THIS SALE IS SUBJECT TO ASSESSMENTS, COUNTY TAXES, EXISTING EASEMENTS, EASEMENTS AND RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

The Sale is made subject to the Right of Redemption of the United States of America, pursuant to Section 2410(c), U.S. Code, for a period of 120 days from date of sale.

Since a deficiency judgment is being demanded, the bidding will remain open for thirty (30) days after the date of sale, pursuant to S.C. Code ANN. Section 15-39-720, (1976). The deficiency judgment may be waived by the Plaintiff upon written request prior to sale.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search well before the foreclosure sale date.

Honorable Gordon G. Cooper
Master in Equity Spartanburg County

Spartanburg, South Carolina
November 19, 2013

27
RILEY POPE & LANEY, LLC
Attorneys for Plaintiff

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SPARTANBURG COUNTY
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JOURNELL LACKEY

MTG-2012-13356
Recorded 1 Pages on 3/26/2012 11:11:15 AM
Recording Fee: \$6.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



WHEN RECORDED MAIL TO:
Bayview Loan Servicing, L.L.C.
Attn: Ramona Careaga
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

BV LOAN NO: 344080

BORROWER: SCHLEDWITZ
LOAN AMOUNT: \$ 160,000.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

Bayview Loan Servicing, LLC a Delaware limited liability company
4425 Ponce de Leon Blvd., Coral Gables, FL 33146

("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 11/23/2005, and executed by:
SCOTT A. SCHLEDWITZ AND ROXANNE JOHNSON SCHLEDWITZ, HUSBAND AND WIFE,
borrower(s) to: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC. ACTING SOLELY AS
NOMINEE FOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP., as Original Lender and Mortgage
recorded in Instrument: 20005-62625, Volume: 3565, Page: 239, recorded on: 11/30/2005, in the Official Records
of SPARTANBURG, State of SC, covering the following described property:

423 SOUTH FAIRVIEW AVE. EXTENTION, SPARTANBURG, SC 29302

Together with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Document.

Dated: March 12, 2012

ASSIGNOR: MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC. ACTING SOLELY AS
NOMINEE FOR TAYLOR, BEAN & WHITAKER
MORTGAGE CORP. its successors and assigns at P.O.
Box 2026, Flint, MI 48501-2026

Witness:

Angela Sojer
Angela Sojer

Witness:

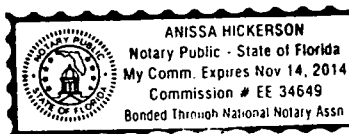
Marco Franco
Marco Franco

By: Robert G. Hall
ROBERT G. HALL, Vice-President

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this March 12, 2012 by ROBERT G. HALL, Vice-
President of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC. ACTING SOLELY AS
NOMINEE FOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP. its successors and assigns at P.O.
Box 2026, Flint, MI 48501-2026 on behalf of the corporation. He is personally known to me.

Anissa Hickerson
Anissa Hickerson
My commission expires: 11/14/2014
EE 34649



Prepared By: Anissa Hickerson
Bayview Loan Servicing, LLC
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

COPY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Bayview Loan Servicing, LLC,

Plaintiff,

vs.

Scott A. Schledwitz, Roxanne J. Schledwitz
aka Roxanne Johnson Schledwitz, Mortgage
Electronic Registration Systems, Inc.
(MERS) as nominee for Taylor, Bean &
Whitaker Mortgage Corp., The United States
of America, by and through its agency, the
Internal Revenue Service, and The South
Carolina Department of Revenue,

Defendant(s):

(File No. 4028.02911)

IN THE COURT OF COMMON PLEAS

C/A NO. 2011-CP-42-

2012-CP-42-0 899

SUMMONS AND NOTICE

Scott A. Schledwitz
5314 Lemon Twist Lane,
Windermere, FL 34786

TO THE DEFENDANTS ABOVE NAMED:

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, 2838 Devine Street, Columbia, South Carolina 29205, 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 MINORS OVER FOURTEEN YEARS OF AGE, AND/OR TO MINORS UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINORS 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 should you fail to answer the foregoing Summons, the Plaintiff will move for a general Order of Reference of this cause to the Master-

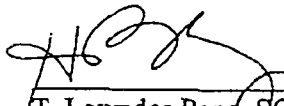
Date 2/29/12 Time 4:48 pm
ISCY
Randy Stone #0377

in-Equity or a Special Referee for the aforesaid County, which Order shall, pursuant to Rule 53, SCRCP, specifically provide that the said Master or Special Referee is authorized and empowered, to enter a final judgment in this case and any appeal from the final judgment entered herein to be made directly to the Supreme Court.

YOU WILL ALSO TAKE NOTICE that under the provisions of S.C. Code Ann. §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 and mortgage which is the subject of this action and the Complaint attached hereto.

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

RILEY POPE & LANEY, LLC



T. Lowndes Pope, SC Bar 66507
Roy F. Laney, SC Bar 64279
Heidi B. Carey, SC Bar 7020
Nikole H. Boland, SC Bar 70491
Damon C. Włodarczyk, SC Bar 70460
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
(803) 799-9993
Attorneys for Plaintiff

M. HEIDI BLACKLEY

2012 FEB 24 PM 1:23

FILED
CLERK OF COURT
SOUTH CAROLINA

February 14, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Bayview Loan Servicing, LLC

Plaintiff(s)

vs.

Scott A. Schledwitz, Roxanne J. Schledwitz aka Roxanne Johnson
Schledwitz, Mortgage Electronic Registration Systems, Inc. (MERS) as
nominee for Taylor, Bean & Whitaker Mortgage Corp., The United States of
America, by and through its agency, the Internal Revenue Service, and The
South Carolina Department of Revenue

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP-42-

2012-CP-42-0899

Submitted By:

T. Lowndes Pope, SC Bar #66507

Roy F. Laney, SC Bar #64279

Heidi B. Carey, SC Bar #7020

Nikole H. Boland, SC Bar 70491

Damon C. Wlodarczyk, SC Bar 70460

RILEY POPE & LANEY, LLC

Attorneys for Plaintiff

Address: POST OFFICE BOX 11412, COLUMBIA, SC 29211

Telephone #: (803) 799-9993

Fax #: (803) 239-1414

Other: http://rplfirm.lawoffice.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20__-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☒ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture - Petition (840)
☐ Forfeiture - Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)

☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)

☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in Out-of-County Action (660)
☐ Sexual Predator (670) | | | |

Submitting Party Signature: _____

Date: February 14, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.
SCCA / 234 (01/2011)

FOR MANDATED ADR COUNTIES ONLY

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

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

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

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

FILED
CLERK OF COURT
SPALDEN COUNTY
2012 FEB 24 PM 1:22
M. HOFER-BLACKLEY

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

SCCA / 234 (01/2011)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Bayview Loan Servicing, LLC,

Plaintiff,

vs.

Scott A. Schledwitz, Roxanne J. Schledwitz aka Roxanne Johnson Schledwitz, Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Taylor, Bean & Whitaker Mortgage Corp., The United States of America, by and through its agency, the Internal Revenue Service, and The South Carolina Department of Revenue,

Defendant(s).

(File No. 4028.02911)

IN THE CIRCUIT COURT
FOR THE SEVENTH
JUDICIAL CIRCUIT

**CERTIFICATE OF EXEMPTION
FROM ADR**

Docket No. 2011-CP-42-

2012-CP-42-0899

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ADR BECAUSE:

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

RILEY POPE & LANEY, LLC

T. Lowndes Pope, SC Bar 66507
Roy F. Laney, SC Bar 64279
Heidi B. Carey, SC Bar 7020
Nikole H. Boland, SC Bar 70491
Damon C. Włodarczyk, SC Bar 70460
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
(803) 799-9993
Attorneys for Plaintiff

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 FEB 24 PM 1:22
M. POPE BLACKLEY

February 14, 2012
Columbia, South Carolina

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.

COPY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Bayview Loan Servicing, LLC,

Plaintiff,

vs.

Scott A. Schledwitz, Roxanne J. Schledwitz
aka Roxanne Johnson Schledwitz, Mortgage
Electronic Registration Systems, Inc.
(MERS) as nominee for Taylor, Bean &
Whitaker Mortgage Corp., The United States
of America, by and through its agency, the
Internal Revenue Service, and The South
Carolina Department of Revenue,

Defendant(s).

(File No. 4028.02911)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2011-CP-42-

2012-CP-42-0899

LIS PENDENS

2012 CP 42 00303

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced and is now or will be pending in this Court upon complaint of the above-named Plaintiff against the above-named Defendants for the foreclosure of a certain mortgage of real estate given by Scott A. Schledwitz and Roxanne Johnson Schledwitz to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Taylor, Bean & Whitaker Mortgage Corp. dated November 23, 2005, and recorded in the public records of Spartanburg County on November 30, 2005, in Book 3565 at Page 239. That thereafter, the Mortgage was assigned unto Plaintiff, which assignment is dated February 2, 2012 and to be recorded in said ROD Office.

The premises covered and affected by the Plaintiff's mortgage and the foreclosure thereof, were, at the time of the making thereof, and at the time of the filing of this notice, described as follows:

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. 25, containing 0.21 acres, more or less and fronting on S. Fairview Avenue Ext., as shown on survey prepared for Phyllis P. McElhaney, dated October 9, 1991 and recorded in Plat Book 114, Page 364, RMC Office for Spartanburg County, SC. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

This being the same property conveyed to Scott A. Schledwitz and Roxanne Johnson Schledwitz by Deed of C. Blease Graham, III, dated November 23, 2005 and recorded November 30, 2005 in Deed Book 84M at Page 962 in the ROD Office for Spartanburg County, South Carolina.

TMS No. 7-13-13 016.00

Property Address: 423 S. Fairview Avenue Extension, Spartanburg, SC 29302

RILEY POPE & LANEY, LLC



T. Lowndes Pope, SC Bar 66507

Roy F. Laney, SC Bar 64279

Heidi B. Carey, SC Bar 7020

Nikole H. Boland, SC Bar 70491

Damon C. Wlodarczyk, SC Bar 70460

2838 Devine Street

Post Office Box 11412 (29211)

Columbia, South Carolina 29205

(803) 799-9993

Attorneys for Plaintiff

February 14, 2012
Columbia, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 FEB 24 PM 1:23
M. HOPE BLACKLEY

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

1. Bayview Loan Servicing, LLC is the Creditor to whom the debt is owed. Creditor has retained the law firm of Riley Pope & Laney, LLC, to collect the owed debt. Any written requests should be addressed to Riley Pope & Laney, LLC, Post Office Box 11412, Columbia, SC, 29211, (803) 799-9993 (Phone), (803) 239-1414 (Fax).
2. As of February 14, 2012, the total debt you owe is \$218,704.41. Because of interest, late charges, and other charges that continue to accrue from the date set forth above, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write or call as directed in Paragraph One (1) of this Notice.
3. Unless you, the Consumer, within thirty (30) days after the receipt of this Notice, disputes the debt or any portion of the debt set forth in Paragraph Two (2) of this Notice and further described in the Complaint attached hereto, the validity of the debt will be assumed to be valid by the Creditor's law firm, Riley Pope & Laney, LLC.
4. If you, the Consumer, notify Riley Pope & Laney, LLC, at the address set forth in Paragraph One (1) of this Notice in writing within thirty (30) days of the receipt of this Notice that the debt or any portion thereof is disputed, Riley Pope & Laney, LLC, will obtain a verification of the debt, and a copy of the verification will be mailed to the Consumer by Riley Pope & Laney, LLC.
5. If you, the Consumer, make a written request to Riley Pope & Laney, LLC within thirty (30) days of the receipt of this Notice, Riley Pope & Laney, LLC, will provide you the Consumer, the name and address of the original Creditor, if different from the current Creditor.
6. 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.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 FEB 14 PM 1:23
M. H. BLACKBERRY

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

Kathy Fleming

2012-CP-42-0899

TRUE & CERTIFIED COPY

ADJUSTABLE RATE NOTE

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

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

November 23, 2005
(Date)

SPARTANBURG
(City)

South Carolina
(State)

423 SOUTH FAIRVIEW AVE. EXTENTION
SPARTANBURG, SC 29302
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 160,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is Taylor, Bean & Whitaker Mortgage Corp.

I will make all payments under this Note in the form of cash, check or money order.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.2500%. The interest rate I will pay may change in accordance with Section 4 of this Note.

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

3. PAYMENTS

(A) Time and Place of Payments

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

I will make my monthly payments on the first day of each month beginning on January 01, 2006

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on December 01, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at Taylor, Bean & Whitaker Mortgage Corp., 1417 North Magnolia Ave, Ocala, FL 34475

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,091.48. This amount may change.

(C) Monthly Payment Changes

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

MULTISTATE ADJUSTABLE RATE NOTE—LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL)—
Single Family—Fannie Mae Uniform Instrument

ITEM 75720L (0011)

(Page 1 of 4 pages)

Form 3520

To Order Call 1-800-526-6393

GREATL



4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of December 2007, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

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

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Six and One Quarter

percentage points (6.2500%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.2500% or less than 6.2500%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than

One percentage points (1.0000%) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 13.2500%.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

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

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

6. LOAN CHARGES

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

2012 FEB 24 PM 1:23

FILED
CLERK OF COURT
SPRINGFIELD COUNTY

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.0000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

8. GIVING OF NOTICES

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

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

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

10. WAIVERS

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

11. UNIFORM SECURED NOTE

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

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

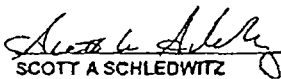
If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this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

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

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

Borrower has executed and acknowledges receipt of pages 1 through 4 of this Note.

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


SCOTT A SCHLEDWITZ

(Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

2012 FEB 24 PM 1:23
MR. SCOTT A. SCHLEDWITZ
Borrower
MR. SCOTT A. SCHLEDWITZ
Borrower
MR. SCOTT A. SCHLEDWITZ
Borrower

FILED
CLERK OF COURT
SPRINGFIELD COUNTY

[Sign Original Only]

OK 555 PM:239

After Recording Return To:
DAVID G. WHITE, P.A.
205 MAGNOLIA STREET
SPARTANBURG, SC 29306

MTG-2005-02325
Recorded 15 Pages on 11/30/2005 11:20:49 AM
Recording Fee: \$22.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register

(Space Above)

MORTGAGE

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated November 23, 2005, together with all Riders to this document.

(B) "Borrower" is SCOTT A SCHLEDWITZ AND ROXANNE JOHNSON SCHLEDWITZ, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone numbers of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is Taylor, Bean & Whitaker Mortgage Corp.
Lender is a Florida Corporation
the laws of FL
1417 North Magnolia Ave, Ocala, FL 34475

organized and existing under the laws of FL
Lender's address is

(E) "Note" means the promissory note signed by Borrower and dated November 23, 2005. The Note states that Borrower owes Lender One Hundred Sixty Thousand and no/100 Dollars (U.S. \$ 160,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than December 01, 2035.

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

SOUTH CAROLINA—Single Family—Florida Mac/ Freddie Mac UNIFORM INSTRUMENT
ITEM TMS25.1 (0011)—MERS (Page 1 of 12 pages)

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LN 555 PAGE 240

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

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

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

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

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

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

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

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

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

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

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

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

CM 555 PAGE 241

TRANSFER OF RIGHTS IN THE PROPERTY

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

County
[Type of Recording Jurisdiction]

of

Spartanburg
[Name of Recording Jurisdiction]

See Attached Exhibit A.

which currently has the address of

423 SOUTH FAIRVIEW AVE. EXTENTION
[Street]

SPARTANBURG
[City]

South Carolina

29302
[Zip Code]

("Property Address"):

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

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

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or

SOUTH CAROLINA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

ITEM 759223 (0017)—025255

(Page 3 of 12 pages)

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CH 565 PAGE 242

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

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

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

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

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

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest

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or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration

SOUTH CAROLINA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

ITEM TSBZSL3 (09/11)

(Page 3 of 12 pages)

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

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

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

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

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

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

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

SOUTH CAROLINA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

ITEM TERN24S (2011)—SERS

(Page 6 of 12 pages)

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

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

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

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

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

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

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

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

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

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

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EX-555 PAGE 246

restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

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

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

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

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 HANCOCK COUNTY

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

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

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

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

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

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

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

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

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

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note

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SOUTH CAROLINA COUNTY

EN 555 PAGE 248

as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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EN 555 PAGE 249

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

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

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

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

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

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

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EN 555 PAGE 250

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 12 of this Security Instrument and in any Rider executed by Borrower and recorded with it.

[Signature]
SCOTT A SCHLEDWITZ (Seal)
-Borrower

[Signature]
ROXANNE JOHNSON SCHLEDWITZ (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Signed, sealed and delivered in the presence of:

[Signature]

[Signature]

State of South Carolina
County of Spartanburg

I William S. Blackley, Notary Public (name and title), do hereby certify that

Scott A. Schledwitz and Roxanne Johnson Schledwitz

before me this day and acknowledged the due execution of the foregoing instrument.

, personally appeared

Witness my hand and official seal (where required by law) this the 23rd day of November, 2005

[Signature]

Notary Public for South Carolina

My commission expires: 6-10-2012

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EXHIBIT "A"

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. 25, containing 0.21 acres, more or less and fronting on S. Fairview Avenue Ext., as shown on survey prepared for Phyllis P. McElhaney, dated October 9, 1991 and recorded in Plat Book 114, Page 364, RMC Office for Spartanburg County, S.C. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

This being the same property conveyed to Scott A. Schledwitz and Roxanne Johnson Schledwitz by deed of C. Blease Graham, III, dated November 23, 2005 and to be recorded herewith in the RMC Office for Spartanburg County, S.C.

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ADJUSTABLE RATE RIDER

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

THIS ADJUSTABLE RATE RIDER is made this 23rd day of November 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Taylor, Bean & Whitaker Mortgage Corp.

("Lender") of the same date and covering the property described in the Security Instrument and located at:

423 SOUTH FAIRVIEW AVE. EXTENTION
SPARTANBURG, SC 29302

[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 7.2500%. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of December 2007 and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

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

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Six and One Quarter

percentage points (6.2500%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

MULTISTATE ADJUSTABLE RATE RIDER—LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL)—Single Family—Fannie Mae Uniform Instrument

Form 3138 1/01

ITEM 1575111 (0011)

(Page 1 of 3 pages)

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.2500% or less than 6.2500%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One percentage points (1.0000%) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 13.2500%.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

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

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

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

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

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

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

Form 3138 1/01

ITEM 1778112 (2011)

(Page 2 of 3 pages)

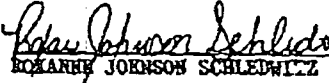
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 3 of this Adjustable Rate Rider.

 (Seal)
SCOTT A SCHLEDWITZ -Borrower

 (Seal)
ROXANNE JOHNSON SCHLEDWITZ -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

M. HOPE BLACKLEY

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CLERK OF COURT
SPRINGFIELD COUNTY

Bayview Loan Servicing, L.L.C.
Attn: Ramona Careaga
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

BORROWER: SCHLEDWITZ
LOAN AMOUNT: \$ 160,000.00

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

Bayview Loan Servicing, LLC a Delaware limited liability company
4425 Ponce de Leon Blvd., Coral Gables, FL 33146

("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 11/23/2005 and executed by: SCOTT A. SCHLEDWITZ AND ROXANNE JOHNSON SCHLEDWITZ, HUSBAND AND WIFE, borrower(s) to: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC. ACTING SOLELY AS NOMINEE FOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP., as Original Lender and Mortgage recorded in Instrument: 20005-62625, Volume: 565, Page: 239, recorded on: 11/30/2005, in the Official Records of SPARTANBURG, State of SC, covering the following described property:

423 SOUTH FAIRVIEW AVE. EXTENTION, SPARTANBURG, SC 29302

Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Document.

Dated: February 2, 2012

ASSIGNOR: MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC. ACTING AS
NOMINEE FOR TAYLOR, BEAN & WHITAKER
MORTGAGE CORP. its successors and assigns at
Box 2026, Flint, MI 48501-2026

Witness:

Angela Soler

Witness:

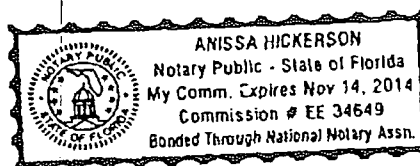
~~Carlo~~ Franco
Gustavo

By: Robert G. Hall
ROBERT G. HALL, Vice-President

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this February 2, 2012 by ROBERT G. HALL, Vice-President of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC. ACTING SOLELY AS NOMINEE FOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP. its successors and assigns at P.O. Box 2026, Flint, MI 48501-2026 on behalf of the corporation. He is personally known to me.

Anissa Hickerson
My commission expires: 11/14/2014
EE 34649



Prepared By: Anissa Hickerson
Bayview Loan Servicing, LLC
4425 Ponce De Leon Blvd, 5th Floor

**CIRCUIT COURT OF THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG**

Bayview Loan Servicing, L.L.C. Plaintiff,	)	2012-CP-420-897
	)	
	)	
	)	OBJECTION TO
	)	FORECLOSURE OF
v.	)	REAL ESTATE
	)	MORTGAGE
	)	
	)	
Scott Allan Schledwitz	)	
Roxanne Johnson Schledwitz	)	
Defendants		

Scott Allan Schledwitz and Roxanne Johnson Schledwitz ("Defendants") objects to Bayview Loan Servicing, L.L.C. ("Plaintiff") Foreclosure of Real Estate Mortgage:

1. Plaintiff has no standing to bring this action because the real estate mortgage described in and attached to the Complaint of Plaintiff (herein referred to as the "Mortgage") on the principal residence of Defendants (herein referred to as the "Property") was given by Defendants to the Mortgage Electronic Registration Systems, Inc ("MERS") as nominee for Taylor Bean and Whitaker Mortgage Corporation, Inc. (herein referred to "TBW").

2. Plaintiff does not hold the power of sale of the Mortgage and no evidence has been presented that it holds such power of sale.

3. Plaintiff is not a 'holder' of the Note and Mortgage and accordingly has absolutely no right, at law or equity, to enforce the Note and Mortgage.

