

21029

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Judge

Appellate Case No. 2014-001384
Common Pleas Case No. 2012-CP-32-2816

RECEIVED
JUL 01 2015
SC Court of Appeals

FV-I, Inc. in trust for Morgan Stanley Mortgage Capital Holdings LLC,...Respondent,

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank and Trust Company, Inc.; Wells
Fargo Bank, N.A.; Branch Banking and Trust Company, Defendants,

Of whom Bryon J. Dolan and Lisa S. Dolan are the.....Appellants.

RECORD ON APPEAL

Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellants

Charles S. Gwynne, Jr.
Jason D. Wyman
Rogers Townsend & Thomas, PC
Post Office Box 100200
Columbia, SC 29202
(803) 771-7900
Attorneys for Respondent

INDEX

Verdict form.....	1
Order Denying Motion for New Trial.....	2
Order Denying Motion to Reconsider.....	3
Order on Motion to Strike Jury Demand and Refer Case.....	4
Order Bifurcating Action.....	10
Order on Motion to Proceed with Trial and Appeal Bond Issues.....	12
Order on Motion to Dismiss this Appeal.....	25
Order Dismissing Appeal in Appellate Case No. 2014-002710.....	27
Summons and Complaint.....	28
Answer and Counterclaim.....	36
Motion for New Trial.....	44
Memorandum in Support of Motion for New Trial.....	45
Motion to Reconsider.....	59
Attached email from Judge Kelly’s law clerk.....	61
Attached <u>CACH, LLC v. Moran</u> order.....	62
Motion to Dismiss this Appeal.....	71
Transcript of Pre-Trial Hearing.....	75
Transcript of Trial.....	99
Admission of agreed exhibits.....	103
Judge’s introductory remarks.....	104
Opening statement – Dolan Defendants (Appellants).....	112
Opening statement – Plaintiff FV-I (Respondent).....	118

Bryon Dolan's testimony – direct examination.....	122
Bryon Dolan's testimony – cross-examination.....	161
Bryon Dolan's testimony – redirect examination.....	221
Bryon Dolan's testimony – recross-examination.....	226
Lisa Dolan's testimony – direct examination.....	227
Lisa Dolan's testimony – cross-examination.....	228
Loretta Poch's testimony (in Dolans' case-in-chief) – direct examination...	230
FVI's Directed Verdict Motions at Close of Dolans' case.....	237
Loretta Poch's testimony (in FV-I's case-in-chief) – direct examination....	245
Loretta Poch's testimony (in FV-I's case-in-chief) – cross-examination.....	272
Loretta Poch's testimony (in FV-I's case-in-chief) – redirect examination..	274
Closing argument – Dolans.....	276
Closing argument – FV-I.....	283
Closing argument – Dolans' reply.....	288
Jury charge.....	290
Verdict delivery.....	203
Trial Exhibits.....	305
Plaintiff's Exhibit 1 (plat).....	305
Plaintiff's Exhibit 2 (note).....	306
Plaintiff's Exhibit 3 (mortgage).....	312
Plaintiff's Exhibit 4 (lis pendens, summons & complaint - 09-2263).....	332
Plaintiff's Exhibit 5 (lis pendens, summons & complaint - 09-2811).....	341
Plaintiff's Exhibit 6 (master's deed).....	349

Plaintiff's Exhibit 7 (foreclosure judgment - 09-2263).....	353
Plaintiff's Exhibit 8 (plat).....	361
Plaintiff's Exhibit 9 (partial release of mortgage).....	362
Plaintiff's Exhibit 10 (email printout with attachments).....	365
Plaintiff's Exhibit 11 (notice from Specialized Loan Servicing, LLC).....	368
Plaintiff's Exhibit 12 (Saxon Mortgage Services Customer Account Activity Statement).....	372
Plaintiff's Exhibit 13 (mortgage modification document).....	386
Defendants' Exhibit 1 (Plaintiff's responses to Dolan Defendants' requests to admit)	388
Defendants' Exhibit 2 (notice of assignment).....	392
Defendants' Exhibit 3 (letter from Saxon Mortgage Services).....	393
Defendants' Exhibit 4 (letter from Saxon concerning release of property)...	395
Defendants' Exhibit 5 (email printout).....	397
Defendants' Exhibit 6 (email printout and attachment).....	398
Defendants' Exhibit 7 (email printout).....	401
Defendants' Exhibit 8 (letter from Saxon with check).....	403
Defendants' Exhibit 9 (servicing notes).....	405
Defendants' Exhibit 10 (consent order – 09-2263).....	410
Defendants' Exhibit 11 (letter from Saxon).....	415
Defendants' Exhibit 12 (Saxon value reconciliation worksheet).....	416
Defendants' Exhibit 13 (foreclosure review sheet).....	417
Defendants' Exhibit 14 (notice from Specialized Loan Servicing, LLC)....	419
Defendants' Exhibit 15 (notice from Specialized Loan Servicing, LLC)....	423

Defendants' Exhibit 16 (Specialized Loan Servicing reinstatement figure letter).....	425
Defendants' Exhibit 17 (email printout).....	427
Defendants' Exhibit 18 (email printout).....	428
Dolan Defendants' Memorandum of Law.....	430
Notice of Appeal in Appellate Case No. 2014-002710.....	443
FV-I's Appellant's Brief in Appellate Case No. 2014-002710.....	445
Certificate of Appellants' Counsel.....	133

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

FV-I, Inc., in trust for Morgan Stanley
Mortgage Capital Holdings LLC,

Plaintiff,

v.

Bryon J. Dolan; Lisa Dolan; First Citizens
Bank and Trust Company, Inc.; Wells
Fargo Bank, N.A.; Branch Banking and
Trust Company,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2012-CP-32-2816

VERDICT

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2014 APR 18 A 8:39

FILED

The jury must unanimously agree on the verdict. Once you have completed this form, the foreperson of the jury should sign and date the form.

Question 1: Did the Dolans prove by a preponderance of the evidence that FV-I, Inc. breached the contract?

Yes

No

If your answer to Question 1 was "Yes", then please set forth the amount of the actual damages.
\$

If your answer to Question 1 was "No", then the forelady should sign and date this verdict form.

April 17, 2014

Kennedy-Forbes
Foreperson

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-32-2816

ORIGINAL

FILED

FV-I, Inc. etc.,

2014 MAY 16 P 1:22

Byron J. Dolan, et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Andrew S. Radeker (per direction of Court)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order ☒ Statement of Judgment by the Court:

The Dolan Defendants' motion for a new trial is hereby denied.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

A. Scott Kelly
Circuit Court Judge

2165
Judge Code

8 May 2014
Date

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-32-2816

ORIGINAL

FV-I, Inc. etc.,

2014 JUN 19 P 12: 20

Bryon J. Dolan, et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Andrew S. Radeker (per direction of court)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order ☒ Statement of Judgment by the Court:

The Dolan Defendants' motion to reconsider the order denying their motion for a new trial is hereby denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

R. Keith Kelly
Circuit Court Judge

2165
Judge Code

13 JUN 2014
Date

SCRPC Form 4C (10/2011)

Page 1 of 2

Record on Appeal 3

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FV-I, Inc., in trust for Morgan Stanley
Mortgage Capital Holdings LLC,

Plaintiff,

vs.

Bryon J. Dolan; Lisa S. Dolan; First
Citizens Bank and Trust Company, Inc.;
Wells Fargo Bank, N.A.; Branch Banking
and Trust Company;

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-32-2816

ORDER ON PLAINTIFF'S MOTION
TO STRIKE JURY DEMAND AND
REFER CASE

This matter came before me at a hearing on July 16, 2013, of the Plaintiff's motion to strike the jury demand of Defendants Bryon J. Dolan and Lisa S. Dolan (hereinafter "the Defendants") and to refer this case to the Lexington County Master-in-Equity. Charles S. Gwynne, Jr., Esquire, argued the motion for the Plaintiff, and Andrew S. Radeker, Esquire, did so for the Defendants. After due consideration, the Court denies the motion to refer the case to the Master-in-Equity and denies in part and grants in part the motion to strike the Defendants' jury demand.

This is a mortgage foreclosure action which the Defendants have asserted defenses and counterclaims. The Defendants pled three counterclaims: 1) for an accounting, 2) for violation of the South Carolina Unfair Trade Practices Act, and 3) for breach of contract. The Plaintiff and the Defendants agree that the claims for foreclosure and for an accounting sound in equity and, thus, that neither party has the right to a jury trial on those claims. The Plaintiff's motion thus concerns the at-law counterclaims, which are those for breach of contract and violation of the Unfair Trade Practices Act.

1/6 

In Johnson v. S.C. Natl. Bank, our Supreme Court set out "the proper analysis for determining the trial of legal and equitable issues in complaints and counterclaims" as follows:

- (1) If both the complaint and the counterclaim are in equity, the entire matter is triable by the court.
- (2) If both are at law, the issues are triable by a jury.
- (3) If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.
- (4) If the complaint is equitable and the counterclaim legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim. In that case, the proper procedure is as follows:
 - (a) The trial judge may, pursuant to Rule 42(b), order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding.
 - (b) If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the "most imperative circumstances," Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S. Ct. 948, 3 L.Ed.2d 988 (1959), the "at law" claim must be tried first. If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first.
 - (c) If the claims are to be tried in a single proceeding and there are factual issues common to both claims, the jury shall first determine the legal issues. The court may then determine the equitable claims, but the jury's determination of common factual issues shall be binding upon the court.

292 S.C. 51, 55-56, 354 S.E.2d 895, 897 (1987).

Accordingly, the Court's analysis for each of the two counterclaims at issue turns on whether the counterclaim is compulsory. As discussed below, the Court determines that the breach of contract counterclaim is compulsory and the Unfair Trade Practices Act claim is not.

2/6 

In June of 2012, the Court of Appeals in Wells Fargo Bank, N.A. v. Smith addressed whether three counterclaims at issue there – common law unconscionability, statutory unconscionability, and violation of the attorney preference statute – were compulsory counterclaims in a mortgage foreclosure action. 398 S.C. 487, 493-99, 730 S.E.2d 328, 331-35 (Ct. App. 2012). The Court of Appeals discussed the test for determining whether a counterclaim is compulsory as follows:

“By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party’s claim.” First-Citizens Bank & Trust Co. of S.C. v. Hucks, 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991); see also Rule 13(a), SCRPC. The test for determining if a counterclaim is compulsory is whether there is a “logical relationship” between the claim and the counterclaim. Mullinax v. Bates, 317 S.C. 394, 396, 453 S.E.2d 894, 895 (1995). In N.C. Fed. Sav. & Loan Ass’n v. DAV Corp., 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989), our supreme court adopted the “logical relationship” test and held DAV’s counterclaim was compulsory because “there [was] a logical relationship between the enforceability of the note which [was] the subject of the foreclosure action and the validity of the purported oral agreement which, if performed, would have avoided default on the note by the joint venture.” In essence, the “logical relationship” determination is made by asking whether the counterclaim would affect the lender’s right to enforce the note and foreclose the mortgage. Advance Intern., Inc. v. N.C. Nat’l Bank of S.C., 316 S.C. 266, 269-70, 449 S.E.2d 580, 582 (Ct.App.1994), aff’d in part, vacated in part, 320 S.C. 532, 466 S.E.2d 367 (1996). Here, there is a “logical relationship” between the enforceability of the Note, which is the subject of the foreclosure action, and the allegation that the Mortgage between Wells Fargo and Smith is unconscionable. If Smith prevails on his unconscionability claim, it will affect Wells Fargo’s right to enforce the Note and foreclose the Mortgage. Therefore, Smith’s common law unconscionability counterclaim is compulsory under the “logical relationship” test.

Id. at 495-96.

The Wells Fargo v. Smith court determined that Smith’s claim based on violation of the attorney preference statute – which apparently only sought relief under subsection (A) of S.C.

3/6 

Code Ann. § 37-10-105 – was an at-law claim but was not compulsory because the “counterclaim has no ‘logical relationship’ to the enforceability of the Note and Mortgage[.]” since, if he prevailed on the claim, “Smith would only be entitled to actual damages and a possible penalty between \$1,500 and \$7,500” and would not be entitled to “rescission of the Note and Mortgage[.]” Wells Fargo, 398 S.C. at 499.

The Defendants argue that, to the extent that the Court of Appeals stated in Wells Fargo v. Smith that a counterclaim in a mortgage foreclosure action is compulsory *only* if “the counterclaim would affect the lender’s right to enforce the note and foreclose the mortgage[.]” the Court of Appeals departed from precedent and is wrong. The Defendants argue the correct test is whether the counterclaims arises out of the same transactions or occurrences as the Plaintiff’s claim. Regardless of the merits of the Defendants’ argument on that point, however, this Court is constrained by precedent to follow Wells Fargo v. Smith, which holds that a counterclaim in a mortgage foreclosure action is compulsory only if it has a logical relationship to the enforceability of the note and mortgage. In other words, under the Wells Fargo v. Smith test, if success on the counterclaim would mean that the plaintiff *cannot* prevail on its foreclosure claim, then the counterclaim is compulsory.

The Defendants’ breach of contract claim is compulsory. The gist of the claim is that the Plaintiff or a predecessor in interest entered into a settlement or modification of the loan at issue, that the Defendants performed their duties under that arrangement (until the Plaintiff prevented them from performing further), and that the Plaintiff breached its contractual duties to the Defendants under the note and mortgage as modified by the settlement. If what the Defendants allege is true, then they are not in default of the note and mortgage, and the Plaintiff thus cannot

4/6 

enforce the note or be granted foreclosure of the mortgage. This is the essence of a compulsory counterclaim.

The Defendants argue that their Unfair Trade Practices Act claim is compulsory because it arises out of the same set of facts (i.e., transactions and occurrences) as do several of their defenses to the foreclosure claim, and because it arises out of the same set of facts as their compulsory breach of contract claim. They also argue that the claim is compulsory because it arises out of the administration of the loan, which is necessarily a part of the Plaintiff's case. The Court disagrees. Under the Wells Fargo v. Smith test, this counterclaim would be compulsory only if it would necessarily affect the Plaintiff's right to enforce the note and foreclose the mortgage. If the Defendants prevail on their Unfair Trade Practices Act claim, that will not necessarily mean that the Defendants have proven a set of facts that makes it impossible for the Plaintiff to succeed on its foreclosure claim. It would be possible both for the Defendants to prevail on this counterclaim and also for the Plaintiff to prevail on its claim at the same trial. Accordingly, the Defendants' Unfair Trade Practices Act counterclaim is permissive.

As the master-in-equity cannot conduct a jury trial, the entire case cannot be referred to the master-in-equity, which is what the Plaintiff sought in its motion. The Defendants noted at the hearing that they would not oppose this case being bifurcated, with the foreclosure claim being tried by the master-in-equity, so long as the jury issues are tried first. Therefore, the Plaintiff has until 45 days after the entry of this Order (to give time for any appeal) to elect that this case be bifurcated in that manner if it chooses to do so.

It is therefore hereby ORDERED as follows:

1. The Plaintiff's motion to refer this case to the master-in-equity is denied;

5/6 

2. The Plaintiff's motion to strike the Defendants' jury demand as to their breach of contract counterclaim is denied, and this counterclaim claim shall be tried by a jury;
3. The Plaintiff's motion to strike the Defendants' jury demand as to their Unfair Trade Practices Act counterclaim is granted, and this counterclaim shall be tried by the Court; and
4. The Plaintiff has until 45 days from the entry of this Order to elect that this case be bifurcated, with the foreclosure claim being tried by the master-in-equity, so long as the jury issues are tried first.

AND IT IS SO ORDERED.



The Honorable Edgar W. Dickson
Circuit Judge

September 26, 2013

6/6 

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FV-I, Inc., in trust for Morgan Stanley
Mortgage Capital Holdings LLC,

vs.

Bryon J. Dolan; Lisa S. Dolan; First Citizens
Bank and Trust Company, Inc.; Wells Fargo
Bank, N.A.; Branch Banking and Trust
Company,

Defendants.

IN THE COURT OF COMMON PLEAS

FILED

DOCKET No. 2012-CP-32-2816

2014 MAY - 1 P 3:49

Plaintiff,

BETH A. CARRIGG
CLERK OF COURT

LEXINGTON

ORDER BIFURCATING ACTION AND
DEFERRING FORECLOSURE CLAIM
TO MASTER-IN-EQUITY

(511792.355 CSG)

WHEREAS, Plaintiff FV-I, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC ("Plaintiff") brought this action to foreclosure a mortgage lien on property more fully described in the Complaint;

WHEREAS, Defendants Bryon J. Dolan and Lisa S. Dolan ("Defendants") filed and Answer and Counterclaim against Plaintiff;

WHEREAS, the answering parties hereto have agreed and stipulated to bifurcate this action pursuant to Rule 42(b), SCRCP; and

WHEREAS, it appearing that pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, that the answering parties hereto have agreed and stipulated that the Plaintiff's foreclosure claim and equitable counterclaim for Accounting be referred to The Honorable James O. Spence, as Master in Equity for Lexington County.

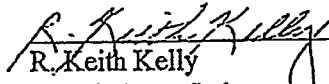
NOW, THEREFORE, by consent of the parties in accordance with their agreement,

IT IS HEREBY ORDERED THAT:

1. This action is hereby bifurcated, the Defendants' counterclaims for Breach of Contract and Unfair Trade Practices are severed from Plaintiff's foreclosure action, and that Defendants may proceed on these counterclaims in a separate trial;
2. Plaintiff's foreclosure claim and equitable counterclaim for Accounting is referred to The Honorable James O. Spence, Master in Equity for Lexington County to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCP, and all matters arising from or reasonably related to such action. The Master in Equity shall retain jurisdiction to

perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, the Master in Equity shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including but not limited to Rule 60(b). Pursuant to Rule 53(e), SCRPC, any appeal from the final judgment 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.

AND IT IS SO ORDERED!


R. Keith Kelly
Circuit Court Judge

Lexington, South Carolina

17 April, 2014

COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-32-2816

**FV-I, Inc., in trust for Morgan Stanley
Mortgage Capital Holdings LLC,**

Plaintiff,

vs.

**Bryon J. Dolan; Lisa S. Dolan; First
Citizens Bank and Trust Company, Inc.;
Wells Fargo Bank, N.A.; Branch Banking
and Trust Company;**

Defendants.

**ORDER ON PLAINTIFF'S MOTION
TO PROCEED WITH TRIAL AND ON
APPEAL BOND ISSUES**

FILED
NOV 21 A 9:25
CLERK OF COURT
LEXINGTON, SC

This matter comes before me upon the Plaintiff's motion that the trial of the equitable claims in this case proceed while an appeal of the denial of Defendants Bryon J. Dolan and Lisa S. Dolan (hereinafter "the Defendants")'s motion for a new trial as to their at-law counterclaims is pending. For the reasons discussed below, the court denies the motion and declines to set any bond conditions for the Defendants to meet in order for the appellate stay to remain in effect.

PROCEDURAL HISTORY

This is a case in which the Plaintiff seeks mortgage foreclosure and the Defendant asserted both legal and equitable counterclaims. This case was bifurcated by consent order on the cusp of trial, with the Defendants' at-law counterclaims tried to a jury on April 17, 2014, and the foreclosure claim and the Defendants' claim for an accounting referred to the undersigned master-in-equity to be tried later. The jury returned a verdict for the Plaintiff on the at-law counterclaims, and the Defendants moved for an order granting them a new trial as to the claims subject of the jury trial (the Defendants' counterclaims for breach of contract and violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*).

The Defendants moved for reconsideration of the order denying their motion for a new trial. That motion was denied, and the Defendants appealed the orders denying the motion for a new trial and motion to reconsider. The Plaintiff moved the Court of Appeals to dismiss the appeal, arguing that the orders were not immediately appealable. The Court of Appeals denied that motion to dismiss, but did grant leave to the parties to address the appealability of the legal counterclaims in their respective briefs.

APPEALABILITY OF APPEALED ORDERS

The Plaintiff takes the position that because this case was bifurcated and the trial on some claims has not already occurred, the order denying the Defendants' motion for a new trial as to the claims that have been tried to a directed verdict and a jury verdict in this case is not appealable. The Plaintiff takes the position that the directed verdict and jury verdict were not final judgments in this case, arguing that only after the equitable claims have been tried would any appeal lie in this case. Accordingly, the Plaintiff argues, the Defendants' appeal does not stay anything, since it is an improper appeal of an unappealable order.

South Carolina law states that "[a]n order that grants or refuses a new trial affects a substantial right and is immediately appealable" pursuant to S.C. Code Ann. § 14-3-330(2)(b). Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 97 (2d ed. 2002) (citing S.C. Code Ann. § 14-3-330(2)(b) and S.C. State Hwy. Dept. v. Clarkson, 267 S.C. 121, 126-27, 226 S.E.2d 696, 697 (1976)). The statute that speaks generally to the appealability of orders, S.C. Code Ann. § 14-3-330, specifically lists an order that "grants or refuses a new trial" as appealable. S.C. Code Ann. § 14-3-330(2)(b). The order denying the Defendants' motion for a new trial that is subject of this appeal is immediately appealable because it is an order that refuses a new trial. Id.

Rule 54(a), SCRPC, provides that the definition of “judgment” under the Rules of Civil Procedure “includes any decree or order which dismisses the action as to any party or finally determines the rights of any party.” The directed verdict at the jury trial as to one of the Defendants’ causes of action tried in that trial and the jury verdict as to the other cause of action tried in that trial are final judgments, for appealability purposes, as they finally determined the rights of the parties with respect to those claims. Rule 54(a), SCRPC. The directed verdict ruling and jury verdict finally determined the rights of the parties as to the breach of contract and unfair trade practices claims.

The Supreme Court of South Carolina has held that an order that ends one of several claims in a case but leaves the other claims pending is an immediately appealable order, ruling against the argument that an aggrieved party must wait until all the causes of action have been finally determined in order to appeal. Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 4 fn. 2, 393 S.E.2d 176, 178 fn. 2 (1990) (overruling Plaza Dev. Services v. Joe Harden Builder, Inc., 296 S.C. 115, 370 S.E.2d 893 (Ct. App. 1988), “to the extent that it holds that one may not appeal the granting of a 12(b)(6) motion under § 14-3-330 if the ruling affects some but not all of a party’s causes of action”); Lebovitz v. Mudd, 289 S.C. 476, 479, 347 S.E.2d 94, 96 (1986) (“order granting a Rule 12(b) motion as to one of multiple claims is directly appealable under § 14-3-330(2) because it affects a substantial right and strikes out part of a pleading”; rejecting argument that circuit court had to make Rule 54(b) certification to make an order appealable where it is already appealable under S.C. Code Ann. § 14-3-330). The Plaintiff’s argument that the Defendants’ appeal is improper because there has been no final judgment in this case is against this precedent and fails.

The denial of the Defendants' motion for a new trial under Rule 59, SCRPC, with respect to the claims tried in the jury trial is, accordingly, immediately appealable under S.C. Code Ann. § 14-3-330(1), which provides for appeals from orders "involving the merits[,] " as well as under S.C. Code Ann. § 14-3-330(2)(b). "An order 'involves the merits,' as that term is used in Section 14-3-330(1) and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense." Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 7, 630 S.E.2d 464, 467 (2006). The directed verdict and jury verdict here finally determined the causes of action tried in the jury trial, and the Defendants' new trial motion was a post-trial motion directed at those final judgments.

If a case is bifurcated into a jury trial on at-law claims and a bench trial on equitable claims, that does not mean that the result of the jury trial is not a final judgment. See Rule 54(a), SCRPC. The jury trial is no less a trial simply because it occurs before the bench trial. The verdict in the jury trial is the final judgment as to the at-law claims subject of that trial; otherwise, it would not be true that in a bifurcated case "the jury's determination of common factual issues shall be *binding* upon the court" in the following bench trial. Wachovia Bank, N.A. v. Blackburn, 407 S.C. 321, 330, 755 S.E.2d 437, 442 (2014) (emphasis added). The fact that the equitable claims remain pending does not affect the finality of the at-law claims' verdict, nor does it affect appealability with regard to post-trial motions directed at that verdict. S.C. Code Ann. § 14-3-330(1)&(2)(b); Rule 54(a), SCRPC; Capital U-Drive-It, 369 S.C. at 7; Link, 302 S.C. at 4 fn. 2; Lebovitz, 289 S.C. at 479.

The Plaintiff cannot prevail on its argument that, because the appealed orders are not appealable, there is no appellate stay in effect. While it appears that the Plaintiff would be

correct if the orders at issue were indeed not appealable, that is not the situation that this case presents.

EFFECT OF THE APPELLATE STAY

Rule 205, SCACR, states as follows:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 241, SCACR (formerly numbered as Rule 225), entitled "Stay and Supersedeas in Civil Actions," provides in pertinent part as follows:

(a) General Rule. As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

(b) Exceptions. The exceptions to the general rule are found in statutes, court rules, and case law. Where specific conditions must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all, of the exceptions to the general rule is:

- (1) Money judgments as provided in S.C. Code Ann. § 18-9-130.
- (2) Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150.
- (3) Judgments directing the execution of conveyances or other instruments as provided in S.C. Code Ann. § 18-9-160.

(4) Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170.

(5) Judgments directing the sale of perishable property as provided in S.C. Code Ann. § 18-9-220.

(6) Family court orders regarding a child or requiring payment of support for a spouse or child as provided in S.C. Code Ann. § 63-3-630.

(7) Worker's compensation awards as provided in S.C. Code Ann. § 42-17-60.

(8) An appeal from an order granting an injunction or temporary restraining order.

(9) Family court orders awarding temporary suit costs or attorney's fees as provided in S.C. Code Ann. § 63-3-530(A)(2).

(10) Ejectment orders as provided in S.C. Code Ann. § 27-37-130 and S.C. Code Ann. § 27-40-800.

(11) Appeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2) and § 1-23-600(G)(5).

Discussing the appellate stay, S.C. Code Ann. § 18-9-220 provides that:

In cases not provided for in Sections 18-9-130 and 18-9-150 to 18-9-180, the notice of appeal shall stay proceedings in the court below upon the judgment appealed from, except that when it directs the sale of perishable property, the court below may order the property to be sold and the proceeds of the property to be deposited or invested in bonds of this State or of the United States, to abide the judgment of the appellate court.

The appeal at issue here does not fall within any of the exceptions to the general rule that service of a notice of appeal stays further proceedings at the trial level as to matters that are affected by the appeal (as the parties appear to agree). No perishable property is at issue here. Therefore, the stay is in effect. What the court must determine is whether trial of the equitable claims in this case falls within the scope of what is affected by the appeal. As discussed below, the court determines that it does.

As noted above, in a bifurcated case involving equitable claims and at-law claims to be tried in different trials, with the at-law claims to be tried to a jury, “[i]f there are factual issues common to both claims, absent the most imperative circumstances, the at law claim must be tried first.” Blackburn, 407 S.C. at 330. That is because, in a case in which a jury tries the at-law claims and the court tries the equitable claims, “the jury’s determination of common factual issues shall be binding upon the court.” Id.

Here, there are factual issues common to the Defendants’ breach of contract claim and the Plaintiff’s foreclosure claim. In a previous order in this case that denied the Plaintiff’s motion to strike the Defendants’ jury demand, which the Plaintiff did not appeal¹, the Honorable Edgar W. Dickson, in deciding that the Defendants’ breach of contract counterclaim is compulsory, ruled that “[i]f what the Defendants allege is true, then they are not in default of the note and mortgage, and the Plaintiff thus cannot enforce the note or be granted foreclosure of the mortgage.” (Order filed Oct. 10, 2013.) That ruling is the law of the case. Ulmer v. Ulmer, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006); Cherry v. Myers Timber Co., Inc., 404 S.C. 596, 598 n. 3, 745 S.E.2d 405, 406 n. 3 (Ct. App. 2013).

An examination of the analysis used in Wayne Smith Const. Co., Inc. v. Wolman, Duberstein, and Thompson, 294 S.C. 140, 363 S.E.2d 115 (Ct. App. 1987), is instructive. In that case, there were multiple appeals. Id. The defendant partnership in Smith Construction initially appealed an order denying its motion to quash notices of deposition, and that appeal was dismissed, as the order was not immediately appealable. Id. at 148. The defendant partnership lost at the trial of the case and appealed that order. Id. The trial court then awarded the plaintiff attorney’s fees concerning the first, then-dismissed appeal of the order denying the motion to

¹ The *Defendants* appealed a different aspect of this order, but the parties resolved that issue, and that appeal was dismissed.

quash the deposition notices. Id. The defendant then appealed the order awarding attorney's fees, arguing that the court lacked jurisdiction because of the appeal from the order that rendered judgment for the plaintiff on the substantive case. Id. The Court of Appeals noted the rule that service of a notice of appeal does not prevent the lower court from proceeding with matters that are not affected by the appeal and stated that "Smith Construction's right to be awarded an attorney's fee as costs did not depend upon the success of the partnership's appeal of the trial court's order awarding Smith Construction judgment." Id. at 149. The Court of Appeals held that the lower court had jurisdiction to issue the order awarding attorney's fees. Id.

Here, unlike in Smith Construction, what the Plaintiff seeks to have happen during the pendency of the Defendants' appeal – the trial of the plaintiff's foreclosure claim and the issuance of a judgment on that claim – *does* depend on the success of the Defendants' appeal. If the Defendants succeed on appeal, the jury trial at which the Defendants lost on their at-law counterclaims will be of no effect, there will be no verdict finding against them on those claims, and the parties will be headed to a new jury trial, the result of which will be binding upon the master-in-equity as fact-finder with respect to the foreclosure claim. See Blackburn, 407 S.C. at 330. Whether it has been finally determined in this case that the facts underlying the counterclaims do not provide the Defendants with a defense to the foreclosure claim is very much a "matter[] decided in the order, judgment, decree or decision on appeal[.]" Rule 241(a), SCACR.

Because the trial of the equitable claims in this case would necessarily entail trial of the Plaintiff's foreclosure claim, trial of the equitable claims is a matter affected by the appeal. The appellate stay, accordingly, prevents the occurrence of that trial as long as the stay remains in effect.

ISSUES REGARDING BOND

At the hearing of the instant motion, the court requested that the parties submit memoranda on the issue of whether the court should require the Defendants to meet bond conditions to prevent the trial of the equitable claims while the appeal is pending and, if so, what those bond conditions should be. For the reasons discussed below, the court declines to impose any bond conditions on the Defendants.

“After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule.” Rule 241(c)(1), SCACR. The Appellate Court Rules appear to provide that the court’s primary consideration in determining whether to lift the appellate stay is “whether such an order is necessary to preserve jurisdiction of the appeal” – which is more likely to be a consideration in determining whether to impose a supersedeas where one would otherwise not exist – “or to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR.

Rule 241(c)(3), SCACR, provides as follows:

The granting of supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate. Further, where it appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.

Where a judgment in a mortgage foreclosure action directs the sale of real estate, the sale pursuant to that judgment is not automatically stayed while appellate proceedings are pending, unless the appellant (usually the mortgagor defendant) gives an undertaking as set forth in S.C. Code Ann. § 18-9-170 or a cash deposit as provided in S.C. Code Ann. § 15-1-250.

The Code section that sets out the undertaking conditions prescribes two slightly different undertakings, one given to stay the sale of real property to a specific party or delivery of possession of real property to a specific party while an appeal is pending, and one given to stay "the sale of land to satisfy a mortgage thereon or other lien[.]" S.C. Code Ann. § 18-9-170. The purpose of the former is to provide the party entitled to ownership of the property with compensation for the loss of the land's possession during the time of the appeal, while the purpose of the undertaking in a mortgage foreclosure appeal is to protect the foreclosure plaintiff from impairment of the full payment of the adjudged debt caused by the property lessening in value during the pendency of the appeal. See id.; Gerald v. Gerald, 30 S.C. 348, 9 S.E. 274, 275 (1889).

The requirements of the undertaking to stay a mortgage foreclosure sale of improved land on appeal are as follows:

- 1) The undertaking must be in writing;
- 2) The undertaking must be executed by the appellant;
- 3) Two sureties must agree to be liable on the undertaking by sufficient affidavit (the sureties so doing on the undertaking document itself or in separate instruments);
- 4) The undertaking must provide that the appellant shall pay to the respondent money per the undertaking if:
 - a. The judgment is affirmed; and
 - b. The land is finally sold for less than the judgment debt and costs.
- 5) The undertaking must state that the appellant shall pay the amount payable to the respondent thereunder if the sale is affirmed and there is a deficiency, which amount is measured as follows:

- a. The appellant shall pay for any waste he commits or suffers to be committed on the premises from the time of the execution of the undertaking to the time of the sale;
- b. The appellant shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale; and
- c. The amount payable per the undertaking shall not exceed the amount of the deficiency in the sale proceeds to satisfy the debt and costs.

S.C. Code Ann. § 18-9-170; Gerald, 30 S.C. 348, 9 S.E. at 275-77; see generally S.C. Code Ann. Title 18, Ch. 9. As an alternative to giving the undertaking, the appellant may make a cash deposit in lieu thereof. S.C. Code Ann. § 15-1-250.

The “manifest object of the undertaking required for the purpose of staying a sale pending an appeal is to protect the respondent, as far as practicable, from any damage which may ensue from the delay caused by the appeal, in enforcing his claim[,]” because the respondent, the foreclosure judgment creditor in that situation, has already been determined by a court to be entitled to the sale directed by the judgment. Gerald, 30 S.C. 348, 9 S.E. at 275. As it appears that Plaintiff’s counsel agreed at the hearing on this motion, S.C. Code Ann. § 18-9-170 would be applicable in this case only if there had already been a foreclosure judgment rendered. None has been.

Since the justification for imposing such conditions in order to stay the operation of the judgment directing the sale is that the court has already determined that the Plaintiff is *entitled* to the sale, the instant situation is materially different from that subject of S.C. Code Ann. § 18-9-170. The Plaintiff has never been determined by any court to be entitled to the relief it seeks in

this case, and it is by no means a foregone conclusion that the Plaintiff will be determined to be entitled to that relief, whether the Defendants succeed on appeal or not. This situation is not one which the Defendants have anything to bond off, nor is it analogous to such a situation. Nothing before the court indicates that an order lifting the appellate stay "is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR.

The court declines to impose any bond conditions on the Defendants in order for the appellate stay to remain in effect. If Plaintiff has legitimate concerns that waste is occurring on the property, Plaintiff may petition the court under the mortgage loan documents and/or applicable waste case law.

TO PROCEED WITH THE FORECLOSURE TRIAL POSES POTENTIAL PROBLEMS

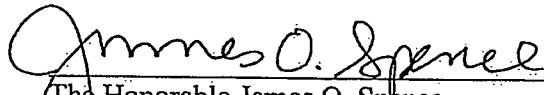
If the appellate stay were lifted, the court would be faced with the specter of this scenario: While the appeal is pending, the court goes forward with the trial of the foreclosure claim. That trial is held with the court being bound to the jury's verdict that decided the Defendants are not entitled to relief on their breach of contract counterclaim. The court finds for the Plaintiff on the foreclosure claim, a judgment of foreclosure is rendered, and the property subject of this case is sold. Afterward, the Defendants prevail on their appeal, and the Court of Appeals directs that a new jury trial be held. At that trial, the Defendants prevail on their breach of contract counterclaim, which necessarily decides, as Judge Dickson ruled, that the Defendants "are not in default of the note and mortgage, and the Plaintiff thus cannot enforce the note or be granted foreclosure of the mortgage." (Order filed Oct. 10, 2013.) This would result in judgments that are irreconcilable with one another. It is safer and more efficient to leave the stay

in effect and have the trial of the foreclosure claim only if and when it is appropriate following the conclusion of the appeal.

CONCLUSION

For the reasons discussed above, IT IS THEREFORE HEREBY ORDERED that the Plaintiff's motion to proceed with the trial of the equitable claims during the pendency of the appeal is hereby denied, and the court declines to impose any bond conditions on the Defendants in order for the appellate stay to remain in effect.

And IT IS SO ORDERED.


The Honorable James O. Spence
Master-in-Equity for Lexington County

Lexington, South Carolina

October 31, 2014

FILED
2014 NOV 21 A 9:25
BETH A. CARRICO
CLERK OF COURT
LEXINGTON CO



CREEL COURT
REPORTING, INC.

JENNIFER L. CASH
COURT REPORTER

803-252-3445
1-800-822-0896
FAX: 803-799-5668

1230 RICHLAND STREET
COLUMBIA, SC 29201
WWW.CREELREPORTING.COM CONTACT@CREELREPORTING.COM

The South Carolina Court of Appeals

FV-I, Inc., in trust of Morgan Stanley Mortgage Capital Holdings, LLC, Respondent,

v.

Bryon J. Dolan, Lisa S. Dolan, First Citizens Bank and Trust Company, Inc., Wells Fargo Bank, N.A., and Branch Banking and Trust Company, Defendants,

Of whom Byron and Lisa S. Dolan are the Appellants.

Appellate Case No. 2014-001384

ORDER

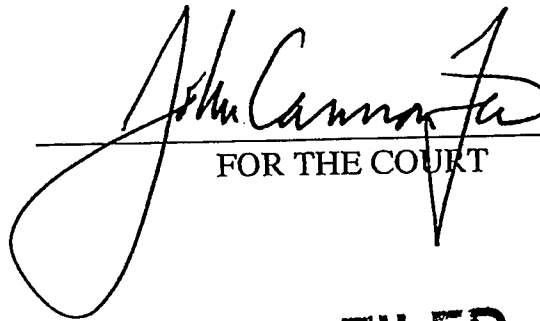
Respondent filed an action in circuit court seeking foreclosure of a mortgage on Appellants' real estate. Appellants filed an answer, asserting two legal counterclaims and one equitable counterclaim against Respondent. The legal counterclaims were for breach of contract and unfair trade practices; the equitable counterclaim was for an accounting. Appellants and Respondent agreed to bifurcate the action pursuant to Rule 42(c), SCRCP, and sever the legal counterclaims from the foreclosure claim and the equitable counterclaim. Thus, the circuit judge held a jury trial on the two legal counterclaims, and referred the foreclosure claim and equitable counterclaim for an accounting to a master-in-equity.

After the jury trial on the legal counterclaims, the circuit judge directed a verdict for Respondent on the unfair trade practices counterclaim, and the jury returned a verdict for Respondent on the breach of contract counterclaim. The circuit judge issued two orders, one denying Appellants' motion for a new trial and one denying Appellants' motion for reconsideration. Appellants appealed both those orders.¹

¹ The foreclosure claim and the equitable counterclaim for an accounting are still pending before the master-in-equity.

Respondent has now filed a motion to dismiss, arguing the two orders are not immediately appealable because the foreclosure claim and the equitable counterclaim for an accounting are still pending before the master-in-equity. Appellants have filed a return, contending the two orders are immediately appealable despite the fact the master-in-equity has not yet rendered a final judgment.

Having carefully considered the motion and return, this court denies Respondent's motion to dismiss. However, the parties may address appealability in their briefs.


FOR THE COURT

Columbia, South Carolina

cc: Andrew Sims Radeker, Esquire
Charles Stuart Gwynne, Jr., Esquire
Jason David Wyman, Esquire

FILED

8-25-14 

The South Carolina Court of Appeals

FV-I, Inc., in trust of Morgan Stanley Mortgage Capital
Holdings, LLC, Appellant,

v.

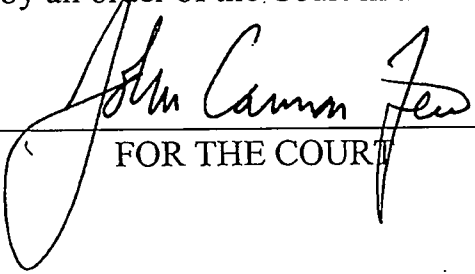
Bryon J. Dolan, Lisa S. Dolan, First Citizens Bank and
Trust Company, Inc., Wells Fargo Bank, N.A., Branch
Banking and Trust Company, Defendants,

Of whom Byron and Lisa S. Dolan are the Respondents.

Appellate Case No. 2014-002710

ORDER

Because the underlying order is not immediately appealable and because the issue of the stay has already been addressed by an order of the Court in a related case¹, this appeal is dismissed.



FOR THE COURT

Columbia, South Carolina

FILED

cc:

Charles Stuart Gwynne, Jr., Esquire
Andrew Sims Radeker, Esquire
The Honorable James O. Spence

2-13-15 AS

¹ Appellate Case No. 2014-001384.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FV-I, Inc. in trust for Morgan Stanley Mortgage
Capital Holdings LLC,

Plaintiff,

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank
and Trust Company, Inc.; Wells Fargo Bank,
N.A.; Branch Banking and Trust Company;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO.

FILED
2012 JUL 24 P 11:00

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

SUMMONS
(NON-JURY)
FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Demanded

2012 CP 3202816

(011792-00355)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, 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.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by FV-I, Inc. in trust for Morgan Stanley Mortgage Capital Holdings LLC.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893)

Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
William S. Kochler (SC Bar #74935)
Jaclynn B. Goings (SC Bar #77501)
Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
July 6, 2012

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FV-I, Inc. in trust for Morgan Stanley Mortgage
Capital Holdings LLC,

Plaintiff,

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank
and Trust Company, Inc.; Wells Fargo Bank,
N.A.; Branch Banking and Trust Company;

Defendant(s).

(011792-00355)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

FILED
2012 JUL 8 P 11:00

COMPLAINT

(NON-JURY)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Demanded

2012 CP 3202816

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Lexington County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101(b)(8) Plaintiff is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.
3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the borrower's request is incomplete.
5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.