4. Plaintiff is aware of Defendants' challenges in Federal Bankruptcy court regarding the Plaintiff's standing as servicer and investor of the Defendants' Mortgage and has failed to provide documentation and defense of such standing.

5. Defendants were under Chapter 13 Bankruptcy protection when the Plaintiff assumed it was the Mortgage Servicer and filed a Transfer of Claim for the two secured claims held by Taylor, Bean and Whitaker with the assertion to the Bankruptcy Court that the Plaintiff was the Mortgagee. The Plaintiff filed the Transfer of Claim after the Defendants' filed a Violation of Automatic Stay motion against Taylor, Bean and Whitaker. Defendant was notified of the Status Hearing where the motion was heard before the Court. As the Mortgagee, the Defendant is responsible for the actions of the Servicer. Defendant failed to respond to the motion or attend the Hearing.

6. Defendants were under Chapter 13 Bankruptcy protection when the Plaintiff assumed it was the Mortgage Servicer. Defendants challenged such standing and presented the Plaintiff's TILA and RESPA violation evidence in hearing of the United States Bankruptcy Court South Carolina on March 24, 2011. Plaintiff was notified of the hearing by first class mail, presented copies of all filings and supporting documentation. The Defendant failed to respond and did not attend the hearing. Defendants won their motion and Plaintiffs were removed as secured creditors in the Defendants' Chapter 13 case.

7. Defendants brought a Quiet Title Action in the Master in Equity Court of Spartanburg County, South Carolina. TBW and Plaintiff were notified via first class mail. Publication was made in Florida as well as Spartanburg County, per court rules. No objection to Quiet Title was entered. Quiet Title Action remains open in Spartanburg County.

8. Defendants have challenged the Plaintiffs' Claim of being the Mortgagee in the Bankruptcy Court of South Carolina in the aforementioned motions and subsequent hearings as well as publication and Quiet Title Motion in the Master in Equity Court of Spartanburg County, South Carolina. In all three instances, the Plaintiff failed to respond or appear to the respective complaints. The Plaintiff has been offered ample opportunity and time to present their findings and have chosen to not do so.

8. The Court should not grant foreclosure of real estate mortgage because, upon information and belief, based largely upon the existence of MERS as nominee under the Mortgage, this Mortgage and the associated Note are one of those instruments transferred to a pass through pool of investors who then created a trust and resold parts of the loan pool to various tranches of derivative securities. These derivative securities may then have been sold and resold. Accordingly, either the Creditor has absolutely no right to bring this case or, even if it does, it cannot obtain a judgment or any other relief as the right to recover on the Note and Mortgage has been pledge to hundreds, perhaps thousands, of other investors in the pool. Alternatively, the Creditor may only have rights to the Note and Mortgage as a security position itself, in which case it is not the proper "holder" to bring this action.

9. Plaintiff cannot name TBW as a Defendant in the aforementioned action because TBW is in Chapter 11 Bankruptcy. Plaintiff has not sought relief from Automatic Stay in United States Bankruptcy Court of Middle Florida in regard to the real estate mortgage named in the action brought by Plaintiff against the Defendants.

10. Plaintiff is not a continuation of or successor in interest to the original mortgagee, who was MERS as nominee for Taylor Bean and Whitaker Mortgage Corporation (not Bayview Loan Servicing). See Argent Classic Convertible Arbitrage Fund, LP v. Countrywide Financial Corp 07-CV-07097 (CD CA 2009).

11. Plaintiff will find it impossible to prove that it is a holder in due course of the Note and Mortgage and hence it is subject to any of the foregoing defenses that is deemed substantive and not jurisdictional.

12. There is absolutely no evidence that the original Note has been endorsed or that an allonge has been signed an affixed to the Note in any manner effective to make Plaintiff a holder of the Note much less a holder in due course of the Note.

13. The Note was a negotiable instrument under South Carolina's Uniform Commercial Code and the Plaintiff did not properly acquire the Note via negotiation. See Union Bank & Trust Co. v Thompson, 202 Ala. 537, 81 So. 39, 40 (1919) and Crum, supra.

14. In order to endorse a note, the current holder must either sign the instrument itself or an allonge (a paper so firmly affixed to the note that it becomes part of the note). See, e.g. Crossland Sav. Bank FSB v. Constant, 737 S.W. 2d 19 (Tex Ct.App. 1987). The text of the UCC suggests mere assignment of an instrument is not sufficient to make the assignee a holder. This is because when an instrument is assigned, it is not necessarily endorsed to the assignee. Courts have supported this interpretation and in a bankruptcy proceeding, one court held that assignment alone does not make the note owner a holder in the absence of endorsement and delivery to the to the person currently in possession. In re Governor's Island, 39 B.R. 417 (Bankr E.D.N.C. 1984)(holding mere assignment of a note without endorsement by the note's previous owner prevents the note's current owner from being a holder of the note). Without status as a holder, one can never be a holder in due course. There is no evidence whatsoever, and, indeed, Plaintiff will not be able to produce any evidence that it is the "holder" of the Note or Mortgage.

15. Alternatively, even if the Plaintiff can show an assignment, if the assignment is not firmly affixed to the Note, there has not been a valid endorsement. See Adams v Madison Realty & Development, 853. F.2d 163 (3rd Cir 1998).

16. There have been serious questions raised concerning the execution of documents by the Plaintiff due to the bundling of mortgages and fraudulent resale by TBW to multiple entities, resulting in the conviction of the top five TBW executives as well as an executive with Bayview Financial (also known as Bayview Asset Management), the parent company of the Plaintiff. Lee Farkas, Chief Executive Officer of TBW and Stephen Gordon of Bayview Financial were convicted of financial crimes based on the use of securitized assets from their mortgage portfolios. In the TBW Chapter 11 Bankruptcy filing, TBW has neither identified nor documented the Defendants' property as being a servicing or real property asset.

17. In the TBW Chapter 11 Bankruptcy filing, TBW has neither identified nor documented the Defendants' property as being a servicing or real property asset.

18. In the TBW Chapter 11 Bankruptcy filing, the United States Bankruptcy Court of Middle Florida has neither received petition to Relief from Automatic Stay regarding the Defendants' Mortgage from MERS nor has TBW authorized MERS to assign the Mortgage to Bayview Loan Servicing.

19. Defendants have proven in the United States Bankruptcy Court Districts of South Carolina and Middle Florida that both TBW and the Plaintiff have fraudulently serviced and collected monies from the Defendants prior to and during the Defendants Chapter 13 Bankruptcy case. Any action by the Plaintiff against the Defendants should be referred to the Bankruptcy Court of South Carolina for a trial to allow for the Defendants to counter sue based on previous complaints by the Defendants. Plaintiff and Defendants will have the opportunity to present evidence and testimony regarding their

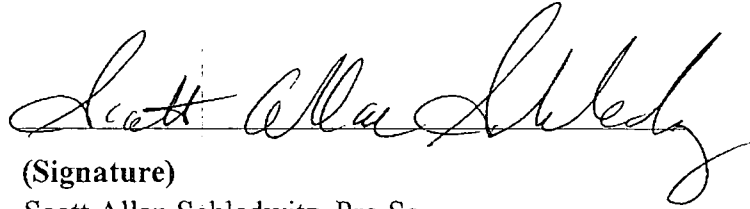
respective complaints.

WHEREFORE, Defendants pray that the court will:

- (1) Deny Plaintiff's Action for Foreclosure of Real Estate Mortgage and refer this case to civil court for a trial by jury.
- (2) Grant the Defendants' Motion for Quiet Title.

For such other and further relief as the court may deem proper.

DATED: October 15, 2013



(Signature)

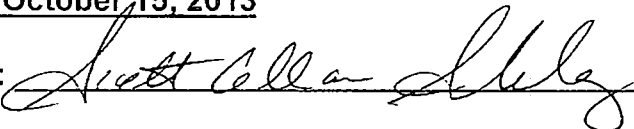
Scott Allan Schledwitz, Pro Se
13118 Sunkiss Loop
Windermere, FL 34786
(407)347-8641
schledwitz@cfl.rr.com

VERIFICATION

I, Scott Allan Schledwitz, am a Defendant in the above-entitled action. I have read the foregoing *Foreclosure of Real Estate Mortgage* and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Spartanburg, South Carolina.

DATED: October 15, 2013

SIGNED: 

Scott Allan Schledwitz, Pro Se
13118 Sunkiss Loop
Windermere, FL 34786
(407)347-8641
Schledwitz@cfl.rr.com

) 2012-CP-420-897

) CERTIFICATE OF
) SERVICE

V.

**Scott Allan Schledwitz
Roxanne Johnson Schledwitz
Defendants**

I certify that on this date, I served a copy of Objection in this action, dated

October 15, 2013, on Heidi B. Carey, Plaintiff Attorney and Bayview Loan Servicing, LLC,
Plaintiff by

- ☐ Delivering it to him/her personally;
- ☒ Mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

PO Box 11412 Columbia SC 29211

- ☐ Delivering it by commercial delivery service in accordance with Rule 4(d)(9), SCRCF, addressed as follows: _____; or,
- ☐ Other: _____

October 15, 2013

Date _____


Signature

Signature

Scott Allan Schledwitz, Pro Se
13118 Sunkiss Loop
Windermere, FL 34786
(407)347-8641
schledwitz@cfl.rr.com

1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS

3 BAYVIEW LOAN SERVICING, LLC,

4 PLAINTIFF,

5 -VS-

TRANSCRIPT OF TESTIMONY

6 SCOTT A. SCHLEDWITZ, ROXANNE J.

SCHLEDWITZ AKA ROXANNE

7 JOHNSON SCHLEDWITZ, MORTGAGE

ELECTRONIC REGISTRATION

8 SYSTEMS, INC., (MERS) AS NOMINEE

9 FOR TAYLOR, BEAN & WHITAKER

MORTGAGE CORP., THE UNITED

10 STATES OF AMERICA, BY AND

THROUGH ITS AGENCY, THE

11 INTERNAL REVENUE SERVICE AND

THE SOUTH CAROLINA DEPARTMENT
OF REVENUE,

12

13 DEFENDANTS.

(2012CP42-0899)

15 REFERENCE HELD:

NOVEMBER 19, 2013.

17 B E F O R E:

HONORABLE GORDON G. COOPER,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

19 RILEY, POPE & LANEY, LLC,
20 BY: JAYME SHY, ESQUIRE
Attorneys for the Plaintiff.

21

22

23

Sarah Hollis, Court Reporter

24

25

1 THE COURT: We go on the record in the case of Bayview Loan Servicing, LLC, versus Scott
2 A. Schledwitz, Roxanne J. Schledwitz aka Roxanne Johnson Schledwitz, Mortgage
3 Electronic Registration Systems, Inc., (MERS) as nominee for Taylor, Bean &
4 Whitaker Mortgage Corp., The United States of America, by and through its agency, the Internal
5 Revenue Service and The South Carolina Department of Revenue. This is case number 2012-
6 0899. The Lis Pendens and Order of Reference have been filed with the Clerk. The appropriate
7 Affidavits have been filed with the Clerk. And the case has been properly referred. The
8 Plaintiff is represented by Ms. Shy. The latest document that I have got from the Defendant
9 who is pro se is a request for a continuance.

10 MS. SHY: Yes sir. And we are asking that you deny that. In reviewing the request for a
11 continuance it looks like it is mostly based upon a bankruptcy case. And I have a whole stack of
12 bankruptcy orders that we can go through and I think he also alleges that there has been no proper
13 assignment from Taylor, Bean & Whitaker to Bayview.

14 THE COURT: I think that I saw a copy of the recorded assignment attached to an Affidavit in
15 the file.

16 MS. SHY: Yes sir, there is. And the Schledwitzs are not in bankruptcy. They were dismissed
17 in 2011 for failure to make payments and I have printed out these bankruptcy orders. The
18 bankruptcy that is still active in Florida that is not where the Schledwitzs filed bankruptcy, that is
19 where Taylor, Bean & Whitaker has filed bankruptcy.

20 THE COURT: Right.

21 MS. SHY: And in that case the Schledwitz's attorney they filed a response and objection to the
22 Motion for Relief. And in that motion they state that the loan has been service released to
23 Bayview Loan Servicing. So they have admitted in the bankruptcy case that the mortgage had
24 been service transferred to Bayview by assignment.

25 THE COURT: Okay.

1 MS. SHY: And these I have in order and I have some notes that I can walk through some of
2 these with you..

3 THE COURT: All right The first thing then is the Order dismissing the bankruptcy case.

4 MS. SHY: Yes sir. And I can kind of go through if you will indulge me with these notes.

5 THE COURT: Yes, I would like for you to..

6 MS. SHY: Okay. The Schledwitzs filed a Bankruptcy and an Adversary in South Carolina, I
7 believe in 2009. The Adversary was 2009- AP80164 and this was dismissed because Taylor,
8 Bean & Whitaker had a pending Chapter 11 bankruptcy down in Florida already and a copy of
9 that order is in the stack of papers that I handed up. The Bankruptcy which is 09BK00666 was
10 dismissed on May 26, 2011 for failure to make timely payments. A copy of that Order is also
11 handed up. The Florida bankruptcy is as we discussed but it actually Taylor, Bean and
12 Whitaker's Chapter 11, and the file number for that is 09BK07047. In that bankruptcy, Taylor
13 Bean & Whitaker dated August 31, 2009, there is an order transferring six portfolios to U. S.
14 Bank and two portfolios of Taylor, Bean & Whitaker to Bayview. And this includes thousands
15 of loans. A copy of the emergency joint motion and the Order of attached documents 44 and 76.

16 **MS. SHY INTRODUCES INTO EVIDENCE A COPY OF THE ORDER DISMISSING**
17 **CASE, U. S. BANKRUPTCY COURT, CASE NUMBER 07-00666-HB, WITH ORDER,**
18 **ORDER DISMISSING ADVERSARY WITHOUT PREJUDICE, AND THREE PAGES**
19 **CASE LOCATOR SHEETS ATTACHED, MARKED AS PLAINTIFF'S EXHIBIT**
20 **NUMBER 1.**

21 THE COURT; All right.

22 MS. SHY: The Schledwitzs filed a Motion for Relief from the Stay on January 27, 2010, which
23 was abated because they didn't pay the filing fee or serve the Motion properly. There is an
24 Order abating the Motion and that is Document 956. They refiled this Motion on February 2,
25 2010, that is Motion, Document 1002, Taylor, Bean & Whitaker Response and Objection to the

1 Motion was filed on February 18, 2010 and that is document 1044. And we discussed the
2 Schledwitzs state that the loan had been service released to Bayview.

3 **MS. SHY INTRODUCES A COPY OF THE DEBTOR'S RESPONSE AND OBJECTION**
4 **TO MOTION FOR RELIEF FROM AUTOMATIC STAY FILED BY SCOTT ALLAN**
5 **SCHLEDWITZ AND ROXANE JOHNSON SCHLEDWITZ, MARKED AS**
6 **PLAINTIFF'S EXHIBIT NUMBER 2.**

7 **MS. SHY INTRODUCES A COPY OF THE OBJECTION TO RELIEF REQUESTED IN**
8 **DEBTORS' OMNIBUS OBJECTION, MARKED AS PLAINTIFF'S EXHIBIT NUMBER**
9 **3.**

10 THE COURT: All right.

11 MS. SHY: There is an Order denying their Motion for Relief from Stay and that is document
12 1125. They filed a proof of claim which Taylor, Bean & Whitaker then objected to. There is
13 an objection to the relief requested in Debtor's Omnibus Objection and that was filed and then
14 there was an Amended Order setting an Evidentiary Hearing and pre-trial scheduled after
15 September 11 and then there was a Notice of Hearing on the trial. However, at this point in the
16 Bankruptcy case our loan is out of it due to the order transferring the two portfolios to Bayview.
17 Our loan is included in that two Portfolios. So there is no longer even, Taylor, Bean & Whitaker
18 are involved in Taylor, Bean & Whitaker's Chapter 11. The Schledwitzs are still trying to file
19 stuff in Taylor, Bean & Whitaker's case but it has nothing to do with the loan, the subject loan.

20 **MS. SHY INTRODUCES A COPY OF THE ORDER DENYING MOTION FOR RELIEF**
21 **FROM STAY, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 4.**

22 **MS. SHY INTRODUCES A COPY OF THE MOTION FOR RELIEF OF AUTOMATIC**
23 **STAY, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 5.**

24 **MS. SHY INTRODUCES A COPY OF THE ORDER ABATING MOTION FOR RELIEF**
25 **FROM STAY, DATED JANUARY 28, 2010, MARKED AS PLAINTIFF'S EXHIBIT**

1 NUMBER 6.

2 MS. SHY INTRODUCES A COPY OF THE EMERGENCY JOINT MOTION OF U.S.

3 BANK NATIONAL ASSOCIATION, MARKED AS PLAINTIFF'S EXHIBIT NUMBER

4 7.

5 MS. SHY INTRODUCES A COPY OF THE AGREED ORDER APPROVING

6 PROCEDURE FOR TRANSFER OF RESIDENTIAL CONSUMER LOAN MORTGAGE

7 PORTFOLIOS, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 8.

8 THE COURT: All right. So there is no question that this loan was transferred out pursuant to

9 the Bankruptcy Order?

10 MS. SHY: Yes sir, and the assignment of mortgage that Bayview now owns it and Bayview is

11 not in bankruptcy.

12 THE COURT: Okay. But this order was entered back in 2009.

13 MS. SHY: Which one, Your Honor.

14 THE COURT: This agreed Order from the Bankruptcy, the Transfer of Residential Consumer

15 Loan Mortgage Portfolios.

16 MS. SHY: Yes sir. The August 31, 2009, Order.

17 THE COURT: Right.

18 MS. SHY: Yes sir.

19 THE COURT; Okay. So there is no question Number 1, even though Taylor, Bean is in

20 bankruptcy in Florida this particular loan was carved out, transferred out of the bankruptcy

21 pursuant to this Order and assigned to Bayview?

22 MS. SHY: Yes sir.

23 THE COURT: Okay. And that is basically what his whole ---

24 MS. SHY: Whole request for continuance was based on.

25 THE COURT: And I noticed in there somewhere he said that he was going to a hearing in

1 Jacksonville?

2 MS. SHY: Yes sir. And they are still filing stuff in the Chapter 11 Bankruptcy and the last
3 Order that we found was something about a hearing was filed back on October 31, 2011. And
4 going to hearing on the bankruptcy trial as of - we have on the docket of record of the
5 bankruptcy we could find no record of a trial. At one point it was set for March 8, 2012 but that
6 didn't occur and on the record there is no further scheduling of a trial. And I think that trial is
7 based upon they filed a proof of claim back in 2010.

8 THE COURT: All right. Then I am satisfied based on the documents that counsel for the
9 Plaintiff has handed up relating to the bankruptcy matters that the Defendants has set out in the
10 Request for a Continuance and other pleadings that the mortgage which serves as the basis for
11 this foreclosure was appropriately carved out of the bankruptcy of Taylor, Bean & Whitaker and
12 assigned to the Plaintiff herein. And the assignment is attached to the ---

13 MS. SHY: It is also attached to the Motion for Summary Judgment, Your Honor.

14 THE COURT: Okay. Maybe that is where I was.

15 MS. SHY: Yes sir.

16 THE COURT: I know that I read it.

17 MS. SHY: I can hand up a copy.

18 THE COURT; That is fine.

19 MS. SHY: The assignment of mortgage was recorded on March 26, 2012.

20 THE COURT: There it is. The Affidavit of Gary Locke. That is the one that I was looking
21 for.

22 MS. SHY: Yes sir.

23 THE COURT; All right. Then based on those findings and the Motion for the Continuance or
24 at least the basis for the Motion for a Continuance, I find there is no basis because the assignment
25 and the carve out is appropriate. If you are ready to proceed with the hearing?

CLERK OF COURT
SPARTANBURG
2013 NOV 20 AM 10:32
FILED - CLERK OF COURT

1 MS. SHY: Yes sir.

2 THE COURT: And this is not owner occupied, is that correct?

3 MS. SHY: That is correct, Your Honor. The Schledwitzs live in Florida and we have filed a
4 Certification of Exemption. The property is vacant. We did begin this foreclosure case with a
5 Summons and Complaint which the Schledwitzs did timely file and serve an Answer.
6 Thereafter, the IRS also asserted an interest concerning the tax lien priority. We referred this
7 case on October 14, 2013. Along with that we have a Non-Military Affidavit, Order of
8 Reference and Notice of Default. We did file Summary Judgment on July 17, 2013. No
9 counter Affidavit has been filed. Attached to our Motion we have an Affidavit of the Business
10 Record Custodian of my Client setting forth the terms of the note and mortgage previously says
11 that the mortgage has been assigned. We did send out a Notice of Breach Letter that the terms
12 Have been complied with and sets forth that the debtors are in default on the loan and haven't
13 made a payment since December 1, 2008. And it sets forth the debt figures and I can go through
14 those one by one if you would like.

15 THE COURT: You don't have an Order with you?

16 MS. SHY: No sir. I didn't prepare the Order.

17 THE COURT: All right. That is fine.

18 MS. SHY: And then with the IRS lien we have a purchase money mortgage. We have talked to
19 the Assistant U. S. Attorney and given him a copy of the HUD and the loan closing. And he has
20 agreed that we do have priority based upon the case law in South Carolina his lien is junior to
21 ours, Your Honor.

22 THE COURT: But he still is asserting the 120 day right of redemption, correct, at the sale?

23 MS. SHY: Yes sir.

24 THE COURT: Okay. Will you go over the debt figures then for the record?

25 MS. SHY: Yes sir. The principal amount due as of the day of default, December 1, 2008, is

CLERK
SPARTANBURG
2013 NOV 20 AM 10:32

1 \$155,759.84. Interest from November 1, 2008 to December 1, 2012 at the rate of 9.5 percent is
2 \$69,318.51. Interest from December 2, 2012 through May 31, 2013 at the rate of 8.5 percent is
3 \$6,604.69. Per diem interest from May 31, 2013 through today's date at the rate of \$36.27 per
4 day. The escrow advance is \$16,178.20. The suspense or unapplied funds balance is \$472.58.
5 A recovery balance of \$2,859.50. And we have not prepared an attorney's fee affidavit or the
6 statement of cost at this time. And we ask if we could send those up with the proposed order
7 for review?
8 THE COURT: All right. And this is a demand or a waiver?
9 MS. SHY: This at the present time is a demand.
10 THE COURT: All right. And the first sale requested is January 6, 2014.
11 MS. SHY: January 6, Your Honor.
12 THE COURT: All right. If you will send up the Order leaving the attorney's fee blank and the
13 total balance blank with a Notice of Sale and the Form 4.
14 MS. SHY: Yes sir. I will do that.
15 THE COURT: All right.
16 MS. SHY: Thank you.