7. Heretofore, on or about March 28, 2005, Bryon J. Dolan made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of \$721,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Bryon J. Dolan and Lisa S. Dolan made, executed and delivered unto Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns (MIN# 100159966122742991) a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

ALL that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Lot 5 (but sometimes known as Lot 5B or Parcel B), fronting on Winward Point Ct. on a plat prepared for Bryon J. and Lisa Dolan by Withworth & Associates, Inc., dated December 4, 2002 and recorded in the Office of the ROD for Lexington County in Book R7757 at Page 154, and having such metes and bounds as shown on said plat.

Also: A non-exclusive Easement for ingress/egress to Lot 5 (a/k/a Lot 5-B) over, through and across Lot 5-A (a/k/a Parcel A) as shown and delineated upon that certain Plat prepared for Norris L. Bowen and Jo Ann Bowen by Survey & Mapping Services dated September 14, 2011, recorded in the Office of Deeds for Lexington County and being more particularly described as "New Ingress/Egress Easement to 540 Windward Point Ct." shown as a small triangular shaped portion of Lot 5-A having an area of (206.25 square feet, more or less) located at the North-East line between Windward Point Court and Lot 5-A.

Less and Except: All that certain piece, parcel, or lot of land, with the improvements thereon, situate, located, lying and being in the County of Lexington, State of South Carolina, the same being shown and delineated as Parcel B-2 containing (1,043 square feet, more or less) more or less, as shown and delineated upon a Plat prepared for Norris L. Bowen and Jo Ann Bowen by Survey & Mapping Services, dated September 14, 2011, recorded in the Office of Deeds for Lexington County in Book R15084 at Page 258; and having such boundaries and measurements as shown thereon, more or less.

This being a portion of the property conveyed to Bryon J. Dolan by deed of James L. Casterline, Jr. and Dorothy C. Casterline dated September 30, 1999 and recorded October 15, 1999 in Book R5490 at Page 159; subsequently, Bryon J. Dolan conveyed a one half undivided interest in the subject property to Lisa S. Dolan by deed dated August 22, 2000 and recorded August 24, 2000 in Book R5936 at Page 326. Also, property conveyed to Bryon J. Dolan and Lisa S. Dolan by deed of South Carolina Electric & Gas Company dated February 4, 2002 and recorded February 5, 2002 in Book R6978 at Page 27.

Property Address: 540 Windward Pt Ct
Columbia, SC 29212

TMS# 002621-01-011

9. The Mortgage was signed, witnessed and probated March 28, 2005; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Lexington County on March 31, 2005, in Mortgage Book R10015 at Page 280. This Mortgage was subsequently assigned to Branch Banking and

Trust Company by deed of September 25, 2009 and recorded October 12, 2009 in Book R13894 at Page 6; subsequently assigned to the Plaintiff herein by assignment dated July 8, 2011 and recorded July 8, 2011 in Book R14959 at Page 331 and by assignment dated September 30, 2011 and recorded October 3, 2011 in Book R15087 at Page 321. This Mortgage is subject to a Mortgage Modification dated September 29, 2011 and recorded September 30, 2011 in Book R15084 at Page 266. Also subject to a Partial Release of Real Estate Mortgage dated October 5, 2011 and recorded October 17, 2011 in Book R15110 at Page 3.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a R10015 at Page 280 lien on the mortgaged premises.

11. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for March 1, 2011, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of March 1, 2011, the principal sum of \$721,000.00, with interest from February 1, 2011, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

12. Pursuant to South Carolina Code Sections 29-3-650 and 29-3-660, Plaintiff specifically demands or reserves its right to a personal or deficiency judgment, unless heretofore or hereafter released, against the Notemaker(s) hereby obligated for the above-described debt.

13. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

14. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

15. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

16. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. First Citizens Bank and Trust Company, Inc., by virtue of a mortgage given by Bryon Dolan a/k/a Bryon J. Dolan and Lisa S. Dolan in the amount of \$250,000.00, dated December 29, 2006, and recorded January 4, 2007 in Book R11662 at Page 69 Also including any other liens they may have. This Mortgage is subject to a Mortgage Modification dated September 29, 2011 and recorded September 30, 2011 in Book R15084 at Page 264. Also subject to a Partial Release of Mortgage Lien recorded October 17, 2011 in Book R15110 at Page 1.

B. Wells Fargo Bank, N.A., by virtue of a judgment against Bryon Dolan in the amount of \$12,319.11, dated June 17, 2010 and recorded on June 17, 2010 in Judgment Roll No. 09-CP-32-05583 Also including any other liens they may have.

C. Branch Banking and Trust Company, by virtue of a judgment against Bryon J. Dolan in the amount of \$80,483.74, dated April 25, 2011 and recorded on May 31, 2011 in Judgment Roll No. 09-CP-32-2811 Also including any other liens they may have.

17. A previous action for Foreclosure of this mortgage resulted in a Judgment of Foreclosure & Sale in the action Branch Banking and Trust Company v. Bryon J. Dolan, et al., in 09-CP-32-2263, filed May 26, 2010. That judgment included, in addition to Foreclosure of Plaintiff's mortgage: 1) Reformation of Plaintiff's mortgage to accurately described the property encumbered by Plaintiff's mortgage.

18. Plaintiff subsequently dismissed that Judgment of Foreclosure and Sale in as much as it pertained to foreclosure of Plaintiff's mortgage and released the Mortgagors from that portion of the judgment which pertained to foreclosure of Plaintiff's mortgage, but Plaintiff specifically preserved the Reformation, leaving this provision in full force and effect.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a R10015 at Page 280 lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

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

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or

exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

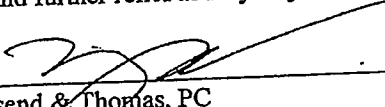
First, to the costs and expenses of the within action and sale;

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

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Lexington County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

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


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893)

Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
William S. Koehler (SC Bar #74935)
Jaclynn B. Goings (SC Bar #77501)
Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
July 6, 2012

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-32-2816

FV-I, Inc., in trust for Morgan Stanley
Mortgage Capital Holdings LLC,

Plaintiff,

vs.

Bryon J. Dolan; Lisa S. Dolan; First
Citizens Bank and Trust Company, Inc.;
Wells Fargo Bank, N.A.; Branch Banking
and Trust Company;

Defendants.

ANSWER AND COUNTERCLAIM
(JURY TRIAL DEMANDED)

Defendants Bryon J. Dolan and Lisa S. Dolan (hereinafter "the Defendants") in answer to the Plaintiff's Complaint and as counterclaim, answers and alleges as follows:

FOR A FIRST DEFENSE

1. Any allegation of the Complaint not herein admitted, qualified, or explained is denied. Any allegations of the Complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the Complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

2. Answering the allegations of paragraph 1 of the Complaint, the Defendants admit the same to the extent that the Complaint states a cause of action for mortgage foreclosure.

3. Answering the allegations of paragraphs 2 and 3 of the Complaint, the Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the same.

4. Answering the allegations of paragraph 4 of the Complaint, the Defendants admit that the Plaintiff or its servicing agent is a participant in the Home Affordable Modification Program (hereinafter "HAMP"), but the Defendants deny the remaining allegations of the paragraph.

5. Answering the allegations of paragraph 5 of the Complaint, the Defendants admit the same as it pertains to Defendants Bryon J. Dolan and Lisa S. Dolan.

6. Answering the allegations of paragraph 6 of the Complaint, the Defendants admit the same.

7. Answering the allegations of paragraph 7 of the Complaint, the Defendants admit that Defendant Bryon J. Dolan signed a note, which note reads as it reads.

8. Answering the allegations of paragraph 8 of the Complaint, the Defendants admit Defendants Bryon J. Dolan and Lisa S. Dolan signed a mortgage, which document reads as it reads.

9. Answering the allegations of paragraph 9 of the Complaint, the Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the same.

10. Answering the allegations of paragraph 10 of the Complaint, the Defendants deny the same.

11. Answering the allegations of paragraph 11 of the Complaint, the Defendants deny the same.

12. Answering the allegations of paragraph 12 of the Complaint, the Defendants admit the Plaintiff demands what it demands, but the Defendants deny the Plaintiff is entitled to what it demands.

13. Answering the allegations of paragraph 13 of the Complaint, the Defendants deny the same.

14. Answering the allegations of paragraph 14 of the Complaint, the Defendants deny the same.

15. Answering the allegations of paragraph 15 of the Complaint, the Defendants admit that the Plaintiff requests what it requests but deny the Plaintiff is entitled to what it requests.

16. Answering the allegations of paragraph 16 of the Complaint, the Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the same.

17. Answering the allegations of paragraph 17 of the Complaint, the Defendants admit upon information and belief that a judgment was previously rendered in the referenced suit but deny that the judgment rendered any relief in favor of the Plaintiff. The judgment reads as it reads.

18. Answering the allegations of paragraph 18 of the Complaint, the Defendants deny the same as written.

19. No answer to the prayer in the Complaint is required.

FOR A SECOND DEFENSE

20. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

21. The Plaintiff's predecessor in interest settled with the Defendants the matters subject of the Plaintiff's foreclosure claims.

22. The Defendants performed under the settlement until agents of the Plaintiff and its predecessor in interest told them not to continue to perform under the settlement.

23. The Plaintiff's predecessor in interest modified the terms of the subject note and mortgage through an agreement with the Defendants.

24. The Plaintiff has knowingly, intelligently, and voluntarily relinquished any right it may have had to bring this foreclosure case.

25. This is a waiver of any right the Plaintiff may have had to bring this foreclosure case.

FOR A THIRD DEFENSE

26. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

27. The Plaintiff and its predecessors, if any, themselves and/or by and through their agents and servants, have engaged in such conduct with respect to the loan subject of this action as to make the Plaintiff's hands unclean with regard to the matters subject of this action.

28. This conduct includes, but is not necessarily limited to, representing to the Defendants that the matters subject of the Plaintiff's foreclosure claim were settled.

29. This conduct relates directly to the subject matter of this action.

30. The said conduct has proximately caused the Defendants prejudice and injury.

FOR A FOURTH DEFENSE

31. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

32. The Plaintiff and its predecessors, if any, themselves and/or by and through their agents and servants, have engaged in conduct that was calculated to convey the impression to the Defendants that the matters subject of the Plaintiff's foreclosure claim were settled.

33. The Plaintiff and its predecessors, if any, themselves and/or by and through their agents and servants, intended, or at least expected or desired, that the Defendants would rely upon the impressions conveyed by this conduct.

34. The Plaintiff or its predecessor in interest knew that the status of the matters subject of this action could not be both as it represented to the Defendants and as it claims in this action.

35. The Defendants lacked the means to determine the true status of these matters.

36. The Defendants accordingly relied on these representations to their prejudice.

FOR A FIFTH DEFENSE

37. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

38. The Plaintiff has no standing to bring this case.

39. The Plaintiff, upon information and belief, does not own the note subject of this case.

40. At most, the Plaintiff acquired from Mortgage Electronic Registration Systems, Inc. (or assignees thereof) its nominee status with respect to the loan at issue.

FOR A SIXTH DEFENSE AND AS COUNTERCLAIM

41. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

42. There is need in this action for discovery of the exact manner in which the Plaintiff has assessed charges and applied payments with regard to the debt subject of this action.

43. The Defendants are entitled to an accounting with regard to the same.

FOR A SEVENTH DEFENSE

44. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

45. The note and mortgage at issue were created through a process designed to deprive registers of deeds (and, here, the Lexington County Register of Deeds) of their lawful fees for the recording of mortgage assignments.

46. The note and mortgage are void for illegality.

FOR AN EIGHTH DEFENSE AND AS COUNTERCLAIM

47. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

48. Actions of the Plaintiff and its predecessors, if any, themselves and/or by and through their agents and servants, such actions including, but not necessarily being limited to, those stated in this pleading, constitute violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*

49. The Plaintiff knew or should have known that the said actions were violations of the Unfair Trade Practices Act and were unfair and deceptive acts in trade or commerce.

50. These actions are capable of repetition, including, but not necessarily limited to, in that the Plaintiff and its predecessors, if any, is a lender and mortgage servicer that engages in collection practices and brings and directs mortgage foreclosure actions and in that the Plaintiff is a participant in the Home Affordable Modification Program.

51. The Defendants have suffered damages as a result of the said actions.

52. The Defendants are entitled to treble damages, reasonable attorney's fees, and costs.

FOR A NINTH DEFENSE AND AS COUNTERCLAIM

53. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

54. The Plaintiff has breached the modified terms of the note and mortgage.

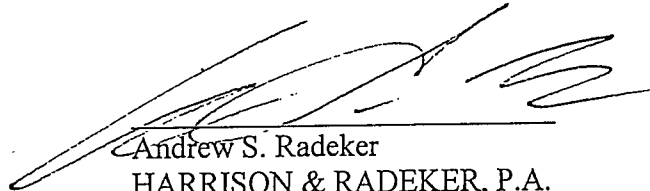
55. The Plaintiffs' aforesaid breach or breaches proximately caused damage to the Defendants.

56. The Defendant is entitled to recover damages from the Defendant.

WHEREFORE, the Defendant prays for the Court to:

- (a) Issue an Order dismissing the Complaint with prejudice;
- (b) Deny the Plaintiff the relief it seeks in this action;
- (c) Specifically enforce the modification agreement;
- (d) Award the Defendant actual damages, punitive damages, treble damages, and all applicable statutory penalties;
- (e) Award the Defendant reasonable attorney's fees;
- (f) Award the Defendant the costs and expenses of this action; and
- (g) Grant the Defendant such other and further relief as the court deems just and proper.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)

ATTORNEY FOR DEFENDANTS
BRYON J. DOLAN AND LISA S. DOLAN

Columbia, South Carolina
August 8, 2012

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FV-I, Inc., in trust for Morgan Stanley
Mortgage Capital Holdings LLC,

Plaintiff,

vs.

Bryon J. Dolan; Lisa S. Dolan; First
Citizens Bank and Trust Company, Inc.;
Wells Fargo Bank, N.A.; Branch Banking
and Trust Company;

Defendants.

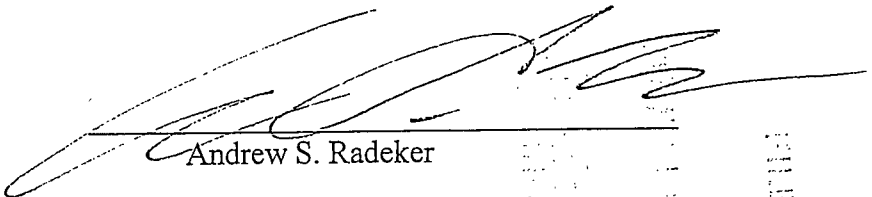
IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-32-2816

CERTIFICATE OF SERVICE

I, Andrew S. Radeker, an attorney with the law firm of Harrison & Radeker, P.A., Attorneys for Defendants Bryon J. Dolan and Lisa S. Dolan, do hereby certify that I, on the 8th day of August, 2012, served the foregoing document in the above-captioned action by depositing the same in the U.S. Mail, first class, postage prepaid, with the return address clearly noted, addressed as follows:

Mary R. Powers, Esq.
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202



Andrew S. Radeker

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

2014 APR 28 P 4:39 Case No. 2012-CP-32-2816

FV-I, Inc., in trust for Morgan Stanley
Mortgage Capital Holdings LLC,

Plaintiff,

vs.

Bryon J. Dolan; Lisa S. Dolan; First
Citizens Bank and Trust Company, Inc.;
Wells Fargo Bank, N.A.; Branch Banking
and Trust Company;

Defendants.

BETH A. CARRIGO
CLERK OF COURT
LEXINGTON SC

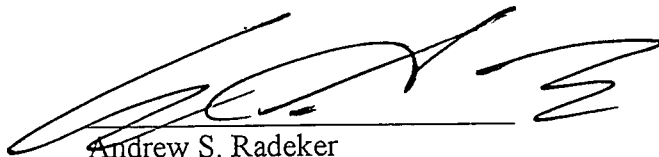
MOTION FOR NEW TRIAL

YOU WILL PLEASE TAKE NOTICE that Defendants Bryon J. Dolan and Lisa S. Dolan (hereinafter "the Defendants") hereby move pursuant to Rules 50 and 59, SCRPC, as well as all other applicable law, for an Order that grants them a new trial on their counterclaims in the above-captioned action.

The grounds for this motion are as is shown in the attached memorandum, which is incorporated herein as if her set forth verbatim.

Consultation with opposing counsel in advance of the making of this motion would have served no useful purpose.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)
ATTORNEY FOR DEFENDANTS
BRYON J. DOLAN AND LISA S. DOLAN

Columbia, South Carolina
April 27, 2014

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2014 APR 28 P 4: 30 Case No. 2012-CP-32-2816

FV-I, Inc., in trust for Morgan Stanley
Mortgage Capital Holdings LLC,

BETH A. CARRICO
CLERK OF COURT
LEXINGTON, SC

Plaintiff,

vs.

Bryon J. Dolan; Lisa S. Dolan; First
Citizens Bank and Trust Company, Inc.;
Wells Fargo Bank, N.A.; Branch Banking
and Trust Company;

Defendants.

**MEMORANDUM IN SUPPORT OF
MOTION FOR NEW TRIAL**

Defendants Bryon J. Dolan and Lisa S. Dolan (hereinafter “the Defendants” or “the Dolans”) respectfully submit this memorandum in support of their motion for a new trial on their counterclaims in the above-captioned action. Arguments made in this memorandum in support of one ground that also support another ground are made in favor of all grounds for a new trial which they support. Further, the Defendants hereby incorporate by reference their arguments made orally in opposition to the Plaintiff (hereinafter, sometimes, “FV-I”)’s direct verdict motion.

ADMISSION OF PLAINTIFF’S EXHIBIT 12 WARRANTS A NEW TRIAL

Over objection by the Dolans, the Court admitted FV-I’s Exhibit 12, a document that was generated by Saxon Mortgage Services, the preceding servicer of the subject loan. FV-I claimed that this document meets the elements of the business records exception to the hearsay rule. The Court ruled that based on Loretta Poch, the Plaintiff’s sole witness, being the custodian of records for this loan at Specialized Loan Servicing (the present servicer of the subject loan), the document met the business records exception and was admissible. This was despite Ms. Poch having testified that she had never worked at BB&T (the first servicer of the loan) or Saxon,

despite her having testified that she had no knowledge of the procedures of either of those companies, and despite no testimony at all being offered as to when, by whom, or how this record or any entry in it was made. This was prejudicial error and warrants a new trial. This document was simply inadmissible hearsay. It was all that was offered to attempt to show that the purported escrow arrearages FV-I claimed as preventing the loan from being brought current with the \$65,520.00 payment had any particular transactions to back up those figures. Particularly in light of the fact that the substantive testimony FV-I elicited from Ms. Poch about the subject account was all objectionable and should not have been admitted either, admission of this document prejudiced the Dolans.

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. Hearsay is generally inadmissible. Rule 802, SCRE. One exception to the hearsay rule is usually called the “business records exception,” though whether the document involved is a record of a business is not what must be shown to satisfy the exception. Rule 803(6), SCRE; S.C. Code Ann. § 19-5-510. The elements of this hearsay exception are as follows:

[A] memorandum, reports, records, or data compilation, in any form, of acts, events, conditions, or diagnoses can be admissible if they are (1) made at or near the time of the event recorded; (2) prepared by someone with or from information transmitted by a person with knowledge; (3) made and kept in the course of a regularly-conducted business activity; (4) identified by the custodian or a qualified witness who can testify regarding the mode of preparation of the record; and (5) found to be trustworthy by the court.

High v. High, 389 S.C. 226, 239, 697 S.E.2d 690, 696-97 (Ct. App. 2010) (citing Rule 803(6), SCRE).

Rule 803(6), SCRE, and S.C. Code Ann. § 19-5-510 have the same substantive requirements, as the language of the latter statute notes:

A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

To authenticate a document as falling under the “business records” exception, a witness qualified to do so must provide sufficient testimony to establish each element of the exception. Connelly v. Wometco Enters., Inc., 314 S.C. 188, 192, 442 S.E.2d 204, 206 (Ct. App. 1994). Otherwise, the document is simply inadmissible hearsay. Id. “A business record without evidence about the manner in which it is prepared or the source of its information does not meet the requirements in either section 19-5-510 or Rule 803(6), SCRE.” State v. Rice, 375 S.C. 302, 331, 652 SE.2d 409, 424 (Ct. App. 2007).

It is, of course, necessary that the witness have knowledge of how the record was prepared. State v. Sarvis, 317 S.C. 102, 107, 450 S.E.2d 606, 609 (Ct. App. 1994). This includes testimony sufficient to establish that the document was “prepared by someone with or from information transmitted by a person with knowledge[.]” Rule 803(6)(2), SCRE.

Further, “[b]usiness record entries must have been made at or near the time of the act to which they relate; the purpose of this mandate is to aid in establishing that the record was honestly and fairly kept.” Rice, 375 S.C. at 332. Accordingly, testimony must be adduced from the witness as to when the record entries were made. Id.

The Supreme Court of Missouri has held that “a document that is prepared by one business cannot qualify for the business records exception merely based on another business’s

records custodian testifying that it appears in the files of the business that did not create the record.” CACH, LLC v. Askew, 358 S.W.3d 58, 63 (Mo. 2012). This is in accord with the law of other states as well, at least of Wisconsin, Texas, Pennsylvania, and New York (and probably others). Palisades Collection, LLC v. Kalal, 781 N.W.2d 503, 510 (Wis. Ct. App. 2010) (to authenticate under business records exception, witness “must have personal knowledge of how the account statements were prepared and that they were prepared in the ordinary course of [the original creditor’s] business”); Riddle v. Unifund CCR Partners, 298 S.W.3d 780, 782-83 (Tex. App. 2009) (“the witness must have personal knowledge of the manner in which the records were prepared”); Martinez v. Midland Credit Mgmt., Inc., 250 S.E.3d 481, 485 (Tex. App. 2008) (purported business records inadmissible where witness “does not provide any information that would indicate that he (or she) is qualified to testify as to the record-keeping practices of the ‘predecessor’”); Standard Textile Co. v. Nat’l. Equip. Rental, Ltd., 437 N.Y.S.2d 398, 398 (N.Y. App. Div. 1981) (plaintiff’s employee “was not a qualified witness to testify as to the record keeping of another entity” absent personal knowledge of the document’s creation”); Commonwealth Financial Systems v. Smith, 2001 PA Super 30, *6 (Pa. Super Ct. 2011) (witness “could not say for certain whether [industry] requirements had actually been followed in the preparation and maintenance of those records because, simply put, he was never in a position to know”).

It appears that South Carolina law is consistent with the law of these sister states on this point. Our Supreme Court has held that a sheriff’s department’s receipt of a record from another office “would not qualify the detective [witness who received the document] to testify to the identity and mode of preparation of the report or whether it was made in the regular course of

business at or near the time of the accident” subject of the report. State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983).

Here, the Court simply substituted a finding that Ms. Poch was the custodian of records for the necessary findings that each element of the business records exception was satisfied. Being a records custodian simply puts a person in a position to testify, if she can, about how a record was prepared. Here, Ms. Poch’s own testimony showed that she was incapable of providing any testimony about the first three elements of the business records exception, nor was any testimony having any tendency to speak toward satisfaction of any of those three elements adduced.

Erroneous evidentiary rulings based on conflating requirements of evidence law constitute abuses of discretion. State v. Page, 406 S.C. 272, 287, 290, 750 S.E.2d 623, 631, 632 (Ct. App. 2013). The Court either conflated the fourth requirement of the business records exception with the preceding three requirements or ignored those three requirements. The jury received an inadmissible and objected-to hearsay document for use in its deliberations. This was prejudicial error that warrants a new trial.

RULINGS AS TO MS. POCH’S TESTIMONY WARRANT A NEW TRIAL

Ordinarily, a witness may not testify as to the contents of a writing. Rule 1004, SCRE; W.R. Grace & Co. v. La Munion, 245 S.C. 1, 138 S.E.2d 337 (1964); Moore v. Postal Telegraph-Cable Co., 202 S.C. 225, 24 S.E.2d 361 (1943); Mayfield v. So. R. Co., 85 S.C. 165, 67 S.E. 132 (1910); Rose v. Winnsboro Nat’l. Bank, 41 S.C. 191, 18 S.E. 487 (1894). This rule is, for some reason, often called the “best evidence” rule, perhaps on the rationale that the writing is the best evidence of its contents.

Ms. Poch testified that her only knowledge of the subject loan came from reading written records of the loan’s servicers. All she knows is what the writings say. When the Dolans

objected to her testimony about the substantive status of and history of the loan, the Court overruled those objections and allowed her to give testimony that her own words establish violated the best evidence rule. This was the only testimony offered to contradict Mr. Dolan's testimony and the only testimony offered for the purpose of convincing the jury that FV-I was right about the status of the account. To admits this testimony was prejudicial error that warrants a new trial.

A *witness* is exactly that: someone who, through what he or she has witnessed (i.e., has observed firsthand), has personal knowledge of a matter at issue in a case. Rule 602, SCRE; M. B. A. F. B. Fed. Credit Union v. Cumis Ins. Soc., Inc., 681 F.2d 930 (4th Cir. 1982); State v. Needs, 508 S.E.2d 857 (1998); State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996). A person's position or status within a company is insufficient to make that person a competent witness. Englebert, Inc. v. Netherlands Ins. Co., 315 S.C. 300, 433 S.E.2d 871 (Ct. App. 1993).

Further, the Court permitted Ms. Poch to testify directly to the legal conclusion of whether the note and mortgage's terms were breached (as well as permitting cross-examination of Mr. Dolan with such questions, which was also prejudicial error). Testimony that is composed of a legal conclusion is inadmissible. E.g., Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003). To permit FV-I to adduce testimony from lay witnesses as to one of the very issues at the heart of this case was prejudicial error.

**A NEW TRIAL SHOULD BE GRANTED ON THE
UNFAIR TRADE PRACTICES ACT CLAIM**

"When ruling on a directed verdict the trial court must view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the party opposing the motion. In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence. . . . When considering

directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. The issue must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of the reasonable juror. A directed verdict is warranted when there is warranted only if evidence would not be legally sufficient to sustain a verdict for the opposite party. If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury.” Estate of Haley ex rel. Haley v. Brown, 370 S.C. 240, 252-523, 634 S.E.2d 62, 68-69 (Ct. App. 2006).

An action for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.* (hereinafter “UTPA”), lies where there is a violation of the UTPA (i.e., an unfair or deceptive act in trade or commerce that impacts the public interest) that proximately causes damages to the plaintiff. *See, e.g., Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 318 S.C. 417, 458 S.E.2d 431 (Ct. App. 1995). To recover under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered damages as a result. Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006).

The South Carolina Supreme Court has stated that demonstrating the potential for an unfair trade practice’s repetition is a demonstration of the requisite “adverse effect on the public interest[.]” though the Court has never held that showing potential for repetition is the *only* way to prove impact on the public interest. Crary v. Djebelli, 329 S.C. 385, 388, 496 S.E.2d 21 (1998). The Court has “specifically declined” to hold that such potential for repetition must be demonstrated by any particular means and has stated that “each case must be evaluated on its own merits.” Id.

Never has a South Carolina appellate court held that repetition or potential for repetition is a necessary element of a UTPA cause of action; rather, our courts have held that showing potential for repetition is *one way* in which a party can satisfy the public interest requirement. Id. As the Court's ruling granting FV-I's directed verdict motion on this claim appears to have been based on the idea that what was at issue was a unique situation that was unlikely to be repeated, this is particularly important. The Court's ruling was error warranting a new trial because, among other things, 1) the public has an interest in mortgage servicers not deceiving borrowers about the status of their loans (think of how many Americans have mortgage loans) and 2) it was not necessary to show that the specific situation at issue here would be actually repeated. Potential for repetition in misrepresenting the status of a loan to a borrower suffices as proof of potential for repetition; however, it was only necessary for the Dolans to adduce evidence of impact on the public interest, not potential for repetition, in order to survive FV-I's directed verdict motion.

The Court's decision to grant a directed verdict on the UTPA cause of action was error. A new trial on this claim is warranted.

RULINGS ON TESTIMONY OF BRYON DOLAN WARRANT A NEW TRIAL

Testimony about negotiations. The Court erroneously barred Bryon Dolan from testifying about his negotiations leading up to the execution of a September 22, 2011, letter agreement with FV-I through its servicer, based on the parol evidence rule. This affected the Defendants' trial strategy and ability to present their case; the Plaintiff then turned around and adduced cross-examination testimony in violation of this ruling for most of the time Mr. Dolan spent being cross-examined. Excluding such testimony at all, however, was error.

The parol evidence rule is a poorly named rule of law, since it is not a rule of evidence at all but, rather, one of the substantive law of contract construction. “The parol evidence rule has been held inapplicable to tort causes of action (including negligent misrepresentation) since the rule is one of *substantive contract law*.” Redwend Ltd. Partnership v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003) (emphasis added). The rule is applicable in cases where a party argues that the terms of a contract are *different from* what is contained in an integrated writing. E.g., Crafton v. Brown, 346 S.C. 347, 550 S.E.2d 904 (Ct. App. 2001) (“Where the terms of [a] written guaranty are clear and complete, extrinsic evidence of agreements or understandings contemporaneous with or prior to its execution cannot be used to contradict, explain, or vary its terms, in the absence of fraud, accident, or mistake in its procurement”). “When a contract is *silent* as to a particular matter, parol evidence is admissible to reveal the parties’ true intent.” Keith v. River Consulting, Inc., 365 S.C. 500, 506, 618 S.E.2d 302, 305 (Ct. App. 2005) (emphasis added).

Here, the September 22, 2011, agreement document is silent as to whether the funds paid under it will be sufficient to bring the loan current or have been agreed to be sufficient to bring the loan current. Indeed, determining what amount is sufficient to bring a defaulted note current will almost always depend upon matters that are not contained in the terms of the documents – the date of default, how much had already been paid on the loan, the existence and amount of expenses properly chargeable to the debt at issue.

Also, if a contract’s language is ambiguous, parol evidence may be admitted to show the intention of the parties, which is a question of fact. S.C. Dept. of Natural Resources v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). The Dolans’ primary contention is that the terms of the writing at issue are silent as to whether the funds being

“applied to the loan” will bring the loan current, and parol evidence is admissible on that point for that reason. If the Court, however, determines that the words “applied to the loan” do speak to this point, they are ambiguous. Applied to the loan *how*? And producing what result? These questions are unanswered by the language of this document.

“A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation. It is a question of law for the court whether the language of a contract is ambiguous. Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties. The determination of the parties’ intent is then a question of fact.” S.C. Dept. of Natural Resources, 345 S.C. at 623.

It is well settled that ambiguous language in a contract document should be interpreted strongly in favor of the party who did not draft the document and against the party who did. E.g., So. Atlantic Financial Servs., Inc. v. Middleton, 356 S.C. 444, 447, 590 S.E.2d 27, 29 (2003); Mid-Continent Refrigerator Co. v. Way, 263 S.C. 101, 109, 208 S.E.2d 31, 35 (1974). Any conflict between clauses in a contract must be resolved in favor of the non-drafting party. Mid-Continent Refrigerator, 263 S.C. at 109.

“The conduct of the parties is entitled to great weight in interpreting an ambiguous contract.” Langston v. Niles, 265 S.C. 445, 458, 219 S.E.2d 829, 834 (1975). In cases of doubt, the interpretation of a contract that the evidence shows was shared by both parties to it is determinative. Kitchens v. Lee, 221 S.C. 59, 66, 69 S.E.2d 67, 69 (1952). The behavior of the parties to the contract in carrying it out is evidence that may speak to their mutual interpretation of the contract terms. Langston, 265 S.C. at 458 (in interpreting ambiguous terms, noting behavior of parties after agreement struck); Kitchens, 221 S.C. at 66 (same).

Where, as here, the contract is ambiguous, at most, on the point at issue and the parties' post-performance conduct has tendencies to support one party's interpretation thereof, testimony about the contractual negotiations should be allowed to explain the ambiguity. The failure to allow such testimony was prejudicial error.

Andrew Farmer phone call testimony. Citing Marshall v. Thomason, 241 S.C. 84, 127 S.E.2d 177 (1962), the Court refused to allow Mr. Dolan to testify to the content of a phone conversation he had with Andrew Farmer of Saxon Mortgage Services in which Mr. Farmer told him not to make more payments on this loan, apparently on the grounds that there was no evidence that he was authorized to speak on such a matter. Marshall is inapposite.

In Marshall, there was absolutely no evidence having any tendency to show that the truck driver at issue was authorized to speak on the company's behalf about the accident involved in that case. Id. at 90-92. Here, however, testimony had already been adduced, without objection, that Mr. Farmer was who had responded on behalf of the Plaintiff to Mr. Dolan's previous inquiry about where to send a payment; then, later, that same person, Andrew Farmer, called and told Mr. Dolan not to make any more payments. His previous call is evidence that he was authorized to speak on such a matter. The relatively more recent case of Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997), speaks relevantly to this issue. The question is what the evidence indicates about what kind of tasks the person performed for the principal; in Jackson, the issue of whether the employee spoke for the defendants was analyzed by noting that "[a]s a car salesman for [them], [the employee] was an agent authorized to speak for them about this vehicle." Id. at 305. Here, the evidence indicates Mr. Farmer was an employee authorized to speak about making payments – or, as the case may be, not making them. This testimony was critical to the Dolans presenting a case that they had been told not to make further payments and

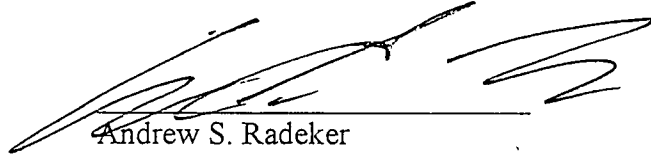
that the Plaintiff had thus brought on itself the breach of the note and mortgage. The failure to admit this testimony was prejudicial error that warrants a new trial.

NEW TRIAL UNDER THE THIRTEENTH JUROR DOCTRINE

“The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. . . . The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitate on the basis of the facts in the case. Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge’s finding that justice has not prevailed. Similarly, the judge may grant a new trial if the verdict is inconsistent and reflects the jury’s confusion.” Vinson v. Hartley, 324 S.C. 389, 403-04, 477 S.E.2d 715 (Ct. App. 1996) (internal citations omitted). This “has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror ‘hangs’ the jury.” Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990) (internal citations omitted).

The facts of this case warrant a new trial under the thirteenth juror doctrine. Here, the evidence does not justify the verdict. The Plaintiff’s servicer took repeated actions showing that it was acting under the impression that the loan was reinstated; the jury apparently ignored them. It is in the interest of justice to grant a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew S. Radeker", is written over a horizontal line.

Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)

ATTORNEY FOR DEFENDANTS
BRYON J. DOLAN AND LISA S. DOLAN

Columbia, South Carolina
April 27, 2014

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2012-CP-32-2816

FV-I, Inc., in trust for Morgan Stanley
Mortgage Capital Holdings LLC,

Plaintiff,

vs.

Bryon J. Dolan; Lisa S. Dolan; First
Citizens Bank and Trust Company, Inc.;
Wells Fargo Bank, N.A.; Branch Banking
and Trust Company;

Defendants.

2014 APR 28 P 4: 39
BETH A. CARRICO
CLERK OF COURT
LEXINGTON

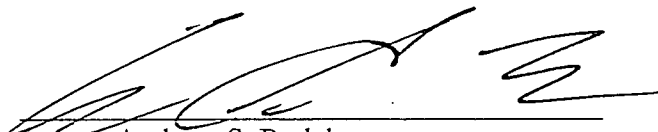
CERTIFICATE OF SERVICE

I, Andrew S. Radeker, an attorney with the law firm of Harrison & Radeker, P.A., Attorneys for Defendants Bryon J. Dolan and Lisa S. Dolan, do hereby certify that I, on the 27th day of April, 2014, served the foregoing document in the above-captioned action by depositing the same in the U.S. Mail, first class, postage prepaid, with the return address clearly noted, addressed as follows:

The Hon. R. Keith Kelly
Circuit Judge
125 E. Floyd Baker Blvd.
Gaffney, SC 29340

Charles S. Gwynne, Jr., Esq.
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202

Adam H. Schanz, Esq.
Crawford & von Keller, LLC
P.O. Box 4216
Columbia, SC 29204


Andrew S. Radeker

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FV-I, Inc., in trust for Morgan Stanley
Mortgage Capital Holdings LLC,

Plaintiff,

vs.

Bryon J. Dolan; Lisa S. Dolan; First
Citizens Bank and Trust Company, Inc.;
Wells Fargo Bank, N.A.; Branch Banking
and Trust Company;

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-32-2816

MOTION TO RECONSIDER

FILED
2014 JUN -5 PM 2:51
CLERK OF COURT
SOUTH CAROLINA

YOU WILL PLEASE TAKE NOTICE that the Defendants Byron J. Dolan and Lisa S. Dolan (hereinafter "Defendants") move before this Court pursuant to Rules 52 and 59, SCRPC, as well as pursuant to all other applicable law, for an order reconsidering, altering, clarifying, or amending the order of the Honorable R. Keith Kelly that denied the Defendants' motion for a new trial¹ in the above-captioned action, and the Defendants ask that a new trial be granted, on the following grounds:

1. For the arguments and reasons noted in the memorandum supporting and served as a part of the Defendants' motion for a new trial, which memorandum is incorporated herein by reference as if here set forth verbatim, the Defendants are entitled to an order reconsidering, altering, clarifying, or amending the judgment rendered in the order denying the motion for a new trial and are also entitled to a new trial.
2. The facts concerning whether the business records exception to the hearsay rule was met with respect to documentary evidence admitted over the Defendants' objection in this

¹ The Defendants have not received written notice of the *entry* of this order. As shown by Exhibit A hereto, on June 2, 2014, the Defendants received written notice that this order has been sent to the Lexington County Clerk of Court to be entered.

case and with respect to the application of the best evidence rule to testimony allowed over the Defendants' objection in this case are markedly similar to the relevant facts of CACH, LLC v. Megan Moran, Case No. 2012-CP-10-5181, in which the court ruled the documentary evidence and testimony there at issue to be inadmissible for reasons the Court in the instant case should have sustained the Defendants' objections in this case. A copy of the final order in the CACH v. Moran case is attached hereto as Exhibit B.

3. Arguments made in the aforesaid memorandum in support of one ground that also support another ground are made in favor of all grounds that they support.
4. This motion is also based upon all other applicable law, the record, and any further memoranda that the Defendants may submit.

Pursuant to Rule 11, SCRCP, there is no duty of consultation prior to this motion, as this is a motion to reconsider and such consultation would have served no useful purpose.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)
ATTORNEY FOR DEFENDANTS

Columbia, South Carolina
June 5, 2014

Drew Radeker

From: Kelly, R. Keith Law Clerk (Joseph T. Odom) <kkellylc@sccourts.org>
Sent: Monday, June 02, 2014 8:56 AM
To: Charlie Gwynne
Cc: Drew Radeker
Subject: RE: FV-I v. Dolan

Charlie,

He signed it, and we mailed it to the Lex Clerk of Court. Let me know if you need anything further. Thanks.

Sincerely,

Trey Odom

From: Charlie Gwynne [mailto:CHARLIE.GWYNNE@rtt-law.com]
Sent: Friday, May 30, 2014 4:03 PM
To: Kelly, R. Keith Law Clerk (Joseph T. Odom)
Cc: Drew Radeker
Subject: RE: FV-I v. Dolan

Mr. Odom,

Could you please let us know if Judge Kelly has had a chance to sign the attached from 4 order?

Thank you,
Charlie



Charlie Gwynne
Shareholder

Direct 803.744.1933
Fax 803.343.7017

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Main 803.771.7900
Visit rtt-law.com

From: Drew Radeker [mailto:Drew@harrisonfirm.com]
Sent: Friday, May 02, 2014 12:07 PM
To: Kelly, R. Keith Law Clerk (Joseph T. Odom); Charlie Gwynne; Jason Wyman
Subject: RE: FV-I v. Dolan

Mr. Odom:

Just so the record is clear, I've attached a Form 4 that would deny the motion.



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-10-5181

CACH, LLC,

Plaintiff,

vs.

Megan Moran,

Defendant.

ORDER

FILED
2014 APR 25 PM 12:12
JULIE J. ARMSTRONG
CLERK OF COURT

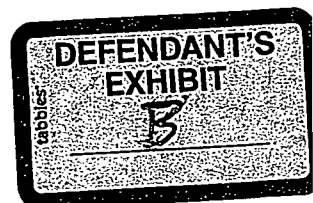
This matter came before me upon the trial of the above-captioned action, held on March 20, 2014, at the Charleston County Courthouse. The Court instructed counsel to submit proposed orders within 10 days of trial.¹ The Court held in abeyance the decision of whether to admit the Plaintiff's sole proffered exhibit at trial.

For the reasons set forth below, the Court denies the Plaintiff the relief it seeks and grants the Defendant's motion for an involuntary nonsuit.

The Plaintiff, CACH, LLC, filed this action on August 8, 2012, and served the summons and complaint on August 12, 2012. In the complaint, the Plaintiff alleges that "[c]redit was extended to Defendant on a revolving line of credit on an open account by Bank of America Corporation, one of its subsidiaries, or a bank to which it is a successor in interest." Neither the complaint nor the "verified statement of account" attached to it provides more identification of the credit-providing entity with which the account was supposedly opened. The complaint alleges that the "Defendant defaulted on the obligation to make the required payments on the account." The complaint does not allege what any of the terms of the account are. It alleges that "there is now due and owing on this account the principal sum of \$12,859.25, plus interest

¹ Because March 30, 2014, was a Sunday, the submission deadline was March 31, 2014. Both parties complied with the deadline.

on
189



thereon from July 26, 2011 at the legal rate of 8.75% per annum as shown by the Verified Statement of Account attached hereto and incorporated herein by reference.” The “verified statement of account” attached to the complaint simply says that this is the amount owing according to “business records” of the original creditor.

The Defendant, Megan Moran, served an answer on September 6, 2012, admitting that she lives in Charleston County and that this Court has jurisdiction but answering that she lacks sufficient knowledge or information to form a belief as to the truth or falsity of the Plaintiff’s remaining allegations. She further pled that the complaint fails to state facts sufficient to constitute a cause of action.

The parties exchanged discovery, and the Plaintiff moved for summary judgment. The Honorable J. C. Nicholson, Jr. heard and denied the Plaintiff’s motion for summary judgment. While the Defendant had initially demanded a jury trial, she waived that demand, with the consent of the Plaintiff, and the case was tried non-jury to the undersigned.

At the beginning of the trial, the Defendant moved to exclude the Plaintiff’s sole witness, Victoria Mason, on the grounds that the Plaintiff’s discovery responses indicated that Ms. Mason had no personal knowledge of the matter. The Court denied the motion and the Plaintiff presented its case.

The Plaintiff called Ms. Mason as a witness. She testified that she works at a company called Square Two Financial and that Square Two Financial is the records custodian for the Plaintiff. She testified that she had received training about how Bank of America maintains its records. She did not testify about when she received the training. She testified that certain records were received from Bank of America concerning this case, that those are now part of the Plaintiff’s records, and that those records concern the account subject of this case. She identified what appear to be account statements labeled with “Bank of America” and “Megan Moran” in

cu
289

their top left-hand corners, dated from May of 2010 to May of 2011. Ms. Mason testified that these statements were computer-generated on a monthly basis from information in Bank of America's "system" for the duration of the account. Ms. Mason offered no testimony about when or by whom the data entries that comprise the information in the statements were made into Bank of America's system. Ms. Mason testified that the account at issue was opened in the year 2000, and it is plain from looking at the statements that the statements do not reveal what makes up a "previous balance" of \$11,960.10 shown on the May-June 2010 statement. No testimony was offered by Ms. Mason about what had happened to the statements that were older than May of 2010.

The Defendant objected to the statements on the grounds that the statements are inadmissible hearsay (and did not meet the requirements of Rule 803(6), SCRE), because their admission would violate the rule of completeness, and because the statements are summaries of documents that were not made available to the Defendant by the Plaintiff. The Plaintiff argued that the statements met the requirements of Rule 803(6), SCRE, and that an unidentified federal regulation promulgated pursuant to the Truth-in-Lending Act provides that banks do not have to keep such account records for more than two years. The Court marked the statements as a court exhibit and reserved ruling on the admission of the statements.

On cross-examination, Ms. Mason testified that she assumes that the "previous balance" of \$11,960.10 shown on the May-June 2010 statement includes some component of interest, though she does not know what the component parts of that figure or their amounts are. She testified that that "previous balance" figure most likely reflects the content of entries that would be shown on older statements. She testified that \$12,815.90, the amount on which the Plaintiff seeks to recover pre-judgment interest in this case, itself contains a component that is interest, though how much of it is interest is unknown to Ms. Mason. She testified that the Plaintiff is

seeking to collect interest on any interest that is a component of that \$12,815.90 amount. She testified that the assignment to the Plaintiff that she referenced on direct examination was done in writing, but that writing was not offered into evidence. Ms. Mason testified that everything she knows about the subject account comes from reading the contents of writings (paper and computerized written records) that, other than the statements discussed above, were not offered into evidence. Counsel for the Defendant moved to strike her testimony on that basis, noting what is known as the best evidence rule. The Court did not rule on that motion at the time. After cross-examination, the Plaintiff rested its case, and the Court heard argument from the parties, including on the Defendant's motion for an involuntary nonsuit.

At no time did Ms. Mason offer any testimony about who the purported original creditor on the subject account was. The Plaintiff produced no copy of the account contract or other evidence of what the terms are of the account contract upon which the Plaintiff bases its claim.

FINDINGS OF FACT

The terms of the purported account agreement are unknown. The identity of the original creditor under that agreement is unknown. Ms. Mason testified that the account was assigned to the Plaintiff, but she did not testify about from what entity it was assigned; thus, this is unknown as well. The components and amounts of the components of the claimed debt the Plaintiff seeks to recover are similarly unknown.

The Plaintiff has not shown that the statements for which it sought admission were prepared by someone with or from information transmitted by a person with knowledge of the items of information contained in the statements. According to the only witness to testify at trial, the statements were computer-generated from information in Bank of America's "system." No information was adduced at trial about who made the data entries that comprise the information within the statements. Each statement does appear to contain a summary – the "previous

balance" – of the entries made on the statements that precede it. What has happened to the statements that predate May of 2010 is not known. No evidence was adduced to the effect that they were lost or destroyed.

Also, as further discussed below, no cognizable evidence of assignment to the Plaintiff of the account was placed into the record, through testimony or exhibit, at trial.

CONCLUSIONS OF LAW

To prevail at trial, one of the things the Plaintiff was required to establish is what the material terms of the claimed account agreement are. "It is elemental, and requires no citation of authority for the proposition that before a party can recover for the breach of a contract, that he must allege and prove by competent, relevant testimony each one of the material elements of the contract sued on." Rabon v. State Finance Corp., 203 S.C. 183, 185, 26 S.E.2d 501, 502 (1943); accord Ringer v. Graham, 293 S.C. 238, 359 S.E.2d 523 (Ct. App. 1987) (burden on plaintiff to prove all terms essential to creation of a contract).

To recover for breach of contract, a claimant must prove that there was a binding contract entered into by the parties, the other party breached the contract, and damage as a proximate result. See Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962). Since the Plaintiff has not proven the terms of the claimed agreement or even with whom the Defendant made the agreement, the Plaintiff is unable to establish a breach of the agreement. The Plaintiff cannot point to any act or omission that constitutes a breach of a term of the account agreement, as the terms of that agreement are unknown. This alone would be dispositive of the Plaintiff's case and entitle the Defendant to prevail.

The Plaintiff's only argument that the account statements were not inadmissible hearsay was that the testimony adduced showed the statements to meet the requirements of Rule 803(6),

SCORE. The testimony did not show this, and the statements also appear to be summaries that are inadmissible for failure to satisfy the requirements of Rule 1006, SCORE.

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCORE. The account statements are hearsay. Hearsay is generally inadmissible. Rule 802, SCORE. One exception to the hearsay rule is usually called the “business records exception,” though whether the document involved is a record of a business is not what must be shown to satisfy the exception. Rule 803(6), SCORE; S.C. Code Ann. § 19-5-510. The elements of this hearsay exception are as follows:

[A] memorandum, reports, records, or data compilation, in any form, of acts, events, conditions, or diagnoses can be admissible if they are (1) made at or near the time of the event recorded; (2) prepared by someone with or from information transmitted by a person with knowledge; (3) made and kept in the course of a regularly-conducted business activity; (4) identified by the custodian or a qualified witness who can testify regarding the mode of preparation of the record; and (5) found to be trustworthy by the court.

High v. High, 389 S.C. 226, 239, 697 S.E.2d 690, 696-97 (Ct. App. 2010) (citing Rule 803(6), SCORE).

Rule 803(6), SCORE, and S.C. Code Ann. § 19-5-510 have the same substantive requirements, as the language of the latter statute notes:

A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

To admit a document as falling under the “business records” exception, a witness qualified to do so must provide sufficient testimony to establish each element of the exception. Connelly v. Wometco Enters., Inc., 314 S.C. 188, 192, 442 S.E.2d 204, 206 (Ct. App. 1994).

Here, the testimony and the contents of the statements fail to establish two of the required five elements of the business records exception. Ms. Mason testified that the accounts were simply computer-generated from information in Bank of America’s “system,” not that they were prepared by someone with knowledge. No testimony was given about who made the data entries that comprise the information within the statements; thus, no foundation was laid that they were prepared from information transmitted by a person with knowledge.

In addition, the statements are summaries, but, as discussed above, they are incomplete summaries, because they contain no information about what the components of the beginning “previous balance” are. Particularly since it appears that some or all of this previous balance is reflected in the balance given on each succeeding statement, these statements are not trustworthy, as they assume the correctness of an unexplained figure. Further, summaries of documents are only admissible where the underlying documents have been made available for the other party’s inspection at a reasonable time and place. Rule 1006, SCRE. This was never done with regard to the statements for months before May of 2010.

The Court sustains the Defendant’s objection to the admission of the statements and declines to admit them.²

The Court also grants the Defendant’s motion to strike insofar as it sought to strike Ms. Mason’s substantive testimony about the subject account. Ordinarily, a witness may not testify

² Should this Court find that the documents were admissible under the business records exception to hearsay, it is important to note other problems and inquiries related to the admissibility of the documents would not automatically be absolved. While Ms. Mason, the witness responsible for maintaining the records in question, may serve as a records custodian to authenticate the documents, she may not discuss information contained in the records—in an attempt to explain the contents of the records to a fact finder—absent a demonstration of personal knowledge of the contents of the document; a sponsoring witness would instead be necessary for such discussion.

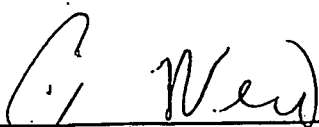
as to the contents of a writing. Rule 1004, SCRE; Moore v. Postal Telegraph-Cable Co., 202 S.C. 225, 24 S.E.2d 361 (1943); Rose v. Winnsboro Nat'l. Bank, 41 S.C. 191, 18 S.E. 487 (1894). An exception exists where the writing has been lost or destroyed, Rule 1004(1), SCRE, but Ms. Mason's testimony did not establish that. It did, rather, indicate the writings from which she said she received all of her information about the subject account do exist within the Plaintiff's possession. With the exception of the statements discussed above, these writings were never offered into evidence.

"After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief." Rule 41(b), SCRCF. A motion under this Rule, usually called a motion for an involuntary nonsuit, is the proper motion for a defendant to make to challenge the sufficiency of the plaintiff's evidence at the close of the plaintiff's case in an action tried without a jury. Hinton v. Designer Ensembles, Inc., 335 S.C. 305, 516 S.E.2d 665, 671 n. 3 (Ct. App. 1999). The Defendant is entitled to prevail on her motion for an involuntary nonsuit here. As discussed above, the Plaintiff did not adduce evidence tending to show the existence of required elements of its claim, in particular the existence of a binding contract and breach thereof. See Fuller, 124 S.E.2d at 610; Rabon, 203 S.C. at 185; Ringer, 293 S.C. at 238.

RESULT ORDERED

It is therefore hereby ORDERED that the Defendant's motion for involuntary nonsuit is granted and the Plaintiff's claim is dismissed with prejudice.

AND IT IS SO ORDERED.



Clifton Newman
Circuit Judge

Orangeburg, South Carolina

April 15, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2014-001384

RECEIVED

JUL 14 2014

SC Court of Appeals

FV-I, Inc., in trust for Morgan Stanley Mortgage
Capital Holdings LLC.....Respondent,

vs.

Byron J. Dolan; Lisa S. Dolan; First Citizens Bank and
Trust Company, Inc.; Wells Fargo Bank, N.A.; Branch
Banking and Trust Company Defendants,

Of whom

Byron J. Dolan and Lisa S. Dolan, are..... Appellants.

72848

RECEIVED

JUL 14 2014

SC Court of Appeals

**RESPONDENT'S MOTION TO DISMISS APPEAL AND
MEMORANDUM OF LAW**

FV-I, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC ("Respondent") hereby moves to dismiss the appeal of Byron J. Dolan and Lisa S. Dolan ("Appellants") on the grounds that the appeal is an impermissible interlocutory appeal.

This is an appeal from the order of the Honorable R. Keith Kelly that denied Appellants' motion for a new trial filed May 16, 2014, and the order of the Honorable R. Keith Kelly that denied Appellants' motion to reconsider that order filed on June 19, 2014. (See Exhibits A and B attached hereto). Respondent filed its Lis Pendens, Summons, and Complaint on July 9, 2012

seeking foreclosure of a certain mortgage of real estate given by Appellants dated March 28, 2005, and subsequently assigned to Respondents July 8, 2011. (See Exhibit C attached hereto). Appellants filed an Answer and Counterclaim on or about August 8, 2012. (See Exhibit D attached hereto). In their Counterclaims, Appellants sought an Accounting, as well as monetary judgments on causes of action for breach of contract and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA").

By order signed April 17, 2014 and filed May 1, 2014, Respondent and Appellants agreed and stipulated to bifurcate the action pursuant to Rule 42(b), SCRCP, thereby severing the Appellants legal claims for Breach of Contract and SCUTPA from Respondent's foreclosure claim and Appellants' equitable counterclaim for Accounting. The foreclosure claim and counterclaim for Accounting were referred to The Honorable James O. Spence, Master-in-Equity, for a separate trial. The legal counterclaims were heard before a jury with The Honorable R. Keith Kelly presiding on April 17, 2014. A directed verdict was granted in favor of Respondent on the SCUTPA claim, and a jury verdict was returned in favor of Respondents on the Breach of Contract counterclaim. (See Exhibit E and F attached hereto). Subsequently, Judge Kelly denied Appellants' motion for a new trial and motion to reconsider the order.

The foreclosure claim and counterclaim for Accounting have yet to be heard or decided by the Master-in-Equity, and thus, a final judgment in the case has yet to be rendered. Nonetheless, Appellants filed a Notice of Appeal with the South Carolina Court of Appeals on June 25, 2014.

Barring some statutory exceptions not applicable here, South Carolina courts have repeatedly held that as a general rule, appeal may only be taken after a final judgment has been rendered. Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (citing Culbertson v.

Clemens, 332 S.C. 20, 23, 471 S.E.2d 163, 164 (1996). “Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final.” Id. (citing Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993)).

An order denying a motion to reconsider a verdict on the at-law counterclaims is interlocutory and not immediately appealable, when a judgment has not been rendered in the equitable foreclosure and Accounting claims. There has not been a final order because the ruling on the at-law claims left some further act to be done by the court before the rights of the parties can be determined. See id.; see also Land v. Land, 201 N.C. App. 672, 687 S.E.2d 511 (2010) (dismissing appeal made after denial of a motion for a new trial in a bifurcated lawsuit because it was a “non-appealable, interlocutory order”). In the present case, the Master-in-Equity must still decide whether the Respondents are entitled to foreclosure before the rights of the parties are determined. Thus, there has not been a final judgment and the order is interlocutory.

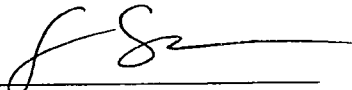
Appellants are seeking to stay the foreclosure claim and Accounting counterclaim before the Master-in-Equity until this appeal is decided. Appellants will likely argue that if the foreclosure action were to go forward before the Master-in-Equity, there is a substantial risk of inconsistent rulings, whereby one court renders a judgment of foreclosure, and the other determines that a new trial must be heard on the legal counterclaims, which could eventually, lead to a finding that the foreclosure must not be granted. However, Appellants are merely restating the rationale as to why an interlocutory appeal is improper at this time in the present case. It is for this very reason that Appellants, should they wish to appeal, must wait until the Master has rendered a judgment on the foreclosure claim and Accounting counterclaim before an appeal may properly be taken.

Appellants wish to treat the legal and equitable claims in this case as one case when it suits their needs and separate when it does not. Appellants and Respondent agreed that the legal counterclaims must be tried first, thus staying the equitable foreclosure claim. Now that the Appellants are dissatisfied with the portion of the case dealing with their legal counterclaims they want to argue that they are somehow allowed to treat the legal counterclaims as a distinct final judgment and continue to delay the equitable claims being heard.

The parties consented to bifurcate the claims in the interest of expediency and judicial economy. The Parties recognized that the Master-in-Equity was best suited to handle the foreclosure action and equitable counterclaim. While the consent to bifurcation did separate the case into separate trials, it did not divide the case into two completely distinct lawsuits. Therefore, to appeal the order denying Appellants motion for a new trial and motion to reconsider that order is an impermissible interlocutory appeal. As such, Respondent respectfully requests this Court to dismiss the appeal and order that the Notice of Appeal filed by Appellants Byron J. Dolan and Lisa S. Dolan be canceled until such time as the Respondent's foreclosure claim and Appellant's Accounting counterclaim are tried before the Master-in-Equity.

Respectfully submitted,

July 10, 2014

 
Charles S. Gwynne Jr. (SC Bar # 73844)
Jason D. Wyman (SC Bar # 100271)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
Attorney for the Respondent
Rogers Townsend & Thomas, PC and its staff are debt collectors

State of South Carolina
County of Lexington

Court of Common Pleas

FV-I, Inc., etc.	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2012-CP-32-2816
	)	
Bryon J. Dolan, et al.	)	
	)	
<u>Defendant.</u>	)	

April 16, 2014
Lexington, South Carolina

B E F O R E:

The Honorable R. Keith Kelly, Judge.

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

Jason Wyman, Esquire
Charles Gwynne, Esquire
Attorneys for the Plaintiff

Andrew S. Radeker, Esquire
Attorney for the Defendant

Bethanie K. Patterson
Circuit Court Reporter

1		I N D E X	
2	<u>WITNESS</u>		<u>PAGE</u>
3			
4			
5			
6			
7		(No Witnesses.)	
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3				
4				
5				
6		(No Exhibits.)		
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (The following proceedings were held on April
2 16, 2014.)

3 THE COURT: All right. Whose motion?

4 MR. WYMAN: Thank you, Your Honor. Jason Wyman
5 here on behalf of the plaintiff. We have a Motion
6 in Limine seeking to bar any testimony based on the
7 Parol Evidence Rule and the Statute of Frauds
8 regarding the September 2011 agreement. It's
9 attached as Exhibit C to your motion there.

10 Basically, Your Honor, the very simple motion
11 is that the terms of the September 2011 agreement
12 are clear and unambiguous. And based on the South
13 Carolina case law, parol evidence would not be
14 allowed to alter, modify or explain the terms in
15 there.

16 The main point of contention from the
17 defendants is that applied to the loan, as stated in
18 paragraph 2, is ambiguous. They contend that the
19 purpose of the apply for the loan is silent as to
20 what -- exactly what happened with the money that
21 was received from the result of the sale, a portion
22 of the mortgaged property.

23 Just for a little bit of background, Your
24 Honor, basically the -- the first mortgage holder,
25 or the plaintiff in this case, agreed to release a

1 small tract of land from the mortgage in exchange
2 for a certain payment from the defendants as part of
3 the closing. And as consideration for that release,
4 the funds were to be applied to the loan. The
5 defendants contend that that meant that the loan was
6 to be brought current. However, if you look at the
7 full context of the agreement, and looking at it in
8 entirety as required to under South Carolina law,
9 it's clear that the loan was not brought current by
10 the \$65,250 payment from the sale of the small strip
11 of land.

12 Specifically, Your Honor, we'd argue that
13 singling out this applied-to-the-loan phrase is
14 trying to create an ambiguity when there's not one
15 there. It would not make sense for the bank to
16 require the Dolans to deep their property on the
17 market if the loan was current. The banks do not
18 tell people to sell their houses if the loan is
19 current.

20 Secondly, Your Honor, the Dolans would not have
21 had that opportunity to apply for a loan
22 modification if, in fact, the loan was current. So
23 we'd argue, Your Honor, that the September 2011
24 agreement is clear and unambiguous and any parol
25 evidence about any discussions leading up to that

1 point in time must be barred.

2 THE COURT: Okay.

3 Yes, sir?

4 MR. RADEKER: Thank you, Your Honor. I take
5 issue a little bit with the characterization of what
6 our position is here. I'd say, first of all, this
7 agreement document is silent as to the particular
8 matter at issue because it does not speak to what
9 the amount is that is necessary to bring the loan
10 current in any way. It's totally silent as to that.

11 And there's law in South Carolina, that *Keith*
12 *vs. River Consulting* case that we've cited in our
13 memorandum, that says: When a contract is silent as
14 to a particular matter, parol evidence is admissible
15 to reveal the party's true intent. So we'd note
16 that that's the case. And that's our primary
17 contention, is parol evidence about whether the
18 payment of money reinstated the loan is just not
19 covered by this document at all, and so the parol
20 evidence is inadmissible on that point.

21 If Your Honor finds that this
22 applied-to-the-loan language does speak to that,
23 well, it is ambiguous. Applied to the loan how and
24 producing what result? It's not clear from the
25 document. The documents were written by the

1 plaintiff's servicing agent so as to be construed
2 against them. But it is ambiguous. And if -- and
3 on that secondary point, because it's ambiguous,
4 we'd be allowed to offer parol evidence as to that.

5 In any event, the question of what the amount
6 is that's necessary to bring the loan current is
7 almost always, in the case of a note, going to
8 depend on evidence that is outside the terms of the
9 document. It's going to depend on things like the
10 date of default, how much had already been paid on
11 the loan, the existence and the amount of expenses
12 that are properly chargeable to the debt at issue.
13 And those facts aren't contained in the text of the
14 document, what the amounts of those things are, in
15 any event.

16 The plaintiff argues that this *Wyndham vs.*
17 *Honeycutt* and *Connor vs. Jager* cases support their
18 position, but they seem to assume that the Statute
19 of Frauds applies to this document. It doesn't. In
20 the *Carter vs. McCall* case, our Supreme Court made
21 clear that as to the -- the only provision is
22 Statute of Frauds that could possibly be at issue,
23 the one concerning a contract to charge any person
24 upon any contract or sale of lands, tenements or
25 hereditaments or any interest and/or concerning

1 them. Our Supreme Court held in that case that it
2 can only be applied to contracts which had in view
3 the transfer of an interest in or concerning lands,
4 and this isn't that. The only transferring that
5 happened here was pursuant to a different contract
6 when the Dolans sold a portion of their yard to
7 their neighbors. They didn't transfer anything to
8 FV-I, they didn't get anything, FV-I didn't transfer
9 anything to them.

10 So we'd note that that section is to be very
11 narrowly construed. Also, got another claim in this
12 case, Unfair Trade Practices Act claim, and there's
13 absolutely zero indication that the Statute of
14 Frauds would bar the introduction of any parol
15 evidence in connection with an Unfair Trade
16 Practices Act claim anyway. And so we'd note that
17 it would be proper for the Court to deny this and
18 certainly to deny it as a Motion in Limine.

19 THE COURT: Well, the Unfair Trade Practices is
20 not before the Court. It's a matter for the jury at
21 this time; right?

22 MR. RADEKER: It is. We agreed to let our
23 appeal get dismissed and they agreed that it be
24 tried by the jury.

25 THE COURT: Okay. So it is then? Okay. I

1 didn't know that. Okay. So --

2 MR. WYMAN: And we were going to put some stuff
3 on the record that we agreed to.

4 THE COURT: Okay. So the Unfair Trade
5 Practices claim is before the Court --

6 MR. WYMAN: And the jury, yes.

7 THE COURT: -- along with the breach and --
8 what's the other?

9 MR. RADEKER: Those are the only two claims,
10 Your Honor. There's an accounting counterclaim,
11 but --

12 THE COURT: All right. I got it. So those two
13 are before -- okay. All right.

14 MR. RADEKER: So that's our position on that
15 motion, Your Honor, unless you have any questions
16 for me.

17 THE COURT: Yes, sir?

18 MR. WYMAN: Your Honor, I'd point out that this
19 written agreement does contain a merger clause. In
20 South Carolina there's a strong favor of recognizing
21 merger clauses and the importance of merger clauses
22 or integration clauses in regards to the Parol
23 Evidence Rule. And I would -- recently the Supreme
24 Court, in *Davis vs. KB Homes of South Carolina*,
25 discussed why -- you know, if there's an integration

1 clause present and the agreement is clear on its
2 face, then extrinsic evidence cannot be brought in
3 to explain, modify or bury the terms of the written
4 agreement.

5 And, Your Honor, I would point out that as far
6 as the applied-to-the-loan language that the
7 defendant is arguing is ambiguous, that
8 applied-to-the-loan is discussed in paragraph 2 of
9 the mortgage, which is Exhibit B for Your Honor. It
10 clearly lays out how proceeds, how payments are to
11 be applied to the loan. The mortgage is referenced
12 in the letter, and I would argue that paragraph 2 of
13 the mortgage clearly sets forth what applied to the
14 loan means. And, therefore, with this agreement not
15 being ambiguous at all, being clear on its face,
16 parol evidence cannot come in to explain, modify or
17 vary the terms in the sense of they're trying to add
18 an additional term that the loan was to be brought
19 current.

20 There's case law in South Carolina that puts
21 forth that even where an agreement -- or a fully
22 integrated agreement, if it's silent on issue, it
23 still cannot be supplemented by parol evidence.

24 MR. RADEKER: And I would note, Your Honor,
25 that the case law is to the opposite effect and that

1 this paragraph 2 does not show what the amount was
2 that was needed to reinstate the loan at this time.
3 And so you'd have to look to parol evidence to
4 determine that or any case involving that question
5 anyway.

6 THE COURT: All right.

7 MR. WYMAN: Your Honor, if I may briefly
8 respond.

9 THE COURT: Yes.

10 MR. WYMAN: The agreement does not mention
11 reinstating the loan at all. And furthermore, Your
12 Honor, the cases that the defendants are relying on,
13 those cases involve oral contracts. The law
14 regarding where an oral contract is silent,
15 certainly parol evidence would be allowed.

16 In this case we have a fully integrated,
17 complete expression of the party's intent here, and
18 it's just clear that he cannot add a term that he's
19 trying to or to explain or do anything regarding to
20 what applied to the loan meant via parol evidence.

21 And as to the argument regarding the Statute of
22 Frauds, I believe there may have been a little bit
23 of confusion on defendants' counsel's part. The
24 Statute of Fraud argument is based on the alleged
25 oral modification of the note and mortgage. We're

1 not contending that the September 2011 agreement is
2 covered by the Statute of Frauds; simply the
3 allegations in the counterclaim are that the note
4 and mortgage were modified either via this agreement
5 or some other oral agreement, and based on the
6 Wyndham case and the Connor case that I have cited,
7 that would not be allowed because the note and
8 mortgage would have to be in writing to satisfy the
9 Statute of Frauds.

10 MR. RADEKER: And, Your Honor, I will keep
11 going, if you let me.

12 THE COURT: Well, how much more do you need me
13 to know about this?

14 MR. RADEKER: I've got copies if you want to
15 look at them. But on the Wyndham and Connor cases,
16 I wanted to note this, both of those cases concern
17 oral contracts, one of them concerns an oral
18 addition to a written contract to sell land. That's
19 what the Statute of Frauds applies to. There's
20 nothing in the notes and mortgages; it's land sales.

21 THE COURT: Okay. What else?

22 MR. RADEKER: That's it.

23 THE COURT: All right. Any other motions? I
24 know we've got some agreements. Any other motions?

25 MR. RADEKER: We've got some agreements on one

1 thing. I don't really know that it's a motion.

2 MR. WYMAN: If I may briefly, Your Honor.
3 Defendants' pretrial brief mentioned a potential
4 Motion to Amend as far as conforming with the
5 evidence under Rule 15 (b). We're not consenting to
6 that whatsoever and we'd argue it's highly
7 prejudicial to bring in two additional claims, a
8 breach of contract accompanied by a fraudulent act
9 and negligent misrepresentation at this late stage,
10 especially considering the two exceptions of those
11 two causes of action would provide an exception to
12 the Parol Evidence Rule. It seems like he's trying
13 to get around poor pleading at the very instance.
14 Nothing in the facts have changed from the time he
15 filed his counterclaim, so we'd argue that the
16 Motion to Amend would be highly prejudicial. My
17 client prepared for breach of contract case, which
18 is simply not in front of us at this time.

19 THE COURT: I was getting ready to ask him
20 about that.

21 Yes, sir?

22 MR. RADEKER: All right. On that I would just
23 say I think, you know, we make motions to amend to
24 conform to the evidence as you present the evidence
25 for when you're done with it. And so I, you know,

1 would say it's -- it would be kind of putting the
2 cart before the horse to take it up at this point.
3 I'd say this: The issues that we might seek to
4 amend to conform to the proof on -- and that would
5 just depend on how things go -- but they wouldn't
6 have occasion, any discovery or preparations, any
7 different from what was already done in the case.
8 And so if another side wants to oppose a Motion to
9 Amend, they got to establish prejudice.

10 And I'm kind of pretalking here. But prejudice
11 is a lack of notice that an issue is to be tried and
12 a lack of opportunity to refute it, as it would only
13 just be legal argument about the meaning of what's
14 already happened and wouldn't have been anything
15 different to get ready for this trial. I just don't
16 see how that can --

17 THE COURT: Well, I already know how I'm going
18 to rule on that. We'll have to see what the
19 evidence is. But I will tell you this now: The
20 Rules of Procedure are set forth so that we don't
21 have trial by ambush and trial by surprise, and
22 we're not going there. Okay? So if you wanted to
23 set forth that, you could have set forth that issue
24 long ago. But we'll see.

25 MR. RADEKER: Thank you, Your Honor.

1 THE COURT: What else?

2 MR. RADEKER: All right. As for agreement,
3 we've agreed on some exhibits. And if that's all
4 right with everybody, we can premark them tonight
5 and bring them in the morning.

6 THE COURT: That's fine with me. We got to
7 have agreement on these exhibits. I think Madam
8 Court Reporter would love it.

9 MR. RADEKER: I think we've agreed that my
10 clients, the Dolan defendants, are in the position
11 of a plaintiff, basically wearing the plaintiff's
12 hat, because we've agreed to bifurcate this case.
13 The only thing that's being tried are their
14 counterclaims. So, in other words, we'd sit here at
15 the plaintiff's table and, you know, go first when
16 we open, go first in reply when we close, present
17 our case first, do all of the other things that the
18 plaintiff normally does.

19 THE COURT: Actually, we had this general
20 conversation at lunch today. I kind of think --
21 what we kind of thought was, since we're not here on
22 the foreclosure -- and really, I know that's going
23 to be mentioned, no doubt about that. But I don't
24 want to go very far I want to tell you that. But we
25 don't need to confuse the jury that they're kind of

1 trying to consider a foreclosure matter. That's not
2 before them.

3 MR. WYMAN: Sure, sure.

4 THE COURT: How do you --

5 MR. WYMAN: Well, certainly, Your Honor, we
6 agree that they would be essentially wearing the
7 plaintiff's hat; however, we do need to modify some
8 of the standard jury charges as to them carrying the
9 burden and things like that, as far as the
10 defendants carrying the burden on their
11 counterclaim.

12 MR. RADEKER: And I can say that what I can do
13 is try to avoid using labels like Plaintiff and
14 Defendant and just say the Dolans and FV-I, as far
15 as the case goes.

16 THE COURT: Yeah. We really did have that
17 conversation too because we were afraid that
18 somebody might think that a defendant in the case --
19 they might not really understand that a defendant is
20 actually acting as the plaintiff before the Court.
21 And we thought, especially when we get to that jury
22 verdict form, we don't want them to be confused one
23 way or the other. So it may -- I don't know how you
24 want to do that. But we may just refer to them
25 as -- how y'all choose, you know, the Dolans vs.

1 FV-I or however you want to do it. Y'all can agree.
2 But I'll follow whatever guide you think.

3 MR. GWYNNE: I'm fine with that. It's just
4 that I don't -- I personally don't want to be
5 limited if it slips out --

6 THE COURT: No, no.

7 MR. GWYNNE: -- because, you know, this is our
8 foreclosure and they've chosen to bring their claims
9 in our case. So the jury needs to understand the
10 whole picture.

11 THE COURT: I agree.

12 MR. GWYNNE: But of course I'm willing to sort
13 of, as much as I remember, to make sure that we
14 don't --

15 THE COURT: No. I didn't mean to shut you down
16 over there. I'm just saying I don't want to confuse
17 them. We're lawyers and these are professional
18 staff and they understand the difference, but I'm
19 not sure that -- I'm not sure that -- and my brother
20 is a skilled laborer, he's a machinist, but I'm not
21 sure that my brother would understand really, to be
22 honest with you.

23 MR. RADEKER: I'd say that probably most people
24 probably don't understand that you can even do that.

25 THE COURT: Right. But I don't understand how

1 to run that equipment that he runs either. He's
2 very good at that. But I don't know how to run that
3 CNC machine or whatever machine it might be.

4 MR. RADEKER: Me either.

5 Your Honor, another thing, the plaintiff has --
6 FV-I has agreed not to mention a prior conviction of
7 Mr. Dolan for filing false tax returns very remote
8 in time. They've agreed not to bring it up.
9 They've agreed not to bring up other debts except as
10 is necessary to explain this. I mean, there's this
11 foreclosure action and a couple of BB&T foreclosure
12 actions that would be absolutely necessary to
13 explain. We'll probably bring those out just to
14 explain what happened. But they've agreed they're
15 basically not going to, like, attack him. So -- and
16 I don't mean to put words in anybody's mouth, I was
17 just trying to kind of find a way to express that.

18 MR. GWYNNE: Yes, Your Honor, we're not going
19 to bring up his other debts. But, obviously, if it
20 comes out that BB&T and First Citizen are defendants
21 in the case, that may come out that -- because they
22 have a lien on the property. That's why we had to
23 name them. That may come out. But we're not going
24 to attack him on what he owes as assets.

25 MR. RADEKER: And we've agreed, if it's okay

1 with you, to go ahead and ask you that no matter
2 what the outcome of this trial is, that whoever
3 wants to make any posttrial motions, they have ten
4 days to do that, if you'll let us.

5 THE COURT: I'll do that.

6 MR. RADEKER: All right. We figured the
7 fairest way to do it is to address it before we --

8 THE COURT: Sure. I'll do that. I'd be happy
9 to help you gentlemen any way I can. Just actually
10 send them to us on the e-mail through Trey because
11 we'll be in Dillon next week.

12 MR. RADEKER: Okay. I'm trying to think if
13 I've got anything else that we need to take up right
14 now. I think that's it.

15 Can y'all think of anything else?

16 MR. WYMAN: Just formally for the record, we've
17 agreed to bifurcate the foreclosure and refer it to
18 the Master in Equity.

19 MR. RADEKER: That's correct.

20 THE COURT: Okay. Do you need to put that in
21 an order or something, a Form 4 or anything?

22 MR. WYMAN: We'll bring that tomorrow, Your
23 Honor.

24 THE COURT: Okay.

25 Madam Clerk, does that suit you to put it on a

1 Form 4?

2 THE CLERK: Not a problem, Judge.

3 THE COURT: Okay. If y'all will just get with
4 Madam Clerk, she'll prepare that, I guess. I know
5 I'm asking a lot, but --

6 THE CLERK: You're fine.

7 MR. RADEKER: We can just bring one.

8 MR. WYMAN: It won't take but a minute.

9 MR. GWYNNE: And we'll bring the reference fee
10 too so we can have it all together.

11 THE COURT: Okay. That'll work. And I'll sign
12 that before we get started. Anything else?

13 MR. RADEKER: Not that I can think of.

14 THE COURT: All right. Why don't we do this:
15 We're going to start promptly at 9:00 a.m. I don't
16 keep my jury waiting at all, if I can. And Trey and
17 I have already done some reading and some talking
18 anyway. We'll do a little more over the next couple
19 hours or next hour and half, something like that.

20 If you gentlemen will watch your e-mails, we'll
21 have a decision on this other matter for you today
22 so that you know where you are tonight. And then if
23 you need us, I'm here by 8:00 in the morning. I'm
24 sure -- and there's lots of staff here. I'm sure if
25 you need to be in up here, you can get in touch with

1 some of these officers and they'll allow you back
2 here. Just don't ex parte me. But if you have some
3 resolution or if something else comes up or if you
4 need some other guidance before the jury gets
5 here -- what I don't want to do is -- what I don't
6 want to do and what I don't like to do is from about
7 8:50 on, I'm done talking and trying to help or do
8 whatever.

9 You know, somewhere around 8:50 I'm going to
10 pour my last cup of coffee out and use the
11 facilities and I'll put on my robe because that jury
12 is sitting back there and those are citizens and
13 taxpayers of Madam Clerk who -- those are her
14 constituents. So we don't need them sitting back
15 there. If you need me, I'm telling you that I'll be
16 here about 8:00. It might be 8:01 or -2, but my
17 bailiff will give me a counseling statement from my
18 DD 201 file.

19 So anyway, seriously, I will be here around
20 8:00-ish if you need me. If that will help you at
21 that point, fine. But around 8:50, if you don't
22 mind, it's just gone. If it settles at a break, it
23 settles at a break, but otherwise, we'll be ready to
24 go and we'll get that jury in here. They're already
25 sworn, we did swear them to try this case, so

1 they're ready to go. I'll just ask Madam Clerk if
2 there's any issues, and then barring none, we will
3 proceed immediately right into the trial.

4 Now, nuts-and-bolts-wise, one witness? Two
5 witnesses? Four witnesses? Doesn't matter to me,
6 just give me an idea.

7 MR. RADEKER: I understand there's only going
8 to be three witnesses total; both of my clients and
9 somebody from -- the present servicer's client.

10 THE COURT: Okay.

11 MR. RADEKER: So I'd expect we'll be done with
12 the presentation of evidence tomorrow. Maybe, if it
13 goes long, we might have to charge and close in the
14 morning on Friday.

15 THE COURT: Okay. Having said that, what Trey
16 does is, if not this afternoon late, certainly
17 tomorrow morning, when people are testifying, he
18 actually starts putting together our jury charge.
19 We use -- unless you want something else, we use
20 Ralph King Anderson's charge book. And then what I
21 generally do have is have a charge conference once
22 everything is done. I want you to actually see in
23 writing what I'm thinking about doing, and we're
24 going to talk about that. And then once we have an
25 understanding about that, then we'll move into

1 arguments and then closing. But if we need to go
2 into Friday, that's fine with me. But if you have a
3 jury charge you want, if you have a particular -- if
4 you can agree on a verdict form, that would be
5 great. Whatever you can do, if you'll send it to
6 Trey, you know, the more we can agree on, the faster
7 it will move.

8 MR. GWYNNE: Your Honor, one thing I'll
9 mention: I think Counsel and I are in agreement
10 that because it's -- the contract is a page and a
11 half, it's not very long, but we're probably going
12 to try to use this projector so the jury can get a
13 good view of it. So we're going to probably use
14 technology as much as we can to publish to the jury.
15 We just have to learn how to use it before.

16 THE COURT: Sure. I mean this when I tell you
17 this: I will let you try your case, I mean, I
18 really will. You can use it and -- I never could do
19 it because I'm not smart enough to do that. But
20 you're welcome to stay in the courtroom for a few
21 minutes to -- anything I can help you do, we will
22 do. And trust me, you try your case, take your
23 time. Don't necessarily drag along, but ask all the
24 questions you want to ask. I know everybody is
25 practicing and representing their side. So whatever

1 you want to do.

2 MR. WYMAN: Thank you, Your Honor.

3 MR. RADEKER: Thank you.

4 THE COURT: Anything else I can help you do?

5 MR. RADEKER: That's it for today.

6 THE COURT: All right. Everybody here has an
7 e-mail address that's with the Bar; right? That's
8 where we get your e-mail addresses.

9 MR. WYMAN: That's correct, Your Honor.

10 MR. RADEKER: I think we're all on that e-mail
11 that I sent.

12 THE COURT: Okay. We'll have your decision on
13 this. Thank you.

14 -- END OF TRANSCRIPT OF RECORD --

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

County of Lexington)

2012-CP-32-2816

FV-I, Inc.,)

Plaintiff,)

vs.)

TRANSCRIPT OF RECORD

Bryon J. Dolan, et al.,)

Defendants.)

April 17th, 2014
Lexington, South Carolina

BEFORE:

THE HONORABLE R. KEITH KELLY, JUDGE; and a jury.

APPEARANCES:

CHARLES S. GWYNNE, ESQ.
JASON D. WYMAN, ESQ.
Attorneys for the Plaintiff

ANDREW S. RADEKER, ESQ.
Attorney for the Defendants

AMINAH R. HARDY, CM
Official Court Reporter

INDEX

OPENING STATEMENTS	Page
By Mr. Radeker	14
By Mr. Gwynne	20

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
BRYON DOLAN	24	63	123	128
LISA DOLAN	129	130		
LORETTA POCH	132, 147	174	176	

CLOSING ARGUMENTS	
By Mr. Radeker	178, 190
By Mr. Gwynne	185
CHARGE OF THE COURT	192
VERDICT	203
CERTIFICATE	206

EXHIBITS

No.	Description	Marked	Admitted
P1	Plat Parcel A & B	5	5
P2	Adjustable rate note	5	5
P3	Mortgage		
P4	540 Foreclosure complaint	5	5
P5	544 Foreclosure complaint	5	5
P6	Foreclosure master-in-equity deed	5	5
P7	Waiver of deficiency judgment	5	5
P8	Plat B1 & B2	5	5
P9	Partial release	5	5
P10	Email dated 10/12/11	5	5
P11	SLS welcome letter	5	5
P12	Customer mortgage activity	167	--
P13	Mortgage modification	5	5
D1	Responses and requests to admit	5	5
D2	Notice of assignment/sale transfer	5	5
D3	Saxon welcome letter	5	5
D4	Letter dated 9/22/11	5	5
D5	Email dated 4/12/14	5	5
D6	Email dated 10/12/11	5	5
D7	Email dated 1/9/12	5	5

1	<u>EXHIBITS</u> (continued)			
2	No.	Description	Marked	Admitted
3	D8	Return check document	5	5
4	D9	Internal notes spreadsheet	5	5
5	D10	Foreclosure release	5	5
6	D11	Letter dated 3/15/11	5	5
7	D12	Value conciliation worksheet	5	5
8	D13	Foreclosure review	5	5
9	D14	SLS welcome letter	5	5
10	D15	Notice of interest and payment adjustment	5	5
11	D16	Reinstatement letter dated 4/10/14	5	5
12	D17	Email dated 1/16/12	37	47
13	D18	Email dated 9/23/11	51	52
14	C1	Jury note	114	
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

(Plaintiff's Exhibits 1-11 and 13 were marked and admitted.)