17 ----- END OF HEARING -----
18
19
20
21
22
23
24
25

CLERK OF COURT
SPARTANBURG
2013 NOV 20 AM 10:32
H. NORTON

) 2012-CP-420-897

1) REQUEST FOR
2) CONTINUANCE

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1. Defendants have maintained in this case as well as the Quiet Title case 2010CP4206734, filed in the County of Spartanburg and referred to the Master-in-Equity, that the property is not encumbered by a mortgage lender. This Court set aside the Quiet Title order, in part because the last known mortgagee, Taylor Bean and Whitaker, was protected in its Chapter 11 Bankruptcy filed in the Bankruptcy Court of Middle Florida. The Defendant has followed the proper steps in contacting all known parties with interest in the property via United States Postal Service First Class mail and by publication in the state of South Carolina and the state of Florida, providing sufficient time for objection and response to aforementioned known parties and John Does. As noted in the Defendants' Objection to the Foreclosure, Quiet Title has preceded the Plaintiff's Motion for Foreclosure, with no objection or response filed by the Plaintiff or Mortgage Electronic Registration Services (MERS). Given the precedential rulings based on the fraudulent transacting of Mortgages and Foreclosure filings by MERS, adequate should be provided for evidence of the chain of custody can be submitted and provided to the Defendants in Discovery.

2. Plaintiff has not provided Certificate of Remand from the Bankruptcy Court of Middle Florida regarding the transfer of ownership of the mortgage on the Defendants property from Taylor, Bean and Whitaker to Bayview Financial Services, L.L.C. Plaintiff is required to provide this document. Adequate time should be allowed for the Plaintiff to file the Motion with the Bankruptcy Court of Middle Florida to obtain said Certificate of Remand.

Page 57 of 177

mortgages, from 2004 through 2009. The Defendants mortgage was orginated and owned by Taylor, Bean and Whitaker in November, 2005. In allocution, Lee Farkas, the Chief Executive Office of Taylor, Bean and Whitaker admitted to the fraudulent transfer and the bundling of mortgages that were sold to multiple investors. Bayviews claim to mortgage ownership is highly questionable as no chain of custody is documented in Middle Florida Court record of Bayviews ownership of the mortgage in question. Adequate time should be provided for the defendant to provide the Court with documentation and testimony of material witnesses from the Taylor, Bean and Whitaker Trustee's office.

4. As provided in the Defendants' Objection to the Foreclosure motion, the Plaintiff has willfully ignored Bankruptcy rule and Court order the Automatic Stay protecting the Defendants in their Chapter 13 Bankruptcy case. The Defendants' pursued by Motion the removal of the Plaintiff's as secured creditor of the mortgage in question. The Plaintiff's failed to respond or make appearance in Bankruptcy Court hearings in November, 2009 and March, 2011. Subsequently, the Bankruptcy Court ruled in the Defendants' favor, removing the Plaintiff as secured creditor because the Plaintiff never provided evidence of ownership nor defended itself of the multiple counts of Violation of Automatic Stay. Damages due to the aforementioned Violation of Automatic Stay remain an open item with the Bankruptcy Court. The Plaintiff is responsible for responding to the Motion and allowing the Court to decide on damages. The mortgage and property are encumbered by this. Adequate time should be provided to allow for the Defendant to schedule the continued hearing in the Bankruptcy Court of South Carolina and the Plaintiff to appear and plea to the Court prior to the Foreclosure Motion being heard in this Court.

5. Given the complexity of the case involving two Federal Bankruptcy Courts involvement with the mortgage, the Plaintiff and the Defendants, the Court should be given the time to review this case, witness list, and evidence from both Plaintiff and Defendants. It is the Defendants' assertion that the Court should refer this case back to the Court of Common Pleas for referral to a Civil Docket, should the Plaintiff provide the basic information regarding the chain of custody and ownership of the mortgage and Certificate of Remand from the Bankruptcy Court of Middle Florida.

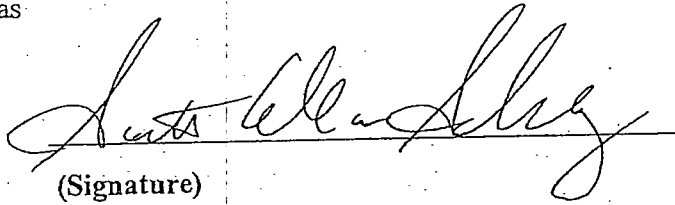
6. The request for additional time to respond to the lawsuit is not made in bad faith and there will be no prejudice to either the court or the plaintiff as a result of the additional time due to the huge numbers of pending foreclosure cases and our continued upkeep and maintenance of the property which protects the value of the property for all involved.

WHEREFORE, Defendants pray that the court will:

The Court to grant the instant Motion for Extension of Time of 60 days to allow the Defendants to provide the Court and Plaintiff a list of witnesses, supporting evidence of the Defendants' arguments and adequate time for correspondence between all parties.

For such other and further relief as
the court may deem proper.

DATED: November 11, 2013

A handwritten signature in cursive script, appearing to read "Scott Allan Schledwitz", written over a horizontal line.

(Signature)

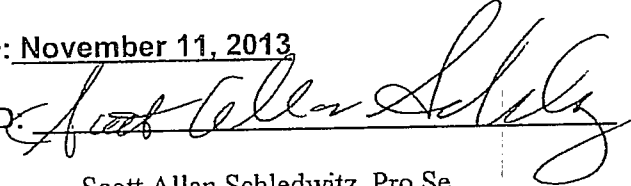
Scott Allan Schledwitz, Pro Se
13118 Sunkiss Loop
Windermere, FL 34786
(407)347-8641
schledwitz@cfl.rr.com

VERIFICATION

I, Scott Allan Schledwitz, am a Defendant in the above-entitled action. I have read the foregoing *Foreclosure of Real Estate Mortgage* and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Spartanburg, South Carolina.

DATED: November 11, 2013

SIGNED: 

Scott Allan Schledwitz, Pro Se
13118 Sunkiss Loop
Windermere, FL 34786
(407)347-8641
Schledwitz@cfl.rr.com

Bayview Loan Servicing, L.L.C.
Plaintiff,

) 2012-CP-420-897
)
)

) CERTIFICATE OF
) SERVICE
)
)
)
)
)

v.

Scott Allan Schledwitz
Roxanne Johnson Schledwitz
Defendants

I certify that on this date, I served a copy of Objection in this action, dated
October 15, 2013, on Heidi B. Carey, Plaintiff Attorney and Bayview Loan Servicing, LLC,
Plaintiff by

- ☐ Delivering it to him/her personally;
☒ Mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in
an envelope with sufficient postage affixed, addressed as follows:

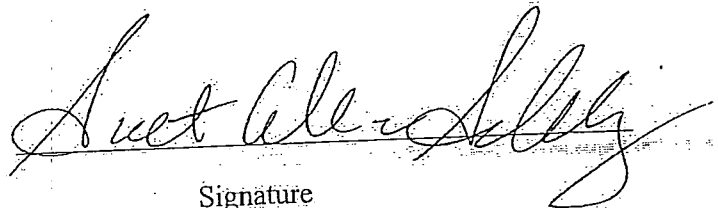
PO Box 11412 Columbia SC 29211

☐ Delivering it by commercial delivery service in accordance with Rule 4(d)(9),
SCRCP, addressed as follows: ; or,

☐ Other:

November 11, 2013

Date



Signature

Scott Allan Schledwitz, Pro Se
13118 Sunkiss Loop
Windermere, FL 34786
(407)347-8641
schledwitz@cfl.rr.com

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS
MASTER-IN-EQUITY

COUNTY OF SPARTANBURG)

BAYVIEW LOAN SERVICING, L.L.C)

Plaintiff(s),)

vs.)

Scott Allan Schledwitz and Roxanne)

Johnson Schledwitz)

Defendant(s).)

ORDER OF CONTINUANCE

Docket No. 2012-CP-420-897

The hearing in the above entitled action originally scheduled for November 19, 2013(date) at 10:30 (X a.m./☐p.m.) has been continued for the following reason(s):

- ☐ Agency Attorney
- ☐ Attorney
- ☐ GAL
- ☐ Lack of Court Time
- ☐ Insufficient Notice or Time
- ☐ Failure to Appoint GAL or Attorney
- ☐ Judge Recusal
- ☐ Judge or Clerk
- ☐ Permanent plan not timely submitted to Court
- ☒ Other: Defendant request for witness testimony and/or chain of custody documentation

Date: November 11, 2013

Gordon G. Cooper

Master-in-Equity

County of Spartanburg, South Carolina

[Print](#) | [Close Window](#)

Subject: FW: 2012-CP-42-0899 Bayview v. Scott Schledwitz
From: "Winstead, Sharon" <swinstead@spartanburgcounty.org>
Date: Fri, Nov 15, 2013 4:55 pm
To: "Scott Schledwitz" <schledwitz@cfl.rr.com>
Cc: "Andrew Knitz" <AndrewK@rplfirm.com>

Hi Mr. Schledwitz,

I emailed your request to the Plaintiff's Attorney, per Judge Cooper's instructions, and the Attorney replied that he will not consent to the continuance.

Thanks,
Sharon

From: Winstead, Sharon
Sent: Friday, November 15, 2013 4:47 PM
To: 'Andrew Knitz'
Subject: RE: 2012-CP-42-0899 Bayview v. Scott Schledwitz

Ok thanks for getting back with me.
Thanks,
Sharon

From: Andrew Knitz [mailto:AndrewK@rplfirm.com]
Sent: Friday, November 15, 2013 4:42 PM
To: Winstead, Sharon
Subject: RE: 2012-CP-42-0899 Bayview v. Scott Schledwitz

Sharon,

Heard back faster than expected. We will not consent to the continuance. Hope you have a great weekend as well.

Thank you,
Andrew

From: Winstead, Sharon [mailto:swinstead@spartanburgcounty.org]
Sent: Friday, November 15, 2013 4:30 PM
To: Andrew Knitz
Subject: RE: 2012-CP-42-0899 Bayview v. Scott Schledwitz

Ok great! Have a good weekend.
Thanks,
Sharon

From: Andrew Knitz [mailto:AndrewK@rplfirm.com]
Sent: Friday, November 15, 2013 4:31 PM
To: Winstead, Sharon
Subject: RE: 2012-CP-42-0899 Bayview v. Scott Schledwitz

Sharon,

I am checking with the attorney who filed the MSJ. He is in depositions today and I will let you know first thing Monday.

Andrew

From: Winstead, Sharon [<mailto:swinstead@spartanburgcounty.org>]

Sent: Friday, November 15, 2013 3:53 PM

To: Andrew Knitz

Subject: 2012-CP-42-0899 Bayview v. Scott Schledwitz

Hi Andrew,

I have attached a Request for Continuance from Scott Schledwitz. The hearing is set for **November 19th, 2013 at 10:30 pm**. Please let me know if you plan to continue or go forward with the hearing.

Thanks,
Sharon

*Sharon Winstead,
Administrative Assistant
Master-In-Equity
P.O. Box 5666, Room 901
Spartanburg, SC 29304
Phone (864) 596-2501
Fax (864) 596-2078
swinstead@spartanburgcounty.org*

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FILED

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

11 FEB 22 AM 11:41

IN RE:
Scott Allan Schledwitz and
Roxanne Johnson Schledwitz,

Debtors

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
CASE NO: 3:09-bk-07047-HB
CHAPTER: 13OBJECTION TO TRANSFER OF CLAIM AND
COMPLAINT AGAINST THE UNITED STATES
TRUSTEE**OBJECTION TO TRANSFER OF CLAIM**

Scott Allan Schledwitz and Roxanne Johnson Schledwitz Object to the Transfer of Claim from Taylor, Bean and Whitaker Mortgage Corporation ("TBW") to Bayview Financial Services..

FACTS

1. Debtors filed for Chapter 13 Bankruptcy on February 7, 2007 in the United States District Court of South Carolina.
2. The Trustee, Gretchen Holland ("Trustee"), was appointed interim chapter 13 trustee for the Case on February 7, 2007, and thereafter became the permanent case trustee.
3. TBW filed a Proof of Claim as a secured claims number 4 and number 5.
4. TBW filed a Motion for Relief from Automatic Stay on July 27, 2009.
5. Debtors filed and Objection to the Motion for Relief from Automatic Stay and a counter complaint for Violation of Automatic Stay and Creditor Misconduct on August 10, 2009.
6. TBW filed for Chapter 11 bankruptcy in the United States District Court of Middle Florida, CASE NO: 3:09-bk-07047-JAF on August 24, 2009.
7. TBW filed a Withdrawal of Motion for Relief from Automatic Stay on August 26, 2009.
8. Debtors filed a Motion on Violation of Automatic Stay and Creditor Misconduct on September 29, 2009, seeking damages based on *Nosek vs. Ameriquest Mortgage*.

9. The Trustee was notified that TBW transferred its secured claims numbers 4 and 5 to Bayview Financial Services on November 16, 2009.
10. The Court held a status meeting with the Debtors and Trustee on November 19, 2009. The Court referred the Debtors to pursue a Motion for Relief from Automatic Stay against TBW before a judgment could be made against the creditor in the Debtors aforementioned motion.
11. Debtors filed a Motion for Relief from Automatic Stay in the United States District Court of Middle Florida against Taylor Bean and Whitaker on January 3, 2010. The Debtors' Trustee was notified via first class mail.
12. The Debtors hearing for Relief from Automatic Stay was held on February 19, 2010, Docket number 1044, in the United States District Court of Middle Florida before Judge Jerry Funk. The Motion was denied based on the creditor's objection that the cost of legal defense in another jurisdiction would be too much for TBW to endure. The judge instructed the debtors to file a secured claim against the defendant.
13. During the hearing for Relief from Automatic Stay in Middle Florida, counsel for TBW, Russell Blain, admitted in Court record that TBW had committed fraud as cited by the Debtors.
14. On February 25, 2010, Debtors filed a secured Proof of Claim against TBW for the amount of \$210,000.
15. TBW is scheduled to confirm its Bankruptcy plan on March 4, 2011.

OBJECTION BASIS

1. TBW and the Trustee failed to file a 3001(e) Transfer of Claim with the United States Bankruptcy Clerk of Court.
2. Because the Transfer of Claim was not properly handled, the Debtors were denied their right to respond officially with an Objection based on Transfer of Claim and reference of a docket number.

COMPLAINT BASIS

1. The Trustee failed to file the Transfer of Claim and Notifications to all parties.
2. The Trustee was aware, based on the Motion for Violation of Automatic Stay and Creditor Misconduct, that the Debtors were being victimized by TBW and its successor Bayview Financial Services and had provided evidence of such abuse to both the Court and Trustee. Based on Section 586 of Title 28 of the United States Code and evidence of fraud committed by TBW provided by the Debtors, the Trustee, as an Officer of the Court AND Administrator of the Estate, had a responsibility to schedule an evidentiary hearing and notify all creditors in the Debtors case in addition to the Debtor.
3. In the Debtors Relief Motion in Middle Florida, the Trustee should have filed the Motion as the party of interest in the Debtors' estate. Debtors incurred significant financial burdens to the estate in order to pursue the Violation of Automatic Stay and Creditor Misconduct. It is the Trustee's obligation to the creditors and debtors to not allow the estate to suffer financial burden due to the willful fraudulent violations of one creditor against the Debtors. In the very least, the Trustee could have assumed a passive role and attended via telephonic means any hearings regarding the Debtors' Motion for Relief.
4. TBW's Bankruptcy filing became explicitly tied to the Debtors' case. Based on this, it is the Trustee's responsibility to seek status of TBW's case in relation to outstanding issues to the Debtors' case. The Court record of the hearing held in Middle Florida regarding the aforementioned Relief from Stay by the Debtors against TBW was fully accessible through PACER to query case disposition as well as the Court reporter for transcript of the hearing.
5. Based on the Trustee's action in transferring the claim with no allowance of due process for debtors and creditors related to the Debtors' case, the Trustee's inaction in administering the estate fairly and guarding it from fraud, and the Trustee's failure as an officer of the Court to pursuing as a party of interest in the Debtors' actions against TBW in the Creditor's Bankruptcy proceedings, the Debtors conclude that the Trustee violated against the

Debtors' 42 U.S.C. § 1983. The accumulation of the above items represent a clear violation of the Debtors' rights to Due Process.

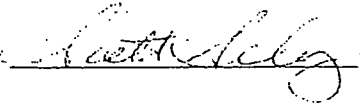
WHEREFORE, Debtors respectfully request:

1. That this Court reject the standing Transfer of Claim and suspend all payments to Bayview Financial Services until the proper filing of 3001 (e) claim, evidentiary hearing is held and by evidence submitted by Claimant and Debtors, the Court is satisfied to either confirm or deny the Transfer of Claim.
2. All funds from the Debtors' payment plan attributed to Bayview Financial Services be applied back to the Debtors' bankruptcy account held by the Trustee.
3. All funds from the Debtors' payment plan attributed to Taylor, Bean and Whitaker Mortgage Corporation be applied back to the Debtors' bankruptcy account, dating back to September, 2008 until the present.
4. Sanction the United States Trustee Gretchen Holland for failure to act as an Administrator of the estate of the Debtors for all parties and failure to follow the mission, policies and guidelines as provided by the Executive Office of the United States Trustee by pursuing the charges of fraud that were filed with evidence by the Debtors and subsequent admission of fraud specified by the Debtors in their Relief Motion by the attorney of Taylor, Bean and Whitaker Mortgage Corporation in record of the United States Bankruptcy Court in the District of Middle Florida.

5. Allow the Debtors to amend their bankruptcy case to apply a priority claim in regard to the administrative cost for preventing further fraud by creditors.

Respectfully submitted,
Scott Allan Schledwitz
Roxanne Johnson Schledwitz
Plaintiffs

This 14th Day of February, 2011


Scott Allan Schledwitz
5314 Lemon Twist Lane
Windermere, FL 34786
(407)347-8641
Schledwitz@cfl.rr.com

CERTIFICATE OF SERVICE

I hereby certify that on **February 14, 2011**, a copy of the foregoing Creditor's Objection to Relief Requested in Debtors' Objection to Transfer of Claim was served electronically or by regular United States mail to:

Gretchen D. Holland
3 Caledon Court, Suite A
Greenville, SC 29615
gdh@upstate13.com

George J. Conits
Post Office Box 10067
Greenville, SC 29603
george.conits@usdoj.gov

Claims Register and mailing matrix

/s/ Scott Schledwitz
Scott Schledwitz, Pro Se

FILED

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

11 FEB 22 AM 11:41

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Scott Allan Schledwitz and
Roxanne Johnson Schledwitz,

Debtors

CASE NO: 3:09-bk-07047-HB
CHAPTER: 13OBJECTION TO TRANSFER OF CLAIM AND
COMPLAINT AGAINST THE UNITED STATES
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3. In the Debtors Relief Motion in Middle Florida, the Trustee should have filed the Motion as the party of interest in the Debtors' estate. Debtors incurred significant financial burdens to the estate in order to pursue the Violation of Automatic Stay and Creditor Misconduct. It is the Trustee's obligation to the creditors and debtors to not allow the estate to suffer financial burden due to the willful fraudulent violations of one creditor against the Debtors. In the very least, the Trustee could have assumed a passive role and attended via telephonic means any hearings regarding the Debtors' Motion for Relief.
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5. Based on the Trustee's action in transferring the claim with no allowance of due process for debtors and creditors related to the Debtors' case, the Trustee's inaction in administering the estate fairly and guarding it from fraud, and the Trustee's failure as an officer of the Court to pursuing as a party of interest in the Debtors' actions against TBW in the Creditor's Bankruptcy proceedings, the Debtors conclude that the Trustee violated against the

Debtors' 42 U.S.C. § 1983. The accumulation of the above items represent a clear violation of the Debtors' rights to Due Process.

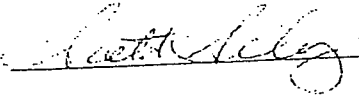
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5. Allow the Debtors to amend their bankruptcy case to apply a priority claim in regard to the administrative cost for preventing further fraud by creditors.

Respectfully submitted,
Scott Allan Schledwitz
Roxanne Johnson Schledwitz
Plaintiffs

This 14th Day of February, 2011


Scott Allan Schledwitz
5314 Lemon Twist Lane
Windermere, FL 34786
(407)347-8641
Schledwitz@cfl.rr.com

CERTIFICATE OF SERVICE

I hereby certify that on **February 14, 2011**, a copy of the foregoing Creditor's Objection to Relief Requested in Debtors' Objection to Transfer of Claim was served electronically or by regular United States mail to:

Gretchen D. Holland
3 Caledon Court, Suite A
Greenville, SC 29615
gdh@upstate13.com

George J. Conits
Post Office Box 10067
Greenville, SC 29603
george.conits@usdoj.gov

Claims Register and mailing matrix

/s/ Scott Schledwitz
Scott Schledwitz, Pro Se

The Honorable Gordon G. Cooper
Master-In-Equity
Spartanburg County, State of South Carolina

November 18, 2013

Dear Judge Cooper,

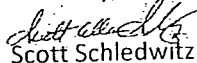
I have received communication from Sharon Winstead that the Plaintiff attorney does not wish to continue this scheduled hearing on the Motion for Summary Judgment – Case # 2012-CP-420-897. I cannot attend this scheduled hearing as I work in another state. I have aggressively attempted to hire an attorney, but given the nature of this case, I have yet to find one that will take it, including two that came through the Bar Referral program.