(Defendant's Exhibits 1-16 were marked and admitted.)

THE COURT: Are the agreed exhibits for the defendant 1 through 12 for -- I'm sorry, one through 11 and 13.

MR. RADEKER: And, Your Honor, at that time we just formally move those into evidence by stipulation.

MR. GWYNNE: Yes, Your Honor.

THE COURT: They're admitted without objection. And the one you -- in controversy you handled that?

MR. GWYNNE: Yes, Your Honor.

THE COURT: And I guess we'll address that at the appropriate time if necessary.

And before we bring them in, I was just going to say something to the effect, like I told you, this case was initially brought by FV-I as a foreclosure action against the Dolans. Going to stay away from plaintiff and defendant. The Dolans have brought counterclaims of breach of contract and unfair trade practices, and these two causes of action are the only two before you today. That suit you?

MR. RADEKER: It does.

MR. GWYNNE: Yes, Your Honor.

THE COURT: We're ready for the jury.

1 (The jury entered the courtroom at 9:33 a.m.)

2 THE COURT: All right. Good morning, Madame
3 Forelady, ladies and gentlemen of the jury. We appreciate
4 your patience. We had what I refer to as technical
5 difficulties this morning, but they're resolved now. As I
6 told you earlier, I generally get here by 8:00 every
7 morning. The lawyers were joining me here this morning,
8 and we had a nice cup of coffee. Chatted about some
9 mechanical things that take place, and those have been
10 resolved and we're ready now and need your services to try
11 this case.

12 As I've previously told you, my name is Keith Kelly.
13 I'm a circuit court judge for South Carolina. I'm
14 generally stationed or assigned to the 7th judicial
15 circuit, which is the Cherokee/Spartanburg counties area,
16 but I do travel around the state, and it's been great to
17 be here with you this week. I'll tell you your clerk of
18 court has taken very good care of us, and if you see her,
19 give her some thanks.

20 Now, before we begin the trial today, I want to make
21 some comments to you and tell you a few things about how
22 the procedure will go. This case is the matter of FV-I
23 versus Bryon and Dolan -- Bryon Dolan and Lisa Dolan, and
24 this case was initially brought by FV-I as a foreclosure
25 action against the Dolans. The Dolans have brought

1 counterclaims or claims of their own, if you will, of
2 breach of contract and unfair trade practices against
3 FV-I, and these are the only two causes of action that are
4 before you today. Again, the foreclosure action itself is
5 not before you. It's only the two claims by the Dolans.

6 Before we begin the trial, I want to tell you that
7 this trial will probably be different from what you might
8 have come to expect. Many folks do not have the chance to
9 attend an actual court session as you're doing at this
10 time, and many people believe from watching television
11 movies or reading books that the trials are always full of
12 high drama, intense action, and riveting circumstances.
13 Now, while all these may be true at times, this trial is
14 not for entertainment purpose. This trial is a
15 fundamental part of our democracy, a search for the truth
16 in an effort to make sure that justice is done between the
17 parties before the Court. Searching for the truth and
18 making sure that justice is done is often slow,
19 deliberate, repetitive, just the opposite of what we have
20 come to understand from TV, radio, books, and movies.

21 Now, this courtroom is a place of honor dedicated to
22 the protection and preservation of citizens' rights
23 through what many have referred to as the greatest justice
24 system ever created. The attorneys appearing before you
25 are advocates for the parties that they represent. But

1 first and foremost, they are officers of the court sworn
2 to uphold the integrity and the fairness of our judicial
3 system and help you in the search for the truth. You
4 should expect the lawyers to be professional, competent,
5 and ethical in their representation of their clients'
6 interests. Again, we thank you for your accepting
7 responsibility to be jurors in this case.

8 Now, what I tell you now is intended to serve as an
9 introduction of the trial of the case, and my remarks are
10 not a charge on the law. I'll instruct you on the law at
11 the end of the trial before you retire to consider your
12 verdict. My remarks are merely an explanation of the
13 procedure that we will follow in the trial so you may
14 better understand what is happening. You are not to take
15 notes in the trial of this case. You have been selected
16 as a fair and impartial juror whose purpose is to find and
17 determine the facts. You are the sole judge of the facts.
18 If at any time I make any comment regarding the facts, you
19 must disregard them. You are to determine the facts from
20 the testimony you hear and from any other evidence that is
21 presented. You should not be influenced by any opinions
22 or statements that you have heard outside of this
23 courtroom. It is especially important that you perform
24 your jury duty to determine the facts diligently and
25 consciously because ordinarily there is no way to correct

1 an erroneous determination of facts by a jury. When you
2 comply with your oath to impartially determine the facts
3 of the case, you will have fulfilled your duty as jurors
4 and no one will have a right to criticize your verdict.

5 Now, on the other hand and with equal emphasis, I
6 tell you the same law that make you the judge of the facts
7 makes me the judge of the law in this case. The law as
8 given by the Court is the only law that you may consider
9 and you must accept it and follow it even if you disagree
10 with it. I cannot tell you what the facts are, and you
11 cannot disagree with me about what the law is or ought to
12 be or should be. Your job is to take the law as I give it
13 to you and apply to it the facts as you find them to be
14 from the testimony of the witnesses and other evidence
15 that is presented. After doing that, you will render a
16 verdict, a true and just verdict under the oath you took
17 as jurors.

18 Until I advise you to begin your deliberations, you
19 must not discuss the case with anyone, including your
20 fellow jurors, friends, family members, and anyone
21 involved in this case. This includes discussions
22 face-to-face as well as by telephone, e-mail, text, blogs,
23 or any other method of communication.

24 Please do not try to learn information from any
25 source outside of this courtroom. In other words, you

1 must not use or look at dictionaries or other reference
2 materials, search the internet, websites, or blogs, or use
3 any other electronic tools to get information about this
4 case in order to help you decide. You may not use
5 computers, telephones, cell phones, smart phones, tablets,
6 the internet, or other tools of technology with
7 communication capabilities at any time while you are in
8 the courthouse, or certainly in your deliberations in the
9 jury room.

10 During your breaks for meals, you may use those
11 devices; however, you may not at any time use those
12 devices to receive or send information about this case.
13 This means that you must not use phone calls, e-mails,
14 text messages, instant messages, Twitter, or any blog,
15 chat room, or website, including Facebook, Google+,
16 MySpace, Linked In, YouTube, or any social media website
17 to send or receive information about this case. This
18 includes information about a party, a witness, an
19 attorney, or a court officer, news accounts about this
20 case, research on any topic raised or any topics you may
21 think would be helpful in deciding the case or any
22 testimony presented by a witness.

23 During the trial, do not read, listen to, or watch
24 any news report or accounts about this case. This
25 includes anything that may be in newspapers or on the

1 internet, radio, or television. You must not consider
2 anything you may have read or heard about this case
3 outside of the courtroom, whether before or during the
4 trial. Information on television, radio, and on the
5 internet or from other sources might be wrong or
6 incomplete. In our judicial system, it is important that
7 you are not influenced by anything or anyone outside of
8 the this courtroom.

9 If you become aware of another juror's violation of
10 my instructions, please inform me immediately. It is
11 important you keep an open mind and not decide any issue
12 in this case until all of the evidence has been presented,
13 the parties have made their closing statements, and I have
14 instructed you on the law. After the case is submitted to
15 you, you must discuss it only in the jury room with your
16 fellow jurors.

17 The attorneys and the parties in the case have been
18 advised they are not to speak to you at all. So if you
19 see anyone involved in the case and they do not say hello
20 or do not speak to you, they're not being rude or
21 unfriendly. They're merely following my instructions.
22 Again, it's important you keep an open mind and not decide
23 the issues in the case until all of the evidence has been
24 presented, the parties have made their statements, and I
25 have instructed you on the law.

1 Now, in just a moment the attorney for the parties
2 will make what is called opening statements to you. The
3 attorneys will explain what the issues in this case are or
4 at least what they contend the issues are in this case.
5 The evidence in the case will be presented to you by
6 testimony of the sworn witnesses from the witness stand
7 and/or by the exhibits that may be introduced into trial.
8 What the lawyers tell you during their opening statements
9 is not evidence in the case but merely their contention of
10 what the issues are.

11 Now, ladies and gentlemen, from time to time during
12 the trial you may hear one of the lawyers say something
13 like, "Your Honor, I believe we have a question or matter
14 of law to discuss with you," or "May we approach the
15 bench?" Sometimes I myself find it necessary to excuse
16 you from the courtroom for a short period so the lawyers
17 and I can discuss a matter of law. The reason for this is
18 you and you alone or the judges of the facts in the case,
19 and sometimes when I am discussing a matter of law with
20 the lawyers, it may be necessary for me to comment on some
21 fact in connection with ruling on whether or not a
22 particular law applies. I cannot tell you what I think
23 the facts are, so I will excuse you from the courtroom
24 while my discussions take place with lawyers so that you
25 will not be influenced by anything I say or do.

1 In determining what the true facts are, you must
2 decide whether or not the testimony of the witnesses is
3 believable. It will be my responsibility to rule as a
4 matter of law whether certain testimony is admissible at
5 all, but once the testimony is admitted, whether or not
6 you believe it is solely for you, the jury, to decide. In
7 deciding whether to believe a witness, you have the right
8 to consider whether the witness has an interest in the
9 result of the trial, whether the witness is prejudiced
10 toward either side, the opportunity for the witness to
11 have seen the matters to which he or she may be
12 testifying, and the way that the witness acts on the
13 stand. I tell you that you have a right to consider
14 anything that is in the record that will help you evaluate
15 the testimony of the witnesses, and that means that it is
16 your duty to pay close attention to the witnesses, to
17 observe them, to listen to them, and to pay close
18 attention to the lawyers and the Court. Please do not
19 allow your thoughts to wander, but pay attention to
20 testimony so that at the end of the trial, you will be
21 able to determine what the true facts are and apply the
22 law to those facts and render a just and true verdict.

23 Madame Forelady, ladies and gentlemen, at this time
24 we're ready to begin the trial.

25 Gentlemen?

1 OPENING STATEMENT

2 BY MR. RADEKER

3 Good morning. A mortgage lender cannot break the
4 terms of its own loan contract with the mortgage borrower.
5 Nor can a mortgage lender, like any other business, engage
6 in unfair and deceptive practices in the conduct of its
7 business. And if a mortgage lender does either one of
8 those things, it's liable for the harms and losses that it
9 causes. Let's talk about what the evidence will show in
10 this case. I'm Drew Radeker. I represent Bryon Dolan and
11 Lisa Dolan here. And we're here today on their
12 counterclaims, as the judge told you in this foreclosure
13 case that FV-I -- their full name is FV-I in trust for
14 Morgan Stanley Capital Mortgage Holdings, LLC -- has
15 brought against them.

16 Now, to understand this case, y'all are going to have
17 to learn about -- if you don't already know -- something
18 about the way that banking and particularly mortgage
19 banking is done today and in the modern world. It's not
20 like it once was. You may remember the banking
21 relationships from the movie It's a Wonderful Life where
22 you go have face-to-face contact with your banker.
23 Everybody sits down, they understand what is going on,
24 they know that they can rely on what's told to them by the
25 people at the bank. We're in a different world now.

1 We're in Wall Street's banking world. And in Wall
2 Street's banking world, very often mortgage loans are
3 owned by company like FV-I who don't have any face-to-face
4 contact with their borrowers at all. They operate through
5 other companies, which are called servicers, mortgage
6 servicers.

7 Now, what's a mortgage servicer? A mortgage servicer
8 is for a mortgage loan kind of like what a property
9 manager agent is for someone who, say, owns an apartment
10 building. Just as a property management agent collects
11 the rent, deals with having to evict people who don't pay,
12 deals with the day-to-day interactions with the tenants, a
13 mortgage servicer collects payments on the loan, sends out
14 all the correspondence concerning the loan, they manage
15 any foreclosure action brought on a mortgage loan, and
16 they do the communication with the borrower on the loan.

17 Now, FV-I, acting through its servicers, which are
18 two companies, Saxon Mortgage Services and then it
19 switched over to another company called Specialized Loan
20 Servicing. They broke the mortgage contract that they
21 have with the Dolans and they engaged in unfair and
22 deceptive trade practices in their interactions with them.
23 Now, this case largely concerns a lump sum payment of
24 \$65,250 that was made to Saxon Mortgage Service acting as
25 servicer for FV-I on September 30th, 2011.

1 Now, you're going to see evidence in this case, both
2 testimony and documentary evidence, that will show you
3 that that amount was what necessary and a little bit more
4 to bring the loan that was subject to this case current.
5 You see, the Dolans were in foreclosure at the time. Not
6 this foreclosure case, in another one. Mr. Dolan had been
7 in the building industry. Both he and his wife were hit
8 hard by the recession, and they got to a point where they
9 had exhausted their savings and they weren't able to
10 service the debt on the mortgage loan, and they'll
11 acknowledge that at the time. But they brought it
12 current. And FV-I, acting through its mortgage servicers
13 did the things that a mortgage would do if a loan was
14 brought current. They had the foreclosure action
15 dismissed. You'll see evidence indicating that they said,
16 "Kill the foreclosure case." But when Mr. Dolan goes to
17 make a payment, after they tell him finally where to send
18 payment to, they switch over to another servicer, payment
19 gets sent back to him, and another foreclosure action is
20 begun.

21 Now, you'll see evidence in the case that shows that
22 that foreclosure action wasn't begun because of any
23 default in payments. You'll see the records from the
24 servicer, from Saxon Mortgage Services who was the
25 servicer at the time that train got started out of the

1 station that gives the reason for returning that payment,
2 not because payment amount isn't sufficient, not because
3 it's insufficient to bring the loan current, but other.
4 See notes. You'll see a foreclosure review sheet that
5 sends "Send this to foreclosure. Says reason for
6 foreclosure, other. See notes." Not default in payment.
7 That's why we're here. And you might wonder why it is
8 that this company would do one of two things -- because
9 only one of two things can happen here, which is either
10 deceive the Dolans into believing that amount was
11 necessary to bring the loan current when it wasn't, or a
12 have that amount be necessary to bring the loan current
13 and treat it like it wasn't. Why would they do that?

14 Well, you see, the amount of this loan was \$721,000.
15 That's the principal debt. And it was brought current
16 because of the way the loan was structured that would be
17 the amount that was left. It was interest-only for a
18 period. And it was a nice house. Before the recession
19 the Dolans were making good money. It's a house on the
20 lake, and it's worth a lot of money. And you'll see in
21 FV-I servicer's own records how they valued this house at
22 \$950,000. And they said maybe if we get it through
23 foreclosure we'll discount \$100,000 off that for getting
24 it sold quickly and make it \$850,000 of what we'll bring
25 in. That's a tidy profit. Wall Street is about profit.

1 So there's motive to do this.

2 Now, you may hear from the other side about a
3 November 22, 2011, docket. We're not afraid of it; we'll
4 show it to you ourselves. They'll say, "This doesn't say
5 this \$65,250 amount is sufficient to bring this loan
6 current," and it doesn't. But it doesn't not say that
7 either. It just doesn't talk about what's necessary to
8 bring the loan current. I'll tell you that's a red
9 herring. What the amount was to bring the loan current
10 was what it was. You'll hear that it was represented that
11 this payment would be sufficient to do that. So you may
12 hear from them, well, they're in foreclosure. They're
13 just making this up because they're desperate. You won't
14 have to take my word for it. You can just look at the
15 documents, and listen to the testimony. Even just from
16 the documents, you can see again and again, telltale
17 signs, telltale signs that show they treated this as
18 though it was brought current. Telltale signs created by
19 the other side in this case. People who certainly don't
20 have any motive to help us make up some story. The
21 documents will show you it's true. It will back it up.

22 So at the end of this trial, you'll be asked to
23 render a verdict. Now, "verdict" is just a word that
24 means to speak the truth. And we'll ask you to speak the
25 truth. You'll have to apply the burden of proof. Judge

1 will tell you about what is it. This is not a criminal
2 case where the burden of proof is beyond a reasonable
3 doubt. If you imagine a set of scales in a criminal case,
4 the scales got to go like this in order for the state to
5 win, to go beyond a beyond a reasonable doubt. This is a
6 civil case. And if you find that the evidence tips even
7 just slightly in favor of the Dolans, then it means your
8 verdict must be for the Dolans.

9 And what should your verdict be? Judge will tell
10 your you verdict should be in an amount sufficient to
11 compensate the Dolans for the losses they suffered because
12 of FV-I's unlawful conduct. That amount and just that
13 amount to put things where they would be if FV-I had done
14 what the law requires them to do. That's the verdict
15 we'll ask you to render at the end of this case. You see,
16 when a mortgage loan company doesn't treat somebody who
17 brought their loan current as though they've done that,
18 what it does is it creates a bunch of extra debt. They
19 rack up interest and fees. Here you'll hear that a little
20 over \$168,000 in that amount today. And it -- people are
21 out the money they paid to bring the loan current and
22 they're no better off, facing foreclosure and loss of
23 their home. That's where the Dolans are now. FV-I will
24 try to tell you it's not like that, but evidence will show
25 you. The telltale signs time and time again, the evidence

1 tips in favor of the Dolans. Thank you.

2 THE COURT: Yes, sir.

3 MR. GWYNNE: Thank you, Your Honor. May it please
4 the Court?

5 THE COURT: Yes, sir.

6 OPENING STATEMENT

7 BY MR. GWYNNE

8 Good morning, everybody. My name is Charlie
9 Gwynne, and I'm an attorney with the law firm of Rogers,
10 Townsend & Thompson in Columbia, and my firm represents
11 the plaintiff in this case. And with me at counsel table
12 is Attorney Jason Wyman from my firm and Ms. Loretta Poch
13 who is from -- is a representative here on behalf of the
14 plaintiff in this case. And I want to thank you for being
15 here today and serving as jurors. This case involves an
16 agreement from September 2011 that was signed by my client
17 and the Dolans. My client has been sued by the Dolans
18 alleging we breached that agreement. We've been sued for
19 breach of contract and we've been sued for unfair trade
20 practices.

21 The evidence today will show you two things. It will
22 show you the terms of this agreement were clear,
23 straightforward, unambiguous. And second thing is that
24 the evidence will show my client complied with all of the
25 terms of the agreement. Or to put it a different way:

1 The Dolans will produce no evidence to you my client
2 breached that agreement.

3 Now, before I start talking about the agreement, I
4 think it's important to get a general idea of the
5 background of this case and why we're here. The evidence
6 will show that my client is the current owner of a note
7 and a mortgage that was taken out in 2005 by the
8 defendants for their lake house on Lake Murray. It's
9 right on the water. The principal balance was \$721,000.
10 The evidence will show that the Dolans have not made a
11 timely mortgage payment on that loan since November 2008.
12 The evidence will further show in 2009, my client filed a
13 foreclosure action because of Mr. Dolan has not made
14 timely mortgage payments. That 2009 foreclosure went all
15 the way to a foreclosure judgment, meaning the court
16 ordered that the property could be sold to pay the debt.
17 However, prior to the sale of the property, this agreement
18 came about. This agreement came about in September of
19 2011.

20 The evidence will show my client had no obligation to
21 enter this agreement. The evidence will show my client
22 entered into the agreement to help the Dolans avoid
23 foreclosure. Let's talk about the agreement. You're
24 going to see it today. There's four main terms of the
25 agreement. First, the agreement allows the Dolans, if

1 they pay my client \$65,250, my client agrees to release a
2 small section of their property, 1,043 square feet
3 exactly, in exchange for that money. And the reason why
4 we did that will become clear during the trial. The
5 evidence will show that my client received the money. My
6 client received the money, we applied it to the loan per
7 the terms of the loan documents. And that's the note and
8 the mortgage tell you how to apply proceeds that you
9 receive from them.

10 The evidence will show in exchange for that \$65,250,
11 my client recorded a partial release, releasing the 1,043
12 square foot of land from the mortgage. The second term of
13 the agreement allowed the Dolans three months, roughly
14 three months to try and sell their property. The evidence
15 will show that my client dismissed the 2009 foreclosure
16 action in which we had a judgment so they could try to
17 sell their property. Nobody is going to buy their
18 property if there's a foreclosure judgment on it. The
19 third term of the agreement gave my client sole discretion
20 to extend that time period by two months. The contract is
21 very clear. The agreement is very clear. It was my
22 client's sole discretion to extend that time period for
23 two months if the Dolans paid \$3,000 a month. The
24 evidence will show that at no time did my client agree to
25 that extension. In fact, the evidence will show at no

1 time were the Dolans close to selling their property
2 during that time.

3 The final term of the agreement relevant to this case
4 is that the Dolans would be allowed during this time
5 period to apply for what's known as a loan modification.
6 A loan modification would have allowed the Dolans to avoid
7 foreclosure. It's another option to avoid foreclosure.
8 Now, unfortunately, the Dolans were not able to sell the
9 property, so in 2012 this action gets filed. Another
10 foreclosure action gets filed. In response to that --
11 filing that foreclosure action, the Dolans asserted
12 several counterclaims, and that's why we're here. Your
13 duty today is only to deal with the two counterclaims, one
14 to deal with breach of contract, one for unfair trade
15 practices.

16 And something I forgot to mention that's obviously
17 very important. When my client received the \$65,250 and
18 applied it to the loan, it did not bring it current. At
19 no time did my client tell Mr. Dolan it would bring it
20 current. You'll see the contract. It says it will be
21 applied to the loan. You'll hear the evidence that at the
22 time that money was received by my client, the total debt
23 to bring the account current was over \$100,000.

24 Please keep in mind today that the burden is on the
25 Dolans today to prove their two claims. The problem is

1 that the Dolans do not have any evidence to prove their
2 claim. This is not a complicated case when you look at
3 the facts. You're going to get hit with a lot of numbers,
4 dates today. I just ask you to look at the contract.
5 It's not very long. It's about two pages long. The
6 contract, the agreement speaks for itself when you read
7 it. I ask that you find for my client and dismiss the
8 borrowers' two counterclaims, the Dolans' two
9 counterclaims. Thank you very much for being here today.

10 THE COURT: Thank you, sir.

11 MR. RADEKER: Thank you, Your Honor. We'd call Bryon
12 Dolan to the stand.

13 THE COURT: Mr. Dolan, come forward and be sworn
14 please.

15 BRYON DOLAN, after having first being duly sworn,
16 testified under oath as follows:

17 THE COURT: Sir, if you would tell us your full name
18 and spell your last name for the court reporter.

19 THE WITNESS: My name is Jack Bryon Dolan. Last name
20 is D-O-L-A-N.

21 THE COURT: Thank you.

22 Yes, sir.

23 DIRECT EXAMINATION

24 BY MR. RADEKER

25 Q. Mr. Dolan, when were you born?

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

- 1 A. February 14, 1960.
- 2 Q. So you've been around a little longer than me?
- 3 A. About 54 years old.
- 4 Q. All right. Are you married?
- 5 A. Yes, sir, I am.
- 6 Q. Who are you married to?
- 7 A. Lisa.
- 8 Q. Thank you, sir. Do you need a minute? Just let me
- 9 know?
- 10 A. I'm good. Go ahead.
- 11 Q. All right. Do you have any children?
- 12 A. Yes, I do. I have Shannon, she's 33. My daughter
- 13 Sheena is 30, and I have a son who is 25, Sean.
- 14 Q. Where are you from?
- 15 A. I grew up in California up until 19 and I joined
- 16 Navy, and that's what brought me to the East Coast.
- 17 Q. How did you get to living in Lexington County, South
- 18 Carolina?
- 19 A. Actually, I came up -- Goose Creek, South Carolina
- 20 was my last duty station on FBM submarines, and I ended up
- 21 getting a computer job here in Columbia, South Carolina.
- 22 Q. Okay. And what do you do for a living?
- 23 A. I'm basically a software engineer/architect. Do
- 24 various things, but that's primarily what I'm doing at
- 25 this point.

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 Q. What else have you done during your -- for work
2 during your career since you got out the Navy?

3 A. Basically, over the last 25 years I've basically been
4 in charge of management information systems for companies.
5 Whether it's been helping them detail a network what
6 software purchase to make, things of that nature. And
7 I've done that all the way up until about 2004.

8 Q. Let's talk about building houses. What experience do
9 you have with that?

10 A. During the years while I was working in IT for my
11 high school days and preNavy days, use to do a lot of
12 plumbing and working on construction sites to earn extra
13 money in summer. When I had a chance to occasionally get
14 a mortgage or build a home, I would build my own homes
15 with a little bit of help from contractors during the
16 course of the years.

17 Q. Okay. And where do you live?

18 A. I live at 540 Windward Point Court, Columbia, South
19 Carolina 29212.

20 Q. Tell me a little bit how you got that place.

21 A. Yeah, about 15 years ago, the good Lord put me in a
22 position to get a promotion. So a piece of property came
23 up, a little cottage and I was able to get it. So it was
24 good news. I hadn't met my wife yet. So I think it was a
25 1999. And me and Lisa got married in June of 2000 and had

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 to do some remodels, make it a little bit bigger. It was
2 only a thousand square feet. And through the years,
3 because it's on the lake, SC & G, the energy regulatory
4 commission, they kind of own what they call the fringe
5 land about 50 feet from the lake line to your property.
6 Why I mention that is if you ever want to make your home a
7 little bit bigger, et cetera, you know, you might need
8 another bedroom or something, most of that property is
9 septic. It's -- there's not a public sewers line out
10 there. So you got to be able to able to what they call
11 put additional lines out there.

12 Long story short, we had an opportunity to buy the
13 fringe land, gave us an opportunity to where if down the
14 road if we wanted to build, we could. Having said that,
15 bought the fringe land. Basically after living small
16 cottage for five years, we were able to subdivide the
17 property and we built the home next door that this case is
18 about now. And we've been there since 2005.

19 Q. Okay. So you built another house next door to the
20 one you have now?

21 A. Yeah. So after we were there for a few years, we
22 basically tore down the original home we first bought and
23 built a bigger home. I was in the building business at
24 that point, and that was 544. I'm in 540.

25 Q. How did you finance that?

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 A. With BB&T. I had known BB&T for 20-plus years and
2 they did my first loan. They did the home next door or
3 the home we live in now and then they were doing the home
4 next door as well now.

5 Q. Okay. And who did you get financing from on the loan
6 that's involved in this case?

7 A. Originally with BB&T, and then through the course of
8 a couple of years I find out that BB&T had sold the
9 loan -- I guess the loan to FV-I Morgan Stanley and Saxon
10 was the servicer, et cetera. And that's where we're kind
11 of at now, or with SLS maybe.

12 Q. Okay. And what's a mortgage servicer, just for the
13 record and our application?

14 A. Basically, what you gave, the analogy is what an
15 apartment manager is for an apartment owner. They take
16 rent. They do any kind of communication, you know, that
17 kind of thing.

18 Q. Okay. Now, when BB&T had the loan, who serviced the
19 loan at that time?

20 A. It was BB&T.

21 Q. Okay. And who did it switch to after it was BB&T?

22 A. The servicer or the loan?

23 Q. Yes, sir.

24 A. The servicer went -- became Saxon Servicing Group, I
25 guess.

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 Q. And who were they servicing the loan for?

2 A. For Morgan Stanley Trust. I guess FV-I Morgan
3 Stanley trust.

4 Q. FV-I being the plaintiff?

5 A. Yes.

6 Q. Sir, did you ever fall behind on that mortgage loan?

7 A. Yes, sir, I did. When BB&T had it, yes, I did.

8 Q. Tell me about why that happened.

9 A. Things were great obviously until the great recession
10 that Wall Street was kind of responsible for. And even
11 though we had plenty of cash to service my debt for a
12 couple of years, the building, of course, I was doing, of
13 course, our own things, even after two years drained that,
14 and you don't have anything to continue on. No homes were
15 selling, so you had no revenue coming in, and that's how
16 we fell behind.

17 Q. Okay. And did BB&T also have the loan on the place
18 next door, the place you built that you weren't living in?

19 A. Yes, they did.

20 Q. What did you decide to do about the place next door
21 and the mortgage loan on that?

22 A. Yeah, what came from it was in fairness to BB&T,
23 there was really a no-win for anybody. I couldn't -- when
24 I say that, I didn't want BB&T to continue to not try to
25 get their money out of the home, so I let that foreclosure

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 action go through so they could go ahead and make that
2 happen. Get some of their money back.

3 Q. Okay. How about the loan that was on your house?

4 A. That was with Saxon at the time and yes, we were, in
5 my opinion, negotiating that. But yes, I was behind as
6 well on that as well at that particular moment.

7 Q. All right. And what was the status of the
8 foreclosure action on that, as far as you know?

9 A. To be honest, I didn't even know at that point we
10 were in a foreclosure action because I thought one had
11 been dismissed.

12 Q. When are we talking about here?

13 A. We're talking about May or June or 2011.

14 Q. Okay. All right. Now, as Mr. Gwynne mentioned in
15 his opening, it was a sale of some 1,000 some odd square
16 feet out of y'all's front yard involved in the background
17 in the case; is that right?

18 A. Yes.

19 Q. Okay. Tell me some about that.

20 A. Okay. So the home at 544, the house next door went
21 into foreclosure and I think March or May. BB&T was now
22 able to get it back on the market and sell it. There were
23 several, several issues that hadn't been decided before it
24 went into foreclosure, so some things had to be solved for
25 any new purchaser.

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 In June, they had a buyer I guess for it or wanting
2 to buy it, but because of some of the issues, they needed
3 me and my wife's help to give them some land and take care
4 of some other things. So I was approached by I believe
5 Ronnie Floyd, the broker who represented them, and the
6 only way they were interested in buying the house was if I
7 would -- since I was the original builder, the owner
8 wanted me to finish it out for him the way they wanted,
9 and they wanted the front yard that was really part of me
10 and Lisa's land, but it looked like it belong to that
11 property, but it never had gotten done by BB&T. So that's
12 why they wanted the 1,043 square feet from our front yard
13 to be joined to their yard.

14 Q. All right. All right. So now what was the problem
15 with you and wife just deeding that part over the to the
16 prospective buyer for the house BB&T now owned?

17 A. Yeah, so when the broker approached me for the other
18 party, their buyer I guess was willing to spend \$25,000
19 for a 1,043 square feet to have it. They wanted me to
20 enter into a contract to sell that for that amount which I
21 agreed to, especially knowing what we -- we could get
22 things totally worked out. But I told them, I said, you
23 know, you're going to have to make sure we get it released
24 by the loan holder of my property, you know, otherwise
25 it's not going be a good sale. So we have no objection to

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 selling it for the \$25,000, but, you know, you're going to
2 have to get quote, unquote FV-I, Morgan Stanley, or Saxon,
3 the servicer, to agree to release the lien.

4 Q. Sir, did you have any communication around that time
5 with anyone from Saxon Mortgage?

6 A. Yes, I did.

7 Q. And who was that?

8 A. It was a gentleman named Kevin Flannigan, who was a
9 VP for Saxon Mortgage.

10 Q. And what, if anything, did Mr. Flannigan tell you
11 about what amount might be necessary to reinstate the
12 mortgage loan, to bring it current?

13 MR. GWYNNE: Objection, Your Honor. Already been
14 ruled on by the Court.

15 MR. RADEKER: Your Honor, this isn't offered to vary
16 any terms of this September 2011, agreement. It's just --

17 THE COURT: Let me see the lawyers.

18 (WHEREUPON, a bench conference was held ~~in the~~
19 presence but not within the hearing of the jury.)

20 BY MR. RADEKER

21 Q. All right. Now, based on any communications you had
22 with Mr. Flannigan, what was your understanding of what
23 was necessary to reinstate the loan, bring it current?

24 A. Basically if I could submit \$65,250, the loan would
25 be brought current and we would -- all foreclosure action

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 would be ceased and I could continue making payments
2 again.

3 THE COURT: Got an issue?

4 JUROR: My apologizes, sir.

5 (A discussion was held off the record.)

6 THE BAILIFF: One of the jurors says that light is
7 distracting. Can we cut it off until we need it?

8 THE COURT: Yes, we sure can.

9 JUROR: The light on the projector. Thank you.

10 THE COURT: Very good. That's a good forelady right
11 there. Sorry to interrupt.

12 MR. RADEKER: That's quite all right.

13 BY MR. RADEKER

14 Q. Mr. Dolan, I'm going show you what's been admitted as
15 ours, Defendant's Exhibit 4. Now, is that a copy of a
16 letter, agreement document signed by you and your wife and
17 by Kevin Flannigan for Saxon Mortgage Services?

18 A. Yes, sir, it is.

19 Q. And it's a shame we just turned that off. I have to
20 turn this on for just a second to show this to the jury.
21 Wait on that. While we're doing that, sir, let me ask
22 you: Does this concern the release of the mortgage lien
23 on that part of the front yard that's being sold?

24 A. The 1,043 feet, yes, sir.

25 Q. And if you look at paragraph 2 in it for me, what is

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 the amount that it says is to be paid to Saxon in exchange
2 for that?

3 A. \$65,250.

4 Q. All right. And looking down at paragraph 3, in that
5 document, it says, "Borrower shall list the property for
6 sale with the intention of the sale closing on or before
7 December 30th, 2011, three months from the date of the
8 sale of the closing which shall occur no later than
9 September 30th." And later it says, "In the event the
10 sale of the property does not close on or before
11 December 30, 2011, Saxon may, in its sole discretion,
12 elect to extend the time frame by an additional two
13 months. In such event, borrower shall remit monthly
14 payments to Saxon of \$3,000 for each month of the
15 two-month extension period."

16 Do you see that?

17 A. Yes, sir, I do.

18 Q. All right. Ask you a few questions about that. Did
19 Saxon receive the \$65,250 on September 30, 2011?

20 A. Yes, sir, they did.

21 Q. And what, if anything, did you and your wife do about
22 listing the property for sale as mentioned in this
23 agreement?

24 A. Well, we already had the property for sale. My wife
25 was a realtor and the only thing Mr. Saxon wanted to do

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 was to have a neutral third-party now list the property.
2 And at that point we complied with the terms and listed it
3 with Ronnie Floyd, another broker. We didn't even really
4 know him before all this came about, which Mr. Flannigan
5 was fine with. He said that would work out fine. So we
6 listed it with him and continued to keep it listed.

7 Q. Toward the bottom says, "Saxon, in its sole
8 discretion, may elect to extend the time frame by an
9 additional two months." Did that happen?

10 A. I believe they initially started the process, yes,
11 but then all of a sudden I'm being told not to send
12 payment.

13 Q. Okay. Tell us about that.

14 A. So January 1st is rolling around. The house hadn't
15 sold yet. During the course of this process, Saxon had
16 never given me an address where to send the payments yet.
17 Now, I had been e-mailing with an Alicia Carter for Saxon
18 prior to the agreement being made. So I emailed her
19 asking, saying, you know, it's the first of January.
20 Where should the payments go? Never got an answer for
21 about three days. So finally I had to place an e-mail to
22 Kevin Saxon, who I hated because he's a VP. You don't
23 want to bother anybody at that level about where a payment
24 gets sent, and letting them know I didn't get a return
25 e-mail, and basically he says, "I'll take care of it

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 today."

2 I got a call, I believe, from Mr. Andrew Farmer who
3 said, "Here is where to send the payment." I got a
4 cashier's check that same day. Sent it to them. Then
5 about a week later Mr. Farmer followed up and asked me,
6 "Hey, did you send that payment?" "Yes, I did. You
7 should have it. If you don't have it, you should have it
8 any day." I think that was on January 12th. The
9 payment got sent on January 9th, the same day I was told
10 what the address was. And then all of a sudden out of the
11 blue, on January 23rd I believe it was, I see a check
12 that's returned back to me, the exact same certified
13 cashier's check I sent them saying they couldn't accept
14 the payment.

15 Q. All right. Let go back and talk about the thing we
16 talked about. You said Kevin Saxon. Do you mean Kevin
17 Flannigan?

18 A. Kevin Flannigan, yes.

19 Q. Who did he work for?

20 A. Excuse me?

21 Q. Who did he work for?

22 A. He worked for Saxon for FV-I, Morgan Stanley.

23 Q. How about Alicia Carter you mentioned?

24 A. Yes, she was represented as working for Saxon because
25 all her e-mail stuff you could see she worked for Saxon.

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 Q. And that Andrew Farmer person?

2 A. Saxon as well.

3 Q. So I'm going to show you this and ask this be marked
4 ask this be marked as Defendant's Exhibit 17.

5 (Defendant's Exhibit 17 was marked.)

6 Q. Show you what's been marked Defendant's Exhibit 17,
7 Mr. Dolan. Is that a copy of your email to Alicia Carter
8 at Saxon asking where you could send your mortgage payment
9 to?

10 A. Yes, sir, it is.

11 Q. What response did you get to that e-mail?

12 A. I never got a reply back.

13 Q. Okay. And just so we make sure we all understand,
14 what did you do next?

15 A. I waited a couple days. But on January 9th, 3 days
16 after this, I called or sent an e-mail for Kevin Flannigan
17 asking for the address where to send the payments.

18 Q. What happened after that?

19 A. He had Andrew Farmer call me that exact same day with
20 the address of where to send the payments.

21 Q. Okay. Now, what discussion, if any, did you have
22 with Mr. Farmer or Mr. Flannigan around that time to the
23 effect, "Oh, you shouldn't send this \$3,000 payment?"

24 A. They didn't say that at all. They gave it to me so I
25 could send the payment to what I thought continue to honor

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 an agreement we had as far as everything being fine.

2 Q. All right. Now take a look for me if you would at
3 Defendant's Exhibit 8, and I'll get it for you. It's got
4 two pages, correct?

5 A. Yes, sir.

6 Q. Lets look at the second page first, which is a -- got
7 to wait on this thing. But it's a copy of the \$3,000
8 check?

9 A. Yes, certified check. Yes.

10 Q. All right. Let's look at the first page. Who does
11 this letter say it's from?

12 A. Says it's from Saxon.

13 Q. Who is it to?

14 A. Myself Bryon J. Dolan.

15 Q. Look on the left for me. Says, "This letter is to
16 advise you we encountered issues with the payment. The
17 following states the reasons," and it's got little
18 checkmarks going down.

19 A. Yes, sir.

20 Q. What, if anything, is in the blank next to the words
21 the "payment amount is not correct"?

22 A. It's not checked.

23 Q. And what, if anything, is in the blank next to the
24 words "there has been a default on the repayment plan
25 agreement"?

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 A. It is not checked.

2 Q. And what, if anything, is in the blank next to the
3 "funds are insufficient to liquidate the account"?

4 A. It's not checked.

5 Q. All right. Let's look at the bottom. Get this
6 focused here. What does it say there at the bottom for a
7 reason?

8 A. It just says check 194074 in amount of \$3,000
9 returned due to status of loan.

10 Q. All right.

11 A. Correct.

12 (A discussion was held off the record.)

13 Q. Okay. What else happened around that time?

14 A. I want to say it was maybe just the day before I --
15 or maybe the day after this, I got a call out of the blue
16 from Andrew Farmer, the same guy who told me to send the
17 check where to send it, et cetera. "Mr. Dolan, you
18 haven't sent a February payment yet, have you?" I said:
19 "Well, no. I'm getting ready to next week." "Well, we
20 can't accept your payment any more." I said, "Why not?"
21 "Your loan has been given to another servicer" --

22 MR. GWYNNE: I'm going to object based on hearsay.

23 MR. RADEKER: I don't understand what the hearsay
24 objection is. He's talking about what -- the statements
25 of the party opponent are through their agent. His

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 statements are only offered to just show the explanation,
2 circumstances the other party says.

3 MR. GWYNNE: Your Honor, there's no foundation about
4 who this individual is, who he worked for, what authority
5 he had at the company. Additionally, he is asserting the
6 statement for the truth of the matter.

7 THE COURT: Yes, sir.

8 MR. RADEKER: Your Honor, there has been testimony
9 about who he is and who he worked for. There's testimony
10 he worked for Saxon Mortgage, which was the servicer on
11 this account.

12 THE COURT: Let's see the lawyers up here.

13 (WHEREUPON, a bench conference was held ~~in the~~
14 presence but not within the hearing of the jury.)

15 THE COURT: Ladies and gentlemen, this is one of
16 these times we have to talk about a little law and what is
17 applicable and what is not. So Madame Forelady, we'll ask
18 you to -- if you'll take your jury and go to the jury
19 room. We won't be long, but do take the time to take a
20 break because before I bring you back, I will allow
21 everybody to use the facilities as well so we don't have
22 stop again. I usually stop about every hour and 15
23 minutes or an hour and a half, and we've been running an
24 hour now. So when we come back, we'll probably run pretty
25 hard on up to lunch. So we'll take 15 minutes. And also

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 if you'll make sure this is sufficient with your juror
2 about the glasses. I know it's a reflection problem. Is
3 it -- is the blue -- just find out if the blue is okay and
4 not the glare down here, and if not, we'll turn that off
5 too.

6 Take the jury out. Don't discuss the case. It's not
7 out yet.

8 (The jury left open court at 10:31 a.m.)

9 THE COURT: All right. Yes, sir.

10 MR. RADEKER: Thank you, Your Honor. I point the
11 Court to Rule 801(d)2(d). A statement by the parties
12 agent or servant --

13 THE COURT: Hold on one second. I didn't bring my
14 evidence book. He's gone to get it. No wonder I couldn't
15 find -- I picked this up and starting doing like this.

16 (A discussion was held off the record.)

17 THE COURT: All right. Go ahead.

18 MR. RADEKER: All right. Rule 801(d)2(d).

19 THE COURT: All right.

20 MR. RADEKER: Says that a statement is not hearsay if
21 it's a statement by the party that is the opposing party.
22 It's clear from the earlier context. Agent or servant
23 concerning a matter within the scope during the agency or
24 employment made during the existence of the relationship.
25 Now, the agency relationship between FV-I and its servicer

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 Saxon has already been established by testimony. It's
2 already been established that Mr. Farmer worked for Saxon,
3 and it's already been established that Mr. Farmer called
4 Mr. Dolan about making this payment, and basically
5 indicating this is where you must send the payment. He
6 calls him back, he's talking about the same subject. We
7 can't take payments now. I don't see what the problem why
8 this is hearsay. And I think this is an admission by a
9 party opponent. Obviously, these are companies. I mean,
10 they have to act through people, and that's what they're
11 doing.

12 I guess I don't really understand what the basis of
13 the objection is. I was hearing from plaintiff's counsel
14 it's got to be established the person has authority, no.
15 It's just has to be within the scope of their agency or
16 employment. He acted within the scope -- it's already in
17 evidence that he said this is where you send the payment.
18 So within the scope of his employment is to tell him, hey,
19 we can't take payment.

20 THE COURT: I call your attention to the South
21 Carolina Marshall versus Thomason and 241 SC 84 which
22 holds that such statements are admissible as admissions of
23 a principal when the agent has been authorized to speak
24 for his principal. But a truck driver is not ordinarily
25 so authorized and therefore his statements about a

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 collision or whatever it is is not admissible as a
2 statement of the employer. So it has to be -- they have to
3 be authorized to speak for the principal.

4 MR. WYMAN: It's my understanding of the law as well.

5 MR. RADEKER: I would say at least some evidence to
6 indicate that's so here. Because Mr. Dolan inquired to
7 the vice president of the company. "Where do I send
8 payment?" Shortly thereafter gets a call from this man
9 that works at the company -- that's established -- about
10 where to send payments. Man calls him back later and
11 said, "Don't send them anymore." It's all on the same
12 topic. It's already evidence of that authorization. It
13 may be circumstantial, but it's there.

14 MR. WYMAN: I'd say it's self-serving at most as far
15 as whether Andrew Farmer had the authority to do this
16 based on a phone call from Kevin Flannigan. It's
17 simply -- he has not established Andrew Farmer had the
18 authority whatsoever to bind Saxon and the plaintiff in
19 case.

20 THE COURT: Well, that's what I'm looking at. Tell
21 me who Mr. Farmer -- what is his capacity there? Can you
22 establish that? I mean, he may be a customer service
23 person, but I don't think the customer service at the bank
24 has the authority to bind the bank.

25 MR. WYMAN: Exactly, Your Honor. It's like a

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 janitor.

2 MR. RADEKER: What we know is that he was an employee
3 who worked there. He made this call about where to send
4 the payment after it had been run up to this vice
5 president, officer at the company, and that's evidence of
6 delegation to him to communicate with Mr. Dolan.

7 THE COURT: I respectfully disagree with you. Tell
8 me something else. The person who returned the call, we
9 don't know what his capacity is. May be a customer
10 service person a person that work at the bank is a teller.
11 A person who works at the bank may be a loan officer. If
12 this person is -- tell you what let's do. Can you
13 establish this person has authority, is a loan officer and
14 has signatory authority for the bank. If he's got
15 signatory authority, I'm going to allow it in.

16 MR. RADEKER: Your Honor, I can't establish that he
17 has signatory authority, but I would just note signatory
18 authority isn't what's necessary --

19 THE COURT: No, it is not, but it is evidence that
20 person is authorized to speak for the bank. My wife is in
21 trust business. Okay. Used to work for a broker, and it
22 wasn't Morgan Stanley. Years and years ago, but she's
23 been with a bank for years and years and years. But
24 nonetheless, she has signatory authority, okay? There are
25 lots of folks that work underneath her that are not

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 authorized to make any trade or any transaction
2 whatsoever. Okay? And often times she has to go
3 physically to a -- one of their branches to sign a
4 document, okay? That's the kind of person I think can
5 bind the bank, because my wife with her signature can bind
6 that bank, and does. There's liability insurance on -- I
7 mean, am I missing something?

8 MR. WYMAN: No, I think that's a correct statement of
9 the law, Your Honor. Has to be an authorized -- certainly
10 he can't even prove that Andrew Farmer technically worked
11 for Saxon. He has the Alicia Carter e-mail with her
12 signature block and Kevin Flannigan has his signature
13 block and stuff like that in his e-mail, but Andrew
14 Farmer, there's just no delegation of authority whatsoever
15 to bind the company in this type of situation.

16 THE COURT: Well, I doubt that even a branch
17 manager -- I know the bank in my company -- that my wife
18 works for, not a even branch manager can bind the bank.

19 MR. RADEKER: And Your Honor, we're not talking about
20 striking an agreement with Mr. Dolan. We're talking about
21 somebody just telling him don't send payment anymore.
22 That's why I think signatory authority analogy is apples
23 to oranges, respectfully.

24 THE COURT: Might be.

25 MR. RADEKER: We're not -- I'm not going to say in

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 this conversation we had this agreement. Mr. Dolan is not
2 going to say that because it's not what happened. It's --
3 I guess what we're talking about is it within the scope of
4 the guy's employment to call him and say don't make
5 payments anymore? He'd already had communications with
6 him about making payments. So communicating with him
7 about making payment appears to be within the scope of his
8 employment. That came in, and came in without objection.

9 MR. WYMAN: Your Honor, I would argue it's still --
10 he can't keep going back with -- Andrew Farmer is not
11 present. He hasn't establish that there's any authority
12 whatsoever as far as basically one phone call he claims to
13 have had. To simply -- to continue to say he can bind the
14 company is just going to be --

15 THE COURT: Tell you what. It's sustained at this
16 time. If you can establish it -- we're going to take a
17 break here. If you've got something else you can
18 establish that he has the authority to bind the bank, if
19 you can establish that he has -- he is authorized to speak
20 for the principal. That's the Marshall v. Thomason. I'm
21 not familiar with the case being overturned. Anybody
22 know? Professor Riser (phonetic) wouldn't have it wrong,
23 would he? Anybody remember him besides me? Okay. We're
24 going to take a break.

25 THE WITNESS: May I use the restroom?

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 THE COURT: Yes, sir. Let me tell you this: You may
2 step down but you may not talk to your lawyer about -- you
3 can talk to him about a baseball game, but you can't talk
4 to him about the case, okay. Please.

5 MR. RADEKER: Just don't talk to me. I don't want
6 to...just --

7 THE COURT: He doesn't want to talk to you.

8 (Laughter.)

9 (A recess was taken from 10:41 a.m. to 10:54 a.m.)

10 THE COURT: While the jury is still out, you got
11 anything else?

12 MR. RADEKER: No, Your Honor, I think we're just
13 going to move on. I have to say for the record I think I
14 satisfied the rule. Obviously, the Court disagrees, so --
15 I would do this, though. Earlier I didn't move what we
16 marked as Exhibit 17 into evidence. I'd do that now.
17 Might as well.

18 MR. GWYNNE: No objection.

19 THE COURT: In evidence without objection. Anything
20 else?

21 (Defendant's Exhibit Number 17 was admitted.)

22 (The jury entered the courtroom at 10:55 a.m.)

23 THE COURT: Yes, sir. Proceed.

24 BY MR. RADEKER

25 Q. Just to pick up where we were and go back and cover a

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 few things I may have skipped over. In January of 2012,
2 around the time of this letter, sending this check back to
3 you, did the servicer on this loan change?

4 A. Yes, it did.

5 Q. Who did it change to?

6 A. SLS.

7 Q. What does that stand for?

8 A. Specialized Loan Servicing.

9 Q. Let's go back and we'll look at some things here.

10 Want you to take a look at an exhibit that's already been
11 admitted into evidence. Take a look for me at Defendant's
12 Exhibit 6 if you would, sir. Tell us what that is first.

13 A. It's an e-mail from Kevin Flannigan from Saxon dated
14 October 12, 2011.

15 Q. All right. Could you read it to me?

16 A. My response to him?

17 Q. Actually, first of all, let's put it up so everybody
18 can see it. This is dated October 12, 2011, correct?

19 A. Yeah, about 12 days after we sent the money in and
20 the agreement was done.

21 Q. And it says, "Mr. Dolan, I ran the reinstatement
22 figures for your loan as you requested, and the amount to
23 bring your loan current as of October 14, 2011, is
24 35,603.88." Do you see that?

25 A. Yes, I do.

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

- 1 Q. 150all right. And later on, it also says, "I also
2 need to point out that you have an escrow shortage of
3 \$26,039.05, and that that's not included in the \$35,603.88
4 to bring your loan current." Do you see that too?
- 5 A. Yes, sir, I do.
- 6 Q. All right. How did you react to receiving this
7 letter?
- 8 A. Well, I had a million other thing going on at the
9 time, so I didn't react, to be honest with you. Did I
10 like what I was seeing? No, but my years of experience
11 have taught me it was only 12 days after we had done the
12 transaction, so everything obviously wasn't getting posted
13 correctly or hadn't been posted based on that. So I
14 just -- I wasn't going to rock the boat, cause any
15 problems. Like I said, I was trying to complete the house
16 next door for the people that I agreed to do it with. I
17 had a software deadline I was trying to make, so there
18 were more pressing issues. So I just wanted to
19 acknowledge to Kevin that I got his e-mail.
- 20 Q. Okay. So you see you sent a response here. Now, the
21 time on Mr. Flannigan's e-mail to you and the time of day
22 is what?
- 23 A. Looks like 11:08 a.m. I don't know if it's his time
24 or my time. I don't know how that syncs up.
- 25 Q. And your -- his time is 11:01 a.m., correct, and your

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 response at 11:08 a.m.?

2 A. Yes, sir.

3 Q. So you get this e-mail. How does that make you feel?

4 A. Again, I wasn't mad or anything. I thought it was
5 totally off, something is wrong with the accounting based
6 on everything we discussed. So I wasn't going to react.

7 I just wasn't going react. I had been in charge of
8 accounting departments for many years and you can see
9 where things don't always get posted correctly, and 12
10 days after the fact, again, I just wasn't going to react
11 to it.

12 Q. Okay. Tell me if the response above, you say,
13 "Thanks, Kevin. I'll review and determine what course to
14 take"; is that correct?

15 A. Yes, that is.

16 Q. And let me ask you about -- were you, like, sitting
17 at your computer when you got this email?

18 A. Yeah, so the house is right next door that I'm now
19 completing for the guy that got this whole transaction
20 doable. We -- I had a meeting that day for the septic
21 tank guy. We had to get him and another contractor up.
22 But I'm in the software developer business, so I sit in
23 front of my computer eight to ten hours a day. So I'm
24 always there. You know, you have Outlook open and you're
25 notified that you have an email. So it was almost kind of

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 instantaneously, I was sitting there doing my thing. This
2 came in. I thought about that, and I just simply, you
3 know, about six, seven minutes later said, "Got your
4 e-mail. Fine. I'll figure out what to do about it."

5 Q. Thank you. Mr. Dolan, had Kevin Flannigan ever said
6 something different to you than that about what amount was
7 necessary to bring your loan current?

8 A. Yes. He told me \$65,250 is what I needed to come up
9 with on that September 29th closing to bring my loan
10 current. That was the whole purpose of all the
11 discussions I had with him.

12 Q. Hold on one second.

13 MR. RADEKER: I would ask this be marked as
14 Defendant's Exhibit 18.

15 (Defendant's Exhibit 18 was marked.)

16 MR. GWYNNE: I objection to this based on the Court's
17 prior ruling. It predates the agreement.

18 (WHEREUPON, a bench conference was held ~~in the~~
19 presence but not within the hearing of the jury.)

20 THE COURT: Yes, sir.

21 BY MR. RADEKER

22 Q. Mr. Dolan, taking a look at what's been marked as
23 Defendant's Exhibit 18, does that contain a copy of an
24 email to you from Kevin Flannigan at Saxon dated
25 September 22nd, 2011?

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 A. Yes, sir.

2 Q. Thank you very much.

3 MR. RADEKER: And we would at this time move this
4 into evidence as Defendant's Exhibit 18.

5 MR. WYMAN: Objection, Your Honor, based on the
6 Court's previous ruling on the in limine motion. It's
7 clearly a reference to the September 22nd, 2011, agreement
8 that's already in evidence. Clearly speaks for itself.

9 THE COURT: I'm going to allow it in over the
10 objection because I don't think it goes to that. I think
11 it goes to what he highlighted right there. Goes to the
12 release itself. You can question him about that.

13 MR. WYMAN: Certainly, Your Honor. Thank you.

14 THE COURT: Go ahead.

15 (Defendant's Exhibit 18 was admitted.)

16 BY MR. RADEKER

17 Q. I'll put this up for us. Take a look at that for me.
18 Sir, that says, "Regarding the recording of partial
19 release, once I receive the wire number for the \$65,250
20 revised amount due Saxon less the \$3,750, Saxon will
21 expedite the filing of the partial release." Do you see
22 that?

23 A. Yes, I do.

24 Q. Mr. Dolan, I'll show you something else. This has
25 already been admitted into evidence as Defendant's

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 Exhibit 9. Take a look at this for me. I keep having
2 trouble turning this thing off.

3 We're having technical difficulties. All right.
4 Thank you.

5 Take a look at this for me, sir. First of all, what
6 is that document?

7 A. It looks like Saxon's internal documents as far as
8 the recordkeeping of the loan.

9 Q. Take a look for me at the fourth entry down on
10 September 26, 2011. Do you see where that says, "The
11 litigation on this loan is now closed/resolved. Please
12 contact the legal department if additional information is
13 needed. Thanks"?

14 A. Yes I do.

15 MR. WYMAN: Your Honor, if I may, I'd like to object
16 just to show -- it's a little confusing not to be able to
17 see the dates connected. I don't know if he can maybe
18 zoom out a little bit further. It's just I don't want to
19 confuse the jury as to any date.

20 THE COURT: Can you zoom out just a little bit?

21 MR. RADEKER: I can zoom out, but it may make it
22 illegible to zoom out far enough to see.

23 THE COURT: Do you what you did, then maybe slide
24 it --

25 MR. RADEKER: Slide it?

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 THE COURT: There you go.

2 Q. And that entry is also on September 26th, 2011?

3 A. Correct.

4 Q. Says "litigation closed." Go down to an entry on
5 September 30, 2011, and that says "wire received" on 9/30
6 IAO. In the amount of?

7 A. \$65,250.

8 Q. All right. And the entry under that also dated the
9 same day says, "Please post five payments at \$3,004.19, 12
10 payments at \$2,553.56, ten payments at \$1,877.62.

11 Remainder of funds to suspense. Thank you." So have you
12 added up those numbers that are given in that entry?

13 A. Yes.

14 Q. What do they add up to?

15 A. \$64,439.87.

16 Q. Okay. See where it says, "remainder of funds to
17 suspense." What do you know about what that means?

18 A. Suspense is put it in an account because we don't
19 know what to do with it, which is basically I guess they
20 didn't know where to apply it because I was caught up on
21 the loan just like we agreed.

22 MR. GWYNNE: Objection, Your Honor.

23 THE COURT: That's sustained.

24 MR. GWYNNE: Move to strike.

25 THE COURT: That's stricken.

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 MR. RADEKER: First part or the last?

2 THE COURT: The last sentence.

3 MR. RADEKER: I think that was a little more than I
4 asked for.

5 BY MR. RADEKER:

6 Q. All right. Take a look at the next page for me.
7 There's an entry the first one for October 3rd, 2011. And
8 you see where that says -- tell me what that says,
9 actually.

10 A. Says, "9/30, task was not fully completed. Need to
11 post ten payments at 1877.62 and remainder of funds,
12 810.13, to suspense."

13 Q. All right. And you see on that same day two entries
14 down, tell me what that says where the word "closed" is
15 there.

16 A. Yes. Says, "task completed as requested. Applied
17 ten payments for total of 18,776.20 from suspense as
18 requested."

19 Q. Look down on the second entry on October 10th, 2011
20 and tell me what that says.

21 A. "Shut down foreclosure process due to loss mitigation
22 activity."

23 Q. How about the one above that, above that on the page?

24 A. The one above it?

25 Q. The one beginning with the word "please." Do you see

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 where it says, "Please kill and bill FC. Money has been
2 received for the negotiated partial release approved by KF
3 one?"

4 A. Yes, I do.

5 Q. Do you know what FC stands for?

6 A. Foreclosure.

7 Q. Flip on the next page for me and see where it says
8 on -- there's an entry second one down for November 30th,
9 2011. Do you see that, sir?

10 A. Yes, I do.

11 Q. Let's take a look at that. Tell me what that says.

12 A. The one that started with "reviewed loan"?

13 Q. That's correct, sir.

14 A. "Reviewed loan for proposal referral. Approved. No
15 PDP, no RPP. Loan modified in suspense. No HAMP or loan
16 mod approved. Check not active. All docs in imaging."

17 Q. Look on the next page for me. See the last entry on
18 that page dated January 18th, 2012?

19 A. Yes. "We received funds IO of \$3,000. E-mailed
20 whole loan for advising."

21 Q. Flip to the last page of the document. Want you to
22 look at the two entries that are both dated January 18,
23 2012 there.

24 A. Yeah. "Do not send funds back. Need to be applied
25 to account. Ask FF to reach out to me prior to sending

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 back for posting."

2 Q. What does the next one say?

3 MR. WYMAN: Objection, Your Honor. He misread that.

4 THE COURT: Okay, read it as it is. I can't see it
5 from here. What did he say? Read it again.

6 THE WITNESS: The last one, sir?

7 MR. RADEKER: The first one on the page. I can just
8 ask him.

9 Q. "Do not send" -- does it say, "do not send funds
10 back. NEE to be applied to account. Asked FF to reach
11 out to me prior to sending back or posting."

12 A. Yes, it does say that.

13 Q. All right. And what does it say in the next entry?

14 A. "AFS approval. T received. Returned all funds. No
15 active agreement on file."

16 Q. No active agreement. Do you know what that means?

17 A. No, I'm just reading the notes. But it appears --

18 Q. That's okay.

19 A. I don't know what they're talking about.

20 Q. And there was a foreclosure case going on at the time
21 that the September 30th, 2011, payment was made, wasn't
22 there?

23 A. Yes, there was.

24 Q. All right. And I'll show you -- let me ask you this:
25 What happened to that foreclosure case?

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 A. It got dismissed after I sent the money.

2 Q. Okay. I'm going to show you what's been admitted as
3 Defendant's Exhibit 10, sir. And I'd ask you to take a
4 look at that for me. First of all, does that appear to be
5 a consent order releasing foreclosure portion of judgment
6 and closing the case in that foreclosure case?

7 A. Yes, sir.

8 Q. Flip to the next page for me. Who does it say --

9 A. I'm sorry.

10 Q. Who does it say under, "I so move"?

11 A. Rogers, Townsend, and Thomas.

12 Q. Attorneys for who?

13 A. Saxon Mortgage, FV-I, Morgan Stanley.

14 MR. WYMAN: Objection, Your Honor. It doesn't say
15 that.

16 MR. RADEKER: It says attorney for the plaintiff, and
17 that's what I'm trying to get out. It says what it says.

18 MR. WYMAN: Plaintiff in the case is not a --

19 MR. RADEKER: We can just agree to strike that last
20 response. It says what it says.

21 THE COURT: Okay. Stricken.

22 BY MR. RADEKER.

23 Q. Look at the first page for me. So take a look at
24 that. Do you see the fourth entry under "It is hereby
25 ordered." Do you see there where it says, "The note and

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 mortgage of the defendant are hereby reinstated"?

2 A. Yes, sir.

3 Q. "Without merger into the judgment released herein as
4 fully as if the hearing release judgment had not been
5 obtained"?

6 A. Yes, I do.

7 Q. Now, who did you understand at this time was in
8 charge of managing the foreclosure action on your loan?

9 A. Well, at that time, Saxon, the servicer on behalf of
10 Morgan Stanley.

11 Q. Okay. Sir, let me ask you: We've been looking at a
12 lot of exhibits, and we'll look at more. The property you
13 live in, how much is it worth?

14 A. According to the latest appraised values from Saxon
15 itself, it's close to \$950,000.

16 Q. And I'll ask you to take a look at Defendant's
17 Exhibit 12. And is this a copy of a piece of paper
18 allegedly Saxon value reconciliation worksheet?

19 A. Yes, sir, it does.

20 Q. All right. What does it give as the base value of
21 comparable sale listing research?

22 A. \$950,000.

23 Q. When is it dated as the date of reconciliation?

24 A. September 6th, 2011, about 23 days before we gave
25 them the money.

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 Q. Okay. What does it say down there at the bottom in
2 the portions I have highlighted?

3 A. Yeah, they're throwing a discount, I guess, in there
4 and it says \$850,000.

5 Q. What was the amount your loan was for?

6 A. \$721,000.

7 Q. All right. Sir, I'll show you another exhibit -- be
8 done with these soon -- marked as Defendant's Exhibit 13.
9 Let me ask you while I'm turning this on, what does this
10 say at the top?

11 A. "Foreclosure review verification for Morgan Stanley
12 Saxon loan."

13 Q. What loan does this appear to be about?

14 A. The one that's on me and my wife's current home.

15 Q. When is this document dated?

16 A. It's dated November 30th, 2011.

17 Q. When does it say a last payment date is?

18 A. October 3rd.

19 Q. All right. Does it give a number to the right of the
20 word valuation?

21 A. One second. Yes. \$910,000.

22 Q. Flip over to the next page of it for me. Up at the
23 top there you see where it says "reason for default"?

24 A. It says other, see notes.

25 Q. See where it says, "loan has no reason for denial"?

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

- 1 A. That's correct.
- 2 Q. Do you know what that means?
- 3 A. No, I do not.
- 4 Q. See where it says, "foreclosure recommendations"?
- 5 A. Yes. "Refer to foreclosure," it appears.
- 6 Q. I'm going to show you one more thing. Take a look at
- 7 what's been admitted as Defendant's Exhibit 16. First of
- 8 all, what is this?
- 9 A. It looks like a notice from a debt collector from
- 10 Specialized Loan Servicing dated October 10th, 2014,
- 11 looking for some kind of -- or loan value that's due at
- 12 this time.
- 13 Q. Let me ask you about at a date. It's 2014. It is
- 14 today, April 17th.
- 15 A. Yes, sir.
- 16 Q. You want to tell me what that date is?
- 17 A. Seven days ago was April 10th.
- 18 Q. You said it was October.
- 19 A. I apologize. April 10th.
- 20 Q. See it says, "The following amount is needed to
- 21 reinstate the above-referenced mortgage loan." And it
- 22 says \$131,326.26 for payments due through April 1st?
- 23 A. That's what it says, correct.
- 24 Q. It's got \$33,421.93, what's listed as corporate
- 25 advances. Do you see that?

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 A. I do.

2 Q. Do you know what that is?

3 A. I haven't a clue.

4 Q. All right. And what they're -- see where it has a
5 line labeled suspense one?

6 A. Yes, I do.

7 Q. What's the amount that's given there?

8 A. \$810.13.

9 Q. Do you recognize that amount?

10 A. Yeah, that's the same amount they didn't know where
11 to apply after they applied all my money previously.

12 Q. What does it say is the total reinstatement amount?

13 A. \$167,893.62.

14 Q. Thank you. Let me ask you, sir, what was the reason
15 or reasons that you got together the money to send Saxon
16 \$65,250 payment?

17 A. Two primary reasons. One, if we didn't, they were
18 going to sell the house for about 500 something thousand
19 dollars next door, which would have significantly dropped
20 the value of our property, and to bring the loan current.

21 Q. Now, if you had believed that amount would not have
22 brought the loan current, what would you have done?

23 A. I wouldn't even have done anything. My wife and I
24 literally had to drain our savings. I had to work on a
25 house for 90 days after that to try to get it finished.

BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 Why would I spend that money only for them to turn around
2 and foreclose on me again?

3 Q. All right. And what, if anything, did you rely on in
4 making the decision to send that money?

5 A. Everything that Kevin Flannigan from Saxon told me.

6 Q. Now, what's your understanding of where Kevin
7 Flannigan works now?

8 A. It's my understanding he works for SLS or FV-I Morgan
9 Stanley.

10 Q. Thank you. Do you -- is he in the courtroom with us
11 today?

12 A. No, he didn't come.

13 Q. Thank you, sir. Please answer any questions opposing
14 counsel has for you.

15 THE COURT: Yes, sir.

16 MR. GWYNNE: Thank you, Your Honor. May it please
17 the Court.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. GWYNNE

21 Q. Good morning, Mr. Dolan. My name is Charlie Gwynne.
22 We met before.

23 A. Yeah.

24 Q. I kind of want to start at the beginning of when you
25 purchased the property. Is it correct you purchased a

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 parcel of land on Lake Murray back in 1999; is that
2 correct?

3 A. Yes.

4 Q. And it was roughly .6-acres; is that correct?

5 A. No, it's not correct. It was -- I think 1.something
6 acres.

7 Q. Going to show you -- can you tell me if you can see
8 the exhibit if I put it over here so I can make sure we're
9 all looking at the same document?

10 A. Sure.

11 Q. Show you what's been marked Plaintiff's Exhibit 1,
12 and is already in evidence. Is that the property that you
13 purchased in 1999?

14 A. The line dividing it was not there. It was all one
15 piece. The two together added together comes over to 1
16 acre.

17 Q. Yes, I'm sorry. So parcel A and parcel B, that's the
18 large parcel you bought in 1999, correct?

19 A. That's correct.

20 Q. And when you purchased the property, you said there
21 was a -- you called it a cottage. Thousand square foot
22 house, correct?

23 A. Yes, sir.

24 Q. It's not depicted on here; is that correct?

25 A. It is, actually. It's the one right up there now.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 That was the old cottage that was there.

2 Q. Now, after several years, you decided to subdivide
3 the lot, correct?

4 A. I think it was a couple years, yeah.

5 Q. But the answer is yes?

6 A. Yes. I'm sorry..

7 Q. And at that time we're talking about 2004, 2005 time
8 frame or earlier?

9 A. It was earlier. I think we actually subdivided the
10 lot somewhere around 2002 or 2003.

11 Q. Now, at the that time you were a builder; is that
12 right?

13 A. No, I was not. I worked for Whaley Food Service
14 Preparers. I was managing information systems.

15 Q. But in terms of this piece of property, you
16 subdivided the lot, correct?

17 A. My wife and I did, yes.

18 Q. And you decided to build two houses on each of the
19 lots; is that right?

20 A. No, I did not. We decided to build one house on what
21 you see now is parcel B.

22 Q. Okay. And you eventually built a house on the other
23 parcel; is that right?

24 A. Yes, we did, years later.

25 Q. And what I'm trying to do is make sure we understand

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 everything. So you have two parcels, two houses that
2 weren't there. You divided the lot and then you built the
3 house eventually; is that correct?

4 A. Yes, sir.

5 Q. And just so we get an idea of what we're talking
6 about, you got parcel A and parcel B. Now, what address
7 is parcel A currently?

8 A. 544.

9 Q. And what is parcel B?

10 A. 540.

11 Q. And what property do you currently live in?

12 A. 540. The one on parcel B.

13 Q. Can you describe the two houses for me in general
14 terms in terms of square footage, how big they are, that
15 type of thing?

16 A. The parcel B house that we live is about 5,000, 5,400
17 square feet. And I think parcel A was about 6,000 square
18 feet when we finished it for the homeowner that bought it
19 in 2011.

20 Q. Now, according to Exhibit A, you see the dividing
21 line; is that right?

22 A. Yes, sir.

23 Q. Okay. And you have a house there. Is that the
24 location of the current house that's on 544?

25 A. The bottom corner -- see the bottom corner of the

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 house that's on there? That's where the corner of the
2 house is currently that's on there. It's a lot bigger
3 than that.

4 Q. Though this isn't a representation of the current
5 house in terms of location -- in terms of location of the
6 proximity to the house to the line, subdivided property,
7 it's pretty accurate?

8 A. It's close to that.

9 Q. Now, at one point just so we're clear, you owned both
10 houses yourself?

11 A. Yes, I did.

12 Q. And you took out a mortgage -- you had two mortgages,
13 one on each house with BB&T; is that right?

14 A. A construction loan and I had a regular mortgage with
15 BB&T, perm loan they call it.

16 Q. Show you a few more exhibits, and if you can't see an
17 exhibit, please let me know. Going to show you what's
18 been marked Plaintiff's Exhibit 2. I can show you what's
19 been marked Plaintiff Exhibit 2. Does this appear to
20 be -- it has more than one page, but does it appear to be
21 your note that you signed?

22 A. Yes, sir, it does.

23 Q. And it's dated March 28th, 2005, correct?

24 A. Yes, sir.

25 Q. And covers your property, 540 Windward Point Court,

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 right?

2 A. Yes, sir.

3 Q. Principal value according to section 1 is \$721,000.

4 A. The loan amount, correct.

5 Q. And I'll show you what's been marked Plaintiff's
6 Exhibit 3. Is this the mortgage for your property --
7 appear to be the mortgage for your property?

8 A. Yes, sir, it does.

9 Q. Dated March 28th, 2005?

10 A. Yes, sir.

11 Q. So the total amount you borrowed was \$721,000; is
12 that right?

13 A. That's correct.

14 Q. Now, do you understand how a mortgage and a note
15 work?

16 A. Yes, I do.

17 Q. Because you've built several houses, haven't you, in
18 your career, correct?

19 A. A few, yes.

20 Q. So you know if you don't pay back the money per the
21 terms of the note, the lender can enforce the
22 foreclosure -- enforce mortgage and foreclose on your
23 property. Do you understand that?

24 A. Yes, sir, I do.

25 Q. And the purpose of foreclosing is to sell the

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 property in order to -- at a foreclosure sale in order to
2 receive funds to pay off the note; is that correct?

3 A. Yes.

4 Q. Now, in 2009, isn't it true that you -- both of your
5 houses and both of your loans were foreclosed on; is that
6 correct?

7 A. They were foreclosed on?

8 Q. The -- two foreclosure actions were filed against you
9 for your two loans; is that correct?

10 A. They were filed, but not foreclosed.

11 Q. Let's look at Exhibits 4 and 5 that are already in
12 evidence. This is Plaintiff's Exhibit 4. And this is a
13 foreclosure action filed in Lexington County in 2009; is
14 that correct?

15 A. It appears to be, yes.

16 Q. And the property address according to the page is
17 540. It's a little difficult to read. Does that say 540?

18 A. Yes, it does.

19 Q. And Plaintiff's Exhibit 5, is this a foreclosure
20 action filed in 2009?

21 A. It is.

22 Q. Correct?

23 A. It is.

24 Q. And the property address on the second page is 544;
25 is that right?

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 A. Yes, it is.

2 Q. And you're named as a defendant in both of these
3 actions; is that correct?

4 A. I am.

5 Q. The property address of 544 went through the
6 foreclosure process, meaning there was a judgment and
7 master issued a deed to sell the property -- sold the
8 property and issued what's known as a master deed; is that
9 correct?

10 A. Yes, it did.

11 Q. I'm just going to show you what's been marked as
12 Plaintiff's Exhibit 6. Is this a copy of the foreclosure
13 master-in-equity deed for 544?

14 A. Yes, it -- I never have ever seen it up, you know, up
15 until just recent. But yes, it appears to be.

16 Q. So when this deed was issued by the master, it's
17 recorded May 13th, 2011. You had no interest in 544,
18 right?

19 A. None at all at this point.

20 Q. No legal interest, no ownership interest at all?

21 A. That's correct.

22 Q. Now, the foreclosure action on 540 we're talking
23 about, did that go all the way to a judgment?

24 A. I'm not familiar with the exactly the lease. I'm not
25 trying to be difficult. I just don't know what you're

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 asking of me.

2 Q. Okay. Let's look at Plaintiff's Exhibit 7 that's
3 already in evidence. This document is entitled judgment
4 of foreclosure and sale?

5 A. Okay.

6 Q. And you can look at the document yourself, of course,
7 I'll represent to you it's for 544?

8 A. Okay. I agree.

9 Q. And it's has the same civil action number.

10 A. Okay.

11 Q. And it says judgment, foreclosure, and sale, and
12 according to paragraph 4, it says you were in default for
13 failing to answer. Do you agree with that?

14 A. For failing to answer?

15 Q. Failing to answer the complaint of the case.

16 A. I think I did answer the original complaint and even
17 showed up at couple of hearings. But at this particular
18 point in the process, yes, I didn't show up on the court
19 on that day. That's correct.

20 Q. Okay. Let's just make sure it's signed by Judge
21 Spence, the master-in-equity. Do you see that?

22 A. Correct.

23 Q. The date of the judgment -- it's got a stamp on it --
24 says May 26th, 2010. Do you see that?

25 A. I do.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. It's a little hard to read. Now, eventually was this
2 judgment vacated, meaning it was dismissed or released?

3 A. From what my attorney showed me, yes, it was.

4 Q. And I believe your attorney has shown you the
5 document, so I'll just grab it.

6 A. You might have marked Exhibit 10. I think it says
7 Exhibit 10.

8 Q. I can take those for you so we keep them all
9 together. Sorry about that. Defendant's Exhibit 10, that
10 was already shown to you. This is a consent order
11 releasing the foreclosure portion of the judgment we just
12 looked at. Do you agree with that?

13 A. I do.

14 Q. I'll just represent to you it has the same civil
15 action number.

16 A. I agree.

17 Q. And this was filed November 16th, 2011. Do you agree
18 with that?

19 A. I do.

20 Q. Now, the action we're here about today is a
21 foreclosure action on 540?

22 A. That is correct.

23 Q. Okay. Do you know when the foreclosure action was
24 filed in the case?

25 A. Are we on a foreclosure action or our breach of

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 contract action? I'm just asking. Are we talking about
2 the foreclosure today?

3 Q. Sir, this case is a foreclosure action dealing with
4 your counterclaims.

5 A. Okay.

6 Q. So are you aware that a foreclosure action was filed
7 in July of 2012 on your property, 540?

8 A. Yes, I am.

9 Q. Now, your attorney had you look at some parts of this
10 order. Are you a lawyer?

11 A. No, I'm not.

12 Q. Are you qualified to interpret certain legal terms or
13 anything like that?

14 A. No, I'm not.

15 Q. This judgment -- this order vacating the sale of
16 your -- the judgment, I'm sorry. The judgment
17 foreclosure, judgment against your property is dated
18 November 16th, 2011. Isn't it correct, sir, that
19 November 2011 is right in the middle of the window that
20 the Saxon granted you to try to sell your property? Is
21 that correct?

22 A. What is that? November of 2011? Yes, it is.

23 Q. Okay. Mr. Dolan, wouldn't it have been hard to sell
24 your property if there was a foreclosure judgment on
25 there?

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 A. If there had been a foreclosure judgment on it, yes,
2 it would have.

3 Q. So isn't it logical to assume that Saxon was trying
4 to assist you in selling your property by dismissing the
5 foreclosure action?

6 A. That wouldn't be the logical assumption to me, no,
7 because I started working with Saxon at their request with
8 Alicia Carter four or five months earlier. So why
9 wouldn't -- if that was the case, why wouldn't they have
10 simply released the foreclosure action then?

11 Q. Isn't this simply Saxon trying to help you out by
12 dismissing the foreclosure so they can complete the part
13 of the contract that allows you to try to sell your
14 property from October, November, and December of 2011?

15 A. No, I disagree with that logic.

16 Q. In September 2011, your attorney has already talked
17 to you about this agreement that was entered into and
18 shown you a copy of it. The agreement has been marked
19 Defendant's Exhibit 4. Do you remember seeing this
20 document?

21 A. Uh-huh.

22 Q. Just for the record, you acknowledge this is your
23 signature on the second page?

24 A. I do agree with that.

25 Q. Does that appear to be your wife's signature on the

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 second page?

2 A. It does.

3 Q. Would you agree with me that this two-page agreement
4 from September, it essentially deals with 544 and 540 in
5 some way; is that correct?

6 A. Yes, it does.

7 Q. And isn't it true you contacted Saxon to initiate the
8 agreement that eventually resulted in this signed
9 agreement in September; is that right?

10 A. My initial contact, yes, it was.

11 Q. And I'm trying to understand make sure I understand
12 what you're saying. The house that was at 544 was lost in
13 a foreclosure case. We already talked about that. It was
14 sold to BB&T at the foreclosure sale. And BB&T was trying
15 to sell it to some buyers; is that correct?

16 A. Correct.

17 Q. Now, part of this agreement deals with releasing a
18 portion of your parcel, parcel B, in order to assist in
19 the sale of 544; is that correct?

20 A. No. It helped 544 sell, but it was done to get
21 caught up and current. Without doing that, we don't have
22 the \$65,250 to bring the loan current, which is what Kevin
23 Flannigan wanted. That's why we did it.

24 Q. Sir, my question to you was: The purpose of
25 releasing the portion of your land, the 1043 square feet,

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 was so that BB&T could close the loan -- sale of the house
2 on 544; is that correct?

3 A. That -- that would be a correct statement.

4 Q. Going to show you what's been marked Plaintiff's
5 Exhibit 8. Sorry. Rotated too far. This is Plaintiff's
6 Exhibit 8. Can you describe what we're looking at here?

7 A. I think we're looking at the final revised plat. See
8 where it says 1,043 square feet. You kind of see a dotted
9 line and then the hard line. That triangular kind of
10 piece of property is what we ended up giving the people --
11 not giving. We ended up selling the people at 544 that
12 eventually bought the house.

13 Q. I'm tall, but I'm not that tall. Appear to be that
14 wedge shaped piece up there?

15 A. It does.

16 Q. So you see the house there; is that right? You see
17 that house?

18 A. Yes, I do.

19 Q. That is parcel B. Says parcel B1, but that's the
20 parcel B that you lived at?

21 A. It is. That's the house that my wife and I live in.

22 Q. Okay. That's 540. And although it's not depicted
23 here, you can kind of see at the top of the page the
24 parcel A, which is was 544 being sold?

25 A. Right. I agree.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. And can you explain again what the reasoning is to
2 sell that 1,043 square feet of land?

3 A. Well, there's -- again there was two reasons. One,
4 if we didn't, they were getting ready to fire sale that
5 property for somewhere in the neighborhood of 570 or
6 \$600,000, which obviously would have devalued my wife's
7 and my home because we didn't want that. But it also
8 allowed the opportunity to bring the mortgage current that
9 we're in so that everybody was happy and we could continue
10 to move on forward. Because by selling that property, it
11 helped generate the revenue to pay the \$65,250.

12 Q. Okay. So one reason is increase your property value;
13 is that correct?

14 A. Keep it from going down. Yes.

15 Q. Yes. That's certainly a legitimate reason. There's
16 another issue, the fact that 544 basically had no front
17 yard?

18 A. Yeah, if you look -- if you looked at it, it had a
19 front yard. But when you got down to it, that line really
20 cut across their front yard.

21 Q. Their corner is almost on your property?

22 A. True, very much. I agree with that.

23 Q. Isn't another reason there was an access issue?

24 A. There was.

25 Q. Can you describe that access issue?

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 A. Yes. Could you put back the other exhibit up? I
2 think that might help the jury. Kevin Flannigan hadn't
3 been aware yet when we first spoke that if you look at the
4 upper left-hand corner -- again, you can only see parcel
5 where it says B1, but A goes over there as well. So when
6 you pull across where it says Windward Point Court, you're
7 driving down the road, you're literally having to cross
8 that property to get into our property. In other words,
9 technically there's no easement, driveway easement to get
10 into our property anymore. And that was another reason
11 why Kevin really wanted to see that happen because he
12 wanted that solved so he didn't have to worry about any
13 encumbrances on a property he had a mortgage on.

14 Q. Okay. But in general terms, it was hard to get
15 trucks or anything else behind the property, 544, correct?

16 A. And it still is unless you get on my property. That
17 didn't do anything to solve that.

18 Q. Okay. So wasn't part of the agreement that's before
19 you would grant an easement, meaning you would grant --

20 A. It wasn't.

21 Q. -- access; is that correct?

22 A. It was BB&T and the buyers of the new property.
23 They're the ones who gave the easement, not me.

24 Q. Well, you agree with me the way the property is
25 subdivided, it created an access issue. You agree on

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 that?

2 A. I agree on that.

3 Q. Okay. Good.

4 A. Not a real access, just an imaginary access issue.

5 From a legal standpoint, it would have created an issue.

6 Q. Okay. Now, isn't it also true that you contracted
7 with the buyers of 544 to do some construction work at
8 their house. Isn't that correct?

9 A. That is correct.

10 Q. So the sale of 544 helps you out in that way too. It
11 allowed you to get some work?

12 A. No, I didn't necessarily quote, unquote need the
13 work. I was working. What it allowed me to do was get
14 the current mortgage caught up with Kevin Flannigan so we
15 all are back on regular basis again. That -- between the
16 sale of the parcel, between the money that was advanced at
17 the time of closing to do the construction and my own wife
18 and I bringing another \$10,000 to closing, that brought up
19 the 62 -- \$65,250 that Kevin Flannigan wanted to bring the
20 loan current.

21 Q. Okay, but my question to you was: You were
22 contracted to do some services there, correct?

23 A. Yes.

24 Q. All right. Now, just so we're all clear on this, you
25 couldn't just sell that 1043 square feet yourself?

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 A. I didn't never want to. That's correct.