The Plaintiff's filings are flawed; they have not demonstrated the chain of assignment from Taylor, Bean and Whitaker through MERS. They also claim that Fair Debt practices have been followed in their filing but they continue to charge an egregiously larger interest rate than what is written in the Adjustable Rate Rider in the mortgage. The incorrect interest rate has been applied even after filing the original complaint in this court (proof of this is attached to this email). The incorrect interest rate based on the wrong Index Rate has been occurring since Taylor, Bean and Whitaker was servicing the mortgages. This also would show that the amount the Plaintiff is requesting in Summary Judgment is incorrect as well. Finally, the Defendants have contended that the Plaintiff holds no right to foreclose in both this court as well as the Federal Bankruptcy Court of South Carolina and they failed to prove as such in the Bankruptcy Court hearing on this matter on March 24, 2011, where the validity of their transferred claim was challenged and suspended by the court, with all payments stopped to the Plaintiff for the remainder of the Defendants' bankruptcy case.

We ask that you re-schedule this hearing to allow evidence to be presented by the defense. A proper hearing will allow both parties in this dispute opportunity to present facts from which the court can make a ruling. In April, 2011, you set aside your signed order on my Motion for Quiet Title in part because of the complexity of the Taylor, Bean and Whitaker Bankruptcy. We ask that you make the same consideration in this case. This is a complex matter, and while procedurally, both the Plaintiff and Defendants have filed appropriately in their respective motions for Summary Judgment and Quiet Title, not all matters can be decided through linear processes.

We pray that you will consider the Defendants' objections and their Request for Continuance.

Sincerely,


Scott Schledwitz

13118 Sunkiss Loop
Windermere, FL 34786
(407)347-8641
schledwitz@cfl.rr.com

**BAYVIEW**

Loan Servicing

5/8/2012

SCOTT SCHLEDWITZ
5314 LEMON TWIST LN

WINDERMERE, FL, 34788-3168

NOTICE OF RATE ADJUSTMENT

Re: Loan ID: 0000344080

Dear Mortgagor (s):

This is notification of an interest rate adjustment to your loan. This adjustment is pursuant to the terms of your loan contract. It is not a waiver of any of the mortgage holder's rights. The mortgage holder reserves all its rights under the terms of the loan contract, including, but not limited to, its rights should you currently be in default.

INTEREST RATE INFORMATION:

CURRENT INDEX RATE:	3.2500 %	NEW INDEX RATE:	3.2500 %
MARGIN:	6.2500 %	MARGIN:	6.2500 %
CURRENT INT RATE:	9.5000 %	NEW INT RATE:	9.5000 %
CURRENT P & I:	\$1,334.53	NEW P & I:	\$1,334.53
CURRENT TOTAL PYMT:	\$1,334.53	NEW TOTAL PYMT:	\$1,334.53

Your payment is not due to be adjusted at this time. The change in your rate is calculated by adding the margin agreed upon in your note to the new index. The calculated interest rate is then rounded according to the terms of your note to arrive at the new rate shown above.

LOAN ACCOUNT INFORMATION:

INTEREST RATE CHANGE DATE:	6/1/2012
P & I PAYMENT CHANGE DATE:	7/1/2012
PROJECTED UNPAID PRINCIPAL BALANCE:	\$150,331.43

Your new interest rate and your new principal and interest payment will continue to be in effect until your next scheduled payment change date.

NEXT INT RATE CHG DATE: 12/1/2012

NEXT P&I CHG DATE: 1/1/2013

If you have any questions regarding this notice, please call Elaine Mitchell, Customer Service Manager or the Special Loans Department at (800) 457-5105 between 8:00 a.m. and 7:00 p.m., (Eastern Time), Monday through Friday.

Sincerely,

Special Loans Department

4425 Ponce de Leon Blvd. / 5th Floor / Coral Gables, FL 33146 / Tel: (800) 457-5105

COPY

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

Scott Allan Schledwitz
Roxanne Johnson Schledwitz

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

-CP-

vs.

Taylor, Bean and Whitaker Mortgage
Corporation
John Doe

Defendant(s)

(Please Print)

Submitted By: Scott Allan Schledwitz, Pro Se
Address: 5314 Lemon Twist Lane
Windermere, FL 34786

SC Bar #:

Telephone #: 407-347-8641

Fax #:

Other:

E-mail: schledwitz@cfl.rr.com

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

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

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

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

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

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

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

- Appeals**
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOJ (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

- Special/Complex /Other**
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature:

Date:

19

2010-CP-42-6734

Y.

**Taylor, Bean and Whitaker
Mortgage Corporation
John Doe
Defendants**

FILED
CLERK OF COURT
PARANBURG COURT
2010 DEC 28 AM 10:42
M. HOPE BLACKLEY

NOW, upon motion by the Plaintiff,

NOW, upon motion by the Plaintiff,
IT IS ORDERED, that this case is referred to Gordon G. Cooper,
Master In Equity for Spartanburg County, who, pursuant to Rule 53(b) SCRPC,
shall exercise all power and authority with a circuit judge sitting without a jury
would have, including but not limited to, making findings of fact and conclusions
of law; directing entry of final judgment in this action under Rule 53(b) SCRPC; to
order a sale on any day, to hear any issues, including motions, after sale or
judgment; issuing any and all Orders and Supplemental Orders; Writs of
Assistance, and hearing any issues involving possession and/or removal of
property and appraisal proceedings under Section 29-3-360, et. Seq. of the South
Carolina Code. Pursuant to Rule 53(b) SCRPC, any appeal from the final judgment

Masters Cost Paid
Date 12-28-10
\$ 125.00

entered by the Master In Equity shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

M. Hope Blackley / Pat Dotantas
~~Presiding Judge~~ Spartanburg County
Clk of Court

WE SO MOVE:

Scott Allan Schledwitz Dated: December 23, 2010
Plaintiff
Scott Allan Schledwitz, Pro Se
5314 Lemon Twist Lane
Windermere, FL 34786
(407)347-8641
Schledwitz@cfl.rr.com

FILED
CLERK OF DISTRICT COURT
SPARTANBURG COUNTY
2010 DEC 28 AM 10:42
M. HOPE BLACKLEY

**CIRCUIT COURT OF THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG**

Scott Allan Schledwitz
Roxanne Johnson Schledwitz
Plaintiffs,

) COMPLAINT TO
) QUIET TITLE TO
) REAL PROPERTY
)
)
)
)
)
)
)
)

v.

Taylor, Bean and Whitaker
Mortgage Corporation
John Doe
Defendants

2019-02-42-6734

Plaintiff complains and for causes of action alleges as follows:

Taylor, Bean and Whitaker Mortgage Corporation is, and at all times herein mentioned, a Corporation organized and existing under the laws of the State of South Carolina with principle offices located at 1417 North Magnolia in the City of Ocala, County of Marion, Postal Code 34475, State of Florida.

Plaintiffs are ignorant of the true names and capacities of defendants sued herein as DOEs I through X, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

Plaintiffs are informed and believe and thereon alleges that, at all times herein mentioned, each of the defendants sued herein was the agent and employee of each of the remaining defendants and was at all times acting within the purpose and scope of such agency and employment.

Plaintiff are and at all times herein mentioned the owner and/or entitled to possession of the property located at

423 South Fairview Avenue Extension, Spartanburg, South Carolina

County of Spartanburg Plat Book Number 84-M, Page Number 962

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 DEC 22 PM 12:10
M. HOPE BLANCHETT

Plaintiffs are informed and believe and thereupon allege that Defendants and each of them, claim an interest in the property adverse to plaintiff herein. However, the claim of said Defendant is without any right whatsoever, and said Defendant has no legal or equitable right, claim, or interest in said property.

Plaintiffs therefore seek a declaration that the title to the subject property is vested in plaintiffs alone and that the defendant herein, and each of them, be declared to have no estate, right, lien, title or interest in the subject property and that said defendant Taylor, Bean and Whitaker Mortgage Corporation, and each of them, be forever enjoined from asserting any estate, right, title or interest in the subject property adverse to plaintiff herein.

WHEREFORE, plaintiffs pray judgment against defendants and each of them, as follows:

For an order compelling said Defendant Taylor, Bean and Whitaker Mortgage Corporation, and Defendant John Doe, and each of them, to transfer legal title and possession of the subject property to Plaintiffs herein;

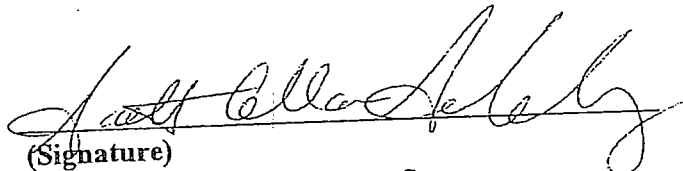
For a declaration and determination that Plaintiffs are the rightful holder of title to the property and that Defendants herein, and each of them, be declared to have no estate, right, title or interest in said property;

For a judgment forever enjoining said defendants, and each of them, from claiming any estate, right, title or interest in the subject property;

For such other and further relief as the court may deem proper.

DATED:

December 17, 2010



(Signature)

Scott Allan Schledwitz, Pro Se
5314 Lemon Twist Lane
Windermere, FL 34786
(407)347-8641
Schledwitz@cfl.rr.com

M. HOPKINS

2010 DEC 22 PM 12:10

CLERK OF COURT
JANUARY 11 2011

745.0
000004-M PG 962
BLOCK MAP REFERENCE No. 7-13-13-016.00
ADDRESS OF GRANTEE: 423 S. Fairview Avenue Ext.
Spartanburg, S.C. 29302

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that C. Blease Graham, III, in consideration of Two Hundred Thousand and No/100 Dollars (\$200,000.00), the receipt of which is hereby acknowledged, has (have) granted, bargained, sold, and released, and by these presents, do(es) grant, bargain, sell and release unto Scott A. Schledwitz and Roxanne Johnson Schledwitz, their heirs and assigns forever:

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. 25, containing 0.21 acres, more or less and fronting on S. Fairview Avenue Ext., as shown on survey prepared for Phyllis P. McElhaney, dated October 9, 1991 and recorded in Plat Book 114, Page 364, RMC Office for Spartanburg County, S.C. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

This being the same property conveyed to C. Blease Graham, III by deed of Lynn Workman Jackson dated February 15, 2001 and recorded in Deed Book 73-K, Page 518, RMC Office for Spartanburg County, S.C.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining;

TO HAVE AND TO HOLD all and singular the said premises before-mentioned unto the said Grantee(s), and the Grantee's(s') heirs (or successors) and assigns forever. And the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantor's(s') heirs (or successors), executors and administrators to the warrant and forever defend all and singular the said premises unto the Grantee(s) and the Grantee's(s') heirs (or successors) and assigns, against the Grantor(s) and the Grantor's(s') heirs (or successors) and against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to restrictions and easements of record, if any.

WITNESS the Grantor's(s') hand(s) and seal(s) this 23rd day of November 2005.

SIGNED, Sealed and Delivered in the Presence of:

[Signature]

C. Blease Graham, III by Marcia L. Kirby, POA (SEAL)
C. Blease Graham, III by Marcia L. Kirby, POA
as recorded in Book _____, Page _____

[Signature]

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

ACKNOWLEDGMENT

I, Whitney S. Bess, a Notary Public for the State of South Carolina, do hereby certify that C. Blease Graham, III by Marcia L. Kirby as POA, personally appeared before me and acknowledged the due execution of the foregoing deed this 23rd day of November, 2005.

SWORN to before me this 23rd day of November, 2005.

[Signature] (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 6-30-07

DEE-2005-62324
Recorded 1 Pages on 11/30/2005 11:20:32 AM
Recording Fee: \$10.00 Documentary Stamps: \$740.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



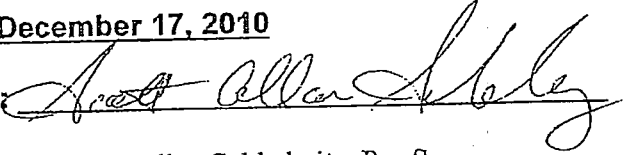
2005 DEC 22 PM 12:10
CLERK OF COURT
SPARTANBURG COUNTY

VERIFICATION

I, Scott Allan Schledwitz, am a Plaintiff in the above-entitled action. I have read the foregoing *Quiet Title Action* and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Spartanburg, South Carolina.

DATED: December 17, 2010

SIGNED: 

Scott Allan Schledwitz, Pro Se
5314 Lemon Twist Lane
Windermere, FL 34786
(407)347-8641
Schledwitz@cfl.rr.com

CLERK OF COURT
SPARTANBURG COUNTY
2010 DEC 22 PM 12:10
M. HOPE BEACHLEY

STATE OF SOUTH CAROLINA,
COUNTY OF SPARTANBURG

Scott Allan Schledwitz
Roxanne Johnson Schledwitz

Plaintiff,

vs.

Taylor, Bean and Whitaker Mortgage
Corporation
John Doe

Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

2010-CP-42-6734

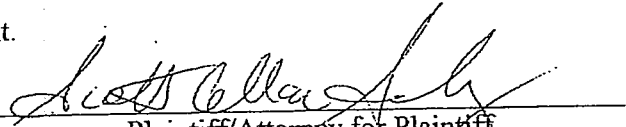
FILE NO.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Spartanburg, South Carolina

Dated: December 17, 2010


Plaintiff/Attorney for Plaintiff

Address: Scott Allan Schledwitz
5314 Lemon Twist Lane
Windermere, FL 34786
(407)347-8641
schledwitz@cfl.rr.com

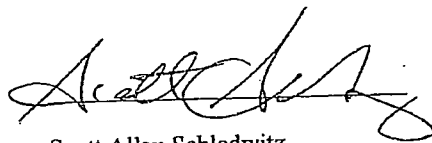
SCCA 401 (5/02)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 DEC 22 PM 12:10
M. HOPE BLANCHARD

2010 CP-42-6734

CERTIFICATE OF SERVICE

I CERTIFY that a copy of Scott Allan Schledwitz Action for Quiet Title including the attachments has been furnished either by electronic mail, first class mail on December 17, 2010, to: Taylor, Bean and Whitaker Mortgage Corp., Debtor, 315 N.E. 14th Street, Ocala, FL 34470; Bayview Lending Services, 4425 Ponce de Leon Avenue, Coral Gables, FL 33146; and John Doe(s) by publication on December 17, 2010; December 18, 2010 and December 20, 2010.



Scott Allan Schledwitz

5314 Lemon Twist Lane

Windermere, FL 34786

(407)347-8641

schledwitz@cfl.rr.com

roxanne.schledwitz@cfl.rr.com

FILED
CLERK OF COURT
DEPARTMENT 190070
2010 DEC 22 PM 12:10
FL HOTE BUREAU

Common Pleas
Clerk : M Hope Blackley
Spartanburg County
Spartanburg, SC 29304
(864) 596-2591

Received From: Schledwitz, Scott Allan

Date : 12/22/2010
RECEIPT #: 39669
Clerk: nbishop

Paying for: Self

Transaction Type: Payment
Payment Type: Cash \$150.00

Reference #:
Comment:

Total Paid \$150.00

Total Received \$150.00
Change Due \$0.00

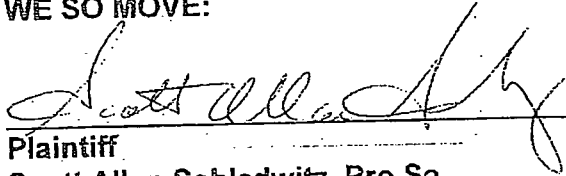
Case #	Caption	Previous Balance	Amount Paid	Balance Due	S/T
2010CP4206734	Scott Allan Schledwitz VS Bean Taylor	\$150.00	\$150.00	\$0.00	499

Total Cases: 1

\$150.00 \$150.00 \$0.00

Page 89 of 177

WE SO MOVE:



Dated: April 15, 2011

Plaintiff

Scott Allan Schledwitz, Pro Se

5314 Lemon Twist Lane

Windermere, FL 34786

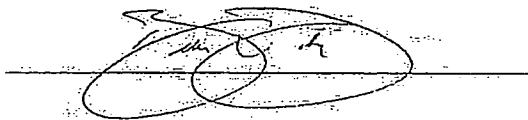
(407)347-8641

Schledwitz@cfl.rr.com

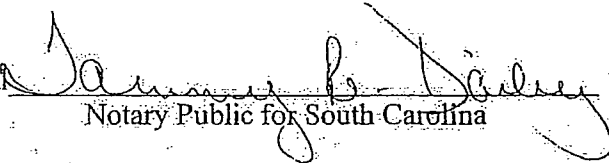
STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Personally appeared before me B. D. Dailey, Jr., who, after being duly sworn, according to law, deposes and says that he is the Editor of The Spartan Weekly News, a newspaper of general circulation published in Spartanburg, State and County aforesaid, and that the attached advertisement was published in The Spartan Weekly News once a week for 3 week(s) in the following issue(s):

March 31, 2011
April 7, 14, 2011



Sworn to before me this 14th day of April, 2011

Seal 
Notary Public for South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 APR 19 PM 2:39
M. HOPE BLACKLEY

LEGAL NOTICE

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
Case No. 2010-CP-42-06734
Scott Allan Schledwitz,
Roxanne Johnson Schledwitz
Plaintiffs, vs. Taylor,
Bean and Whitaker Mortgage
Corporation, John Doe,
Defendants

Complaint to Quiet Title
to Real Property

Plaintiff complains, and
for causes of action
alleges as follows:

1. Defendant Taylor, Bean
and Whitaker Mortgage
Corporation, is, and at all
times herein mentioned
was, organized and exist-
ing under the laws of the
State of Florida, with
principal offices in the
City of Ocala, County of
Marion, State of Florida.

2. Defendant John Does
are, and at all times here-
in mentioned, were resi-
dents of the City of Spar-
tanburg, County of Spar-
tanburg in the State of
South Carolina.

3. Plaintiffs Scott Allan
Schledwitz and Roxanne
Johnson Schledwitz are
ignorant of the true names
and capacities of defen-
dants sued herein as DOES I
through X, inclusive, and
therefore, sues these
defendants by such ficti-
tious names. Plaintiffs
will amend this complaint
to allege their true names
and capacities when ascer-
tained.

4. Plaintiff are informed
and believe, and thereon
allege that, at all times
herein mentioned, each of
the defendants sued herein
was the agent and employee
of each of the remaining
defendants and was at all
times acting within the
purpose and scope of such
agency and employment.

5. Plaintiff are, and at
all times herein mentioned
the owner and/or entitled
to possession of the prop-
erty located at 423 South
Fairview Ave. Extension,
Spartanburg, South Caro-
lina 29302.

6. Plaintiff are informed
and believe and thereupon
allege that, and each of
them, claim an interest in
the property adverse to
plaintiff herein. However,
the claim of said Defen-
dants are without any right
whatsoever, and said
defendants have not legal
or equitable right claim,

or interest in said prop-
erty.

7. Plaintiffs therefore
seek a declaration that the
title to the subject prop-
erty is vested in plain-
tiffs alone and that the
defendants herein, and
each of them, be declared
to have no estate, right,
title or interest in the
subject property and that
said defendants, and each
of them, be forever
enjoined from asserting
any estate, right, title or
interest in the subject
property adverse to plain-
tiff herein.

WHEREFORE, plaintiffs
pray judgment against
defendants and each of
them, as follows:

1. For an order compelling
said Defendants, and each
of them, to transfer legal
title and possession of the
subject property to Plain-
tiffs herein.

2. For a declaration and
determination that Plain-
tiffs are the rightful
holder of title to the
property and that Defen-
dants herein, and each of
them, be declared to have
no estate, right, title or
interest in said property.

3. For a judgment forever
enjoining said defendants,
and each of them, from
claiming any estate,
right, title or interest in
the subject property.

4. For costs of suit here-
in incurred.

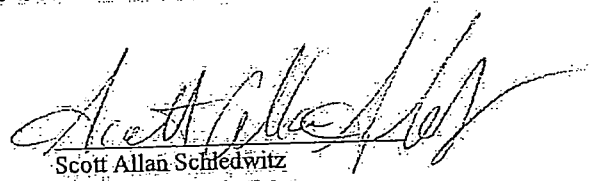
5. For such other and fur-
ther relief as the court
may deem proper.

DATED: March 24, 2011
Scott Allan Schledwitz, Pro Se
5314 Lemor Twist Lane
Windermere, FL 34786
schledwitz@cfl.rr.com
3-31, 4-7, 14

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 APR 19 PM 2:39
M. HOPE BLACKLEY

CERTIFICATE OF SERVICE

I CERTIFY that a copy of Scott Allan Schledwitz Motion for Relief from Stay including the attachments has been furnished either by electronic or first class mail on March 28, 2011, to: Taylor, Bean and Whitaker Mortgage Corp., Debtor, 315 N.E. 14th Street, Ocala, FL 34470 and 4901 Vineland Road, Ste. 120 Orlando, FL 32811.



Scott Allan Schledwitz
5314 Lemon Twist Lane
Windermere, FL 34786
(407)347-8641
schledwitz@cfl.rr.com
roxanne.schledwitz@cfl.rr.com

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 APR 19 PM 2:39
M. HOPE BLACKLEY

COPY

CIVIL CASE NUMBER
2010CP4206734

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
SCOTT ALLAN SCHLEDWITZ)
ROXANNE JOHNSON SCHLEDWITZ)
PLAINTIFF(S))
)
VS.)
)
TAYLOR, BEAN AND WHITKER)
MORTGAGE CORPORATION)
JOHN DOE)
DEFENDANT(S))

FINAL ORDER FOR SUIT
TO QUIET TITLE

THIS MATTER came before me on the day of pursuant to Sections 15-13-10, et seq., of the South Carolina Code of laws, 1976, for the purpose of quieting title to a parcel of land located in Spartanburg County. The real property which is the subject of this lawsuit is more fully described as follow: The following pleadings were filed in this office of the Clerk of Court:

1. Summons and Compliant
2. Lis Pendens
3. Notice Nisi
4. Affidavit of Publication
5. Petition for Default and Order of Default and Reference with authority of the Master to issue a final Decree;

ALL of the Defendants in the above captioned matter were served by first class mail or publication for three consecutive weeks. The record further contains no responsive pleadings.