2 Q. My question to you was: You couldn't, on your own,
3 sell that piece of land, right?

4 A. I could not.

5 Q. And the reason is there was a mortgage on your
6 property, correct?

7 A. Correct.

8 Q. And if you sold a part of your land, that would
9 decrease the collateral or the property that secures the
10 mortgage; is that correct?

11 A. That is correct.

12 Q. Now -- so in this case, Saxon, acting for the
13 plaintiff, had to agree to it; is that right?

14 A. Yes, that is correct.

15 Q. And just so we're clear on this too, when the closing
16 occurred at 544, the funds the 65,250 would go directly
17 from the closing to Saxon, right?

18 A. That's correct.

19 Q. It didn't go through you; is that right? You didn't
20 get a check and then write a check to Saxon?

21 A. We made it happen that way because that's the way
22 Kevin Flannigan wanted. It could have happened that, but
23 yes, it's a matter of the way the transaction was done.

24 Q. You didn't send any money to Saxon for the \$65,000?

25 A. I brought personally \$10,000 to closing, me and my

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 wife, so that they could apply that to send to Saxon.

2 Q. So let's just recap a little bit. You purchase a
3 lot. You subdivide the lot. You built two houses on the
4 lot, but because of the way you subdivided the lot, it
5 created an issue; is that right? It created an access
6 issue, it created a front yard issue which decreased the
7 value of the property; is that correct?

8 A. Based on your statement as it sits right now, that's
9 correct.

10 Q. All right. I want to look at the agreement a little
11 closer with you, if that's all right. This is Defendant's
12 Exhibit 4. Mr. Dolan, would you agree with me that the
13 note and the mortgage we've already looked at and this
14 agreement is the only agreement you have -- written
15 agreement you have with Saxon or any lender regarding your
16 mortgage?

17 A. Yes. Written agreement?

18 Q. Yes.

19 A. Yes, I would agree to that.

20 Q. If it's okay, I want to read through it. It's not a
21 very long agreement. I just want to be sure we're all
22 clear on what the document says. It's dated
23 September 22th, 2011; is that right?

24 A. Yes, sir.

25 Q. And on the top right has an address. Do you see the

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 address for Saxon?

2 A. I do.

3 Q. This is September 2011. You testified you had
4 trouble finding an address for them in January. Why did
5 you have trouble finding an address for them when the
6 address is on this document?

7 A. Where do you see the address at?

8 Q. It's on the top right. I'm sorry if I didn't have
9 it.

10 A. Okay. Quite frankly, didn't even realize it was on
11 that document and didn't even look at that document to see
12 if the address was on it. I thought it was a legal
13 document. I wouldn't think that that's where I would look
14 to send a payment.

15 Q. Trying to make the paragraphs a little bigger. Can
16 you see that okay after --

17 A. I can.

18 Q. First paragraph. It's the unnumbered one. It's
19 addressed to you; is that right?

20 A. It is.

21 Q. Says, "I reviewed" -- and just so we know, it's
22 written by Kevin Flannigan, who is the vice president of
23 Saxon Mortgage Services, Incorporated; is that correct?

24 A. That's correct.

25 Q. It says, "I have reviewed your request for a partial

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 release of land contained in the property's legal
2 description of the mortgage dated March 28, 2005. In
3 connection with the sale of the property located at 544
4 Windham Court Point, subject to the satisfaction of all
5 the conditions as described below, Saxon, on behalf of the
6 holder of the loan, consents to a partial release of the
7 mortgage lien pertaining to 1,043 square feet of the
8 property as more particularly described as parcel B2 on
9 the attached survey prepared on September 24, 2011 by
10 Survey Mapping Service of South Carolina, Incorporated.
11 The conditions are as follows."

12 So would you agree with me that this paragraph is
13 sort of just an introductory paragraph?

14 A. Yes, sir.

15 Q. And Kevin is writing to you about your request for
16 the partial release and references the plat we already
17 looked at with the 1043 square feet?

18 A. Yes, sir.

19 Q. And the last sentence, it says -- now it's setting
20 forth the conditions; is that correct?

21 A. That appear to be correct, yes.

22 Q. Okay. Paragraph Number 1, "At the time of the
23 closing, the new owners of the 544 Windward Point Court
24 property shall accept and approve the new survey showing
25 the ingress/egress easement to the property, which will be

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 recorded with the Register of Deeds office in Lexington
2 County, South Carolina, and which shall be retained for
3 the benefit of the property. Borrower shall provide Saxon
4 with a recorded copy of the survey for Saxon's records.
5 Saxon shall prepare a partial release of lien documents."

6 Did I read that correctly?

7 A. Yes, you did.

8 Q. And would you agree with me this paragraph is just
9 dealing with that access issue we talked about?

10 A. Yes.

11 Q. And would you agree with me that everybody complied
12 with that paragraph?

13 A. Yes.

14 Q. You're not alleging my client did anything to breach
15 that particular paragraph?

16 A. Not at all.

17 Q. Second paragraph. "As consideration for Saxon's
18 consent to the partial release, the sum of \$65,250 shall
19 be held in escrow by the title company closing the sale of
20 544 Windward Point Court to be wired to Saxon immediately
21 after the closing and funding of the transaction. Saxon's
22 wire instructions are attached hereto. The funds shall be
23 applied to the loan. Borrower shall ensure a HUD-1
24 delineating these amounts shall be delivered to my
25 attention prior to the closing.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 "The sale of the partial release of land shall be
2 recorded for \$65,250 as required by the buyer and the
3 buyer's lender of 544 Windward Court Point so as to be
4 added to the sales price of the purchase contract for 544
5 Windward Point Court."

6 Did I read that correctly?

7 A. Yes, you did.

8 Q. So this paragraph deals with the amount of money that
9 Saxon would receive from the closing of 544 in exchange
10 for releasing the 1043 square feet; is that correct?

11 A. That's correct.

12 Q. And the amount listed of \$65,250, correct?

13 A. Correct.

14 Q. Is it correct that Saxon did, in fact, receive that
15 money?

16 A. They did receive it.

17 Q. And in the middle of paragraph, it says the 65,250
18 would be -- the funds will be applied to the loan. Do you
19 see that part?

20 A. Well, what's -- what line down?

21 Q. Right there. The funds will be applied to the loan.

22 A. Yes.

23 Q. And the loan -- the loan they're referring to is 544?

24 A. No, five --

25 Q. I'm sorry?

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 A. 540, isn't it?

2 Q. You're correct. The loan they're referring to is the
3 540, your address?

4 A. Me and my wife's house.

5 Q. Now, we've already talked about that the note, the
6 mortgage in this document are the only written agreement
7 you have regarding your property with the lender, correct?

8 A. Correct.

9 Q. Is that correct, sir?

10 A. Yes, correct.

11 Q. If -- Mr. Dolan, if funds are received on your
12 account and are to be applied to your loan, is it not
13 correct that the mortgage you signed and the note you
14 signed has -- the mortgage that you signed has an entire
15 paragraph devoted to how you apply funds to your loan; is
16 that correct?

17 A. I'm not aware of that. I'm not saying there isn't,
18 but I'm not aware of it.

19 Q. Let's look at your mortgage. This is Plaintiff's
20 Exhibit 3 that I already asked you about, and turn to
21 page 405. Do you see where it says paragraph 2, section
22 2?

23 A. I do.

24 Q. And what is that paragraph called or section called?

25 A. Application of payments or proceeds.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. So would you agree with me that paragraph 2 of the
2 mortgage says exactly how the \$65,250 was to be applied to
3 your loan?

4 A. I'm just reading. One second.

5 Q. Well, sir, let's read it together.

6 A. No, I agree with you. That is what it says.

7 Q. This talks about -- says payments or proceeds; is
8 that correct?

9 A. Correct.

10 Q. And talks about the lender shall apply the
11 following -- those payments or proceeds in the following
12 order; is that correct?

13 A. Yes.

14 Q. Or it says priorities, excuse me. It also talks
15 about if the lender receives a payment from the borrower
16 for delinquent periodic payment, it says how it should be
17 applied; is that correct?

18 A. I see where it says that, correct.

19 Q. So would you agree with me that paragraph 2 of the
20 mortgage states exactly how the \$65,250 should have been
21 applied to your loan?

22 A. Yes, that says -- here's what I say. It certainly
23 gives the guidelines of how money should be applied.

24 Q. You don't want to give me a yes-or-no answer on that?

25 A. Well, when I read that, to be honest with you, what

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 about the suspense amount for \$810. That was put to
2 suspense. There were no more loans to apply it to, which
3 only applies if the loan had been paid in full and brought
4 current. I don't see where it says anywhere on there take
5 the undue amount that doesn't pay the loan and put it in
6 suspense. That's what I was looking for and reading. I
7 don't see that.

8 Q. Mr. Dolan, you brought this up with your counsel. He
9 made a point about some money going into suspense; is that
10 right?

11 A. Yeah.

12 Q. And is it your contention -- sounded like your
13 contention was that if a lender ever puts money in
14 suspense, that means his loan is current; is that right?

15 A. No, I'm not implying that at all. But the mere fact
16 that they don't say why it was put in suspense but they're
17 so detailed on how to apply all them other tells me that
18 there was money left over. It wasn't needed.

19 Q. Isn't it true if a lender receives what's known as
20 partial payment, meaning a payment less than the amount
21 due, they put in suspense until they receive a full
22 payment?

23 A. As you've said, I've built ten homes. I've worked
24 with five different lenders and I've never seen a payment
25 applied to suspense when quote/unquote more of an amount

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 or not an amount was due. As the paragraph says, it's
2 either applied to principal or it's applied to interest.
3 I'm just telling you my experience. I've never ever seen
4 that done before.

5 Q. Okay. I just want to be sure on that. You see the
6 paragraph 2 there says, "Funds shall be applied to the
7 loan," correct?

8 A. I do see that.

9 Q. And you see paragraph 2 here, "Application of
10 payments or proceeds"?

11 A. Uh-huh.

12 Q. Those two phrases are similar; is that right?

13 A. I didn't see the detail laid out in the agreement we
14 did on September 22nd that I see laid out here on this
15 document.

16 Q. My question to you, Mr. Dolan, is: Those two
17 paragraphs are similar; is that correct? Yes or no?

18 A. No, in my opinion --

19 Q. Applied, application. Those are the same words,
20 aren't they?

21 A. I just don't agree with you on that.

22 Q. On September 22nd, 2001, when this agreement was
23 signed, do you know what the total amount due on your loan
24 was?

25 A. I can only go by what Kevin Flannigan told me my loan

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 amount was to bring it current. You asked me. I'm going
2 by what he told me it was. We needed to come up with --
3 originally 69 and then he took it down to 65,250 because
4 we had to pay First Citizens.

5 Q. Sir, that's not what I asked you. I said on
6 September 22nd, 2011, did you know what the amount of
7 money to bring your loan current is, a dollar figure?

8 A. Yeah, \$65,250.

9 Q. Isn't it correct that you owed more than that on your
10 loan?

11 A. No, that is not correct.

12 Q. In fact, you owed over \$100,000 loan on your loan?

13 A. That is absolutely incorrect.

14 Q. Exhibit 4 states the funds shall be applied to your
15 loan; is that right?

16 A. It does.

17 Q. It does not state that your loan would be made
18 current with the receipt of \$65,250?

19 A. It is, but it doesn't say it's not current either.

20 Q. Now, once Saxon received the money, and applied it to
21 the loan, they were obligated to release the 1,043 square
22 feet from the mortgage; is that correct?

23 A. That's correct.

24 Q. Did Saxon, in fact, do that?

25 A. They did.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. Let me show you what's been marked Plaintiff's
2 Exhibit 9. Is this the partial release of real estate for
3 the 1043 square feet?

4 A. Yes, it is.

5 Q. And it was recorded on October 17, 2011?

6 A. Yes, sir.

7 Q. That's the property description for the release and
8 it references B2, 1043 square feet, correct?

9 A. Correct.

10 Q. All right. So would you agree with me that all
11 parties complied with paragraph 2?

12 A. Yes.

13 Q. Let's move on to paragraph 3. Paragraph 3 states,
14 "Borrowers" -- that's you, correct?

15 A. Yes.

16 Q. "Shall list the property for sale with the intention
17 of the sale closing on or before December 30th, 2011.
18 Three months from the date of the sale closing of 544
19 Windward Point Court, which shall occur no later than
20 September 30, 2011. The sale transaction for the property
21 shall be an arms-length transaction, and borrower shall
22 retain a neutral third-party realtor to represent them in
23 the sale of the property. Saxon shall advise borrowers of
24 the asking price to include in the listing. In the event
25 the sale of the property does not close on or before

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 December 30th, 2011, Saxon may, in its sole discretion,
2 elect to extend the time frame by an additional two
3 months. In such event, borrower shall remit monthly
4 payments to Saxon of \$3,000 for each month of the
5 two-month extension period."

6 Did I read that correctly?

7 A. Yes, sir.

8 Q. So this paragraph states basically that you and you
9 wife agree to list your property for sale, and you have
10 until December 30th to close, correct?

11 A. To sell the property. Try to sell the property, yes.

12 Q. It's required that you have an arms-length
13 transaction?

14 A. Yes.

15 Q. What does that mean?

16 A. Even though my wife was a realtor, he didn't feel
17 comfortable that was arms length, so he wanted me to get
18 another realtor for the sale of the home, which I did.

19 Q. So he essentially wanted a neutral party to sell your
20 property?

21 A. Yes, sir.

22 Q. Would you also agree that paragraph 3 also states
23 that it's Saxon's sole discretion whether to extend the
24 time by two months?

25 A. Yes, though extend what time? Extend what time has

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 always been my question in that. But either way, yes, I
2 see what you're saying. They wanted -- they wanted sole
3 discretion of extending time by two months. Yes, that
4 says that in there, though I don't know what that really
5 means.

6 Q. Well, it says, "Saxon may, in its sole discretion,
7 may elect to extend the time frame by an additional two
8 months." You don't know what that means?

9 A. Extend two months. So let's say they don't extend
10 two months. What does -- they don't extend two months.
11 What does that mean? Is there something that says here's
12 what's going to happen if we don't?

13 Q. It says to extend the time frame. Isn't that
14 referencing the three-month time frame that's immediately
15 above it?

16 A. To sell the house, yes.

17 Q. Okay. So this paragraph 3 states that it's Saxon's
18 sole discretion to extend the time to sell your house by
19 two months; is that correct?

20 A. Three months, correct.

21 Q. Correct?

22 A. Correct.

23 Q. Did the parties -- all the parties comply with this
24 paragraph?

25 A. I believe so, yes.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. Okay. Saxon gave you three months to sell your
2 property; is that correct?

3 A. Yes.

4 Q. In fact, during that three months, they dismissed the
5 foreclosure judgment against you that we already looked
6 at. They dismissed that in November; is that right?

7 A. One that they didn't have to do, which should have
8 been in that agreement. But obviously they did something
9 other than the agreement, so yes.

10 Q. Did you list your property during that three months
11 whether -- you -- I believe you already testified it was
12 already on the market?

13 A. It was already on the market.

14 Q. Did you keep it on the market for those three months?

15 A. Yes, I did.

16 Q. Did you sell the property during that time?

17 A. No, I did not.

18 Q. Did you have any offers to sell your property during
19 that time?

20 A. No, I don't believe we did.

21 Q. So you never presented a contract for sale to Saxon
22 to approve or disapprove; is that correct?

23 A. No, we did not.

24 Q. Did Saxon ever tell you they would extend the
25 deadline by two months? Did they ever tell you that in

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 writing?

2 A. In writing, no.

3 Q. So your testimony --

4 A. Go ahead, yes.

5 Q. Go ahead. I'm sorry. I didn't mean to cut you off.

6 A. It was already there. I didn't expect it to have to
7 be in writing anymore.

8 Q. Well, when the term "sole discretion" is used,
9 doesn't that mean that one party has the sole discretion
10 to decide to do that part of the contract?

11 A. I agree with that.

12 Q. So you have nothing in writing from Saxon saying they
13 agreed to the two-month extension?

14 A. Nothing in writing, no.

15 Q. Did you have any offers on the property in January
16 and February of 2012?

17 A. No, I did not.

18 Q. You didn't have any offers coming in during that time
19 either?

20 A. Slowest period of sales. That's correct.

21 Q. So the 2009 foreclosure was dismissed in November of
22 2011 and the current action wasn't filed until July 2012,
23 this action?

24 A. Correct.

25 Q. So between November of 2011 and July of 2012, did you

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 have any offers on the property?

2 A. No, we actually took the house off the market once we
3 understood the fix was in, quite frankly.

4 Q. Now, you mentioned this in your direct examination,
5 but in January, the servicing of your loan was transferred
6 from Saxon to SLS; is that right?

7 A. Right. Right at the time I'm making my payments to
8 them.

9 Q. I'm going to show you what's been marked as
10 Plaintiff's Exhibit 11. Is this a letter from SLS to you
11 dated January 18th, 2012? Is that right?

12 A. It is.

13 Q. Is this -- this is a -- what's known as a hello
14 letter saying we're servicing your loan now; is that
15 right?

16 A. Yes, if I had gotten that letter, yes, that is what I
17 would have thought. But it -- go ahead. This was not the
18 letter that made me even aware because I didn't get it
19 that SLS even had my loan. I thought it was still Saxon
20 at that point.

21 Q. This is dated January 18th, 2012. It's addressed to
22 you, correct?

23 A. It does.

24 Q. Did you receive this letter?

25 A. No, I did not.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. Did SLS ever agree to extend the time frame for you
2 to sell your house by two months?

3 A. No.

4 Q. I want to make sure I understand your testimony,
5 Mr. Dolan. You're saying the \$65,250 was enough to bring
6 your loan current; is that right?

7 A. According to Mr. Flannigan, yes, it was.

8 Q. And you have no documents to support that; is that
9 correct?

10 A. That's correct.

11 Q. Only your testimony here today supports that,
12 correct?

13 A. That's correct. And the documents that obviously to
14 me imply that that was the deal, but yes.

15 MR. GWYNNE: Your Honor, move to strike that last
16 statement.

17 MR. RADEKER: What's the basis?

18 MR. WYMAN: He's talking about implied agreement.
19 The agreement is clear on its face.

20 (Court reporter requested clarification.)

21 MR. WYMAN: The September 22nd, 2011, agreement is
22 clear on its face.

23 MR. RADEKER: I'd say -- I mean, at this point I
24 think they probably opened the door given all the
25 questioning they had about what the terms mean, as well as

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 looking at prior documents about it.

2 THE COURT: Okay. Here's what I'm going do. I'll
3 overrule it at this time. It's asked and answered. Just
4 move along.

5 MR. GWYNNE: Thank you, Your Honor.

6 BY MR. GWYNNE

7 Q. Mr. Dolan, if it's your contention that this document
8 means that your loan would be brought current if Saxon
9 received \$65,250, why would you list your property for
10 sale? Why would you agree to that?

11 A. First, let me correct. It's not my contention that
12 agreement says that my loan is brought current for \$6,250
13 (sic). That was for the partial release. I agree with
14 that. But in addition to that, I was bringing the amount
15 that I was told to bring to bring the loan current. It
16 simply doesn't say whether it brings the loan current or
17 it does not bring it current.

18 Q. But Mr. Dolan, you're saying that the \$65,250 would
19 bring it current; isn't that correct?

20 A. According to Mr. Flannigan, correct.

21 Q. Why would you list agree to list your property for
22 sale if you were bringing your loan current?

23 A. For two reasons: To ensure that we finally got an
24 amount that was agreed on anybody so I would haven't any
25 problem when I did sell it. As we all know, if there's an

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 encumbrance on the mortgage and everything else, you can't
2 even get a realtor to list or sell the home or anything
3 else because now there's an amount as to what it takes to
4 close. So the deal is even though my wife and I lived at
5 the home didn't that mean we didn't still want to sell our
6 home. Let's get the equity out of it, we're in our 50s,
7 you know, let's get a smaller home, that kind of thing.

8 So it wasn't about we wouldn't sell our home even
9 after bringing it current. We could just continue to sell
10 the home and when it sold, at least we didn't have to
11 worry about fighting this battle again later.

12 Q. Mr. Dolan, if your loan was current, you could have
13 listed your property for whatever you wanted. But in this
14 agreement, you agreed to list it for what Saxon wanted; is
15 that right?

16 A. I'm listing it for the fair market value. That's
17 what we did. And quite frankly, Saxon was somewhat right.
18 It was \$950,000, and I think we're in the ballpark with
19 the listing. So just because Saxon wants it listed for
20 950, if that's what fair market value is, isn't that what
21 you're going to list your home for?

22 Q. Let's look at paragraph number 4 on the second page
23 of the document, sir. Says, "After the property is listed
24 for sale, borrowers will have the option of completing a
25 financial package delivering the same to Saxon for review

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 of a potential loan modification. However, borrowers
2 acknowledge borrowers may not discontinue the listing
3 unless and until a decision regarding a potential loan
4 modification has been made."

5 Did I read that correctly?

6 A. Yes, you did.

7 Q. So this paragraph is basically saying that if you
8 want to, they'll send you a financial packet. You can
9 provide your information, send it back to them to be
10 considered for a loan modification, correct?

11 A. Correct.

12 Q. Mr. Dolan, if \$65,250 would bring your loan current,
13 why would you apply for a loan modification?

14 A. I wouldn't. That's why I didn't take them up on the
15 option. They were assuming I couldn't make the payments
16 anymore. I could make the payment.

17 Q. But you agreed to that paragraph? Why?

18 A. I have the option. Did you read what that paragraph
19 says? I have the option. I simply chose not to do an
20 option for a loan modification. I didn't need it. I
21 could afford the payments that were in place at that
22 point.

23 Q. If your loan was current, sir, there would be no need
24 to modify it, correct?

25 A. For my -- no, that is not correct at all. Your loan

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 could be current but if you still can't afford the
2 payments, you're going to modify it. I didn't need to
3 modify it.

4 Q. Do you remember having your deposition taken in my
5 office back in August of 2013?

6 A. I do.

7 Q. Sir, do you remember when I asked you why you would
8 be -- you were -- you would be considered for -- why you
9 were thinking being considered for a loan modification,
10 you stated, quote, Because they didn't like the interest
11 that I was paying, which was such a very, very low rate
12 under the ARM. So modifying the agreement would actually
13 let them make more money in a new agreement?

14 A. I do agree with that.

15 Q. So you're saying Saxon wanted to modify your loan to
16 increase your interest rate?

17 A. Absolutely.

18 Q. Even though your loan was current because of the
19 money they were receiving?

20 A. That's correct. That's exactly what I'm saying.

21 Q. Let's look at paragraph 5 and 6.

22 A. Paragraph 5 says, "Saxon has no further obligation to
23 release any portion of the mortgage lien against the
24 property other than as described herein unless and until
25 the loan is fully satisfied."

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Do you agree with me that --

2 A. I do.

3 Q. -- all sides complied with that?

4 A. I agree.

5 Q. I want to go back to paragraph 4 briefly. Do you
6 agree that all parties complied with paragraph 4 also?

7 A. Yes, it's on there. I signed it. I agree with it.

8 Q. No, I mean that -- I understand you signed it. I'm
9 saying did everyone comply with the terms, meaning they
10 fulfilled any obligation that have under it?

11 A. Excuse me. Yes, I believe so.

12 Q. And you just said paragraph 5, you're not claiming my
13 client breached paragraph 5 either?

14 A. No.

15 Q. Paragraph 6, "Notwithstanding the foregoing,
16 borrowers agree that if the closing of the 544 Windward
17 Point Court does not occur by September 30th, 2011, this
18 agreement shall self-operatively be rendered null and
19 void."

20 Did I read that correctly?

21 A. You did.

22 Q. You're not accusing my client of violating that
23 paragraph, are you? It's just setting the deadline for
24 the closing to occur.

25 A. Yes, that's correct.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. Let's look at the final paragraph. Says, "The letter
2 agreement supersedes all prior negotiations,
3 representations, understandings, or agreements, oral or
4 written between parties. In the event that borrowers fail
5 to comply with any of these provisions, Saxon shall
6 reserve all rights and remedies afforded to it at law, in
7 equity, or otherwise. Please indicate your agreement with
8 these terms by executing this letter agreement where
9 indicated below and return a signed copy to me.
10 Sincerely, Saxon Mortgage Service, Kevin A. Flannigan."

11 Did I read that correctly?

12 A. Yes.

13 Q. Would you agree this final paragraph, the unnumbered
14 paragraph is basically saying that this is the terms that
15 we agreed to?

16 A. Yes.

17 Q. And this paragraph also states that Saxon is
18 reserving its rights, correct?

19 A. Yes.

20 Q. Which would include foreclosing on your property if
21 your loan wasn't current; is that correct?

22 A. They certainly have that right, yes.

23 MR. GWYNNE: One moment, Your Honor.

24 THE COURT: Yes, sir.

25 BY MR. GWYNNE:

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q Going to change gears a little bit, Mr. Dolan.

2 Mr. Dolan, show you what's been marked Plaintiff's

3 Exhibit 10.

4 A. Okay.

5 Q. Mr. Dolan, just so everybody is clear, Plaintiff's

6 Exhibit 10 is very similar to Defendant's Exhibit 6 except

7 it has another page on it. I just want to put that on the

8 record.

9 A. Okay.

10 Q. This is -- so you've already discussed this e-mail

11 with your attorney; is that correct?

12 A. Yes, I did.

13 Q. This is two e-mails, one with -- and is that your

14 e-mail address at the top?

15 A. Yes, it is.

16 Q. So you're communicating with Mr. Flannigan; is that

17 right?

18 A. Yes, I am.

19 Q. Now, Mr. Flannigan's e-mail is dated October 12th,

20 2011; is that correct?

21 A. Yes, it is.

22 Q. And it was sent at 11:01 a.m. to you; is that right?

23 A. It is.

24 Q. Now, by this time, the closing has already occurred

25 on 544. Monies been sent to Saxon, correct?

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 A. Correct.

2 Q. Would you agree with me this e-mail was sent after
3 the money was applied to your loan?

4 A. Yes, absolutely.

5 Q. In the e-mail, Mr. Flannigan states in the first
6 paragraph, quote, I ran the reinstatement figures for your
7 loan as you requested, and the amount to bring your loan
8 current as of 10/14/2011 is \$35,603.88.

9 Is that right?

10 A. That's correct.

11 Q. Did you request Mr. Flannigan to run a reinstatement
12 figure?

13 A. Several times over a five-month period, yes.

14 Q. And this is after the money was already applied?

15 A. That's correct. Well, I'm not going to say after the
16 money was applied. I'm going to say after the closing
17 took place. I have no idea internally what they did with
18 the money.

19 Q. Mr. Dolan, you were shown an exhibit that had
20 collection notes on it; is that correct, from Saxon?

21 A. Yes.

22 Q. System notes? And did you go over with your attorney
23 the date the money was applied to the loan?

24 A. Did we? Yeah, may have, yeah. Keep in mind I just
25 saw that this last week. I've never seen that before.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. Let's look at it again all together. This is
2 Exhibit 9, Defendant's Exhibit 9. And it says that on
3 September 30th, 2011, money was posted to your account
4 totaling \$65,250 or about that; is that correct? Do you
5 see that?

6 A. Which line item?

7 Q. The one on the bottom.

8 A. And the remainder to suspense, yes. Assuming that's
9 the \$65,250 total.

10 Q. Sir, I'm just trying to get the timeline right. So
11 the money is applied on September 30th, 2011, and Kevin
12 sends you an e-mail almost two weeks later, October 12th,
13 2011, saying, "Here's the reinstatement quote you
14 requested," correct?

15 A. Correct.

16 Q. Okay. But your testimony is you don't know if the
17 money was applied yet; is that correct?

18 A. Keep in mind you're showing us a document I just saw
19 a week later that's internal communication. On
20 October 12th, no, I don't know that the money is applied
21 yet. You've got it, but I don't know how you applied it.
22 Many times in my accounting career and IT career, I've
23 seen my staff post payments many, many times. So with
24 only 12 days later, yes, I have no idea exactly how you
25 posted it or didn't post it when this e-mail came, mind

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 you. Now looking back at the documentation -- I've seen
2 this last week -- it appears they did post it around that
3 time.

4 Q. Sir, if I heard your testimony correctly, you said it
5 was posted. You agreed it was posted September 30th and
6 the e-mail from Kevin is two weeks later?

7 MR. RADEKER: Objection. That's not what he said.

8 A. I agree they got the payment. That's not what I
9 said.

10 THE COURT: Overruled. He's on cross.

11 BY MR. GWYNNE

12 Q. Once again, I don't remember if you answered my
13 question. Did you request a reinstatement quote from
14 Mr. Flannigan around October 12th, 2011?

15 A. No, I think it was back around June, July, or August.
16 That's when I requested them originally. And now all of a
17 sudden, he's sending to me.

18 Q. So you didn't call him on the phone and ask him for a
19 reinstatement?

20 A. Never, never.

21 Q. So Kevin Flannigan out of the blue is sending you
22 reinstatement in October after your loan was just
23 reinstated?

24 A. Amazing, isn't it?

25 Q. Let's look at your reply e-mail. It's dated

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 October 12th, 2012 at 11:08 a.m.

2 A. I agree.

3 Q. Seven minutes later?

4 A. I agree.

5 Q. You must have been right at your desk, I assume?

6 A. I was right there programming away and taking care of
7 20 other things.

8 Q. You respond by saying, Thanks, Kevin. Exclamation
9 point. I'll review and determine what course to take.

10 We've had two showings this last week on the house and was
11 told possible contract may be coming within the week after
12 the second couple spent an hour in home yesterday. I saw
13 the prequalification letter for this couple, so I know
14 they're capable of closing. We'll see what happens.

15 Thanks again for the numbers. Bryon.

16 Did I read that right?

17 A. I agree.

18 Q. It sounds like in this e-mail you're saying -- you're
19 telling Kevin that we're showing the house. You say,
20 "Thank you for the numbers and I'll review them"?

21 A. That's right. I'll review and determine what course
22 to take.

23 Q. If your loan was brought current, why would you need
24 to review the reinstatement quote he sent you?

25 A. Why would I need to review it?

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. Yes, sir.

2 A. He's obviously all of a sudden out of the blue giving
3 me numbers for the very first time that I hadn't even
4 remotely heard from him or been aware from anybody. So
5 at -- let's see. I was 51 at the time. Life taught me
6 you just don't react. Yeah, it was a knee-jerk originally
7 when I saw it, but I thought, "No, this ain't the whole
8 deal. Something is not right." So that's what I said,
9 I'll review and determine what course to take. Keeping in
10 mind, this wasn't top of my agenda at that particular day
11 when I got his e-mail. I mean, I'm basically telling him
12 I'll review and determine what course to take. How should
13 I have responded?

14 Q. Well, would you agree with me that in your reply you
15 did not state to Mr. Flannigan that you thought your loan
16 was current?

17 A. No, I didn't say that, and I didn't say that it
18 wasn't current either. I just simply chose to let him
19 know I got his e-mail is basically what that is, and
20 that's the end of it.

21 Q. You had the opportunity to do that here, correct?

22 A. No, I did not. I think there was a PDF attached to
23 that if I'm not mistaken. I'm going by memory. I hadn't
24 even had time to open the PDF to see why he would have
25 come up with those numbers yet in that seven-minute

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 period. It just wasn't at the top of my agenda with all
2 the things I was doing that day.

3 Q. Yeah, I believe you told your attorney you kind of
4 didn't react to it. You thought you would look at it
5 later, take care of it later; is that right?

6 A. Yeah, you know, around once the first payment was due
7 January or February whenever, because we pretty much had
8 an agreement intact. I knew it was nothing
9 earth-shattering. I think somewhere in there if I'm not
10 mistaken, he even makes like it's no big deal. Hey, if
11 the full amount, or we can't set -- we can set you up on a
12 repayment plan up to 12 months to repay the amount if you
13 want. So even in his voice, I didn't hear any ominous
14 anything. He was saying that, so it just wasn't an
15 immediate that I needed to respond to. I'm not saying
16 agreed to it any way, shape, or form. It just came out of
17 the blue.

18 Q. Just one more question on this e-mail. Do you
19 remember being deposed in my office in August 2013?

20 A. Yes, I do.

21 Q. Do you remember me showing this email and what your
22 response was?

23 A. I may not, but feel free to read it to me.

24 Q. I will, sir. You said, "Yeah, at that point, that's
25 when I hit the floor."

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 A. Yeah.

2 Q. Is that you hitting the floor in your reply email to
3 him seven minutes later?

4 A. My mom told me to count the ten when I was a kid.
5 Just because you feel something does not mean you react.
6 That has never served me well when I just react. You take
7 it in, you chew on it a little bit, you figure out what
8 the deal is. So yes how many time have all of us been
9 immediate want to knee-jerk, but we know that's not the
10 way you deal with people. So I wasn't going to do that.

11 MR. GWYNNE: Your Honor, this would be a good place
12 for me to break if the Court -- I probably have another
13 20, 25 minutes, so...

14 THE COURT: Okay. Thank you. I hate to interrupt
15 lawyers, ladies and gentlemen, so we ran a little bit long
16 here. I generally like to break after about an hour and
17 15 minutes to an hour and 30 minutes. We've been running
18 about an hour and 40 minutes or so. So as now indicated,
19 this is a good time to break for lunch. It's about 12:30,
20 something like that, so I tell you what let's do. Let's
21 break for lunch. You're to go to lunch on your own, enjoy
22 each other's company or be alone, whatever you choose to
23 do. Somebody might live close enough to go home to go for
24 lunch. I don't know.

25 But nonetheless, let me tell you this: If you are

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 together or if you are with a friend, you're not free to
2 begin deliberations in this matter. This matter is not
3 over. We've not heard all of the evidence, so it would
4 not be proper for you to begin your deliberation process.
5 I tell people don't even begin to deliberate within your
6 own mind. I've been called out on that by some lawyers
7 afterwards that say, "How in the world can you not do
8 that?" When I tell people, well, don't think about it,
9 okay? I want you to think about the baseball game or the
10 basketball game or the next NASCAR race or whatever it is
11 you like to think about besides this case. All right. So
12 again, please do not begin to deliberate among yourself or
13 within your own mind.

14 Also, I'll remind you that I previously charged you
15 and you are under oath, but I previously charged you that
16 you may use your cell phones, smart phones, iPads during
17 the break at lunch, but you are, number one, to leave
18 those in your car or at home when you return to the
19 courthouse. They're not allowed on the premises, and
20 certainly not in the jury room. But I also have charged
21 you previously that you are not to use those to try to do
22 any research independent on anything that's in this
23 courtroom. It's a fundamental part of our justice system
24 that this case be decided by you from the evidence that
25 you have seen or heard in this courtroom, and only in this

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 courtroom.

2 With that, Madame Forelady, we'll excuse you for
3 lunch. Please be back in your jury room -- tell you what.
4 Be back in your jury room in an hour and be back about
5 1:45, and I'll intend to take the bench at 1:50, okay? If
6 you'll be back at 1:45, no later than that, I'll take the
7 bench at 1:50.

8 Anything from the lawyers before I release the jury?

9 MR. GWYNNE: No, sir, Your Honor.

10 MR. RADEKER: No, Your Honor.

11 THE COURT: Okay. Madame Forelady, take the jury out
12 please.

13 (The jury left open court at 12:33 p.m.)

14 THE COURT: Okay. Sir, I'm going to allow you to
15 come off the stand and go to lunch with your wife. You
16 may also join your lawyer if you choose, but I again
17 instruct you you cannot discuss the case with him
18 whatsoever. And when we come back at just slightly prior
19 to 1:50 and at your lawyer's instruction, if you would
20 please resume that seat so that we'll be able to go right
21 into it.

22 Anything from the lawyers?

23 MR. GWYNNE: No, sir.

24 MR. RADEKER: No, Your Honor.

25 (A recess was taken from 12:34 p.m. to 1:55 p.m.)

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 THE COURT: In the lunch recess, the Court received a
2 note that's now been marked as Court's 1. A juror stated
3 that he did not realize it but his mortgage is serviced by
4 SLS. He just wanted to advise the Court of that. I got
5 the lawyers together in chambers, brought the juror in to
6 chambers and asked him in the presence of the lawyers
7 would that interfere with his ability to be fair to either
8 side. He said it would not, and the lawyers are satisfied
9 with that answer. Is that correct, gentlemen?

10 MR. GWYNNE: Yes, Your Honor.

11 MR. WYMAN: Yes, Your Honor.

12 MR. RADEKER: That's correct, Your Honor.

13 THE COURT: I have advised the juror he may continue
14 to serve. I have now made that note Court's 1 exhibit.
15 Anybody have anything for the record?

16 MR. GWYNNE: No, Your Honor.

17 MR. WYMAN: No, Your Honor.

18 MR. RADEKER: No, Your Honor.

19 THE COURT: We're ready for the jury.

20 (Court's Exhibit 1 was marked.)

21 (The jury entered the courtroom at 1:56 p.m.)

22 THE COURT: All right. I trust everyone had a good
23 lunch. Is everyone ready to proceed, Madame Forelady?

24 JUROR: Yes, Your Honor.

25 THE COURT: Okay. Gentlemen?

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 MR. GWYNNE: Yes, Your Honor.

2 BY MR. GWYNNE

3 Q Mr. Dolan, when we broke for lunch, we were talking
4 about Plaintiff's Exhibit 10. Do you recall that?

5 A. Actually, I don't. Would you refresh my memory,
6 please?

7 Q. Plaintiff's Exhibit 10 is the e-mail from Kevin
8 Flannigan in October of 2011.

9 A. Yes, I remember.

10 Q. And you replied to it. Do you recall that?

11 A. Yes.

12 Q. Now, you never followed up with Kevin on this e-mail,
13 correct?

14 A. No, I did not.

15 Q. Attached to the e-mail was this letter. Do you
16 recall that?

17 A. Actually, I don't recall. Was that the PDF or
18 attachment?

19 Q. This letter was attached to the e-mail. Do you
20 recall seeing it?

21 A. I remember there being an attachment, yes.

22 Q. Let's look. It's a reinstatement letter; is that
23 correct? Says, "These are the reinstatement figures for
24 the referenced loan." Correct?

25 A. Dated 10/14, yes.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. I believe it's 10/12/2011.

2 A. Well, this -- okay, I'm with you.

3 Q. I see what you mean. It says it's good through 10/14
4 and it's for \$35,603.88; is that correct?

5 A. I see that, yes.

6 Q. And that's the same amount that's in Mr. Flannigan's
7 e-mail; is that correct? Second line down?

8 A. Yes, it is.

9 Q. So you never followed up when you received this
10 quote. You never mentioned anything to Kevin Flannigan
11 about it; is that correct?

12 A. Not at that point, no.

13 Q. What do you mean "at that point"? You never
14 mentioned to Kevin Flannigan about this reinstatement
15 quote as being incorrect; is that correct?

16 A. I'll say that's correct.

17 Q. Now, the \$3,000 you testified about earlier, you sent
18 that in on your own, correct?

19 A. Yes, trying to honor the agreement that we had.

20 Q. But nobody at Saxon ever authorized you to send that
21 money in, correct?

22 A. No, I was authorized to send it. That's why they
23 gave me the address there to send it to.

24 Q. And that money was returned to you, correct?

25 A. Yeah, after -- on January 23rd, it was.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. Now, my client did not breach any terms of the note
2 that was Exhibit 2; is that correct?

3 MR. RADEKER: Objection. That calls for a legal
4 conclusion.

5 THE COURT: Overruled. He can answer if he -- go
6 ahead.

7 BY MR. GWYNNE

8 Q. Exhibit 2, which is the note in this case, are you a
9 alleging my client breached any of the terms of note?

10 A. Yeah, I'm breaching that at their sole discretion
11 they could elect to have me send in the payments and this
12 thing continue on. They elected to do that and then
13 turned right around and breached it and stopped me from
14 doing it.

15 Q. Mr. Dolan, maybe I wasn't very clear. I'm talking
16 about Exhibit, 2 which is the adjustable rate note in this
17 case. Are you claiming that my client breached any of
18 these terms? This was the document that you signed when
19 you took out the loan in 2005.

20 A. Yeah, when I was with BB&T?

21 Q. Yes. Did my client breach any of these terms?
22 That's my question.

23 A. I would say no also, only in the many letters that I
24 did see from your client, there were interest rates and
25 amounts being charged that were not based on that LIBOR

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 rate according to the adjustable rate mortgage note which
2 clearly states how interest payments and amounts are
3 supposed to be done. Those were breached several times
4 while your client had the note.

5 Q. Did my client breach any term of the mortgage
6 document that's Exhibit 3, Plaintiff's Exhibit 3?

7 A. To be honest with you, I really could not say yes or
8 no.

9 Q. Isn't it true the last time you made a regular
10 monthly mortgage payment was November 1st, 2008?

11 A. With BB&T?

12 Q. On this loan.

13 A. That's correct.

14 Q. And according to the 2009 foreclosure action -- I'll
15 show you Plaintiff's Exhibit 4, which is the foreclosure
16 action for the property address -- 2009 foreclosure action
17 for the property, 540?

18 A. The one that was eventually dismissed, that one?
19 Just trying to keep track.

20 Q. According of the paragraph 21 of that complaint,
21 second line down, it says, "I thought payments received by
22 the plaintiff have been credited to the subject loan. The
23 subject was in default and due for December 1, 2008." So
24 you'll agree, once again, that the last monthly mortgage
25 payment you made was November of 2008?

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 A. Thereabouts, correct.

2 Q. Mr. Dolan, do you pay your county taxes on the
3 property?

4 A. Not at the this time now.

5 Q. When is the last time you paid your county taxes on
6 the property?

7 A. Probably 2008.

8 Q. What's stopping you from making your county taxes on
9 this property?

10 A. Well, because I'm in litigation with your client,
11 it's in my best interests to let them pay it until we get
12 this resolved.