Upon hearing this matter, the Court finds the following salient facts:

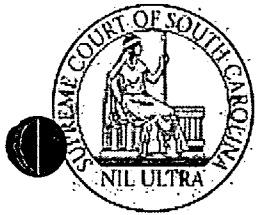
1. The property above-described is a part of acres tract of land that was conveyed on and recorded in Book 3565 at Page 239 and Page 255 in the R.M.C. Office for Spartanburg County.
2. The Plaintiff herein is the owner of the subject tract in land and holds the said title in fee simple and all others should be barred of all right, title, estate, interest in or lien upon the said property. There are no outstanding liens or encumbrances on this property. Therefore, based upon the above findings of fact, it is hereby ORDERED that the subject tract of land identified hereinabove is owned in fee simple by the Plaintiff.

And it is further ORDERED that the Master in Equity shall issue a confirmatory deed to the Plaintiff for the subject property.
AND IT IS SO ORDERED!

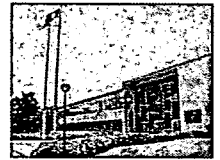
THE HONORABLE GORDON G. COOPER
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 APR 19 PM 4:08
MHOPE BLACKLEY

28



Spartanburg County Seventh Judicial Circuit Public Index



[Spartanburg County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

Bayview Loan Servicing Llc VS Scott A Schledwitz , defendant, et al

Case Number:	2012CP4200899	Court Agency:	Common Pleas	Filed Date:	02/24/2012
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Referred To Master	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
South Carolina Department Of Revenue	Service/Certificate Of Service	Filing		01/22/2014-09:47		
United States Of America, By & Thru Agency Internal Revenue Svs	Service/Certificate Of Service	Filing		01/22/2014-09:47		
Mortgage Electronic Registration Systems Inc, As Nominee Taylor Bean & Whitaker	Service/Certificate Of Service	Filing		01/22/2014-09:47		
Schledwitz, Roxanne J Aka	Service/Certificate Of Service	Filing		01/22/2014-09:47		
Schledwitz, Scott A	Service/Certificate Of Service	Filing		01/22/2014-09:47		
Bayview Loan Servicing Llc	Waiver/Waiver of Deficiency	Filing		01/22/2014-09:41		
Schledwitz, Scott A	Notice/Notice of Appeal	Filing		12/31/2013-16:08		
South Carolina Department Of Revenue	Service/Certificate Of Service	Filing		12/20/2013-12:33		
Taylor Bean & Whitaker Mortgage Corp	Service/Certificate Of Service	Filing		12/20/2013-12:33		
Schledwitz, Scott A	Service/Certificate Of Service	Filing		12/20/2013-12:33		
Schledwitz, Roxanne J Aka	Service/Certificate Of Service	Filing		12/20/2013-12:33		

Page 95 of 177

Internal Revenue Service	Service/Certificate Of Service	Filing		12/20/2013-12:33		
Schledwitz, Roxanne Johnson	Service/Certificate Of Service	Filing		12/20/2013-12:33		
United States Of America, By & Thru Agency Internal Revenue Svs	Service/Certificate Of Service	Filing		12/20/2013-12:33		
Mortgage Electronic Registration Systems Inc, As Nomiee Taylor Bean & Whitaker	Service/Certificate Of Service	Filing		12/20/2013-12:33		
Schledwitz, Scott A	Service/Certificate Of Service	Filing		12/12/2013-10:13		
Schledwitz, Scott A	Motion Cancel/Postpone Sale, Set Aside Judgmt & Req for	Filing		12/12/2013-10:10		
Bayview Loan Servicing Llc	Filing of Exhibits	Filing		12/03/2013-11:40		
Bayview Loan Servicing Llc	Affidavit/Attorney Fees	Filing		12/03/2013-11:40		
Bayview Loan Servicing Llc	Statement of Costs	Filing		12/03/2013-11:39		
Bayview Loan Servicing Llc	Notice/Foreclosure Sale	Filing		12/03/2013-11:39		
Bayview Loan Servicing Llc	Master/Order Of Foreclosure & Sale	Order		12/03/2013-11:39		
Bayview Loan Servicing Llc	Order/Form 4/Property to be Sold at Public Sale	Order		12/03/2013-11:39		
Bayview Loan Servicing Llc	Transcript/Transcript of Testimony	Filing		11/20/2013-09:57		
Bayview Loan Servicing Llc	Service/Certificate Of Service	Filing		11/18/2013-14:58		
Schledwitz, Scott A	Request/Request for Continuance	Filing		11/18/2013-14:57		
Schledwitz, Roxanne J Aka	Request/Request for Continuance	Filing		11/18/2013-14:57		
Schledwitz, Scott A	Service/Certificate Of Mailing	Filing		11/08/2013-16:14		
United States Of America, By & Thru Agency Internal Revenue Svs	Service/Certificate Of Mailing	Filing		11/08/2013-16:14		
Schledwitz, Roxanne J Aka	Service/Certificate Of Mailing	Filing		11/08/2013-16:14		
Mortgage Electronic Registration Systems Inc, As Nomiee Taylor Bean & Whitaker	Service/Certificate Of Mailing	Filing		11/08/2013-16:14		
South Carolina Department Of Revenue	Service/Certificate Of Mailing	Filing		11/08/2013-16:14		
Schledwitz,	Service/Certificate Of	Filing		11/08/2013-		

Roxanne Johnson	Mailing			16:14		
Internal Revenue Service	Service/Certificate Of Mailing	Filing		11/08/2013-16:14		
Bayview Loan Servicing Llc	Notice/Notice of Hearing	Filing		11/08/2013-16:14		
Schledwitz, Scott A	Verification	Filing		11/08/2013-15:20		
Schledwitz, Scott A	Objection to Foreclosure of Real Estate Mortgage	Filing		11/08/2013-15:20		
Schledwitz, Roxanne Johnson	Objection to Foreclosure of Real Estate Mortgage	Filing		11/08/2013-15:20		
Bayview Loan Servicing Llc	Affidavit/Non Military Service	Filing		10/14/2013-11:42		
Bayview Loan Servicing Llc	Notice/Notice of Default	Filing		10/14/2013-11:41		
Bayview Loan Servicing Llc	Order/Referred to Master	Order		10/14/2013-11:41		
Bayview Loan Servicing Llc	Order/Order Filing Fee	Filing		10/14/2013-11:41		
Carey, Heidi B.	Roster/Notice of Case Roster Publication Sent	Action		09/11/2013-15:07		
Kimpson, Milton Gary	Roster/Notice of Case Roster Publication Sent	Action		09/11/2013-15:07		
Conits, George John	Roster/Notice of Case Roster Publication Sent	Action		09/11/2013-15:07		
Conits, George John	Roster/Notice of Case Roster Publication Sent	Action		09/11/2013-14:54		
Kimpson, Milton Gary	Roster/Notice of Case Roster Publication Sent	Action		09/11/2013-14:54		
Carey, Heidi B.	Roster/Notice of Case Roster Publication Sent	Action		09/11/2013-14:54		
Bayview Loan Servicing Llc	Letter/Letter	Filing		07/17/2013-13:37		
Bayview Loan Servicing Llc	Affidavit - Non jury	Filing		07/17/2013-13:37		
Bayview Loan Servicing Llc	Service/Certificate Of Service	Filing		07/17/2013-13:36		
Bayview Loan Servicing Llc	Motion/Summary Judgment	Motion		07/17/2013-13:35	10/14/2013-13:35	
Bayview Loan Servicing Llc	Service/Certificate Of Service	Filing		04/09/2012-00:00		
Bayview Loan Servicing Llc	Answer/Answer	Filing		04/09/2012-00:00		
Bayview Loan Servicing Llc	Service/Certificate Of Service	Filing		03/22/2012-08:00		
Schledwitz, Scott A	Objection to Foreclosure of Real Estate Mortgage	Filing		03/22/2012-07:59		
South Carolina Department Of Revenue	Request for Notice of Surplus Funds	Filing		03/08/2012-15:47		
South Carolina Department Of Revenue	Consent to Reference	Filing		03/08/2012-15:47		

South Carolina Department Of Revenue	Answer / Answer	Filing		03/08/2012-15:47		
Bayview Loan Servicing Llc	Service / Certificate Of Service	Filing		03/08/2012-15:47		
Schledwitz, Scott A	Service / Affidavit Of Service	Filing		03/08/2012-00:00		
Schledwitz, Roxanne J Aka	Service / Affidavit Of Service	Filing		03/08/2012-00:00		
Schledwitz, Roxanne Johnson	Service / Affidavit Of Service	Filing		03/08/2012-00:00		
Bayview Loan Servicing Llc	Verification / Verified	Filing		03/08/2012-10:25		
Bayview Loan Servicing Llc	Certification Of Exemption From Admin Order	Filing		03/02/2012-00:00		
Schledwitz, Scott A	Certificate / Certificate Of Mailing	Filing		03/02/2012-00:00		
Schledwitz, Roxanne J Aka	Certificate / Certificate Of Mailing	Filing		03/02/2012-00:00		
Schledwitz, Roxanne Johnson	Certificate / Certificate Of Mailing	Filing		03/02/2012-00:00		
Mortgage Electronic Registration Systems Inc, As Nomiee Taylor Bean & Whitaker	Certificate / Certificate Of Mailing	Filing		03/02/2012-00:00		
United States Of America, By & Thru Agency Internal Revenue Svs	Certificate / Certificate Of Mailing	Filing		03/02/2012-00:00		
South Carolina Department Of Revenue	Certificate / Certificate Of Mailing	Filing		03/02/2012-00:00		
Mortgage Electronic Registration Systems Inc, As Nomiee Taylor Bean & Whitaker	Service / Affidavit Of Service	Filing		03/01/2012-00:00		
United States Of America, By & Thru Agency Internal Revenue Svs	Service / Affidavit Of Service As To Attorney General	Filing		02/28/2012-00:00		
South Carolina Department Of Revenue	Service / Affidavit Of Service	Filing		02/28/2012-00:00		
South Carolina Department Of Revenue	Service / Affidavit Of Service As To Attorney General	Filing		02/28/2012-00:00		
Schledwitz, Scott A	Service / Affidavit of Non Service	Filing		02/27/2012-00:00		
Schledwitz, Roxanne J Aka	Service / Affidavit of Non Service	Filing		02/27/2012-00:00		
Schledwitz, Roxanne Johnson	Service / Affidavit of Non Service	Filing		02/27/2012-00:00		
Bayview Loan	Lis Pendens Filed	Filing		02/24/2012-		

Servicing Llc				00:00		
Bayview Loan Servicing Llc	Filing/Image of Summons & Complaint	Filing		02/24/2012-00:00		
Bayview Loan Servicing Llc	Filing/Image of Exhibits A thru C	Filing		02/24/2012-00:00		
Bayview Loan Servicing Llc	Summons & Complaint	Filing		02/24/2012-14:01		
Bayview Loan Servicing Llc	Prop Des 7 13 13 016 00/423 S Fairview Ave Exten Spartanburg	Filing		02/24/2012-13:56		
Bayview Loan Servicing Llc	ADR/Alternative Dispute Resolution (Workflow)	Filing				

FORM 7
PROOF OF SERVICE OF AN AMENDED RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
MASTERS AND SPECIAL REFEREES

Gordon G. Cooper, MASTER-IN-EQUITY

Case No. 2012-CP-42-0899

Bayview Loan Servicing,
L.L.C.

Respondent,

v.

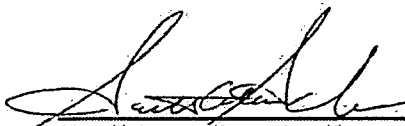
Scott Allan Schledwitz;
Roxanne Johnson Schledwitz

Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Bayview Loan Servicing, L.L.C. by depositing a copy of it by United States Postal Service, postage prepaid, on May 10, 2015, addressed to his attorney of record, Heidi Carey, Riley, Pope and Laney, LLC, 2838 Devine Street, Columbia, SC 29205.

May 10, 2015



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
MASTERS AND SPECIAL REFEREES

Gordon G. Cooper, MASTER-IN-EQUITY

Case No. 2012-CP-42-0899

Bayview Loan Servicing,
L.L.C.

Respondent,

v.

Scott A. Schledwitz, Roxanne J. Schledwitz a/k/a
Roxanne Johnson Schledwitz, Mortgage Electronic
Registration Systems, Inc. (MERS) as nominee for
Taylor, Bean & Whitaker Mortgage Corp., The United
States of America, by and through its agency, the Internal
Revenue Service, and The South Carolina Department of
Revenue, Defendants,

Appellant.

Of whom Scott A. Schledwitz and Roxanne Johnson
Schledwitz are the Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

March 3, 2015



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FORM 7
PROOF OF SERVICE
FINAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
MASTERS AND SPECIAL REFEREES

Gordon G. Cooper, MASTER-IN-EQUITY

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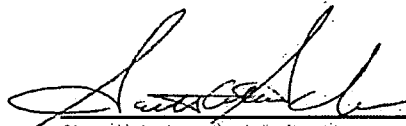
Scott Allan Schledwitz;
Roxanne Johnson Schledwitz

Appellant.

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant on Bayview Loan Servicing, L.L.C. by depositing a copy of it by United States Postal Service, postage prepaid, on July 17, 2015, addressed to the attorneys of record, Damon Christian Wlodarczyk and Heidi Carey, Riley, Pope and Laney, LLC, 2838 Devine Street, Columbia, SC 29205.

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FINAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
MASTERS AND SPECIAL REFEREES

Gordon G. Cooper, MASTER-IN-EQUITY

Case No. 2012-CP-42-0899

Bayview Loan Servicing, L.L.C. Respondent,

v.

Scott A. Schledwitz, Roxanne J. Schledwitz a/k/a Roxanne Johnson Schledwitz,
Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Taylor,
Bean & Whitaker Mortgage Corp., The United States of America, by and through
its agency, the Internal Revenue Service, and The South Carolina Department of
Revenue, Defendants,

Of whom Scott A. Schledwitz and Roxanne Johnson Schledwitz are the Appellants.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities	i
Statement of Issues on Appeal	2
Statement of the Case	3
Facts	4
Arguments	
1. BECAUSE RESPONDENT FAILED TO PROVIDE EVIDENCE IT HAD STANDING TO FORECLOSE, THEREFORE, IT HAS NO RIGHT TO FORECLOSE ON THE APPELLANT PROPERTY	10
2. BECAUSE RESPONDENT FAILED TO PROVIDE ASSIGNMENT OF MORTGAGE PRIOR TO ITS LIS PENS FILING AND NO AMENDMENT THEREAFTER, THE RESPONDENT IS NOT INTITLED TO A SUMMARY JUDGMENT	14
3. MASTER-IN-EQUITY ERRED IN DENYING APPELLANTS' TIMELY AND REPEATED REQUEST FOR A TRIAL TO HEAR ARGUMENTS, TESTIMONY AND EVIDENCE	15
Conclusion	20

TABLE OF AUTHORITIES

CASES

Partain v. Upstate Automotive Group, 386 S.C. 488, 689 S.E.2d 602 (2010)	18
Quail Hill, LLC v. Cnty. of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010)	19

STATUTES

UCC Laws § 9-406(c)(h)	11
UCC § 3-305(a)(ii)(iii)	13
South Carolina Code of Law SECTION 37-22-190(11)	13
UCC Laws § 3-407(a)	15

OTHER AUTHORITIES

South Carolina Civil Court Procedure Rule 44	10
South Carolina Civil Procedure Rule 38	15
South Carolina Civil Procedure Rule 71	17
South Carolina Civil Procedure Rule 56	18

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN ALLOWING THE RESPONDENT'S LIS PENS AND COMPLAINT FILING PRIOR TO A PROPER ASSIGNMENT OF MORTGAGE?
2. DID THE RESPONDENT PROVIDE EVIDENCE PROVING IT HAD STANDING TO FORECLOSE?
3. DID THE MASTER-IN-EQUITY ERR IN FAILING TO REFER THIS CASE FOR A JURY TRIAL?

STATEMENT OF THE CASE

On February 12, 2012, Bayview Loan Servicing, LLC (Respondent), brought this action of Summary Judgment and subsequent Foreclosure actions against Scott Allan Schledwitz and Roxanne Johnson Schledwitz (Appellants). Schledwitz answered alleging Bayview's claim was invalid as it had no standing to bring this type of action and receive judgment and requesting a Trial by Jury to provide a proper defense. The Summary Judgment Motion was heard on November 19, 2013, and judgment was entered on December 2, 2013.

On December 20, 2013, Schledwitz served the Notice of Appeal on Bayview. On January 29, 2014, Schledwitz served the Amended Notice of Appeal on Bayview.

FACTS

The following are the facts of Appellants complaint:

1. On November 25, 2005, Movant, executed a \$160,000 adjustable rate mortgage with Taylor, Bean and Whitaker Mortgage Corporation (hereafter "TBW") secured by the aforementioned first mortgage on their principal residence located at 423 South Fairview Avenue Extension, Spartanburg, South Carolina, 29302. Recorded on November 30, 2005, instrument number MTG-2005-62325, Book 3565, Page 239.
2. On November 25, 2005, Movant, executed a \$40,000 fixed rate mortgage with Taylor, Bean and Whitaker Mortgage Corporation secured by the aforementioned second mortgage on their principal residence located at 423 South Fairview Avenue Extension,

Spartanburg, South Carolina, 29302. Recorded on November 30, 2005, instrument number MTG-2005-62326, Book 3565, Page 255.

3. The Movant filed a Chapter 13 Plan on February 7, 2007.
4. The aforementioned case was confirmed on August 29, 2007 CASE Number 07-00666-hb United States Bankruptcy Court of South Carolina.
5. On February 29, 2008, Movant' were conditionally approved by Michigan Mutual (a.k.a First Premier Mortgage)for an FHA Mortgage for refinancing of their principal resident that was secured by the aforementioned mortgage with the Respondent. This approval was based on showing 12 months of on time payments made to the Trustee for the Chapter 13 Plan and 12 months of on time payments to the Respondent.
6. On May 7, 2008, the Movant' submitted a Motion to Incur Indebtedness that was approved by the court on June 12, 2008.
7. On or around March, 2008 Movant' received upon request to TBW, Payoff Statements for aforementioned mortgage with pay history. The statements showed incorrect interest rate applied to the adjustable rate mortgage, an accumulation of interest and late charges on the pre-petition arrearage and a pay history that was incorrectly showing the post-petition pay history (attached Payoff Statement).
8. On or about March, 2008, Movant' attorney requested information from TBWs' attorney regarding the interest and accumulated fees not covered in the plan that were on the Movant' Payoff Statement(attached Attorney Inquiry Email).
9. Due to the erroneous Payoff Statement, FHA terms mandated that the conditional approval would be retracted because of the stated post-petition pay history. This required

Michigan Mutual to obtain conditional approval from another FHA lender willing to lock the rate while TBW updated the pay history and pay off statement to reflect the correct post petition pay history and a payoff that accounted for the remaining principal balance and pre-petition arrearage and an estimate of the daily interest rate based on actual payoff date, with no accumulation of interest, fees and other penalties on pre-petition arrearage.

10. On March 31, 2008, Michigan Mutual obtained a new conditional approval with a higher interest rate, based on the Trustee Pay History and awaiting the aforementioned post-petition pay history and adjusted payoff statement for the secured mortgage with the TBW.
11. On April 30, 2008, TBWs' attorney replied with partial information regarding adjustable interest rate and a pre-petition balance that was different than the pre-petition Proof of Claim amount (attached Korn April 30 Email). TBW offered no statement correcting post-petition pay history, adjustment to incorrect charges on pre-petition arrearage nor validation or adjustment of Adjustable Rate Interest for the monthly payment.
12. On May 31, 2008, conditional approval for FHA mortgage refinance with Michigan Mutual expired due to the refusal of revised pay statement reflecting corrected adjustable rate interest, reduced over charge for erroneous compilation of late fees and penalty interest and updated post-petition pay history by Respondent.
13. On June 14, 2008, Plaintiff, Scott Allan Schledwitz, had to accept a position with his employer in another state. The new position would guarantee continued income that would allow for the Movant to continue making earnest effort to maintain payment schedules for the Chapter 13 plan, living expenses and mortgage payments to the best of

their ability. The new position added undue stress as it required a commute of 540 miles to Lake Mary, Florida with long term absences from the Plaintiff family for the next 56 weeks. Because of the inconsistent payment schedule with amounts and fraudulent actions of TBW, alternative employment options would not allow Scott Schledwitz to take employment at slightly lower income nor allow for a Mr. Schledwitz to obtain a second job for additional income to offset any reduction from taking other employment near the Movant' residence.

14. On or around August, 2008, Plaintiff Scott Allan Schledwitz, sought assistance from Dr. Christopher Caston seeking medical assistance due to stress and anxiety directly related to TBWs' actions and the resulting course taking by the Movant' to continue making payments to TBW for the secured mortgage. Mr. Schledwitz was prescribed 500mg of Depakote mid-day to help with the added stress and anxiety. The related stress and anxiety has placed a physical toll on Mr. Schledwitz.
15. On or around October, 2008, Movant' retained attorney Scott Talley to communicate with TBW regarding aforementioned erroneous activities.
16. On or around November, 2008, TBW attorney advised Movant' attorney to direct Movant to contact Respondent representative Deo Sengh directly to discuss erroneous activities attributed to accounting issues internal to Respondent.
17. On December 3, 2008, Movant' attempted to retrieve payment statements, Adjustable Rate Interest information that was scheduled to be reset on November 14, 2008, current payoff statements and pay history information through the TBW's website portal. The website portal located at <http://www.taylorbean.com> where TBW operates a public and

private informational website. TBW provides customers of their secured loan products login and password to view the account information specific to the customer and property secured. The Movant' access to the basic account information they required was intentionally blocked by the Respondent through the online portal(attached Taylor Bean restriction). Per the instructions from the website, Movant contacted the Respondent through the listed telephone number on the Respondent website and were told they were not allowed access but could not be told why access was restricted. This was the Movant' second, documented attempt to retrieve valid information from the TBW. TBW deceptively prevented the Movant' from accessing this information.