13 Q. So it's true that Saxon and SLS have been paying your
14 county taxes?

15 A. No, I'm not saying that at all. I'm saying they're
16 getting paid. Whether SLS did, whether Saxon, whether
17 BB&T did, I do not know.

18 Q. Are you aware that if it matters if your loan is in
19 default or not if you can walk across the parking lot and
20 go pay your taxes? Does it matter your loan is in
21 default?

22 A. The question again, please?

23 Q. Is the fact that your loan is in default, does that
24 prevent you from walking across the parking lot and paying
25 your county taxes?

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 A. No, it does not does not prevent me from doing that.

2 Q. You're just letting Saxon and SLS pay your taxes?

3 A. While they're in litigation with me, that's correct.

4 Q. Okay. When's the last time you paid the hazard
5 insurance on the property?

6 A. I think in January.

7 Q. So you'd be surprised to find out that Saxon and SLS
8 have been paying your hazard insurance since 2009? That
9 would be a surprise to you?

10 A. One or two, they may have. I don't know about all of
11 them.

12 Q. Does the fact your loan is in default prevent you
13 from buying hazard insurance from your property?

14 A. Well, actually, I don't know it does but when I tried
15 to purchase insurance at about \$3,000 cheaper than what
16 your client was trying to charge me, they would not let me
17 do it. That's all I can say about that, because I've
18 tried to do that.

19 Q. You were asked some questions by your counsel about
20 the value of your property. Will you agree with me if you
21 had a buyer lined up who would pay you enough money from
22 the property that would satisfy your loan, you would sell
23 the property, correct?

24 A. If I could satisfy the loan. That's always been the
25 question. You never know what was owed on the loan.

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 That's been the problem from day one. It's made up
2 amounts.

3 Q. I want to show you Defendant's Exhibit 13. This was
4 shown to you by your counsel.

5 A. Can I see the date at the top of that, please?

6 Q. Sure.

7 A. Foreclosure dated November 30th, 2011. That one?

8 Q. Yes. Now will you agree with me this appears to be
9 an internal review of your loan for possible referral to
10 foreclosure?

11 A. Yes, I would.

12 Q. Okay. According to this document you were due for
13 March 1st, 2011; is that correct?

14 A. That's what the document says, even though I just
15 gave them a \$65,000 payment two months before. But yes,
16 that document says that.

17 Q. And this document is dated November 30th, 2011, at
18 the top there; is that right?

19 A. Correct.

20 Q. Now, as I stated previously this foreclosure action
21 wasn't filed until July of 2012. Is that your
22 understanding?

23 A. Yeah, and I think this foreclosure review was done
24 just a few days after you did me a favor releasing the
25 other foreclosure, correct? Didn't you release the

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 foreclosure in November?

2 Q. Sir, my question to you -- this foreclosure action
3 that we're here about wasn't filled until July 2012; is
4 that correct?

5 A. I believe so.

6 Q. So the fact this review was done in November 2011 did
7 not result in a foreclosure action being filed in November
8 of 2011, correct?

9 A. This letter here. Ask your question one more time,
10 please.

11 Q. This letter is dated November 2011. Do you agree
12 with that?

13 A. That I'm look at right now, yes.

14 Q. And there's no record any client filed a foreclosure
15 that month or month after that or more after that. It
16 wasn't until July 2012; is that correct?

17 A. Yes, and I don't really recall when your client
18 actually filed the foreclosure action.

19 Q. I'll represent it to you it was July of 2012. So the
20 foreclosure complaint we just looked at in that was filed
21 in 2009 states the last payment you made was
22 November 1st, 2008, which made you due for
23 December 1st, 2008. Do you agree with me on that?

24 A. Okay.

25 Q. And this date here says -- now, this is dated after

BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 the money of \$65,250 was received. Says you're due for
2 3-1-2011?

3 A. That why I didn't pay even attention to this when I
4 saw it this week because it says last payment date or loan
5 due date 3-1-11. I just two months before made y'all a
6 \$65,250 payment.

7 Q. But isn't it logical to assume the \$65,250 was
8 applied to your December 1st, 2011, payment?

9 A. No, it is not.

10 Q. February 1st, 2011, payments?

11 A. Not all not based on conversation with Kevin
12 Flannigan. Not at all.

13 MR. GWYNNE: If I could have a minute, Your Honor?

14 THE COURT: Yes, sir.

15 MR. GWYNNE: Your Honor, no further questions.

16 THE COURT: Redirect?

17 MR. RADEKER: Certainly Your Honor.

18 **REDIRECT EXAMINATION**

19 BY MR. RADEKER

20 Q. Taking the last first, as to whether you're claiming
21 a breach of the note, you're claiming that FV-I received
22 funds to reinstatement the loan to bring it current?

23 A. To bring the loan current, that's correct.

24 Q. And they didn't treat it that way?

25 A. That's correct.

BRYON DOLAN - REDIRECT EXAMINATION BY MR. RADEKER

1 Q. Now, if they had treated this as though you brought
2 this current, would you be willing to pay the taxes they
3 advanced for you?

4 A. Without any issue.

5 Q. Okay. All right. Let me ask you some questions
6 about this document that's up here on the screen now. You
7 remember when -- and I think you do based on what your
8 answers were when Mr. Gwynne was asking you whether the
9 plaintiff was just doing you a favor by dismissing this
10 foreclosure action?

11 A. Right.

12 Q. And that was done on November 16, 2011 is when that
13 order was filed?

14 A. Yes, it was.

15 Q. All right. And the date of this document that sent
16 this to foreclosure is November 30, 2011?

17 A. That's correct.

18 Q. So you think two weeks is a realistic time span to
19 give you to sell your property?

20 A. No.

21 Q. All right. Ask you about something else. The e-mail
22 exchange between you and Mr. Flannigan that was put up
23 earlier, there was in that a seven-minute gap between his
24 e-mail saying, "This is what's necessary to reinstatement
25 the loan," and your response. Tell me what happened in

BRYON DOLAN - REDIRECT EXAMINATION BY MR. RADEKER

1 those seven minutes.

2 A. Well, I did get it. I looked at the amounts, totally
3 threw me off. Was probably perturbed about it for a
4 minute, if even a minute. But I had a phone call that
5 came in on the septic tank issue that had to be solved. I
6 had a software guy emailing me on something that was even
7 more urgent for a deadline I had to make. And at the end
8 of the day, I just simply wanted to let Kevin know I got
9 this and be done with it. We would address it later.
10 That was really the extent of that exchange.

11 Q. And other than saying seven minutes, how long do you
12 think seven minutes is? A long time? Short time? Medium
13 time?

14 A. It's a lot longer than the ten seconds my mom told me
15 to count before I react. I mean, I thought it was a long
16 time, I didn't think it was short or anything like that.
17 Seemed like a long time to me.

18 Q. And if we were to stand here in silence for seven
19 minutes, how much time would you have to think about
20 things? Would it be a long time?

21 A. It would.

22 Q. Now, the September 22nd, 2011, agreement document
23 that you signed, who wrote that?

24 A. Kevin Flannigan, as the attorney said.

25 Q. Okay. And that's what it says right there at the

BRYON DOLAN - REDIRECT EXAMINATION BY MR. RADEKER

1 bottom of the document, right?

2 A. Right.

3 Q. Says, "Return it to me." Signed Kevin Flannigan.

4 A. Correct.

5 Q. So you didn't write it?

6 A. I didn't.

7 Q. Okay. Now, Mr. Gwynne asked you earlier about access
8 to your property, the adjoining property. To your
9 knowledge, what does that have to do with the issues in
10 the case?

11 A. None whatsoever.

12 Q. All right. And let me ask you this: How much money
13 did you pocket from selling that part of your yard?

14 A. Zero.

15 Q. But you don't have that part of your yard anymore, do
16 you?

17 A. It's not mine.

18 Q. And that was something someone was willing to pay
19 \$30,000 for, correct?

20 A. That's correct.

21 Q. All right. I'm going to show you something that was
22 also shown to you by -- it may be here. I may have
23 another copy. Show you a copy of Defendant's Exhibit 14.
24 Specialized Loan Servicing statement. Dated January 18th,
25 2012. You see it's addressed to you?

BRYON DOLAN - REDIRECT EXAMINATION BY MR. RADEKER

1 A. Yes.

2 Q. Look at the bottom left-hand portion of it. And tell
3 me how much it says your payment amount is?

4 A. \$1877.62.

5 Q. And over here on the right, does it contain where it
6 says payment instructions? I can blow it up for you.

7 A. Yes. It's hard for me to see but I guess it would,
8 yes.

9 Q. Do you see that?

10 A. Yes.

11 Q. Make check payable to Specialized Loan Servicing?

12 A. On that date, yes.

13 Q. Mr. Gwynne asked you earlier about having an address
14 based on the letter, letter agreement document that Kevin
15 Flannigan sent you for Saxon Mortgage, right?

16 A. Right at the top. I think it was on their letterhead
17 maybe,

18 Q. In your experience with mortgage loans, do mortgage
19 servicers always use the same address for different things
20 such as correspondence and payment process?

21 A. Not at all. I think over the course of this thing,
22 I've probably submitted things to two or three different
23 addresses.

24 Q. Thank you very much. I don't have any more questions
25 for you.

BRYON DOLAN - RECROSS-EXAMINATION BY MR. GWYNNE

1 THE COURT: Very good. Anything?

2 MR. GWYNNE: One moment, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. GWYNNE

5 Q. Very briefly. Mr. Dolan, your attorney asked if you
6 received any money from the sale of your land, and you
7 said no; is that correct?

8 A. Meaning me directly?

9 Q. Yes.

10 A. Yes.

11 Q. But you do admit that the \$65,250 was sent to Saxon
12 and applied to your loan?

13 A. Correct. I do.

14 Q. So that money went to your loan to pay a debt that
15 you owe, partially pay a debt you owe, correct?

16 A. No, it paid a loan to bring it current, not partially
17 pay a loan.

18 Q. Okay. And just to be clear, you weren't forced to
19 sell this piece of land. Correct?

20 A. No.

21 Q. You did it out your own free will?

22 A. That's correct.

23 Q. And just briefly, your attorney asked you about that
24 address on that letter from September 2011 from Saxon.

25 Would you agree with me that there's also a phone number

BRYON DOLAN - RECROSS-EXAMINATION BY MR. GWYNNE

1 on there you could have called to find out the address to
2 send your payment to?

3 A. Yes, and I probably -- I don't even think that number
4 rang to where I eventually had to call to get a phone
5 number.

6 MR. GWYNNE: No further questions, Your Honor. Thank
7 you.

8 THE COURT: Sir, you may step down. Please be
9 careful.

10 MR. RADEKER: Your Honor, we'd call Lisa Dolan to the
11 stand briefly.

12 THE COURT: Ms. Dolan come to the stand and be sworn,
13 please.

14 LISA DOLAN, after being duly sworn, testified as
15 follows:

16 THE COURT: Tell us who you are and spell your last
17 name.

18 THE WITNESS: Lisa Scott Dolan. D-O-L-A-N.

19 DIRECT EXAMINATION

20 BY MR. RADEKER

21 Q. Thank you, Ms. Dolan. Ma'am, could you tell me who,
22 if anyone, handled any communications with Saxon Mortgage
23 Services on your behalf?

24 A. My husband, Bryon Dolan.

25 Q. Okay. Did you handle any of them yourself?

LISA DOLAN -- DIRECT EXAMINATION BY MR. RADEKER

1 A. No.

2 Q. Now, is that just a division of labor in y'all's
3 household?

4 A. You might say I trust him to do that. He discusses
5 it with me, but he handles that.

6 Q. Do you remember him saying anything inconsistent with
7 what he said today?

8 A. No.

9 Q. Thank you. I don't have any further questions.

10 THE COURT: All right. Yes, sir.

11 MR. GWYNNE: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GWYNNE

14 Q My name is Charlie Gwynne. Nice to see you again.

15 Is it correct that you had no personal involvement in
16 drafting of the September agreement that we've been
17 showing on the board?

18 A. I did not.

19 Q. And you have no direct knowledge about any statements
20 made by Saxon in the lawsuit?

21 A. No.

22 Q. So any information you have about that agreement or
23 about any communication with Saxon came through your
24 husband?

25 A. Correct.

LISA DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 Q. Now, you did sign that agreement?

2 A. I did.

3 Q. Okay. But correct to say you signed it without
4 reading it, correct?

5 A. That's true. I trust him to do that.

6 Q. At this time the agreement was signed in 2011, is it
7 true that you were a licensed real estate agent?

8 A. Yes.

9 Q. So you're familiar with how to buy and sell real
10 estate?

11 A. Yes.

12 Q. Per the terms of that agreement we looked at, you and
13 your husband were required to list the property for sale
14 for a certain time frame. Do you agree with that?

15 A. Yes.

16 Q. And was the property listed for sale?

17 A. Yes, it was.

18 Q. Was it listed into 2012 for a time?

19 A. You know, I'm bad at dates so I couldn't really tell
20 you. And I haven't look at the documentation in a long
21 time.

22 Q. Well, did you ever receive a offer on the house?

23 A. Not that I recollect.

24 MR. GWYNNE: Thank you, Your Honor.

25 THE COURT: Sir?

LORETTA POCH - DIRECT EXAMINATION BY MR. RADEKER

1 MR. RADEKER: That's all.

2 THE COURT: Ma'am, you may be excused.

3 MR. RADEKER: And finally, Your Honor, we'd call
4 Loretta Poch to the stand.

5 LORETTA POCH, after being duly sworn, testified
6 as follows:

7 THE WITNESS: My name is Loretta Poch, P-O-C-H.

8 DIRECT EXAMINATION

9 BY MR. RADEKER

10 Q. Ms. Poch, you work for Specialized Loan Servicing?

11 A. Yes, I do.

12 Q. And they're a servicer for the plaintiff in the case?

13 A. Yes.

14 Q. They weren't always the servicer for plaintiff in the
15 case?

16 A. That's correct.

17 Q. Servicer before that was Saxon Mortgage Service?

18 A. Right.

19 MR. WYMAN: Objection. These are all leading
20 questions. Just make sure she's not being treated as a
21 hostile witness.

22 THE COURT: She's not being treated as a hostile
23 witness. He's her witness. He called her.

24 MR. WYMAN: Just making sure, Your Honor.

25 THE COURT: I just took that to be preliminary.

LORETTA POCH - DIRECT EXAMINATION BY MR. RADEKER

1 BY MR. RADEKER

2 Q. Let me ask you about that. You're here to testify
3 for the plaintiff in this case, right?

4 A. Yes.

5 Q. All right. Now, how long have you worked for
6 Specialized Loan Servicing?

7 A. Seven years.

8 Q. Seven years. All right. Have you ever worked for
9 Saxon Mortgage Service?

10 A. No.

11 Q. All right. Have you ever worked at BB&T?

12 A. No.

13 Q. Kevin Flannigan, he worked at Saxon Mortgage Service,
14 didn't he?

15 A. Yes.

16 Q. And at Specialized Loan Servicing?

17 A. No.

18 Q. So he did not work at Specialized Loan Servicing?

19 A. No.

20 Q. Where does he work?

21 A. Morgan Stanley.

22 Q. Morgan Stanley. And what's the name of the plaintiff
23 in this case?

24 A. FV-I in trust for Morgan Stanley.

25 Q. So that's his involvement?

LORETTA POCH - DIRECT EXAMINATION BY MR. RADEKER

1 A. Yes.

2 Q. Now, Saxon serviced the loan in this case during part
3 of the previous foreclosure action on this loan; is that
4 correct?

5 A. Yes.

6 Q. At the end of that case?

7 A. Of the 2009 case?

8 Q. Yes, ma'am.

9 A. Yes.

10 Q. All right. And Saxon served both loans?

11 A. I don't know what their servicing is.

12 Q. Okay. There's more than two, right?

13 A. I really don't know.

14 Q. You really don't know?

15 A. I really don't know.

16 Q. Okay. So do you know how -- what Saxon's procedures
17 were?

18 A. I know that they match industry standard procedure.

19 Q. So you know they match industry standard procedures,
20 but you don't know how many loans are serviced?

21 A. That's correct.

22 Q. So you don't have any idea?

23 A. No, sir.

24 Q. So do you go their offices and see how they did their
25 thing?

LORETTA POCH - DIRECT EXAMINATION BY MR. RADEKER

1 A. No.

2 Q. And how fair would it be to say that anything you
3 know about what Saxon did concerning this loan or any loan
4 just comes from looking at documents. Pretty fair?

5 A. That is fair, yes.

6 Q. All right. FV-I in trust for Morgan Stanley, they've
7 got a few loans don't they?

8 A. I don't know.

9 Q. You don't know? So when did Specialized Loan
10 Servicing become the servicer for this loan?

11 A. January 24, 2012.

12 Q. And so any information that Specialized Loan
13 Servicing has about this loan from before that comes from
14 some prior service servicer's records, right?

15 A. That's right.

16 MR. WYMAN: Objection, leading.

17 THE COURT: Rephrase.

18 BY MR. RADEKER

19 Q. All right. Ma'am, where does any information that
20 Specialized Loan Servicing has about this loan before it
21 took over servicing of it come from?

22 A. All the records are transferred electronically for
23 servicer to servicer. We go through a lengthy process
24 that spans 30 days before a loan goes live on our system
25 where we receive data transfer of all the records, the

LORETTA POCH - DIRECT EXAMINATION BY MR. RADEKER

1 payment history, the note history, and the loan documents.
2 And it goes through a rigorous process to ensure accuracy
3 in one group and then a second -- another entire group of
4 people re-review all of that information to ensure
5 accuracy again. Then -- this is 30 days prior. Then 15
6 days prior, we get updated financial figures, and then
7 three days prior, we get updated financial figures again,
8 and it goes through the same rigorous process through
9 these two groups.

10 Once it's passed all these reviews, then it's
11 boarded -- we call it boarded, meaning loaded into our
12 system and it goes into live data on the date we begin
13 servicing transfer the loan. But it can't get to that
14 point until we've ensured all the accuracy. Once it's
15 boarded into our system, then the prior service records
16 become our servicing records.

17 Q. So you said they become your servicing records?

18 A. That's correct.

19 Q. Y'all didn't make them?

20 A. No.

21 Q. Okay. And now these groups, these are Specialized
22 Loan Servicing people in these groups?

23 A. Yes.

24 Q. Not people from the previous servicer?

25 A. No.

LORETTA POCH - DIRECT EXAMINATION BY MR. RADEKER

1 Q. So if there's something that's just not in the
2 records, Specialized Loan Servicing, would they know about
3 that?

4 A. If everything didn't match these business rules, this
5 rigorous testing, then it would become apparent something
6 was missing.

7 Q. But if there wasn't anything this records to show
8 what happened, you wouldn't know that, would you?

9 A. That's right. If it never existed, we wouldn't
10 know -- it wouldn't be there.

11 Q. All right. Is testifying part of your job?

12 A. Yes, it is.

13 Q. In fact, you were just in Florida yesterday
14 testifying; is that right?

15 A. No, I wasn't.

16 Q. So where were you?

17 A. Here.

18 Q. You were here?

19 A. Here, yes.

20 Q. All right. When is the last time you testified in
21 court?

22 A. Last week.

23 Q. Last week?

24 A. Okay.

25 Q. I'm sorry, where was that?

LORETTA POCH - DIRECT EXAMINATION BY MR. RADEKER

1 A. In Florida.

2 Q. In Florida. So how many times a year do you
3 typically testify as part of your job?

4 A. It really varies. I would say from two times a week
5 to five or six times a week.

6 Q. And you work for Specialized Loan Servicing?

7 A. Yes, I do.

8 Q. All right. That's who writes your paychecks?

9 A. Yes.

10 Q. And that's who you're doing your work for when you
11 testify?

12 A. Yes.

13 Q. Thank you. I don't have any further questions for
14 you.

15 THE COURT: Gentlemen?

16 MR. WYMAN: Your Honor, we don't have any
17 cross-examination. We reserve the right to call her in
18 our case-in-chief as far as our defense.

19 THE COURT: You can do that. Nothing further? Ma'am
20 you may step down.

21 Yes, sir.

22 MR. RADEKER: Your Honor, that concludes our case.
23 We rest.

24 THE COURT: Okay. Madame Forelady, ladies and
25 gentlemen of the jury, the Dolans have now rested their

1 case, what's known as their case-in-chief, which means
2 that's the only evidence they intend to put up. Before we
3 hear from FV-I, there's matters that would be necessary
4 for me to take up outside your presence. I don't
5 anticipate this being very long whatsoever, but
6 nonetheless, it would be improper for you to be here. So
7 with that, Madame Forelady, I'm going to ask you take the
8 jury to jury room. We'll probably be a good ten minutes
9 or thereabouts. Do not begin to deliberate. The case is
10 not over. With that, we excuse you from the courtroom.

11 (The jury left the courtroom at 2:29 p.m.)

12 THE COURT: All right. Motions?

13 MR. RADEKER: I was just going to say Mr. Dolan asked
14 if he could use the restroom if you don't have any problem
15 with that. We don't need him here to argue the motions.

16 THE COURT: That would be fine. Yes, sir.

17 MR. WYMAN: Move for a motion for directed verdict on
18 both causes of action, Your Honor. What would you like me
19 to address first? I think the UTA claim probably easier
20 to address. I don't see any evidence that's been
21 presented to satisfied the public interest requirement
22 showing repetition. This appears to be very similar to
23 the Robertson versus First Union National Bank, case with
24 a private wrong -- an alleged private wrong between two
25 parties and that's just not sufficient to satisfy the

1 requirements of the Unfair Trade Practices Act.

2 THE COURT: I read the same case. Let me hear from
3 you, Counsel.

4 MR. RADEKER: All right. Thank you, Your Honor. I'd
5 say what we've got here is more than a private wrong.
6 This conduct is capable of repetition. Further, our court
7 has said many times that how you show potential for
8 repetition or even how you show impact on public interest
9 is not limited to any particular method. One could show
10 impact on the public interest even without showing
11 potential for repetition.

12 But here certainly these companies did servicing for
13 banks, Morgan Stanley. They have a chance to repeat such
14 behavior or behavior like it in the future. And simply to
15 misrepresent to someone what the amount is to bring the
16 loan current is repeatable behavior. All one has to
17 demonstrate in order to satisfy the public interest
18 prong -- which I understand is the only prong they're
19 arguing we haven't satisfied -- is potential for
20 repetition. It's capable of being repeated.

21 THE COURT: I don't think that's his argument at all,
22 but I'll be happy to hear more. Go ahead. I'll hear more
23 from you, I don't think that's what he said.

24 MR. WYMAN: Your Honor, that's not what I'm saying.

25 MR. RADEKER: All right. Well, Your Honor if simply

1 because there were a breach contract there could be no
2 Unfair Trade Practices Act, we can tell that's not true
3 because we can look at cases that are decided between
4 parties where there was a breach of contract, and the
5 court allowed Unfair Trade Practices Act cause of action,
6 such as the Wright versus Craft case and Singleton versus
7 Stokes Mazda case, I think, case that decided in
8 memorandum. Were the law that simply because it's a
9 contractual relationship between the parties means you can
10 never have Unfair Trade Practice Act cause of action, the
11 Act would be gutted. Totally meaningless.

12 That's not the law. Those cases focus on the
13 typical, isolated nature of a breach of contract. They
14 don't stand for the proposition that simply because
15 there's a contract between the parties, there can't be an
16 Unfair Trade Practices Act cause of action.

17 THE COURT: Yes, sir.

18 MR. WYMAN: Your Honor, I agree with his previous
19 representation of the case law, but that was not my
20 intention as far as my only argument. This is a unique
21 set of facts. He's presented absolutely no evidence to
22 satisfy that this is -- has been -- occurred in the past
23 or there has the potential to be occurring in the future.
24 Simply because there are loans serviced in South Carolina
25 by different lenders, that does not lead to a viable cause

1 of action for the Unfair Trade Practices Act. And as Your
2 Honor said, the Robertson versus First Union case is on
3 point. This is a conduct which only affects the parties
4 of the transaction here. This is between the plaintiff
5 and the defendants, Dolans, and that just does not give
6 rise to a Unfair Trade Practices Act claim, and we should
7 be awarded a directed verdict because there's only one
8 reasonable inference.

9 THE COURT: The Court, at this stage of the
10 proceedings, is concerned only with a scintilla of
11 evidence at the directed verdict stage and must look at --
12 the Court must look at the motion in the favor -- in the
13 light most favorable to the nonmoving party. However,
14 there does have to be a scintilla of evidence, and this
15 Court has heard nothing that would rise to a scintilla of
16 evidence in this matter so that directed verdict motion is
17 granted. Next cause of action?

18 MR. WYMAN: Thank you, Your Honor. And as to the
19 breach of contract, Your Honor, we would argue they have
20 failed to present -- there's only one reasonable inference
21 from the evidence that's been presented thus far, that my
22 client did not breach the contract at issue. Mr. Gwynne
23 through the cross-examination of Mr. Dolan point by point
24 by point through that September 2011 agreement, and he
25 stated that he complied with all terms of that agreement

1 and said there's no breach of the note and there was no
2 breach of the mortgage. Without a breach or unjustifiable
3 failure to perform the contract, they cannot satisfy their
4 burden of proof on the breach of contract action.

5 Furthermore, Your Honor, we would argue they have not
6 presented any proof of damages in this case at all. The
7 \$3,000 was sent; the \$3,000 was returned. That's the only
8 thing that really is evident in the case is that the
9 September 30th, 2011, agreement was complied with by my
10 client, and as well the Dolans, but there's simply been no
11 breach at all.

12 As to the fact there could have been -- if there's
13 some other oral agreement, we would argue that's been
14 barred by the parol evidence rule. There would not be a
15 binding contract as to that, so they would not be able to
16 satisfy the cause of action there.

17 THE COURT: Yes, sir.

18 MR. RADEKER: Thank you, Your Honor. On this one, I
19 would say I have an easier row to hoe than the other one.
20 I know first of all, got a couple places where there may
21 be breaching, and certainly where the Court is looking at
22 the existence of evidence and not its weight, I think we
23 get past the directed verdict on the breach of contract
24 claim.

25 First of all -- and we'll come to another one that

1 could stand totally independent of this. The September
2 22nd, 2011, agreement, testimony was Saxon extended the
3 deadline on behalf of the plaintiff. Mr. Dolan sent in
4 the first \$3,000 payment. They turned around and sent it
5 back. That's a repudiation. That's a breach.

6 As to whether there's damages here, there's at least
7 a jury question as to whether this amount was sufficient
8 to bring this thing current. Look at the way that the
9 plaintiff behaved after they received the money. They
10 dismissed the foreclosure action. Banks don't dismiss
11 foreclosure actions when you haven't reinstated the
12 mortgage. And then they turned around and treated it as
13 though it wasn't reinstated.

14 THE COURT: I'm going to disagree with you on that,
15 but go ahead.

16 MR. RADEKER: Well, in any event, it's at least some
17 evidence that they have reinstated, because dismissal of
18 the foreclosure action is consistent with reinstatement.
19 Further they submit -- "they" being -- you know, Saxon was
20 running the show at that point -- submits an order to the
21 court that says the note and mortgage are hereby
22 reinstated. They move for that to be made an order, and
23 it's done. So they're saying it's reinstated. They
24 continue to treat it as though it's not. Mr. Flannigan
25 represented to the Dolans the amount necessary to bring it

1 current and they paid that.

2 We're talking here about whether there's a scintilla
3 of evidence of breach. Here there most certainly is. We
4 got enough to get past the rather low hurdle that it is to
5 get past directed verdict on this point.

6 As to whether there's damages here, if the money
7 wasn't properly applied, there's certainly damages,
8 because that's what caused there to be this big tab they
9 say that they've got now, some \$168,000 on this. Also, as
10 part of this transaction here, the first transaction that
11 I spoke about in this argument, the September 22nd
12 transaction, that there's certainly evidence that the
13 plaintiff breached under that. The Dolans parted with a
14 piece of land that someone was willing to pay \$30,000 for.
15 They don't have that now. They don't have the money.
16 They didn't make any money off the transaction and they
17 got no benefit from it at all.

18 And so we'd note that there's a scintilla of evidence
19 on each point. But the points are: Is there breach and
20 did it cause damages? You know, We've got a contract -- I
21 don't think there's any doubt that there's two. There's
22 note and mortgage contract and there's the September
23 22nd agreement. And there's a scintilla of evidence of
24 breach on each point. All the Court is concerned with on
25 damages at this point is some evidence tending show they

1 existed.

2 THE COURT: All right, sir.

3 MR. WYMAN: Your Honor, as to the damages briefly,
4 the testimony is that \$30,000 -- it's my understanding
5 Mr. Dolan's testimony is what he's claim his damages, the
6 \$30,000. He was not required to sell that land. He -- I
7 simply do not see how that can be his actual damages as a
8 result of a breach, Your Honor. Our position is clearly
9 there's been no breach. Mr. Dolan testified point by
10 point that all terms were complied with as far as the
11 September 22nd, 2011, agreement. He had the opportunity
12 to say that they weren't, but they were.

13 MR. DOLAN: And I did.

14 THE COURT: Well, again -- and the Court not doing
15 the weight of the evidence. The Court is only being asked
16 to view the scintilla of evidence and he has testified to
17 his understanding of what the agreement was, and I'm not
18 weighing that evidence as that being heavy or light. I'm
19 just saying that was his understanding that he's testified
20 to. So the Court finds that is at least a scintilla of
21 evidence and that would go to the finder of fact, that
22 being the jury. So I'm going to deny your motion on that
23 cause of action.

24 MR. WYMAN: Thank you, Your Honor.

25 THE COURT: Other motions?

1 MR. RADEKER: Not from me.

2 THE COURT: Ready for the jury? We'll take a break.

3 MR. GWYNNE: Your Honor, could I...

4 (A recess was taken from 2:39 p.m. to 2:46 p.m.)

5 (The jury entered the courtroom at 2:46 p.m.)

6 THE COURT: All right. Madame Forelady, any matters
7 from the jury?

8 JUROR: No, sir.

9 THE COURT: No matters? Okay. We're ready to go.

10 MR. GWYNNE: Thank you, Your Honor. The plaintiff
11 calls Ms. Loretta Poch to the stand.

12 THE COURT: I remind you you're under oath. You
13 remain under oath.

14 DIRECT EXAMINATION

15 BY MR. GWYNNE

16 Q. Ms. Poch, what company do you work for?

17 A. Specialized Loan Servicing.

18 Q. And where is the physical location of your office?

19 A. Highlands Ranch, Colorado, which is a suburb of
20 Denver.

21 Q. What is your job title?

22 A. High-risk analysis.

23 Q. And what are some of your job duties with SLS?

24 A. I work on contested foreclosures and service liaison
25 to local counsel, and I testify at foreclosure trials and

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 in depositions.

2 Q. And this has come out before, but what is SLS's role
3 in the case?

4 A. We're a mortgage loan servicer. We collect payments,
5 disburse escrow. If the loan goes into default, we work
6 with borrowers on loss mitigation. If we're unable to
7 reach a resolution, we refer to the matter to foreclosure
8 and work with foreclosure counsel to have the property
9 foreclosed and sold.

10 Q. So would borrowers typically interact with your
11 company for their loan?

12 A. Yes, they would.

13 Q. And who is SLS servicing the Dolans' loan for?

14 A. FV-I in trust for Morgan Stanley.

15 Q. Now, is it common practice in the mortgage loan
16 industry for a lender to use a loan servicer to handle
17 those type of operations?

18 A. Yes, it's very common.

19 Q. And are you authorized to testify on behalf of your
20 company in today's trial?

21 A. Yes, I am.

22 Q. In the ordinary course of its business, does SLS
23 maintain record for the loans that it services, including
24 the Dolans' loan?

25 A. Yes, we do.

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 Q. As part of your job duties, are you familiar with
2 those records?

3 A. Yes, I am.

4 Q. And have you reviewed the Dolans' record maintained
5 by your company for today's trial?

6 A. Yes, I have.

7 Q. And do you have personal knowledge of this loan based
8 on your review of those records?

9 A. Yes, I do.

10 Q. Do you know when this loan originated?

11 A. In 2005.

12 Q. Going to show you some exhibits. Exhibit 2 which has
13 already been --

14 A. Don't make it too small.

15 Q. Plaintiff's Exhibit 2 which has already been shown in
16 court today. That's a copy of the note?

17 A. Yes, it is.

18 Q. Okay. And Plaintiff's Exhibit 3. Is that a copy of
19 the mortgage?

20 A. Yes, it is.

21 Q. And in general terms, can you explain what a note and
22 mortgage are?

23 A. A note is a promise to pay an amount and the mortgage
24 secures the collateral or the real property of the note
25 amount.

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 Q. And did Mr. Dolan sign the note?

2 A. Yes, he did.

3 Q. And according to the terms of the note, this was an
4 interest-only note for 120 months?

5 A. Yes.

6 Q. Now, did Mr. and Mrs. Dolan sign the mortgage?

7 A. Yes, they did.

8 Q. Is there any reason why Lisa Dolan would sign the
9 mortgage but not the note?

10 A. Yes. Lisa Dolan was not becoming personally liable
11 on the note, but because she was a owner of the property,
12 she had to sign the mortgage as well as Mr. Dolan.

13 Q. And who was the original lender for the loan?

14 A. BB&T.

15 Q. And who is the current owner of the note and
16 mortgage?

17 A. FV-I in trust for Morgan Stanley.

18 Q. Which is the plaintiff in this case?

19 A. Yes.

20 Q. Okay. Do you know when the loan was sold from BB&T
21 to FV-I?

22 A. I believe July of 2010.

23 Q. Is it typical in the mortgage industry for loans to
24 be bought and sold like that?

25 A. Very common.

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 Q. When a loan is sold by one lender and purchased by
2 another, do the term of the note and mortgage change?

3 A. No.

4 Q. Do you remember the original amount borrowed?

5 A. \$721,000.

6 Q. And the what the property address was?

7 A. 540 -- the street name escapes me.

8 Q. Is it 540 Windward Point Court in Columbia, South
9 Carolina?

10 A. Yes.

11 Q. Has this loan always been serviced by SLS?

12 A. No, it has not.

13 Q. I believe you answered before, but when did SLS start
14 servicing this loan?

15 A. In January 2012.

16 Q. I'll show you what's marked Plaintiff's Exhibit 11.
17 Is this a copy the letter that was sent by SLS to
18 Mr. Dolan?

19 A. Yes, it is.

20 Q. And what is it notifying him of?

21 A. It's a welcome letter advising that SLS is now the
22 loan servicer, how to contact us, and where to make
23 payments.

24 Q. And it's hard to see, but it is dated January 18th,
25 2012?

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 A. Yes.

2 Q. But SLS didn't start servicing the loan until a few
3 days later, correct?

4 A. That's correct.

5 Q. Is SLS required to send this letter out?

6 A. Yes, we are.

7 Q. And who was the prior loan servicer?

8 A. Saxon.

9 Q. And do you know when Saxon serviced this loan?

10 A. They serviced it from July 2010 until it transferred
11 to Specialized in January 2012.

12 Q. And this is a 2005 loan, so do you know who serviced
13 it before Saxon?

14 A. BB&T.

15 Q. So it's possible for a lender who provides financing
16 for a loan to service the loan itself, correct?

17 A. That is correct.

18 Q. When a loan is service transferred, can you explain
19 typically what happens? I know you talked a little bit
20 about it before, but do you have anything to add?

21 A. Basically that -- when it goes through this rigorous
22 testing that I was talking about, they're looking at all
23 the financial data to ensure that it matches all the
24 written loan documents. And the quality control process
25 is to ensure that nothing is missing or nothing is added

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 that's inappropriate into the loan records.

2 Q. So do you know if in this particular case what you
3 described about service transfer, did it occur?

4 A. Yes, it did, and there were no errors found in the
5 servicing transfer. Everything matched.

6 Q. So when SLS started servicing this loan, did it
7 receive Saxon's and BB&T payment history?

8 A. Yes.

9 Q. Did it receive Saxon and BB&T's communication that
10 would have been sent out?

11 A. Yes.

12 Q. Would it have received its servicing notes?

13 A. Yes.

14 Q. Are you familiar with the prior lawsuit that was
15 filed in this case?

16 A. Yes, I am.

17 Q. Are you familiar with the 2009 lawsuit that was
18 filed?

19 A. Yes.

20 Q. Show you what's been marked Exhibit 4. According to
21 the complaint -- which is a copy of the 2009 complaint --
22 according to the complaint that was filed in paragraph 21,
23 it states that the loan was due for December 2008. Do you
24 see that?

25 A. Yes.

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 Q. Is that what the records show that you reviewed?

2 A. Yes.

3 MR. RADEKER: Objection, Your Honor. I mean she's
4 testifying off records that aren't here and they also --
5 they don't meet the business record exception. She's
6 already testified she has no idea what the processes are
7 at these company creating them.

8 THE COURT: Let me hear from you.

9 MR. GWYNNE: Your Honor, this may be a matter of law,
10 but my position is that a -- Ms. Poch has already
11 testified about the procedures, and certainly a servicer
12 can testify about the prior records of the prior servicer.

13 THE COURT: Yes, sir.

14 MR. RADEKER: She's testified about her company's
15 procedures. And she's also testified that she doesn't
16 know what the procedures were regarding records that the
17 previous servicer or the servicer before that.

18 THE COURT: Well, the Court finds -- it's overruled,
19 and the Court finds it complies with 803.6.

20 Go ahead.

21 BY MR. GWYNNE

22 Q. Ms. Poch, if they were due for December 1, 2008, that
23 means the last time he made a -- the Dolans made a
24 mortgage payment on time would have been
25 November 1st, 2008; is that's correct?

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 A. Yes.

2 Q. Now, was there eventually a foreclosure judgment
3 entered in the matter?

4 A. In the 2009 case?

5 Q. Yes.

6 A. Yes. There was.

7 Q. And that foreclosure judgment was eventually vacated
8 or dismissed; correct?

9 A. Yes, it was.

10 Q. And currently we're here on a 2012 foreclosure action
11 on the same property; is that correct?

12 A. That's correct.

13 Q. Now, are you familiar with the September 22, 2011,
14 agreement?

15 A. Yes, I am.

16 Q. Can you tell us about that agreement?

17 A. The Dolans were seeking to sell a small piece of
18 their property to parties who had purchased a property
19 address adjacent to theirs in order to allow ingress and
20 egress on that property. And Saxon, who was serving the
21 loan, agreed to a partial release of that small sliver of
22 property in exchange for the payment of \$65,250. In
23 addition, Saxon allowed the Dolans to list the property
24 for sale hoping to generate a short sale to satisfy the
25 loan and offered the Dolans the opportunity to apply for a

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 loan modification to cure the arrearages on the loan if
2 they so chose.

3 Q. I apologize. I'm trying to find that agreement so
4 we can...I'm sorry. Here we are. It's Defendant's
5 Exhibit 4. Is this a copy of the agreement you were
6 talking about?

7 A. Yes.

8 Q. And that has been gone over today?

9 A. Yes.

10 Q. Okay. Is it correct to say that -- who approached
11 who about this agreement starting about why this agreement
12 came to existence?

13 A. Mr. Dolan wrote to Saxon.

14 Q. And Saxon agreed to take a certain amount of money in
15 exchange for releasing that portion, correct?

16 A. That's right.

17 Q. And you may have already said it, but the amount of
18 \$65,250, right?

19 A. That's correct.

20 Q. And you mentioned the other terms were the easement
21 issue?

22 A. Yes.

23 Q. And Saxon required the borrower to keep the property
24 listed for sale?

25 A. Yes, they did.

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 Q. And the Dolans were also allowed to be reviewed for a
2 loan modification?

3 A. If they wanted to apply for one, they could.

4 Q. Can you explain what a loan modification is?

5 A. A loan modification is to -- if you're behind on your
6 mortgage to modify your loan to deal with the payments
7 that you're behind and get you to an affordable mortgage
8 payment.

9 Q. And why did Saxon require the borrower to keep their
10 property listed for sale?

11 MR. RADEKER: Objection. I mean, she's -- this would
12 just be speculation. He's asking her to speculate about
13 why some other company that's even not her company would
14 have done whatever it did.

15 MR. GWYNNE: Your Honor, the Court has already ruled
16 that she can testify about business records, and certainly
17 a contract is a business record.

18 MR. RADEKER: Well, that's not what he's asking her
19 to testify about. He's asking her to testify about what
20 their motivations were.

21 THE COURT: Rephrase the question. Let's see what we
22 got.

23 MR. GWYNNE: I'll rephrase, Your Honor.

24 BY MR. GWYNNE

25 Q. Ms. Poch, the agreement calls -- allows the borrowers

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 to list their property for sale; is that right?

2 A. Yes.

3 Q. Would the receipt of \$65,250 have brought the Dolans'
4 loan current?

5 MR. RADEKER: Objection. Again, she just testified
6 that her only knowledge would come from records.

7 THE COURT: Okay.

8 MR. RADEKER: The best evidence rule applies.

9 THE COURT: Okay. Let's take care of -- Madame
10 Forelady, this is one of those times I need to talk with
11 the lawyers. If you would take your jury out, please.

12 JUROR: Yes, sir.

13 (The jury left open court at 3:00 p.m.)

14 THE COURT: Okay. I take full responsibility for any
15 confusion because I was going to do this, put this on the
16 record anyway at a regular break we might would have. But
17 the Court finds that she is the custodian of records, and
18 under 803.6, she previously testified as to the records
19 being maintained and how the records were obtained by her
20 company. Dolans' counsel called the witness and elicited
21 this testimony as well as the fact that the witness
22 regularly testifies in other jurisdictions, including
23 Florida, as to records in the course of her employment.