18. On December 9, 2008, Plaintiff called TBW and spoke with TBW representative, Deo Sengh, to discuss the next interest rate adjustment per the term of the Adjustable Rate Rider (attached). Mr. Sengh advised the Movant' that the rate had not been set as of yet and the new payment could not be determined. Mr. Sengh alleged that all statements and related information was being sent directly to Plaintiff Bankruptcy attorney, Gina McMaster. Movant' requested that Adjustable Rate Interest be reset to the original 7.25% and were informed by Mr. Sengh that would be illegal in bankruptcy and could not be done

19. January 14, 2009, Movant notified court and related creditors of *Pro Se* status.

20. On or about February, 2009, Movant discovered TBW had not been providing documentation alleged by Deo Sengh, TBW representative to Plaintiff Bankruptcy attorney regarding Adjustable Rate increase or related payment history-- violating

mortgage agreement rules regarding written notification for adjustable rate interest per the Adjustable Mortgage Rider (attached).

21. On August 24, 2009, TBW filed for Chapter 11 Bankruptcy protection in the United States Bankruptcy Court of Middle Florida CASE NO: 3:09-bk-07047-JAF.
22. On August 31, 2009, the Bankruptcy Court of Middle Florida in the Case of TBW, approved an order that required TBW to provide Bayview, US Bank and Ocwen Lending with servicing information and mortgage documentation of mortgages to be serviced by Bayview, US Bank and Ocwen Lending effective September 1, 2009. The three aforementioned servicers were to be provided this information, in part, to prevent harm to the customers as well as TBW.
23. On September 1, 2009, Appellants received a letter from Bayview Loan Servicing, LLC, identifying themselves as the new loan servicer.
24. On November 19, 2009, Appellants appeared in United States Bankruptcy Court of South Carolina, presided by the Honorable Judge Helen Burris, to review the complaint filed by the Movant in Bankruptcy Court regarding Violation of Automatic Stay by the TBW as well as the facts supporting the complaints outlined in the Violation of Automatic Stay. It was noted by the Court that while the Court in South Carolina did not have jurisdiction in this Complaint due to the TBW's Chapter 11 Bankruptcy filing, it would stay engaged through the Appellants' Trustee as to any and all actions resulting from the aforementioned complaint. It was also recommended that the complaint be facilitated through the United States Bankruptcy Court of Middle Florida, where the TBW has filed its Chapter 11 Bankruptcy.

25. On December 22, 2010, Appellants filed a Quiet Title Action. Final order was signed and set aside on April 19, 2011 by the Master-In-Equity for a final hearing to review the standing of TBW as a Respondent. Respondents were notified through publication.
26. On March 24, 2011, Movant United States Bankruptcy Court of South Carolina, presided by the Honorable Judge Helen Burris, to review Movant's motion to remove the Respondent as a secured creditor for failure to provide notification of the Transfer of Claim and the Respondent's subsequent failure to respond to requests for account information and documentation proving its standing as mortgage servicer and holder by assignment from Taylor, Bean and Whitaker. The Respondent failed to appear at the hearing and was removed as a secured creditor from the Movant's bankruptcy case.
27. On February 24, 2012, Respondent files a Lis Pens and Complaint against the Movant in order to secure a Summary Judgment and foreclose on the Appellants' property. The Appellants, TBW, Mortgage Electronic Registration System (hereafter "MERS"), the State of south Carolina and the Internal Revenue Service as Defendants.
28. The Assignment of Mortgage (hereafter "AOM") with as sole nominee for Taylor, Bean and Whitaker was filed, assigning the mortgage to Bayview Loan Servicing. The date of the signed AOM was February 2, 2012, with no stamp or recording for the Register of Deeds in Spartanburg County.
29. On March 6, 2012, the Appellants filed an Objection to the Complaint and responded with a demand for Trial by Jury.

30. March 26, 2012, the Assignment of Mortgage was filed with the Spartanburg Register of Deeds with the signatures of a Mortgage Electronic Registration Systems executive, Robert G. Hall dated March 15, 2012.
31. No Limited Power of Attorney has been filed by Taylor, Bean and Whitaker naming Bayview Loan Servicing with the Register of Deeds as constituting and appointing Bayview Loan Servicing, LLC or its successors as its true and lawful Attorney-in-Fact, with full authority to execute, sign, make, acknowledge, deliver and record any assignment of security instruments or any other document necessary to transfer its interest in the security instrument, including a mortgage or deed of trust to Bayview Loan Servicing.
32. November 8, 2013, Appellants received a notice of the Summary Judgment hearing scheduled for November 19, 2013. Appellants replied on November 11, 2013 with an Objection to the Summary Judgment hearing and demanded a Trial by Jury.
33. November 16, 2013, Appellants filed a Motion for Continuance in order to depose the Respondents representatives, request transcript and redacted documents from the United States Bankruptcy Courts of Middle Florida and South Carolina and conduct Discovery for both the Appellants and Respondent.
34. November 18, 2013, Appellants requested status of the Motion for Continuance from the Master-In-Equity and were provided a copy of Ex-Parte communication conducted between the Master and the Respondent's attorney.
35. November 19, 2013, Summary Judgment hearing was held with the Appellants.

36. November 27, 2013, the Master-In-Equity signed the Summary Judgment and related Foreclosure notice and Sale.

37. December 20, 2013, Appellants received the Master-In-Equity signed orders.

ARGUMENTS

I. BECAUSE RESPONDENT FAILED TO PROVIDE PROOF IT WAS THE ASSIGNEE TO THE NOTE, IT HAS NO RIGHT TO FORECLOSE ON THE APPELLANT PROPERTY

A. The Respondent presented bankruptcy orders for blanket assignment of loan servicing from TBW to several Loan Servicers covering more than 4,200 mortgages throughout the United States. This original order provided detail of required account information for transfer of servicing. Detail would include the documentation of the Appellants' Mortgage, Note, RESPA and other related information. Respondent asserted the order covered its' legal holding and/or ownership of the Appellants' mortgage but never presented the supporting documentation that validates the aforementioned order is applicable and provides the Respondent with adequate evidence it had standing to foreclose. If the original note was lost or destroyed, the Respondent failed to file a Lost Note Certificate in its original filing of the LIS PENS and Complaint or in an amendment. Appellant requested a jury trial with the Spartanburg County Master-In-Equity with pre-trial discovery to resolve this issue or validate the defense's assertion that the Respondent is neither owner nor holder of the mortgage and has no standing to bring action on the Appellants.

B. The Assignment of Mortgage original mortgage holder, Taylor, Bean and Whitaker, is under Chapter 11 Bankruptcy protection, authentication of the Assignment of Mortgage specific to the Appellant through the Bankruptcy Court of Middle Florida by judge signature and court seal is a reasonable and defined by South Carolina Civil Court Procedure Rule 44 Proof of Record –

Rule 44(a) Authentication.

(1) Domestic. An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of

embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept and authenticated by the seal of his office.

Respondent failed to provide authentication, while other servicers for mortgages in similar proceedings have sought Motion for Relief from Automatic Stay for the mortgage and title or have been granted Limited Power of Attorney, with similar filings in Spartanburg County. The Appellant has demonstrated numerous challenges to the Respondents' status as holder or owner of the mortgage in question in timely responses in this case as well as in the Appellant filings in the Bankruptcy Court of South Carolina.(Record on Appeal Exhibit 1, page 63, Exhibit 2, page 69 and Exhibit 4, page 77) This is a violation of UCC Laws § 9-406 (c) DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE –

(c) [Proof of assignment.]

Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its

obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) (subsection (a) - [Discharge of account debtor; effect of notification.]).

Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(h) [Rule for individual under other law.]

This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

C. The actions of the Respondent are Predatory and Fraudulent. Respondent's assumption that it is the servicer is further clouded by its inability to correctly calculate the Adjustable Interest Rate,

defined in the Adjustable Rate Rider to the mortgage(Amended Record on Appeal Exhibit 3, page 76). Even if the Court believes the Respondent is the holder of the mortgage, the fact the interest rate has been egregiously miscalculated over the term of the agreement shows that the summary amounts are incorrect as well. In responses to the Respondent's Complaint filed with the Master-In-Equity of Spartanburg County(Motion for Continuance, page 56), Appellants filings in South Carolina Bankruptcy Court(Exhibits1 and 2) and direct Qualified Written Request to the Respondent, the Appellants have continuously requested servicing information from the Respondent regarding the payment history, Adjustable Rate Mortgage Interest and related. This is a violation of South Carolina Code of Law SECTION 37-22-190 (11) Prohibited activities –

(11) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act (RESPA), 12 U. S.C. Section 2605 and Section 2609, and regulations adopted pursuant to them by the Secretary of the Department of Housing and Urban Development and state law;

The Complaint filed by the Respondent is a violation of UCC § 3-305(a)(ii)(iii) DEFENSES AND CLAIMS IN RECOUPMENT –

(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms,

Failure to reply to the Qualified Written requests further clouds the standing of the Respondent to file a complaint or request action as it pertains to the Appellants.

II. BECAUSE RESPONDENT FAILED TO PROVIDE ASSIGNMENT OF MORTGAGE PRIOR TO ITS LIS PENS FILING AND NO AMENDMENT THEREAFTER, THE RESPONDENT IS NOT INTITLED TO A SUMMARY JUDGMENT.

A. The Assignment of Mortgage was recorded by the Registrar of Deeds 30 days after the Lis Pens filing by the Respondent for this case. Respondent had no standing at the time of the filing to file its' complaint and Motion for Summary Judgment and has fully relied on a back dated Assignment of Mortgage that was never recorded by the Register of Deeds in Spartanburg County as its' right to continue through the proceedings. The original complaint and subsequent motions by the Respondent should have been denied based on the lack of legal standing

evidenced through their original filing.

B. Assignment of Mortgage to the Respondent was through Mortgage Electronic Registration Systems, Inc. ("MERS") acting solely as nominee for Taylor, Bean and Whitaker Mortgage Corporation ("TBW"). MERS is a Defendant in this civil case. The MERS executive that signed the Assignment of Mortgage is an employee of the Respondent as are the witness and notary of the same document. Appellant challenges the validity of the assignment and had requested a trial, discovery and deposition of the Assignment of Mortgage signer (Objection to Motion of Foreclosure, page 41). Furthermore, Respondent Attorney should be disqualified for representing both Respondent (Plaintiff) and a Defendant in this civil case.

C. In the Lis Pens and Complaint filed by the Respondent, under the General Allegations item #7 Respondent references a certain Note in the principal sum of one hundred sixty thousand and 00/100 (\$160,000.00) Dollars with an interest rate of 7.2500% per annum commencing installment payments on January 1, 2006. A copy of the note is attached to the complaint and recorded as Exhibit "A". Upon review of Respondent Exhibit "A", there are noted differences in the signature page acknowledgements of the signor with a missing signature of Roxanne Johnson Schledwitz, one of the Appellants. Roxanne Schledwitz signed all other documents during the closing of the mortgage on the property. The Note was signed at the time of the closing. Appellants have asserted that this document appears to be altered. This falls under the definition of UCC Laws - § 3-407(a). ALTERATION –

(a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party,

The Appellants objected to the Complain to the Master-In-Equity and asked for referral of this case to a Trial by Jury and allow evidence to be reviewed.

Respondent presented in its Complaint Exhibit "A, which is an altered document and the Respondent knew that the purported Adjustable Rate Note was fraudulent. Exhibit "A" only represents the Adjustable Rate Note. This is an incomplete filing of the required Note. If Respondent did not own the Mortgage, then it could not have validly instituted this Mortgage Foreclosure action.

III. MASTER-IN-EQUITY ERRED IN DENYING APPELLANTS' TIMELY AND REPEATED REQUEST FOR A TRIAL TO HEAR ARGUMENTS, TESTIMONY AND EVIDENCE

A. Appellant requested a trial by jury to present a proper defense, conduct discovery, depose witnesses and request documentation from the Bankruptcy Courts of South Carolina and Middle Florida in its Objections and Motion for Continuance. This violates South Carolina Civil Procedure Rule 38 –

Rule 38(a) Right Preserved.

The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

As with all responses, Appellant made this request in a timely fashion and was not granted the trial.

B. Respondent filed an Emergency Motion in the United States Bankruptcy Court of Middle Florida on August 27, 2009(Exhibit 1), stating that it had not received the information regarding the mortgage servicing for bundles of mortgages, including the Appellants. This motion was continued until August 10, 2010 where Bank of America requested the court to reactivate a second motion that did not prejudice the ownership of mortgages in allowing Bayview and U.S.

Bank to service the mortgages transferred from TBW. In an attached item to the motion, the Loan Service and Purchase Agreement state the requirements of transfer of the Mortgage, with a sample letter and attachment, or a Lost Mortgage Note Affidavit. It states that by agreeing to this motion, the Respondent acknowledges that mortgage transfer cannot occur without meeting that aforementioned condition. The Respondent failed to provide as evidence any documentation related to the transfer including account numbers, original mortgage documents, or Sales Certificate. The Appellants Objected as to the validity of Respondent's claim as the mortgage servicer and holder. As mentioned previously, in the objections filed by the Appellants, a trial by jury was demanded.

C. Appellants filed a Lis Pens and Motion for Quiet Title on December 22, 2010(Exhibit 4), following proper procedures through the Final Order of Quiet Title. The Master-In-Equity of Spartanburg originally signed the order, then set aside pending a final hearing in which the Court would review the standing of the Appellant and effect on TBW, and assumedly, the Respondent. The Master for the Quiet Title Case is the same in this civil case. As mentioned in the Assignment of Mortgage as well as the objections filed by the appellant and the Quiet Title standing, the Title of the mortgaged property in this case is in question. The Respondent acknowledges the original mortgage holder, Taylor, Bean and Whitaker is currently in Chapter 11 Bankruptcy with Automatic Stay. The Appellant has requested Continuance and trial to conduct discovery, depose witnesses and gather information from the Bankruptcy Courts of South Carolina and Middle Florida that contains redacted documentation that must be released based on request to each court. Appellant was not granted this request to settle Title issues, which

is contrary to South Carolina Civil Procedure Rule 71 –

Rule 71(e) Actions When Title Is at Issue. In foreclosure or partition actions when title to real property is at issue the court or master to whom the action is referred shall take testimony and receive evidence as to the title and interest in the premises of the several parties. In all such actions the judge or master shall ascertain the rights and interests of the several parties and set forth in the report or order of judgment the conveyances or probate estates, if any, through which the rights or interests were acquired. In all such actions a transcript of record shall be made and preserved in the case file in the office of the clerk of court.

D. At no time does any waiver of Trial by Jury apply to the Appellant's demand. As stated previously, the Respondent continuously violated South Carolina Code of Law SECTION 37-22-190 (11) by attempting to illegally service the Mortgage and disregarding the calculation of the Adjustable Rate Mortgage. Whether it was the Respondent of TBW guilty of the fraudulent practice, the Appellants has no way of knowing at the time they signed the Mortgage and related documents, that the Mortgage Servicer would go outside of the scope of the Mortgage and Rider to calculate the monthly payment.

In *Partain v. Upstate Automotive Group*, 386 S.C. 488, 689 S.E.2d 602 (2010), Partain alleged Upstate Auto fraudulently replaced the truck he purchased with a different truck at the time of pick-up. 386 S.C. at 490, 689 S.E.2d at 603. Partain filed suit against Upstate Auto alleging he was the victim of a "bait and switch" in violation of the South Carolina Unfair Trade Practices Act. Id. Based on an arbitration agreement, Upstate Auto moved to dismiss Partain's claim. The Partain court found Aiken was controlling and concluded the arbitration clause did not apply because "the alleged actions of Upstate Auto constituted 'illegal and outrageous acts' unforeseeable to a reasonable consumer in the context of normal business dealings." Partain, 386 S.C. at 493, 689 S.E.2d at 604-05. Our supreme court noted Partain could not be held to have foreseen that Upstate Auto, after completing a sale, would substitute an entirely different vehicle in place of the truck he had agreed to purchase. Moreover, the court found Partain could not have "contemplated that, in signing the arbitration clause, he was agreeing to arbitrate claims arising from allegedly fraudulent conduct." The Appellants could not have considered when signing the document that the mortgage owner would fraudulently service the mortgage in the manner in which has been conducted. Therefore, *Partain v. Upstate Automotive Group* is applicable to the Appellants.

E. The Master did not apply the appropriate Standard of Review, as defined by South Carolina Rules of Civil Procedure, Rule 56 –

(e) Form of Affidavits; Further Testimony; Defense

Required. Supporting and opposing affidavits shall be made

on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

In *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) the South Carolina Supreme Court held that "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56, SCRPC." Rule 56, SCRPC provides that summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

matter of law." Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party."

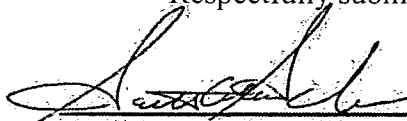
In this case, the Master ignored the two Objections, Motion for Continuance and Motion for a Hearing for Evidentiary Review filed by the Appellant where genuine issues of material fact were raised regarding the Respondent's standing to foreclose, citing filings in a Federal Criminal Court, two Federal Bankruptcy Courts and referencing documents filed by the Respondent as well as documents on file with the Spartanburg County Register of Deeds. Additionally, the Master set aside a previously signed Final Motion for Quiet Title order in part, to review in hearing the standing of TBW and any John Doe Defendant. In the Quiet Title case, the Master acted without response from any named or unnamed Defendant in accordance with Rule 56. Finally, the Appellants raised the fraudulent activities of TBW during the time it originated and service the Appellant's mortgage. The point about fraud regarding the original mortgage owner has clouded the standing of mortgages across the country, including South Carolina. In Spartanburg County, TBW originated and serviced 1133 mortgages from 1995 to 2009. As mentioned previously, other assignees have recorded Limited Power of Attorney from TBW and specific to the mortgages recorded by the County Register of Deeds. The Respondent does not have a Limited Power of Attorney for the Appellant's mortgage nor any other mortgage, object or instrument in Spartanburg County Register of Deeds. The absence of these plus filings of AOM after the LIS PENS and no Affidavit of Lost Note added to the issues with TBW fraud establish enough basis for referral to a Jury Trial, as requested by the Appellants.

CONCLUSION

The Respondent had failed to file the LIS PENS and Complaint with any standing due to the disparity in the filing of the Assignment of Mortgage, which had not been filed at the time of the Respondent filing. The Respondent failed to provide adequate proof of its standing as the mortgage servicer and holder. Finally, the Master-In-Equity erred in not referring the case back to the Court of Common Pleas, subsequently denying the Appellants their right and timely demand for a Trial by Jury. For the reasons stated, this Court should reverse the judgment of the Master-In-Equity.

August 5, 2015

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Gordon G. Cooper, Master in Equity Judge

Case No.: 2013-002811

Bayview Loan Servicing, LLC,

Respondent,

v.

Scott A. Schledwitz, Roxanne J. Schledwitz a/k/a Roxanne Johnson Schledwitz,
Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Tylor, Bean &
Whitaker Mortgage Corp., The United States of America, by and through its agency, the
Internal Revenue Service, and the South Carolina Department of Revenue,
Defendants,

of whom Schott A. Schledwitz is the

Appellant.

FINAL BRIEF OF RESPONDENT

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Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Gordon G. Cooper, Master in Equity Judge

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of the Issues on Appeal	1
Statement of the Case	2
Facts	4
Arguments	
I. THE ISSUES RAISED BY APPELLANTS ARE NOT PRESERVED FOR APPELLATE REVIEW.....	7
II. THERE WAS NO ERROR IN THE LIS PENDENS AND COMPLAINT BEING FILED PRIOR TO THE RECORDING OF THE ASSIGNMENT OF MORTGAGE.....	8
III. THERE WAS NO ERROR IN NOT GRANTING A TRIAL BY JURY IN THE FORECLOSURE ACTION.....	9
Conclusion	10

TABLE OF AUTHORITIES

CASES

<u>Malloy v. Thompson</u> , 2012-213385, 2014 WL 4087881 (S.C. Aug. 20, 2014).....	7
<u>Elam v. S. Carolina Dep't of Transp.</u> , 361 S.C. 9, 602 S.E.2d 772 (2004).....	7, 8
<u>Lester v. Dawson</u> , 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997).....	9
<u>Bloom v. Ravoira</u> , 339 S.C. 417, 529 S.E.2d 710 (2000).....	7
<u>U.S. Bank Trust Nat'l Ass'n V. Bell</u> , 385 S.C. 364, 684 S.E.2d 199 (Ct.App. 2009)...	6
<u>Garvin v. Bi-Lo, Inc.</u> , 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999).....	7
<u>Wilder Corp. v. Wilke</u> , 324 S.C. 570, 576, 479 S.E.2d 510, 513 (Ct. App. 1996) <u>aff'd</u> , 330 S.C. 71, 497 S.E.2d 731 (1998).....	9

RULES

Rule 17(a), SCRCP.....	8
Rule 56(c), SCRCP.....	6
Rule 59(e), SCRCP.....	7, 8

STATEMENT OF ISSUES ON APPEAL

- I. THE ISSUES RAISED BY APPELLANTS ARE NOT PRESERVED FOR APPELLATE REVIEW
- II. THERE WAS NO ERROR IN THE LIS PENDENS AND COMPLAINT BEING FILED PRIOR TO THE RECORDING OF THE ASSIGNMENT OF MORTGAGE
- III. THERE WAS NO ERROR IN NOT GRANTING A TRIAL BY JURY IN THE FORECLOSURE ACTION

STATEMENT OF THE CASE

Respondent (hereinafter "Lender") filed a Lis Pendens, Summons and Complaint on February 24, 2012, seeking to foreclose a mortgage of real property which is located in Spartanburg County, South Carolina. The Summons and Complaint were served and the Appellants (hereinafter "Borrowers") timely filed and served a *pro se* "Objection to Foreclosure of Real Estate Mortgage." No counterclaims were asserted by the Borrowers against the Lender.

The matter was referred to the Spartanburg County Master-in-Equity on October 14, 2013.

On July 17, 2013, Lender filed and served a Motion for Summary Judgment supported by an Affidavit and exhibits. No counter-affidavits were filed or served. On November 19, 2013, a hearing was held before on the Master-in-Equity on Plaintiff's Motion for Summary Judgment. Counsel for the Plaintiff appeared and prosecuted the motion. Defendants did not appear.

On December 3, 2013, an Order for Foreclosure and Sale was filed which is the subject of this appeal.

On or about January 23, 2014, Lender's counsel received a letter from this Court of the same date to the Borrowers indicating that a Notice of Appeal was received by the Court on December 31, 2013, and informing Borrowers of several deficiencies. At no time has the undersigned counsel for the Lender or his law firm received a Notice of Appeal or the Order/Judgment being appealed from the Appellant.

On or about January 23, 2014, Lender's counsel received a second letter of the same date from this Court to the Borrowers indicating that, among other deficiencies, the Borrowers failed to submit the required filing fee with their Notice of Appeal. Again, neither the undersigned nor his law firm has received any correspondence from the Borrowers to this Court or any of the referenced exhibits.

On or about January 24, 2014, Lender's counsel received a letter from this Court of the same date providing the case caption and other procedural directives. A review of the online docket from the Spartanburg County Clerk of Court's Office indicates that no Notice of Appeal had been filed with the lower court.

On or about February 3, 2014, Respondent's counsel received a letter from this Court of the same date directed to the Appellant and informing him of several deficiencies regarding his Initial Brief. Once again, neither the undersigned nor his law firm have received any documents, correspondence or communication from the Appellant since the December 3, 2013 Order was filed.

On December 10, 2014, Lender filed a Motion to Dismiss the appeal, which was granted by Order filed April 17, 2014. Borrower's filed a Motion for Rehearing on April 21, 2014, which was granted and the appeal reinstated by Order filed September 5, 2014.¹

¹ After receiving this Court's Order reinstating the appeal and directing Lender to file its Initial Brief and Designation of Matter to be included in the Record on Appeal, counsel for Lender obtained all necessary documents from the South Carolina Case Management Public Index via www.sccourts.org.

FACTS

This case involves the foreclosure of a mortgage involving real property located in Spartanburg County. On July 17, 2013, Lender filed and served a Motion for Summary Judgment supported by an Affidavit and exhibits. The Affidavit and exhibits established the following facts:

- 1) The Borrower Scott Schledwitz executed a Note on or about November 23, 2005, to Taylor, Bean & Whitaker Mortgage Corp., in the principal sum of One Hundred Sixty Thousand and 00/100 (\$160,000.00) Dollars, payable in monthly installments of principal and interest of \$1,091.48 commencing January 1, 2006;
- 2) In order to secure the payment of the Note according to the terms and conditions thereof, the Borrowers made, executed and delivered unto Taylor, Bean & Whitaker Mortgage Corp., a certain real estate mortgage covering the following described property:

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. 25, containing 0.21 acres, more or less and fronting on S. Fairview Avenue Ext., as shown on survey prepared for Phyllis P. McElhaney, dated October 9, 1991 and recorded in Plat Book 114, Page 364, RMC Office for Spartanburg County, SC. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

This being the same property conveyed to Scott A. Schledwitz and Roxanne Johnson Schledwitz by Deed of C. Blease Graham, III, dated November 23, 2005 and recorded November 30, 2005 in Deed Book 84M at Page 962 in the ROD Office for Spartanburg County, South Carolina.

TMS No. 7-13-13 016.00

Property Address: 423 S. Fairview Avenue Extension, Spartanburg,
SC 29302;

- 3) The Mortgage was signed, witnessed, probated and recorded in the public records of Spartanburg County on November 30, 2005, in Book 3565 at Page 239;
- 4) The Mortgage was assigned unto Lender, which assignment is dated March 12, 2012 and recorded March 26, 2012 in Book 4563 at Page 517.
- 5) The Borrower Scott Schledwitz defaulted on his payments on December 1, 2008. The Lender, as the holder of the Note and Mortgage, declared the entire balance of said principal and interest due and payable at once which was the sum of One Hundred Fifty Five Thousand Seven Hundred Fifty Nine and 84/100 (\$155,759.84) Dollars as of November 1, 2008, together with interest thereon at the rate of 9.5% per annum, with a current rate of 8.500% per annum from November 1, 2008, together with reasonable attorney's fees and the costs and disbursements of this action, plus all moneys advanced by the Lender under the terms of the Note and Mortgage for the payment of ad valorem taxes and/or insurance premiums, property maintenance, and securing thereof or otherwise.
- 6) The Borrowers default on the Note and Mortgage had not been cured, and a Right to Cure Notice was mailed to the Borrower Scott Schledwitz;
- 7) That the amount due on the Note and Mortgage as of December 1, 2008 exclusive of fees and costs was as follows:

Principal amount due as of December 1, 2008	\$155,759.84
Interest from November 1, 2008 to December 1, 2012 at a current rate of 9.5000%	\$59,318.51
Interest from December 2, 2012 to May 31, 2013 at a current rate of 8.5000%	\$6,604.69
Escrow Advance	\$16,178.20
Suspense	-\$472.58
Recoverable Balance	\$2,859.50

8) The total debt would continue to accrue a per diem charge of \$36.27 for interest.

(Supp. R. pp. 2-8).

In addition, copies of the Note, Mortgage, Assignment of Mortgage and Notice of Default/Right to Cure were attached to the Affidavit and attested to. (Supp. R. pp. 9-31).

No counter-affidavits were filed or served and the Borrowers did not appear at the summary judgment hearing. (R. pp. 1-2).

STANDARD OF REVIEW

“A mortgage foreclosure is an action in equity.” U.S. Bank Trust Nat’l Ass’n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct.App. 2009). “In an appeal from an action in equity, tried by a judge alone, [the appellate court] may find facts in accordance with [its] own view of the preponderance of the evidence.” Id. Moreover, the appellate court “may correct errors of law in both legal and equitable actions[.]” with no particular deference to the trial court. Id.

Summary Judgment is warranted only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule

56(c), SCRCF. “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party.” Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. However, once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent must come forward with specific facts showing there is a genuine issue for trial.” Garvin v. Bi-Lo, Inc., 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999). The opponent cannot merely rely upon the pleadings, but must submit some additional evidence creating a genuine issue of material fact. Id.

ARGUMENT

I. THE ISSUES RAISED BY BORROWERS ARE NOT PRESERVED FOR APPELLATE REVIEW

“At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge.” Malloy v. Thompson, 2012-213385, 2014 WL 4087881 (S.C. Aug. 20, 2014). “The issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge.” Id. “It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” Id.

If an issue is raised to the trial judge but not ruled upon, a party is required to file a Rule 59(e), SCRCF motion or the issue is not preserved for appellate review. Elam v. S. Carolina Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780

(2004) (stating a party *must* file a Rule 59(e), SCRCP, Motion to Alter or Amend when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review).

Lender contends that the facts and legal arguments presented to this Court in Borrowers' Brief were not raised to the trial judge either by oral argument or counter-affidavit, they were not addressed in the Order for Judgment and Foreclosure of Sale, and they were not raised to the trial judge in a Rule 59(e), SCRCP, Motion to Alter or Amend Judgment. (R. pp. 1-9). As such, Borrowers' arguments are not preserved for appellate review and this appeal should be dismissed.

II. THERE WAS NO ERROR IN THE LIS PENDENS AND COMPLAINT BEING FILED PRIOR TO THE RECORDING OF THE ASSIGNMENT OF MORTGAGE (Borrowers' Issues I & II)

Borrowers allege that it was in error to allow the foreclosure to proceed to judgment since it the Lis Pendens, Summons and Complaint were filed prior to the Assignment of Mortgage being executed and recorded. (Borrowers' Brief at I).

Rule 17(a), SCRCP, provides in part:

. . . No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

To the extent the Borrowers' pleading response raised an objection to Lender's standing as the real party in interest to prosecute the foreclosure action, the issue was cured by ratification by the real party in interest when the Assignment of

Mortgage was recorded and the Motion of Summary Judgment was filed and served with an Affidavit from a representative of Lender. (R. pp. 20-25; Supp. R. pp. 3-8, 29).

Borrowers also argue that they challenge the validity of the Assignment of Mortgage and that there were discrepancies with the Note attached to the Complaint. (Borrowers' Brief at II(C)). As set forth in Issue I above, these arguments were not presented to the trial judge for consideration at the summary judgment hearing and, therefore, those issues are not preserved for appellate review. Moreover, there is no evidence in the Record on Appeal to dispute the uncontradicted evidence before the trial judge that 1) a copy of the Note was attested to by Plaintiff's authorized representative and attached to the Motion for Summary Judgment; and 2) that the Note and Mortgage were assigned to Lender. (Supp. R. pp. 5-8). Accordingly, there was no error in granting Lender and Order for Foreclosure and Sale and this appeal should be dismissed.

III. THERE WAS NO ERROR IN NOT GRANTING A TRIAL BY JURY IN THE FORECLOSURE ACTION (Borrowers' Issue III).

Borrowers argue that it was error to have this foreclosure action referred to the Master-in-Equity for a bench trial when the Borrowers made a jury trial demand. (Borrowers' Brief at III).

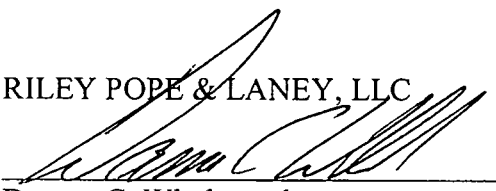
"Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). "Actions for foreclosure . . . are actions in equity." Wilder Corp. v. Wilke, 324 S.C. 570, 576, 479 S.E.2d 510, 513 (Ct. App. 1996) aff'd, 330 S.C. 71, 497 S.E.2d 731 (1998).

As the Complaint was solely an action to foreclose a mortgage and the Borrowers did not allege any counterclaims giving rise to a trial by jury, it was proper for the case to be referred to the Master-in-Equity for non-jury disposition. Therefore, the appeal should be dismissed.

CONCLUSION

Respondent respectfully requests that this Court find facts in accordance with its own view of the preponderance of the evidence and affirm the trial judge's Order for Foreclosure and Sale and dismiss the present appeal.

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Columbia, South Carolina

July 24, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUL 28 2015

APPEAL FROM SPARTANBURG COUNTY
Gordon G. Cooper, Master in Equity Judge

SC Court of Appeals

Case No.: 2013-002811

Bayview Loan Servicing, LLC,

Respondent,

v.

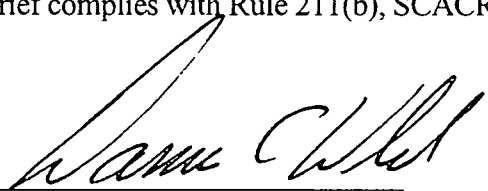
Scott A. Schledwitz, Roxanne J. Schledwitz a/k/a Roxanne Johnson Schledwitz, Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Tylor, Bean & Whitaker Mortgage Corp., The United States of America, by and through its agency, the Internal Revenue Service, and the South Carolina Department of Revenue,
Defendants,

of whom Schott A. Schledwitz is the

Appellant.

CERTIFICATION OF COUNSEL

I hereby certify that Respondent's Final Brief complies with Rule 211(b), SCACR.


Damon C. Wlodarczyk, SC Bar No. 70460
Attorney for the Respondent

Columbia, SC

July 28, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Gordon G. Cooper, Master in Equity Judge

RECEIVED

JUL 28 2015

SC Court of Appeals

Case No.: 2013-002811

Bayview Loan Servicing, LLC,

Respondent,

v.

Scott A. Schledwitz, Roxanne J. Schledwitz a/k/a Roxanne Johnson Schledwitz, Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Tylor, Bean & Whitaker Mortgage Corp., The United States of America, by and through its agency, the Internal Revenue Service, and the South Carolina Department of Revenue,
Defendants,

of whom Schott A. Schledwitz is the

Appellant.

CERTIFICATE OF SERVICE

I do hereby certify that I served the Respondent's Final Brief and Certification of Counsel upon the parties below herein by depositing a copy of same, this date, in the U.S. Mail, first class postage prepaid, and addressed as follows:

Scott Allen Schledwitz
13118 Sunkiss Loop
Windermere, FL 34786


Damon C. Włodarczyk

Columbia, SC

July 28, 2015

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

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

Bayview Loan Servicing, LLC, Respondent,

v.

Scott A. Schledwitz, Roxanne J. Schledwitz a/k/a
Roxanne Johnson Schledwitz, Mortgage Electronic
Registration Systems, Inc. (MERS) as nominee for
Taylor, Bean & Whitaker Mortgage Corp., The United
States of America, by and through its agency, the Internal
Revenue Service, and The South Carolina Department of
Revenue, Defendants,

Of whom Scott A. Schledwitz and Roxanne Johnson
Schledwitz are the Appellants.

Appellate Case No. 2013-002811

Appeal From Spartanburg County
Gordon G. Cooper, Master-in-Equity

Unpublished Opinion No. 2016-UP-274
Submitted March 1, 2016 – Filed June 8, 2016

AFFIRMED

Scott Allan Schledwitz, of Windermere, FL, pro se.

Roxanne Johnson Schledwitz, of Windermere, FL, pro
se.

Heidi B. Carey and Damon Christian Wlodarczyk, both
of Riley Pope & Laney, LLC, of Columbia, for
Respondent.

PER CURIAM: Scott and Roxanne Schledwitz appeal the master's order granting foreclosure, arguing the master (1) erred in finding Bayview had standing to foreclose the mortgage, and (2) failing to grant their requests for a jury trial. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

As to issue 1: *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 219, 746 S.E.2d 478, 480 (Ct. App. 2013) ("When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56, SCRCR"); *id.* ("In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party."); Rule 56(c), SCRCR (stating summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law"); *Draper*, 405 S.C. at 219, 746 S.E.2d at 480 ("Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." (quoting *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008))); *id.* at 220, 746 S.E.2d at 481 ("Generally, a party must be a real party in interest to the litigation to have standing." (quoting *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010))); Rule 17(a), SCRCR (stating when an action is brought by a party other than the real party in interest, the action shall not "be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder of substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest"); *Draper*, 405 S.C. at 220, 746 S.E.2d at 481 ("An assignee stands in the shoes of its

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

assignor."); *id.* at 220-221, 746 S.E.2d at 481 ("A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." (quoting *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 374 684 S.E.2d 199, 204 (Ct. App. 2009))); *id.* at 221, 746 S.E.2d at 481 ("Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." (quoting *Bell*, 385 S.C. at 374-75, 684 S.E.2d at 205)); *id.* ("Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." (quoting *Bell*, 385 S.C. at 375, 684 S.E.2d at 205)).

As to issue 2: *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 292, 778 S.E.2d 106, 108 (2015) ("Whether a party is entitled to a jury trial is a question of law, which [an appellate] [c]ourt reviews de novo, owing no deference to the [trial court's] decision."); *id.* at 293, 778 S.E.2d at 108 ("The South Carolina Constitution provides that the right to a jury trial shall be preserved inviolate."); *id.* ("Generally, the relevant question in determining the right to a trial by jury is whether the action is legal or equitable." (quoting *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997))); *id.* ("Because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial."); *Abba Equip., Inc. v. Thomason*, 335 S.C. 477, 486, 517 S.E.2d 235, 240 (Ct. App. 1999) (noting appellant bears the burden of providing an adequate record for this court to conduct a proper review).

AFFIRMED.

HUFF, A.C.J., and SHORT and THOMAS, JJ., concur.

PETITION FOR REHEARING

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
MASTERS AND SPECIAL REFEREES

Gordon G. Cooper, MASTER-IN-EQUITY

Case No. 2012-CP-42-0899

Bayview Loan Servicing, L.L.C. Respondent,

v.

Scott A. Schledwitz, Roxanne J. Schledwitz a/k/a Roxanne Johnson Schledwitz,
Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Taylor,
Bean & Whitaker Mortgage Corp., The United States of America, by and through
its agency, the Internal Revenue Service, and The South Carolina Department of
Revenue, Defendants,

Of whom Scott A. Schledwitz and Roxanne Johnson Schledwitz are the Appellants.

PETITION FOR REHEARING

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TABLE OF CONTENTS

Table of Authorities	i
Statement of the Case.....	2
Facts	3
Summary of Arguments	4
Arguments	
1. BECAUSE RESPONDENT FAILED TO PROVIDE EVIDENCE IT HAD STANDING TO FORECLOSE, THEREFORE, IT HAS NO RIGHT TO FORECLOSE ON THE APPELLANT PROPERTY	10
2. BECAUSE RESPONDENT FAILED TO PROVIDE ASSIGNMENT OF MORTGAGE PRIOR TO ITS LIS PENS FILING AND NO AMENDMENT THEREAFTER, THE RESPONDENT IS NOT INTITLED TO A SUMMARY JUDGMENT	14
3. MASTER-IN-EQUITY ERRED IN DENYING APPELLANTS' TIMELY AND REPEATED REQUEST FOR A TRIAL TO HEAR ARGUMENTS, TESTIMONY AND EVIDENCE	15
Conclusion	20

TABLE OF AUTHORITIES

CASES

Partain v. Upstate Automotive Group, 386 S.C. 488, 689 S.E.2d 602 (2010)	18
Quail Hill, LLC v. Cnty. of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010)	19

STATUTES

UCC Laws § 9-406(c)(h)	11
UCC § 3-305(a)(ii)(iii)	13
South Carolina Code of Law SECTION 37-22-190(11)	13
UCC Laws § 3-407(a).	15

OTHER AUTHORITIES

South Carolina Civil Court Procedure Rule 44	10
South Carolina Civil Procedure Rule 38	15
South Carolina Civil Procedure Rule 71	17
South Carolina Civil Procedure Rule 56	18

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN ALLOWING THE RESPONDENT'S LIS PENS AND COMPLAINT FILING PRIOR TO A PROPER ASSIGNMENT OF MORTGAGE?
2. DID THE RESPONDENT PROVIDE EVIDENCE PROVING IT HAD STANDING TO FORECLOSE?
3. DID THE MASTER-IN-EQUITY ERR IN FAILING TO REFER THIS CASE FOR A JURY TRIAL?

STATEMENT OF THE CASE

On February 12, 2012, Bayview Loan Servicing, LLC (Respondent), brought this action of Summary Judgment and subsequent Foreclosure actions against Scott Allan Schledwitz and Roxanne Johnson Schledwitz (Appellants). Schledwitz answered alleging Bayview's claim was invalid as it had no standing to bring this type of action and receive judgment and requesting a Trial by Jury to provide a proper defense. The Summary Judgment Motion was heard on November 19, 2013, and judgment was entered on December 2, 2013.

On December 20, 2013, Schledwitz served the Notice of Appeal on Bayview. On January 29, 2014, Schledwitz served the Amended Notice of Appeal on Bayview.

FACTS

The following are the facts of Appellants complaint:

1. On November 25, 2005, Movant, executed a \$160,000 adjustable rate mortgage with Taylor, Bean and Whitaker Mortgage Corporation (hereafter "TBW") secured by the aforementioned first mortgage on their principal residence located at 423 South Fairview Avenue Extension, Spartanburg, South Carolina, 29302. Recorded on November 30, 2005, instrument number MTG-2005-62325, Book 3565, Page 239.
2. On November 25, 2005, Movant, executed a \$40,000 fixed rate mortgage with Taylor, Bean and Whitaker Mortgage Corporation secured by the aforementioned second mortgage on their principal residence located at 423 South Fairview Avenue Extension,

Spartanburg, South Carolina, 29302. Recorded on November 30, 2005, instrument number MTG-2005-62326, Book 3565, Page 255.

3. The Movant filed a Chapter 13 Plan on February 7, 2007.
4. The aforementioned case was confirmed on August 29, 2007 CASE Number 07-00666-hb United States Bankruptcy Court of South Carolina.
5. On February 29, 2008, Movant' were conditionally approved by Michigan Mutual (a.k.a First Premier Mortgage)for an FHA Mortgage for refinancing of their principal resident that was secured by the aforementioned mortgage with the Respondent. This approval was based on showing 12 months of on time payments made to the Trustee for the Chapter 13 Plan and 12 months of on time payments to the Respondent.
6. On May 7, 2008, the Movant' submitted a Motion to Incur Indebtedness that was approved by the court on June 12, 2008.
7. On or around March, 2008 Movant' received upon request to TBW, Payoff Statements for aforementioned mortgage with pay history. The statements showed incorrect interest rate applied to the adjustable rate mortgage, an accumulation of interest and late charges on the pre-petition arrearage and a pay history that was incorrectly showing the post-petition pay history (attached Payoff Statement).
8. On or about March, 2008, Movant' attorney requested information from TBWs' attorney regarding the interest and accumulated fees not covered in the plan that were on the Movant' Payoff Statement(attached Attorney Inquiry Email).
9. Due to the erroneous Payoff Statement, FHA terms mandated that the conditional approval would be retracted because of the stated post-petition pay history. This required

Michigan Mutual to obtain conditional approval from another FHA lender willing to lock the rate while TBW updated the pay history and pay off statement to reflect the correct post petition pay history and a payoff that accounted for the remaining principal balance and pre-petition arrearage and an estimate of the daily interest rate based on actual payoff date, with no accumulation of interest, fees and other penalties on pre-petition arrearage.

10. On March 31, 2008, Michigan Mutual obtained a new conditional approval with a higher interest rate, based on the Trustee Pay History and awaiting the aforementioned post-petition pay history and adjusted payoff statement for the secured mortgage with the TBW.
11. On April 30, 2008, TBWs' attorney replied with partial information regarding adjustable interest rate and a pre-petition balance that was different than the pre-petition Proof of Claim amount (attached Korn April 30 Email). TBW offered no statement correcting post-petition pay history, adjustment to incorrect charges on pre-petition arrearage nor validation or adjustment of Adjustable Rate Interest for the monthly payment.
12. On May 31, 2008, conditional approval for FHA mortgage refinance with Michigan Mutual expired due to the refusal of revised pay statement reflecting corrected adjustable rate interest, reduced over charge for erroneous compilation of late fees and penalty interest and updated post-petition pay history by Respondent.
13. On June 14, 2008, Plaintiff, Scott Allan Schledwitz, had to accept a position with his employer in another state. The new position would guarantee continued income that would allow for the Movant to continue making earnest effort to maintain payment schedules for the Chapter 13 plan, living expenses and mortgage payments to the best of

their ability. The new position added undue stress as it required a commute of 540 miles to Lake Mary, Florida with long term absences from the Plaintiff family for the next 56 weeks. Because of the inconsistent payment schedule with amounts and fraudulent actions of TBW, alternative employment options would not allow Scott Schledwitz to take employment at slightly lower income nor allow for a Mr. Schledwitz to obtain a second job for additional income to offset any reduction from taking other employment near the Movant' residence.

14. On or around August, 2008, Plaintiff Scott Allan Schledwitz, sought assistance from Dr. Christopher Caston seeking medical assistance due to stress and anxiety directly related to TBWs' actions and the resulting course taking by the Movant' to continue making payments to TBW for the secured mortgage. Mr. Schledwitz was prescribed 500mg of Depakote mid-day to help with the added stress and anxiety. The related stress and anxiety has placed a physical toll on Mr. Schledwitz.
15. On or around October, 2008, Movant' retained attorney Scott Talley to communicate with TBW regarding aforementioned erroneous activities.
16. On or around November, 2008, TBW attorney advised Movant' attorney to direct Movant to contact Respondent representative Deo Sengh directly to discuss erroneous activities attributed to accounting issues internal to Respondent.
17. On December 3, 2008, Movant' attempted to retrieve payment statements, Adjustable Rate Interest information that was scheduled to be reset on November 14, 2008, current payoff statements and pay history information through the TBW's website portal. The website portal located at <http://www.taylorbean.com> where TBW operates a public and

private informational website. TBW provides customers of their secured loan products login and password to view the account information specific to the customer and property secured. The Movant' access to the basic account information they required was intentionally blocked by the Respondent through the online portal(attached Taylor Bean restriction). Per the instructions from the website, Movant contacted the Respondent through the listed telephone number on the Respondent website and were told they were not allowed access but could not be told why access was restricted. This was the Movant' second, documented attempt to retrieve valid information from the TBW. TBW deceptively prevented the Movant' from accessing this information.

18. On December 9, 2008, Plaintiff called TBW and spoke with TBW representative, Deo Sengh, to discuss the next interest rate adjustment per the term of the Adjustable Rate Rider (attached). Mr. Sengh advised the Movant' that the rate had not been set as of yet and the new payment could not be determined. Mr. Sengh alleged that all statements and related information was being sent directly to Plaintiff Bankruptcy attorney, Gina McMaster. Movant' requested that Adjustable Rate Interest be reset to the original 7.25% and were informed by Mr. Sengh that would be illegal in bankruptcy and could not be done

19. January 14, 2009, Movant notified court and related creditors of *Pro Se* status.

20. On or about February, 2009, Movant discovered TBW had not been providing documentation alleged by Deo Sengh, TBW representative to Plaintiff Bankruptcy attorney regarding Adjustable Rate increase or related payment history– violating

mortgage agreement rules regarding written notification for adjustable rate interest per the Adjustable Mortgage Rider (attached).

21. On August 24, 2009, TBW filed for Chapter 11 Bankruptcy protection in the United States Bankruptcy Court of Middle Florida CASE NO: 3:09-bk-07047-JAF.
22. On August 31, 2009, the Bankruptcy Court of Middle Florida in the Case of TBW, approved an order that required TBW to provide Bayview, US Bank and Ocwen Lending with servicing information and mortgage documentation of mortgages to be serviced by Bayview, US Bank and Ocwen Lending effective September 1, 2009. The three aforementioned servicers were to be provided this information, in part, to prevent harm to the customers as well as TBW.
23. On September 1, 2009, Appellants received a letter from Bayview Loan Servicing, LLC, identifying themselves as the new loan servicer.
24. On November 19, 2009, Appellants appeared in United States Bankruptcy Court of South Carolina, presided by the Honorable Judge Helen Burris, to review the complaint filed by the Movant in Bankruptcy Court regarding Violation of Automatic Stay by the TBW as well as the facts supporting the complaints outlined in the Violation of Automatic Stay. It was noted by the Court that while the Court in South Carolina did not have jurisdiction in this Complaint due to the TBW's Chapter 11 Bankruptcy filing, it would stay engaged through the Appellants' Trustee as to any and all actions resulting from the aforementioned complaint. It was also recommended that the complaint be facilitated through the United States Bankruptcy Court of Middle Florida, where the TBW has filed its Chapter 11 Bankruptcy.

25. On December 22, 2010, Appellants filed a Quiet Title Action. Final order was signed and set aside on April 19, 2011 by the Master-In-Equity for a final hearing to review the standing of TBW as a Respondent. Respondents were notified through publication.
26. On March 24, 2011, Movant United States Bankruptcy Court of South Carolina, presided by the Honorable Judge Helen Burris, to review Movant's motion to remove the Respondent as a secured creditor for failure to provide notification of the Transfer of Claim and the Respondent's subsequent failure to respond to requests for account information and documentation proving its standing as mortgage servicer and holder by assignment from Taylor, Bean and Whitaker. The Respondent failed to appear at the hearing and was removed as a secured creditor from the Movant's bankruptcy case.
27. On February 24, 2012, Respondent files a Lis Pens and Complaint against the Movant in order to secure a Summary Judgment and foreclose on the Appellants' property. The Appellants, TBW, Mortgage Electronic Registration System (hereafter "MERS"), the State of south Carolina and the Internal Revenue Service as Defendants.
28. The Assignment of Mortgage (hereafter "AOM") with as sole nominee for Taylor, Bean and Whitaker was filed, assigning the mortgage to Bayview Loan Servicing. The date of the signed AOM was February 2, 2012, with no stamp or recording for the Register of Deeds in Spartanburg County.
29. On March 6, 2012, the Appellants filed an Objection to the Complaint and responded with a demand for Trial by Jury.

30. March 26, 2012, the Assignment of Mortgage was filed with the Spartanburg Register of Deeds with the signatures of a Mortgage Electronic Registration Systems executive, Robert G. Hall dated March 15, 2012.
31. No Limited Power of Attorney has been filed by Taylor, Bean and Whitaker naming Bayview Loan Servicing with the Register of Deeds as constituting and appointing Bayview Loan Servicing, LLC or its successors as its true and lawful Attorney-in-Fact, with full authority to execute, sign, make, acknowledge, deliver and record any assignment of security instruments or any other document necessary to transfer its interest in the security instrument, including a mortgage or deed of trust to Bayview Loan Servicing.
32. November 8, 2013, Appellants received a notice of the Summary Judgment hearing scheduled for November 19, 2013. Appellants replied on November 11, 2013 with an Objection to the Summary Judgment hearing and demanded a Trial by Jury.
33. November 16, 2013, Appellants filed a Motion for Continuance in order to depose the Respondents representatives, request transcript and redacted documents from the United States Bankruptcy Courts of Middle Florida and South Carolina and conduct Discovery for both the Appellants and Respondent.
34. November 18, 2013, Appellants requested status of the Motion for Continuance from the Master-In-Equity and were provided a copy of Ex-Parte communication conducted between the Master and the Respondent's attorney.
35. November 19, 2013, Summary Judgment hearing was held with the Appellants.

36. November 27, 2013, the Master-In-Equity signed the Summary Judgment and related Foreclosure notice and Sale.

37. December 20, 2013, Appellants received the Master-In-Equity signed orders.

ARGUMENTS

I. BECAUSE RESPONDENT FAILED TO PROVIDE PROOF IT WAS THE ASSIGNEE TO THE NOTE, IT HAS NO RIGHT TO FORECLOSE ON THE APPELLANT PROPERTY

A. The Respondent presented bankruptcy orders for blanket assignment of loan servicing from TBW to several Loan Servicers covering more than 4,200 mortgages throughout the United States. This original order provided detail of required account information for transfer of servicing. Detail would include the documentation of the Appellants' Mortgage, Note, RESPA and other related information. Respondent asserted the order covered its' legal holding and/or ownership of the Appellants' mortgage but never presented the supporting documentation that validates the aforementioned order is applicable and provides the Respondent with adequate evidence it had standing to foreclose. If the original note was lost or destroyed, the Respondent failed to file a Lost Note Certificate in its original filing of the LIS PENS and Complaint or in an amendment. Appellant requested a jury trial with the Spartanburg County Master-In-Equity with pre-trial discovery to resolve this issue or validate the defense's assertion that the Respondent is neither owner nor holder of the mortgage and has no standing to bring action on the Appellants.

B. The Assignment of Mortgage original mortgage holder, Taylor, Bean and Whitaker, is under Chapter 11 Bankruptcy protection, authentication of the Assignment of Mortgage specific to the Appellant through the Bankruptcy Court of Middle Florida by judge signature and court seal is a reasonable and defined by South Carolina Civil Court Procedure Rule 44 Proof of Record –

Rule 44(a) Authentication.

(1) Domestic. An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of

embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept and authenticated by the seal of his office.

Respondent failed to provide authentication, while other servicers for mortgages in similar proceedings have sought Motion for Relief from Automatic Stay for the mortgage and title or have been granted Limited Power of Attorney, with similar filings in Spartanburg County. The Appellant has demonstrated numerous challenges to the Respondents' status as holder or owner of the mortgage in question in timely responses in this case as well as in the Appellant filings in the Bankruptcy Court of South Carolina.(Record on Appeal Exhibit 1, page 63, Exhibit 2, page 69 and Exhibit 4, page 77) This is a violation of UCC Laws § 9-406 (c) DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE –

(c) [Proof of assignment.]

Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its

obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) (subsection (a) - [Discharge of account debtor; effect of notification.]).

Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(h) [Rule for individual under other law.]

This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

C. The actions of the Respondent are Predatory and Fraudulent. Respondent's assumption that it is the servicer is further clouded by its inability to correctly calculate the Adjustable Interest Rate,

defined in the Adjustable Rate Rider to the mortgage(Amended Record on Appeal Exhibit 3, page 76). Even if the Court believes the Respondent is the holder of the mortgage, the fact the interest rate has been egregiously miscalculated over the term of the agreement shows that the summary amounts are incorrect as well. In responses to the Respondent's Complaint filed with the Master-In-Equity of Spartanburg County(Motion for Continuance, page 56), Appellants filings in South Carolina Bankruptcy Court(Exhibits 1 and 2) and direct Qualified Written Request to the Respondent, the Appellants have continuously requested servicing information from the Respondent regarding the payment history, Adjustable Rate Mortgage Interest and related. This is a violation of South Carolina Code of Law SECTION 37-22-190 (11) Prohibited activities –

(11) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act (RESPA), 12 U. S.C. Section 2605 and Section 2609, and regulations adopted pursuant to them by the Secretary of the Department of Housing and Urban Development and state law;

The Complaint filed by the Respondent is a violation of UCC § 3-305(a)(ii)(iii) DEFENSES AND CLAIMS IN RECOUPMENT –

(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms,

Failure to reply to the Qualified Written requests further clouds the standing of the Respondent to file a complaint or request action as it pertains to the Appellants.

II. BECAUSE RESPONDENT FAILED TO PROVIDE ASSIGNMENT OF MORTGAGE PRIOR TO ITS LIS PENS FILING AND NO AMENDMENT THEREAFTER, THE RESPONDENT IS NOT INTITLED TO A SUMMARY JUDGMENT.

A. The Assignment of Mortgage was recorded by the Registrar of Deeds 30 days after the Lis Pens filing by the Respondent for this case. Respondent had no standing at the time of the filing to file its' complaint and Motion for Summary Judgment and has fully relied on a back dated Assignment of Mortgage that was never recorded by the Register of Deeds in Spartanburg County as its' right to continue through the proceedings. The original complaint and subsequent motions by the Respondent should have been denied based on the lack of legal standing

evidenced through their original filing.

B. Assignment of Mortgage to the Respondent was through Mortgage Electronic Registration Systems, Inc. ("MERS") acting solely as nominee for Taylor, Bean and Whitaker Mortgage Corporation ("TBW"). MERS is a Defendant in this civil case. The MERS executive that signed the Assignment of Mortgage is an employee of the Respondent as are the witness and notary of the same document. Appellant challenges the validity of the assignment and had requested a trial, discovery and deposition of the Assignment of Mortgage signer (Objection to Motion of Foreclosure, page 41). Furthermore, Respondent Attorney should be disqualified for representing both Respondent (Plaintiff) and a Defendant in this civil case.

C. In the Lis Pens and Complaint filed by the Respondent, under the General Allegations item #7 Respondent references a certain Note in the principal sum of one hundred sixty thousand and 00/100 (\$160,000.00) Dollars with an interest rate of 7.2500% per annum commencing installment payments on January 1, 2006. A copy of the note is attached to the complaint and recorded as Exhibit "A". Upon review of Respondent Exhibit "A", there are noted differences in the signature page acknowledgements of the signor with a missing signature of Roxanne Johnson Schledwitz, one of the Appellants. Roxanne Schledwitz signed all other documents during the closing of the mortgage on the property. The Note was signed at the time of the closing. Appellants have asserted that this document appears to be altered. This falls under the definition of UCC Laws - § 3-407(a). ALTERATION –

(a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party,

The Appellants objected to the Complain to the Master-In-Equity and asked for referral of this case to a Trial by Jury and allow evidence to be reviewed.

Respondent presented in its Complaint Exhibit "A, which is an altered document and the Respondent knew that the purported Adjustable Rate Note was fraudulent. Exhibit "A" only represents the Adjustable Rate Note. This is an incomplete filing of the required Note. If Respondent did not own the Mortgage, then it could not have validly instituted this Mortgage Foreclosure action.

III. MASTER-IN-EQUITY ERRED IN DENYING APPELLANTS' TIMELY AND REPEATED REQUEST FOR A TRIAL TO HEAR ARGUMENTS, TESTIMONY AND EVIDENCE

A. Appellant requested a trial by jury to present a proper defense, conduct discovery, depose witnesses and request documentation from the Bankruptcy Courts of South Carolina and Middle Florida in its Objections and Motion for Continuance. This violates South Carolina Civil Procedure Rule 38 –

Rule 38(a) Right Preserved.

The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

As with all responses, Appellant made this request in a timely fashion and was not granted the trial.

B. Respondent filed an Emergency Motion in the United States Bankruptcy Court of Middle Florida on August 27, 2009(Exhibit 1), stating that it had not received the information regarding the mortgage servicing for bundles of mortgages, including the Appellants. This motion was continued until August 10, 2010 where Bank of America requested the court to reactivate a second motion that did not prejudice the ownership of mortgages in allowing Bayview and U.S.

Bank to service the mortgages transferred from TBW. In an attached item to the motion, the Loan Service and Purchase Agreement state the requirements of transfer of the Mortgage, with a sample letter and attachment, or a Lost Mortgage Note Affidavit. It states that by agreeing to this motion, the Respondent acknowledges that mortgage transfer cannot occur without meeting that aforementioned condition. The Respondent failed to provide as evidence any documentation related to the transfer including account numbers, original mortgage documents, or Sales Certificate. The Appellants Objected as to the validity of Respondent's claim as the mortgage servicer and holder. As mentioned previously, in the objections filed by the Appellants, a trial by jury was demanded.

C. Appellants filed a Lis Pens and Motion for Quiet Title on December 22, 2010(Exhibit 4), following proper procedures through the Final Order of Quiet Title. The Master-In-Equity of Spartanburg originally signed the order, then set aside pending a final hearing in which the Court would review the standing of the Appellant and effect on TBW, and assumedly, the Respondent. The Master for the Quiet Title Case is the same in this civil case. As mentioned in the Assignment of Mortgage as well as the objections filed by the appellant and the Quiet Title standing, the Title of the mortgaged property in this case is in question. The Respondent acknowledges the original mortgage holder, Taylor, Bean and Whitaker is currently in Chapter 11 Bankruptcy with Automatic Stay. The Appellant has requested Continuance and trial to conduct discovery, depose witnesses and gather information from the Bankruptcy Courts of South Carolina and Middle Florida that contains redacted documentation that must be released based on request to each court. Appellant was not granted this request to settle Title issues, which

is contrary to South Carolina Civil Procedure Rule 71 –

Rule 71(e) Actions When Title Is at Issue. In foreclosure or partition actions when title to real property is at issue the court or master to whom the action is referred shall take testimony and receive evidence as to the title and interest in the premises of the several parties. In all such actions the judge or master shall ascertain the rights and interests of the several parties and set forth in the report or order of judgment the conveyances or probate estates, if any, through which the rights or interests were acquired. In all such actions a transcript of record shall be made and preserved in the case file in the office of the clerk of court.

D. At no time does any waiver of Trial by Jury apply to the Appellant's demand. As stated previously, the Respondent continuously violated South Carolina Code of Law SECTION 37-22-190 (11) by attempting to illegally service the Mortgage and disregarding the calculation of the Adjustable Rate Mortgage. Whether it was the Respondent of TBW guilty of the fraudulent practice, the Appellants has no way of knowing at the time they signed the Mortgage and related documents, that the Mortgage Servicer would go outside of the scope of the Mortgage and Rider to calculate the monthly payment.

In *Partain v. Upstate Automotive Group*, 386 S.C. 488, 689 S.E.2d 602 (2010), Partain alleged Upstate Auto fraudulently replaced the truck he purchased with a different truck at the time of pick-up. 386 S.C. at 490, 689 S.E.2d at 603. Partain filed suit against Upstate Auto alleging he was the victim of a "bait and switch" in violation of the South Carolina Unfair Trade Practices Act. Id. Based on an arbitration agreement, Upstate Auto moved to dismiss Partain's claim. The Partain court found Aiken was controlling and concluded the arbitration clause did not apply because "the alleged actions of Upstate Auto constituted 'illegal and outrageous acts' unforeseeable to a reasonable consumer in the context of normal business dealings." Partain, 386 S.C. at 493, 689 S.E.2d at 604-05. Our supreme court noted Partain could not be held to have foreseen that Upstate Auto, after completing a sale, would substitute an entirely different vehicle in place of the truck he had agreed to purchase. Moreover, the court found Partain could not have "contemplated that, in signing the arbitration clause, he was agreeing to arbitrate claims arising from allegedly fraudulent conduct." The Appellants could not have considered when signing the document that the mortgage owner would fraudulently service the mortgage in the manner in which has been conducted. Therefore, *Partain v. Upstate Automotive Group* is applicable to the Appellants.

E. The Master did not apply the appropriate Standard of Review, as defined by South Carolina Rules of Civil Procedure, Rule 56 –

(e) Form of Affidavits; Further Testimony; Defense

Required. Supporting and opposing affidavits shall be made

on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

In *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) the South Carolina Supreme Court held that "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56, SCRPC." Rule 56, SCRPC provides that summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

matter of law." Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party."

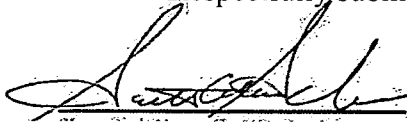
In this case, the Master ignored the two Objections, Motion for Continuance and Motion for a Hearing for Evidentiary Review filed by the Appellant where genuine issues of material fact were raised regarding the Respondent's standing to foreclose, citing filings in a Federal Criminal Court, two Federal Bankruptcy Courts and referencing documents filed by the Respondent as well as documents on file with the Spartanburg County Register of Deeds. Additionally, the Master set aside a previously signed Final Motion for Quiet Title order in part, to review in hearing the standing of TBW and any John Doe Defendant. In the Quiet Title case, the Master acted without response from any named or unnamed Defendant in accordance with Rule 56. Finally, the Appellants raised the fraudulent activities of TBW during the time it originated and service the Appellant's mortgage. The point about fraud regarding the original mortgage owner has clouded the standing of mortgages across the country, including South Carolina. In Spartanburg County, TBW originated and serviced 1133 mortgages from 1995 to 2009. As mentioned previously, other assignees have recorded Limited Power of Attorney from TBW and specific to the mortgages recorded by the County Register of Deeds. The Respondent does not have a Limited Power of Attorney for the Appellant's mortgage nor any other mortgage, object or instrument in Spartanburg County Register of Deeds. The absence of these plus filings of AOM after the LIS PENS and no Affidavit of Lost Note added to the issues with TBW fraud establish enough basis for referral to a Jury Trial, as requested by the Appellants.

CONCLUSION

The Respondent had failed to file the LIS PENS and Complaint with any standing due to the disparity in the filing of the Assignment of Mortgage, which had not been filed at the time of the Respondent filing. The Respondent failed to provide adequate proof of its standing as the mortgage servicer and holder. Finally, the Master-In-Equity erred in not referring the case back to the Court of Common Pleas, subsequently denying the Appellants their right and timely demand for a Trial by Jury. For the reasons stated, this Court should reverse the judgment of the Master-In-Equity.

June 15, 2016

Respectfully submitted,



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The South Carolina Court of Appeals

Bayview Loan Servicing, LLC, Respondent,

v.

Scott A. Schledwitz, Roxanne J. Schledwitz a/k/a
Roxanne Johnson Schledwitz, Mortgage Electronic
Registration Systems, Inc. (MERS) as nominee for
Taylor, Bean & Whitaker Mortgage Corp., The United
States of America, by and through its agency, the Internal
Revenue Service, and The South Carolina Department of
Revenue, Defendants,

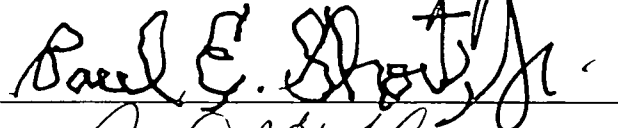
Of whom Scott A. Schledwitz and Roxanne Johnson
Schledwitz are the Appellants.

Appellate Case No. 2013-002811

ORDER

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



J.


J.


J.

FILED

August 18, 2016 27
Page 876 of 107

Columbia, South Carolina

cc: Scott Allan Schledwitz
Roxanne Johnson Schledwitz
Heidi B. Carey, Esquire
Damon Christian Wlodarczyk, Esquire