24 The Court finds her to be the custodian of the
25 electronic records and will allow her to testify as to

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 anything contained in those electronic records normally
2 kept in the normal course of business.

3 Yes, sir.

4 MR. RADEKER: Thank you, Your Honor. I note this:
5 We -- while we respectfully disagree with that
6 assessment --

7 THE COURT: Yes, sir.

8 MR. RADEKER: It's true all it means is that she may
9 be qualified to lay a foundation to authenticate the
10 business records. It doesn't mean she can offer oral
11 testimony as to what's in there. She's testified her only
12 knowledge about it comes from reading the records.

13 THE COURT: Yes, sir.

14 MR. RADEKER: If you lay a foundation for the record,
15 maybe, and get into it evidence, maybe, but she can't get
16 up there and say the amount owed is X, or -- she's got to
17 lay a foundation through the documents. The best evidence
18 rule means a witness ordinarily is not permitted to
19 testify to the content of a writing, and that's where all
20 her knowledge comes from is contents of writing. And
21 she's testified to that.

22 THE COURT: That information you've already put into
23 evidence. It's in evidence. All these e-mails about
24 what's owed. Am I missing something?

25 MR. WYMAN: Servicing records. He put in the

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 servicing records. He wanted those in. Clearly --

2 THE COURT: You put the servicing records in.

3 MR. RADEKER: I put the servicing records in that
4 don't say what's owed.

5 THE COURT: Well, tell me. Are there not exhibits
6 over there, because I've been watching them up on the
7 screen that show an e-mail back and forth between the
8 Dolans and Mr. Flannigan and about what's owed and how it
9 was arrived at. I mean, am I missing something?

10 MR. RADEKER: There's an e-mail from him that
11 attaches the letter.

12 THE COURT: Okay.

13 MR. RADEKER: I mean, she could say this letter says
14 this. But I mean, I think she's vouching for the quality
15 of the records to say the amount is X. Like if she's a
16 custodian, then she can talk about the records in an
17 attempt to lay a foundation to get them in. And that's
18 all she can do. She can't just say the amount is X on the
19 basis of stuff that is not here.

20 THE COURT: Well, let me ask you this: The office
21 manager at my law firm where I practiced all those years,
22 could she not say -- could she not testify as to what
23 somebody owes me on an account?

24 MR. RADEKER: She could testify, "Here are invoices."

25 THE COURT: Okay. All right. I see your position,

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 but go ahead. Let me hear.

2 MR. WYMAN: Your Honor, I understand opposing
3 counsel's argument, but the payment history is here and
4 I -- getting ready to offer it in before he started
5 objecting to just her speaking about it.

6 MR. RADEKER: So -- well, might have been putting the
7 cart before the horse.

8 MR. WYMAN: Certainly, I think that may just be.

9 MR. GWYNNE: Your Honor, the witness has already
10 testified she has personal knowledge based on her review
11 of the record. I'm not sure -- am I supposed to bring the
12 computer systems here? She can say what was owed on the
13 debt at a certain time if she reviewed the records to
14 determine what that is.

15 THE COURT: She is custodian of the records. She can
16 testify to those records if she is the custodian. And
17 they're in electronic format these days. Nobody except --
18 I don't even know if a mom-and-pop grocery store keeps a
19 paper record anymore. I don't even have a paper grocery
20 list. It's on my iPhone, okay? Come on. She's the
21 custodian of the records. The Court so finds.

22 You can object. You're protected. Go ahead.
23 Anything else?

24 MR. GWYNNE: No, Your Honor.

25 THE COURT: And she can testify what's owed and she

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 testify as she looks at that record, that's what it is.
2 And you can object and put it on the record. You're
3 protected. Anything else before we bring the jury back?

4 MR. RADEKER: Your Honor, just to protect me on the
5 record, I would love it if the Court would note my
6 continuing objection to her testimony on this because it's
7 all based on the content of writings, so I don't have to
8 stand up and make it constantly.

9 THE COURT: So noted. Anything else?

10 MR. RADEKER: And I would object in advance to
11 this -- what I think they're about to offer as Saxon loan
12 history because it's not her company's records and she
13 testified she doesn't know what the procedures are under
14 which they created them.

15 MR. WYMAN: We should address --

16 THE COURT: Well, all right --

17 (Indiscernible cross-talk interrupted by reporter.)

18 MR. WYMAN: We would argue that the payment would be
19 admissible as a business record under 803.6, Your Honor,
20 and the case law in South Carolina 12th RMA Partners NCW
21 First (phonetic) clearly comes in. If the business
22 records of a prior servicer are not allowed in, then the
23 business would be eviscerated. Everything is electronic,
24 as Your Honor said.

25 THE COURT: The business records are what they are.

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 They're in electronic format. They are what they are.
2 The whole purpose of that rule is to ensure
3 trustworthiness of the record. Unless you are saying that
4 there's some reason to say this record is not trustworthy,
5 it's been altered or amended in some way, sir -- I'll be
6 happy to hear from you, but other than that, it simply
7 goes through the air from them over to here to the next
8 person. I can't tell you how it does it. My daughters
9 probably can, but I can't. But it's electronic.

10 MR. RADEKER: And I'd note the five elements to
11 what's commonly called the business records exception.
12 That the record has -- the record of entry has to be made
13 at or near the time of the event recorded; prepared by
14 someone with or from information transmitted by a person
15 with knowledge; made and kept in the course of regularly
16 conducted business activity; and then identified by
17 custodian or qualified witness and found to be trustworthy
18 by the Court. And I note that at least as to those first
19 three things, she's testified she doesn't know how these
20 records were made and she doesn't have any knowledge of
21 these other companies' process for creating them. And so
22 I note that she can't just say, "Oh, this is our business
23 record because we got them from somebody else."

24 And looking at this document, it clearly predates the
25 time that Specialized Loan Servicing took over servicing

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 of this loan because it goes back into 2010. She
2 testified about January 2012, and it's labeled Saxon
3 H-I-S-T for history. It's Saxon record. She doesn't know
4 a thing about how it's made. She can't lay the foundation
5 for it to come in. Just because she is a custodian, that
6 means she might be a person who could lay such a
7 foundation, but she said they can't.

8 THE COURT: She said they received in the ordinary
9 course of commercial transaction and they have safeguards
10 in effect, do they not?

11 MR. WYMAN: That's correct, Your Honor. That was the
12 testimony.

13 MR. RADEKER: And I would respectfully note that
14 doesn't satisfy the business records exception, sir.

15 THE COURT: Overruled, but protected on the record.

16 MR. RADEKER: Thank you, Your Honor.

17 THE COURT: Anything else?

18 MR. WYMAN: So is payment history coming into
19 evidence, Your Honor?

20 THE COURT: Payment history is coming in and she can
21 testify to all these business record. She's the
22 custodian. Anything else?

23 MR. GWYNNE: No, Your Honor.

24 (A discussion was held off the record.)

25 THE COURT: Everybody ready? Bring the jury in.

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 (The jury entered the courtroom at 3:08 p.m.)

2 BY MR. GWYNNE

3 Q. Ms. Poch, can you explain what a reinstatement quote
4 is?

5 A. It's a statement of all the amounts due to bring the
6 loan into current status.

7 Q. So if somebody misses their mortgage statement and
8 they want to pay a sum to bring it current, that's what
9 that would be?

10 A. That's correct.

11 Q. And whether they're two months behind or three years
12 behind, it's called a reinstatement statement, right?

13 A. That's correct.

14 Q. Can you say what typically makes up a mortgage
15 payment each month?

16 A. Well, there's payment -- well, in this case there's
17 payment for interest. Now, traditional loan there's a
18 payment for principal and interest and then additional
19 payment are paid each month for taxes and insurance, and
20 then the servicer annually pays taxes and insurance when
21 they come due from those funds received.

22 Q. So my question to you is: If there's a reinstatement
23 statement quote request, it may include other things other
24 than your normal monthly mortgage payment; is that
25 correct?

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 A. Yes. Other things that could be included besides
2 your monthly mortgage payment would be late charges. If
3 the loan had been accelerated and sent to foreclosure,
4 attorney's fees and costs could be included as well.

5 Q. And that's allowed under the terms of the note and
6 mortgage the borrower signed, correct?

7 A. Yes.

8 Q. Including the Dolans, correct?

9 A. Yes.

10 Q. I may have asked you this, but I want to be sure.
11 Saxon received the \$65,250 from the September 30th, 2012,
12 agreement; is that correct?

13 A. That's right.

14 Q. And does paragraph 2 of the mortgage that we've
15 already seen today state how the money is to be applied to
16 the loan?

17 A. Yes, it does.

18 Q. Did Saxon apply the \$65,250 pursuant to the terms of
19 the loan documents?

20 A. Yes, they did.

21 Q. Are you familiar with the payment history from Saxon
22 during that time to show that it was applied correctly?

23 A. Yes, I am.

24 Q. I'm going to show you what's been marked Plaintiff's
25 Exhibit 12, and I will hand that to you, and it is a long

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 document with a lot of numbers that probably won't be too
2 helpful if I put on there. But I'm going to hand that to
3 you. That's marked as Plaintiff Exhibit 12. Is that the
4 payment history -- what is that document?

5 (Plaintiff's Exhibit Number 12 was marked.)

6 A. This is Saxon's mortgage payment history that began
7 on July 22nd, 2010 and runs until January 20th, 2012.

8 Q. Okay. So that covers the time frame of September
9 30th, 2011, correct?

10 A. Yes, it does.

11 Q. Can you explain how the \$65,250 was...

12 A. Yes. The funds were applied to mortgage payments due
13 December 2008 through February 2011. There was an excess
14 that was placed and unapplied since it wasn't enough to
15 make a whole mortgage payment of -- I believe it was \$810.
16 Let me find it here. I'm sorry. This is taking me a
17 minute to locate it.

18 Q. Ms. Poch, while you're doing that, can I ask you a
19 question? I put page 11 on the screen. This is a copy of
20 what you have.

21 A. Okay.

22 Q. And I don't envy anyone who has to read this, but
23 does page 11 of the payment history show the \$65,250 being
24 applied to the loan the on September 30, 2011?

25 A. Yes, it does.

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 Q. Is it correct that the dates work up? They don't --
2 you don't go down the page. You sort of read the front
3 from back to front; is that right?

4 A. Yes, that's correct.

5 Q. Does the payment history show that \$65,250 was
6 received and then that money was applied to the oldest
7 payment that he owed and then was applied going forward;
8 is that correct?

9 A. That's correct.

10 Q. And you've already testified that was, I believe, 27
11 months of payment, correct?

12 A. That's correct.

13 Q. Was the \$65,250 enough to bring the loan current?

14 A. No, it wasn't. The funds were received in September
15 of 2011 and it was sufficient to make payment through
16 February of 2011. So the next payment due was March 2011.

17 Q. Now, the payments that -- the monthly payments that
18 the money was applied to is not the same, correct? It
19 varies?

20 A. That's correct.

21 Q. Why is that?

22 A. This loan adjusts annually every May based on the
23 LIBOR interest rate published in the Wall Street Journal.

24 Q. So it's a easily calculated number and that's spelled
25 out in the terms of the note?

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 A. Yes, it is.

2 Q. Now, according to paragraph 3 of the September
3 agreement, Saxon, at its sole discretion, had the right to
4 extend the timeframe to sell the time frame to sell the
5 property by two months; is that correct?

6 A. Yes, that's correct.

7 Q. And if Saxon agreed to it, then the Dolans would pay
8 them another \$3,000 for each of those two months; is that
9 correct?

10 A. Yes.

11 Q. Did Saxon ever invoke its rights to extend the time
12 period for the Dolans to sell the property for the
13 additional two months?

14 MR. RADEKER: Objection. That's not in this record
15 and not in any kind of regular business record. He's
16 just -- there's no foundation laid to indicate if she
17 would know whether that happened.

18 MR. GWYNNE: I'll rephrase.

19 BY MR. GWYNNE

20 Q. Ms. Poch, is there anything in Saxon's business
21 records to show that Saxon agreed to extend the time
22 period for the Dolans to sell their house by another two
23 months?

24 A. There is not.

25 Q. Now, the Dolans did attempt to send in the \$3,000; is

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 that correct?

2 A. Yes, they did.

3 Q. And that \$3,000 check was not enough to bring their
4 loan current in January of 2012 when they sent it in; is
5 that correct?

6 A. No, it was not.

7 Q. Even if the Dolans sent in another \$3,000 payment
8 that wasn't enough to bring their loan current; is that
9 correct?

10 A. No.

11 Q. Do you know what the amount they were still due after
12 the money was applied, the \$65,250?

13 A. \$35,200 and change.

14 Q. I'm going to show you what's been marked Plaintiff's
15 Exhibit 10. This is the e-mail that's been previously
16 discussed between Kevin Flannigan and Mr. Dolan. And
17 Mr. Flannigan worked at Saxon in October 2011; is that
18 correct?

19 A. Yes.

20 Q. The reinstatement quote that's been discussed dated
21 October 12, 2011 that was attached to that e-mail states
22 what the reinstatement amount would have been, correct?

23 A. Yes, it does.

24 Q. That's after the \$65,250 was applied to the loan; is
25 that correct?

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 A. That's correct.

2 Q. When a loan transfers -- I'm not sure I asked you
3 this, but when a loan transfer between servicers, that
4 doesn't affect the terms of the note and mortgage, does
5 it?

6 A. It does not.

7 Q. So SLS would have been bound by the agreements that
8 the Dolans made with the prior servicer, correct?

9 A. Yes.

10 Q. Did SLS ever invoke its rights under paragraph 3 of
11 the September 2011 agreement to extend that time period by
12 two months?

13 A. No.

14 Q. Are you aware if any of the September 11th agreement
15 terms have not been complied with, or have they been
16 complied with by SLS?

17 A. They've been complied with.

18 Q. When the \$65,250 was received by Saxon, are you aware
19 if they recorded a partial release for that 1,043 square
20 foot section?

21 A. Yes, they did.

22 Q. And I believe that's been made Plaintiff's Exhibit 9;
23 is that correct? Is that the partial release?

24 A. Yes.

25 MR. GWYNNE: One moment, Your Honor.

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 BY MR. GWYNNE

2 Q. Just a few more questions, Ms. Poch. Now, according
3 to the payment history that you reviewed, who has been
4 paying the county tax and insurance on this property since
5 2009?

6 A. Saxon, and then when the servicing transferred, SLS.

7 Q. Can you explain in general terms what would make a
8 servicer pay those two charges?

9 A. Yes. If we receive notice from the taxing authority
10 that the taxes are delinquent, we advance the tax because
11 the tax is a prior lien senior to the mortgage. If the
12 tax isn't paid and the taxing authority forecloses its
13 lien, it would then extinguish the mortgage. So we've got
14 to keep that current to ensure our lien isn't
15 extinguished. As far as hazard insurance, it's certainly
16 in everybody's interests to keep the property ensured in
17 the case of damage, vandalism, or fire.

18 Q. So in general terms, you're protecting your
19 collateral, correct?

20 A. Yes.

21 Q. The house could burn down and you lose your
22 collateral. The house could be sold at a tax sale and
23 lose your collateral; is that correct?

24 A. That's correct.

25 Q. Now, just because -- if a loan is in default, a

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 borrower can still pay his taxes, correct?

2 A. Absolutely.

3 Q. And if you received notice that he paid his taxes,
4 you wouldn't pay them?

5 A. That's right.

6 Q. And when a loan is default, the borrower can still
7 take out an insurance policy, correct?

8 A. I assume they can, yes.

9 Q. And if you know there's an active insurance policy on
10 a piece of property, you're not going to buy your own
11 policy; is that correct?

12 A. No.

13 Q. Are you aware of what the taxes and insurance that
14 have been paid on this property?

15 A. I think the total amount due currently is about
16 \$50,000.

17 Q. I'm going to show you Plaintiff's Exhibit 10 again.
18 We've talked about the 35,000 figure that Mr. Flannigan
19 mentioned. But if you look at paragraph 2, he says, "I
20 also need to find out -- you have an escrow shortage of
21 \$26,039.05. This is not included in the \$35,603.88."

22 Can you tell me what an escrow shortage is?

23 A. An escrow shortage is for the amount that's been
24 advanced on behalf of the borrower by Saxon to pay taxes
25 and insurance that had been unreimbursed by the borrower.

LORETTA POCH - DIRECT EXAMINATION BY MR. GWYNNE

1 Q. That's money that a borrower still owes, correct?

2 A. Yes, it is.

3 Q. He would have the pay that to bring his loan current,
4 typically?

5 A. Yes, he would.

6 Q. Now, Kevin mentions that he's attaching a breakdown
7 of that amount. Is this that breakdown? Says \$26,039.05?

8 A. Yes, it is.

9 Q. And this is from September 30th, 2011; correct?

10 A. Correct.

11 Q. So since that date 2012, 2013, SLS have and Saxon
12 have been paying the property taxes and hazard insurance?

13 A. That's correct.

14 MR. GWYNNE: No further questions, Your Honor.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. RADEKER

18 Q. Thank you. Now, you don't know because you weren't
19 there whether the phone call that Mr. Dolan testified to
20 the guy Andrew Farmer was ever made?

21 A. I don't know.

22 Q. Okay. And so you also don't know wherever Kevin
23 Flannigan ever told Mr. Dolan there was an amount to bring
24 this loan current, right?

25 A. We have an email from Mr. Flannigan to Mr. Dolan.

LORETTA POCH -- CROSS-EXAMINATION BY MR. RADEKER

1 Q. How about before that? Do you know if he told him
2 anything before that?

3 A. There's no record of a discussion about the total
4 amount due.

5 Q. So if Kevin Flannigan told Mr. Dolan there was an
6 amount to bring this loan current but did not put in the
7 records of Saxon, you would have no idea about it?

8 A. That's right.

9 Q. I want to show you what we were just looking at, and
10 that's Plaintiff's Exhibit 10. Let's look at the second
11 page of it. You -- all right. Says, "Please be advised
12 we must receive this amount no later than October 14th,
13 2011 to stop collection foreclosure proceedings."

14 Do you see that?

15 A. Yes.

16 Q. Now, on November 16th, 2011, foreclosure action was
17 dismissed, right?

18 A. The prior foreclosure, yes.

19 Q. The one that was going on when this was sent, right?

20 A. Yes,

21 Q. Okay. One last question for you, ma'am. If Saxon's
22 records are wrong, then that means what you know about
23 this case because it's based on those records is also
24 wrong, correct?

25 A. That would be correct.

LORETTA POCH - REDIRECT EXAMINATION BY MR. GWYNNE

1 Q. Thank you.

2 MR. RADEKER: I don't have anything further.

3 MR. GWYNNE: Just briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. GWYNNE

6 Q. Ms. Poch, do you have any reason to think that
7 Saxon's business records are wrong?

8 A. No. All of their records went through our rigorous
9 testing and were found with no errors.

10 Q. Is it common in your industry to give reinstatement
11 quotes verbally?

12 A. Uncommon.

13 Q. In fact, it would be bad business to give verbal
14 reinstatement quotes?

15 A. Absolutely.

16 Q. They've typically in writing, correct?

17 A. Yes,

18 MR. GWYNNE: No further questions, Your Honor.

19 THE COURT: Thank you. Ma'am, you may step down.

20 Yes, sir.

21 MR. GWYNNE: I was returning an exhibit, Your Honor.

22 THE COURT: Okay. Do you have another witness?

23 MR. GWYNNE: I'm sorry. No, sir. Okay. Plaintiff
24 rests, Your Honor.

25 THE COURT: All right. Both sides have now rested.

1 Madame Forelady, it's necessary for me to take up a matter
2 or two and one of the matters I don't mind telling you is
3 going to be we are really close on that bubble to
4 continuing on and working -- I'll talk with the lawyers
5 about -- tell you what let's do. I'm going to let you go
6 out while we tend to a couple of things and I want Madame
7 Forelady if you would kind of poll your jurors and see if
8 there's anyone that has a child or children that have to
9 be picked up at 5:00 or something like that.

10 JUROR: Yes, sir.

11 THE COURT: And whether or not the juror would want
12 to stay a little longer -- you poll the jurors and I'll
13 talk with the lawyers about that too. Okay. Please go
14 out and to the jury room.

15 (The jury left open court at 3:28 p.m.)

16 THE COURT: Motions?

17 MR. GWYNNE: No motion, Your Honor.

18 THE COURT: Okay.

19 MR. RADEKER: None from me.

20 THE COURT: Okay. All right, gentlemen. Let's talk
21 nuts and bolts real quick.

22 (A recess was taken from 3:29 p.m. to 4:29 p.m.)

23 (The jury entered the courtroom at 4:30 p.m.)

24 THE COURT: Madame Forelady, any issues from the
25 jury?

1 JUROR: No, sir.

2 THE COURT: Okay. At this time where we are in the
3 proceedings is the case has now ended as far as the
4 evidence goes. I'm going to ask you to pay close
5 attention to the closing statement of the lawyers, after
6 which I'm going to charge you the law, after which I'll
7 ask you to retire to your jury room while we gather up all
8 of these exhibits. I tell you ahead of time that all
9 these exhibits that have been marked belong to you, the
10 jury, for your consideration. Once all those are
11 accounted for, they're coming back to you and you then may
12 begin your deliberations. Pay attention to the lawyers,
13 please.

14 Gentlemen?

15 CLOSING ARGUMENT

16 BY MR. RADEKER

17 Thank you, Your Honor. When y'all go back there in
18 that jury room, you're going to have three jobs. First
19 job, you're going to have to go over the evidence in this
20 case and reach a determination for yourself about what it
21 is you think is going on in the case. But keep that open,
22 keep that flexible because the next job is to discuss with
23 each other why you feel the way you feel about the case
24 and what the result ought to be. And the third job is
25 y'all are going to have to come to a decision, a unanimous

1 decision in this case. And this is going back to a breach
2 of contract came.

3 Now, did FV-I breach a contract with the Dolans?

4 Yes. Let's talk about why. In opening, I told you about
5 the telltale signs that you're going to see. Well, we saw
6 them. FV-I and their servicers, they didn't treat this
7 loan right after this payment was made the way you would
8 treat a loan that was still delinquent. Let's look at
9 some things. FV-I gets the money September 30, 2011.
10 This will go back there for you. "We received the wire
11 this morning." Look at their own internal notes.

12 October 1st, -- October 10th, rather. I'm sorry. Ten
13 days later. "Kill and bill FC. Money has been received."
14 Next entry, "Shut down foreclosure process due to loss
15 mitigation activity," and it's there again in case someone
16 forgot to do it.

17 FV-I made a lot of this October 12th letter sent
18 out two days after this notice was made saying, "end the
19 foreclosure, shut it down." What does it say? It says,
20 "Here's the amount we must receive no later than
21 October 14th, 2011 to stop collection
22 procedures/proceedings." Now, Mr. Dolans testified --
23 said, Well, worked at some places sometimes. Stuff
24 doesn't get credited immediately. And I'll tell you if
25 you look at these notes, you see that it doesn't get

1 credited automatically. What the notes say is somebody
2 had to give directions on how to apply the payments,
3 because they give those directions in the notes.

4 And lo and behold, this stopping foreclosure
5 proceedings, it happened because they moved -- here's them
6 moving saying I want the court to enter this order with
7 this, an order that releases the foreclosure portion of
8 the judgment and closes the case. And what does it say?
9 The note and mortgage of the defendant are -- that's the
10 Dolans -- are hereby reinstated.

11 Now, banks don't dismiss foreclosure actions when
12 people haven't brought the loans current. They don't have
13 any reason to. They have no incentive to. And it's
14 entirely consistent with what it is that Kevin Flannigan
15 told Mr. Dolan about what the amount to bring this loan
16 current was. Now, you heard from Loretta Poch and she
17 said, "Well, that's not right." But respectfully to
18 Ms. Poch, I would submit this: She doesn't really know
19 anything about what happened. All she can look at are
20 records, someone else's records, not even her own
21 company's records. And she told you if those records are
22 wrong, everything she knows about this is also wrong. So
23 what she has to say, take it with the appropriate amount
24 of grains of salt.

25 And once they switch servicers, this loan continued

1 to be treated as though it had been brought current.
2 January 18th, 2012. First letter from Specialized Loan
3 Servicing, payment amount not 56 some odd thousand
4 dollars. \$1877.62. One payment. Here's your same
5 payment. And look at the reasons why it went to
6 foreclosure. We know what the motive might be. Motive
7 might be this property on the lake is worth some money,
8 about \$950,000 -- \$850,000. If you give \$100,000 discount
9 for selling it fast like a bank would do, liquidating it
10 out of foreclosure on a loan that would be \$721,000 if
11 it's brought current.

12 Let's look at the instructions to begin foreclosure.
13 When did it happen? November 30th, 2011. No time at all
14 after this thing was dismissed. The notes, payment date
15 of October 3rd as you can see, the payments aren't
16 credited automatically. They got them on the 30th,
17 didn't do anything with them for a couple days. The
18 valuation -- and here's the reason. Other. See notes.
19 Not failure to make payments. Not they're behind. Other.
20 See notes. Now, I'm not in the banking industry, but I
21 can tell you that probably failure to make the payments is
22 overwhelmingly the most common reason why someone says
23 send a loan to foreclosure. And I bet you if that had
24 been the reason, they would have written that on
25 nonpayment. Not what we've got. Other. See notes.

1 Do -- we have a breach of contract for another
2 reason? We would be here even if there weren't this other
3 breach of contract. Sure, we would. Mr. Dolan testified
4 Saxon extended the deadline. Mr. Farmer at Saxon, acting
5 on behalf of the plaintiff, told Bryon Dolan, "This is
6 where to send in the first of your \$3,000 payments." Sent
7 it in, they sent it back. There's definitely a breach of
8 contract in this case. When they say send in the payment,
9 they've extended the deadline. The discretion is to
10 extend the deadline, not whether to accept each payment.
11 When they said do the thing that you must do when we
12 extend the deadline, they extended it.

13 Look at what happens when they send it back. Is it
14 because the payment amount is not correct? No. Is it
15 because there's been a default on a repayment plan
16 agreement? No. Is it because the funds are insufficient
17 to liquidate the account? No. What's the reason? Other.
18 Return due to status of loan, whatever that is.

19 So we've got a breach of contract here. The standard
20 by which you'll weigh this evidence as we talked about the
21 opening statement is just a preponderance of the evidence.
22 Does the evidence tilt even more slightly in one party
23 favor than another on this question. Here it all is. It
24 tilts in favor of the Dolans.

25 Take a look at this. Here is where Kevin Flannigan

1 talks about the amount that's due Saxon and he says, "The
2 revised amount due Saxon," and this is what we revised it
3 to be. This is what we agreed to take. \$65,250. Once we
4 get this, we'll file the release of property. Why would
5 he say that if it weren't true?

6 This is the verdict form that will go back with you
7 to the jury room. You must agree unanimously on the
8 verdict. You have to come to a decision together. Once
9 you completed this form, Madame Forelady should sign it.
10 Did the Dolans prove by a preponderance of the evidence
11 that FV-I, Inc. breached the contract? Yes. Now, if you
12 answer yes, got to give an amount of damages. That amount
13 is up to y'all. We'll talk to you about how you might
14 calculate it, some various figures.

15 \$30,000. That's what somebody is willing to pay for
16 that part of the yard out there. The Dolans don't own
17 that anymore. Didn't any get benefit out of this deal.
18 They don't have that. So maybe it's that. \$65,250.
19 That's the amount of money that went to Saxon. No benefit
20 to the Dolans from that. Still facing foreclosure today.
21 Because after we have this trial, there's going to be
22 another one on the plaintiff's foreclosure claim. That
23 will be heard by a judge. That judge is going to be bound
24 by what this jury determines as to the issues that are
25 before you all today. Maybe there's another way to figure

1 it. Ms. Poch testified that the plaintiff has paid taxes
2 and some insurance on the property. Mr. Dolan testified
3 he'd gladly repay that if FV-I would just honor its
4 agreement under the contract, so what is this corporate
5 advances? Who knows. But maybe it's taxes and insurance.

6 Total reinstatement \$167,893. That's what's on this
7 from them a week ago today. Here's the math on that.
8 \$167,893.92 minus \$33,421.93 leaves \$134,471, essentially
9 interest that has accrued on this loan since these people
10 quit allowing Mr. Dolan to make payments and sent it back
11 to him. I think what we've got here is something where
12 FV-I is using one servicer and then they transfer over to
13 another servicer, and this other servicer says, "We don't
14 know anything about this," and that's what's led these
15 people to be where they are now.

16 But y'all can make it right. All the law requires of
17 you is if there is a breach of contract is put the parties
18 in the position they would be in if FV-I had performed
19 under the contract. Where would they be? They wouldn't
20 be in foreclosure. They would be current on this. It
21 would apply all this money correctly. And I'll tell you,
22 if Kevin Flannigan gave this man the wrong figure, he's
23 stuck the plaintiff with that figure. He said this is the
24 revised amount due.

25 You know, when I grew up my parents used to say to me

1 a man's word is his bond. Now corporations, they want to
2 be treated like people. The real question is: Are we
3 going to really treat them like people? Hold them the
4 their word just like any of us would be held to ours.

5 Thank you.

6 MR. GWYNNE: Thank you, Your Honor may it please the
7 Court.

8 THE COURT: Yes, sir.

9 CLOSING ARGUMENT

10 BY MR. GWYNNE

11 Good afternoon, ladies and gentlemen. Once again,
12 I'm Charlie Gwynne on behalf of the plaintiff. I just
13 want to first thank you for being here. It's been a long
14 day. We're nearing toward the end of it.

15 I said in the opening this was not a complicated
16 case. You just heard from the Dolans' attorney. He had
17 to piece his story together with 10 or 12 documents. The
18 only document I really need to look at it is this one
19 right here that you'll have back there in the jury room.
20 I promise you I will not read this again to you, but this
21 is a one and a half page document that is unambiguous and
22 states what the term of this deal are. Very briefly,
23 paragraph 2 states -- talking about the money being
24 received by Saxon to release the small portion of land.

25 First of all, my client agrees there was a contact.

1 This was it. The evidence presented to you today shows
2 that my client received that money and applied it to the
3 loan per the terms of the loan agreement. If you remember
4 I went through this document word for word, point by point
5 with Mr. Dolan, and at the end of every paragraph I said,
6 "Did all the parties comply with it?" and he said yes.

7 Mr. Dolan's versions of events today do not make
8 sense. They're not logical. Why would Saxon require
9 Mr. Dolan to sell his property if he was current? Why
10 would Saxon require Mr. Dolan or even offer Mr. Dolan to
11 enter into a loan modification if he was current on his
12 loan? You also saw an e-mail from Kevin Flannigan dated
13 less than two weeks later which sends him a reinstatement
14 quote of \$35,000. According to the reply e-mail seven
15 minutes later, Mr. Dolan acknowledges the agreement,
16 acknowledges the figures, and says he'll take a look at it
17 and says he's trying to sell his property. I read a
18 deposition if you remember where he told me in August of
19 2013 that he hit the roof or hit the floor when he saw
20 that figure. I don't think the e-mail supports that story
21 or supports the story he told in court today.

22 One thing that the Dolans have tried to insinuate is
23 that somehow my client was gaining an advantage by
24 entering into this agreement due to the valuation of their
25 property or something like that. That's not what the

1 evidence has shown. The evidence has shown that they were
2 already in -- they had a foreclosure judgment against them
3 when the agreement was entered into. And after this
4 agreement was signed, the foreclosure action was dismissed
5 in November about a month and a half later. You can't
6 sell a property that has a foreclosure judgment. This
7 wasn't charity by my client. It was a simply a deal that
8 worked out between Mr. Dolan and my client to avoid
9 foreclosure.

10 This agreement has two options to avoid foreclosure:
11 A short sale of the property or a loan modification. This
12 isn't charity. This isn't some conspiracy in order to
13 sell the house at a certain amount. I submit to you that
14 lenders do not force people to sell houses that are
15 current. Lenders do not force people to get modification
16 to get a higher interest rate like Mr. Dolan said. That's
17 not what lenders do.

18 You've heard from Ms. Poch. She has gone through the
19 payment history with you. The payment shows that on
20 September 30th, 2011, Saxon received the money and
21 immediately applied it to the loan, but did not bring it
22 current. The Dolans cannot dispute that. The payment
23 history, which is Exhibit 12, Plaintiff's Exhibit 12
24 clearly shows that. Another term of this agreement that's
25 in dispute by the Dolans is this idea of this extension.

1 As I said before, I read this agreement with you. I don't
2 know about you, but when the term -- the two words "sole
3 discretion" are used, that's pretty straightforward. It's
4 Saxon's sole discretion to have extended that time frame.
5 Now, a logical reading of the contract means if you're
6 close to selling your house, we may consider extending the
7 offer. That's a logical reading of that contract.

8 There has been no evidence presented to you other
9 than Mr. Dolan's statements that either FV-I or Saxon or
10 SLS agreed to that extension. The only evidence is that
11 Mr. Dolan attempted to unilaterally send in money in order
12 to have that extension. There's simply no evidence that
13 the plaintiff, my client agreed to that extension. What
14 this document pretty much boils down to is it's a release
15 agreement. This was benefiting all the parties.
16 Mr. Dolan wanted his neighboring property that he lost in
17 a foreclosure to sell at a higher amount. That makes
18 sense. If the property next to you sells for more, that's
19 almost always going to increase your property.

20 So this is simply a release document. He agreed. He
21 wasn't forced to sell this 1043 square piece of land. He
22 agreed to it, Saxon agreed to take a certain amount of
23 money in order to give the release. That's all this
24 document is, and in exchange, they allow him to avoid
25 foreclosure. Avoiding foreclosure works for all the

1 parties, including the bank. If they can get a short
2 sale, they'll take that any day over foreclosure. If they
3 can get a loan modification and get the loan performing
4 again, they will do that.

5 Opposing counsel said in his closing that, "Banks do
6 not dismiss foreclosures unless the loan is current."
7 There's no evidence of that. That's only his statement,
8 and I'm here to tell you that's not true. Foreclosure
9 actions are dismissed all the time for various reasons.
10 The evidence that the 2009 foreclosure action was
11 dismissed to me -- the fact that the 2009 foreclosure
12 action was dismissed does not mean loan was current. And
13 to find another reason, you simply have to look at this
14 document. It was to allow the Dolans to try to sell their
15 property. Nobody is going to buy a property in
16 foreclosure, that has a foreclosure judgment against it.

17 The judge is going to instruct you on the law in a
18 minute, but I submit to you the Dolans have not proved
19 their case. They have not provided you with evidence to
20 prove that my client breached the contract. There's three
21 main elements to breach of contract: One, there has to be
22 a valid contract. That's not in dispute. We all agree
23 the September 2011 document is a contract. The second
24 element is breach. One of the parties has to breach the
25 terms of the agreement, which basically means break a term

1 and I submit to you there's been no evidence that my
2 client breached the agreement. As I said, Mr. Dolan said
3 we complied with all of it. And finally, in order to be
4 successful on a breach of contract claim, the Dolans would
5 need to assert or prove they've been damaged in some way.

6 The Dolans have not proven any damages. They agreed
7 to sell this piece of property the 1,043 feet of land.
8 They agreed to do it. The testimony that you've heard has
9 shown that Mr. Dolan and Ms. Dolan have been living in
10 this 5400 square foot house on Lake Murray since
11 November 2008, and they've not made a mortgage payment, a
12 timely mortgage payment since then. I ask again that you
13 find for my client and dismiss the Dolans' claims against
14 my client. Thank you again for your time today.

15 THE COURT: Yes, sir.

16 MR. RADEKER: Thank you.

17 CLOSING ARGUMENT

18 BY MR. RADEKER

19 What a bank is going to do is what's in the bank's
20 interests. That's what banks do in the modern world. And
21 because a bank is going to do what's in the bank's
22 interest -- nothing wrong with self-interest -- but
23 there's something wrong with breaking a contract. They're
24 going to not say things like this or get a judge to order
25 things like this if those things are not true. Bank has

1 no motivation to get an order to say the note and mortgage
2 of the defendant are hereby reinstated if that is not the
3 case. None at all. What's not logical is for this whole
4 foreclosure case to have been dismissed if this payment
5 wasn't supposed to bring the loan current. Because it
6 actually brought it current by agreement.

7 Now, who did we not hear from in this case? We did
8 not hear from Kevin Flannigan. Why didn't we hear from
9 him? If he something different to say than what Mr. Dolan
10 had to say about what happened, I submit to you they would
11 have brought him here to testify. They did not do it. I
12 think they're scared of what his testimony would be if he
13 were to answer honestly. We didn't hear from Andrew
14 Farmer. Didn't bring him down here to say this telephone
15 call did not happen. Chose not to try to contradict
16 Mr. Dolan about that because they don't have anything to
17 contradict him with.

18 No payments since 2008. Well, \$65,250 is quite a
19 mortgage payment in my book. We just ask that you keep
20 that in mind when you retire to the jury room. What's
21 illogical would be for all of these things that are in
22 these documents to have been said, written, if this loan
23 had not been reinstated. Thank you.

24 THE COURT: Thank you, gentlemen.
25

JURY CHARGE

THE COURT: Madame Forelady, ladies and gentlemen of the jury. You have seen and heard the evidence presented as well as the arguments of counsel, and it is now my duty and obligation to instruct you on the law that is applicable in the case. It will then be your solemn duty and obligation to begin your deliberations through which process you will decide the facts, apply the law as I instruct, and render a fair and impartial decision. It is your exclusive duty to determine what the facts are in this case. You do that based on your own common sense examination and evaluation of the testimony and other evidence received during the trial of this case.

You 12 jurors alone will decide what effect, value, and weight is to be given to any particular testimony or other evidence received. Quite simply, your ultimate goal is to find the truth in this case, and by doing so, you will have fulfilled your obligation as jurors in giving both parties a fair and impartial trial based on the evidence presented and the law applicable to this case.

You have heard the evidence and the arguments, and I will now explain to you the law that applies. As I previously stated to you, this case originated as a foreclosure action brought by FV-I or FV-1 against Bryon Dolans and Lisa Dolan. The Dolans have brought a

1 counterclaim for breach of contract against FV-I. The
2 Dolans are alleging they've been harmed by FV-I's breach
3 and are asking you to be compensated for those damages
4 they have incurred.

5 Now, under our constitution and code of laws, only
6 you, the jury, can make the findings of fact in the case.
7 I am not permitted to tell you how I feel about the
8 evidence that has been presented, and throughout this
9 trial, I have intended to be fair and impartial toward
10 each of the parties involved. As previously stated to
11 determine the facts in the case, you will have to evaluate
12 the credibility or believability of the witnesses. In
13 establishing the facts, you, the jury, can believe as much
14 or as little of each witness's testimony as you think
15 proper. You may believe the testimony of a single witness
16 against many witnesses, or just the opposite. You may
17 believe part of a witness's testimony and disbelieve the
18 rest. The fact that testimony is not contradicted
19 directly does not render it undisputed, as you must first
20 gauge the credibility and believability from which such
21 testimony comes. Throughout this process, you have but
22 one objective and that is to seek the truth regardless of
23 its source.

24 The same constitution and law of South Carolina which
25 designates and makes you the finder of the fact also makes

1 me the instructor of the law. You must accept the law as
2 I now give it to you, and if I am wrong, there is a
3 another place and time for that error to be considered
4 and, if necessary, corrected. But for now you must accept
5 the law as I give it to you, and this means you should not
6 be concerned what you think the law should be or ought to
7 be, only what I now charge you the law in South Carolina
8 is.

9 There are two types of evidence generally presented
10 during a trial, direct evidence and circumstantial
11 evidence. Direct evidence is the testimony of a witness
12 who claims to have actual knowledge of a fact, such as an
13 eyewitness. It is evidence which immediately established
14 the main fact to be proved. Circumstantial evidence is
15 proof of a chain of facts or circumstances indicating the
16 existence of fact. It is evidence which immediately
17 establishes the collateral facts from which the main fact
18 may be inferred. Circumstantial evidence is based on
19 inference and not on personal knowledge or observation.
20 It is proof that does not actually establish the fact in
21 question, but that asserts or describes something else
22 from which you may either reasonably infer the truth of
23 the fact or at least reasonably infer an increase in the
24 probability that the fact is true.

25 Circumstantial evidence -- for circumstantial

1 evidence to be sufficient to warrant the finding of fact,
2 the circumstantial evidence must lead to that fact with
3 reasonable certainty. The law makes absolutely no
4 distinction between the weight or value to be given to
5 either direct or circumstantial evidence. Nor is a
6 greater degree or certainty required of circumstantial
7 evidence than of direct evidence.

8 The burden of proof in the case, ladies and
9 gentlemen, is by the preponderance of the evidence. A
10 preponderance of the evidence simply means the greater
11 weight of the evidence. It is evidence which, as a whole,
12 shows that the facts sought to be proved is more likely
13 true than not. This can be illustrated by imagining a set
14 of scales. When the case begins, the scales are even.
15 After all the evidence has been presented, if the scales
16 remain even or if they tip slightly in favor of FV-I, then
17 the Dolans have failed to meet the burden of proof and
18 would not be entitled to recover in this case. If, on the
19 other hand, the scales tip even slightly of the Dolans,
20 the Dolans would have met the burden of proof, and you
21 should return a verdict for them. The preponderance of
22 the evidence is not determined by the number of witnesses.
23 Instead it must be determined by the greater weight of the
24 evidence.

25 Now, in South Carolina our courts have held that

1 there is no distinction between a corporation and
2 individuals. A corporation is a person in the eyes of the
3 law. A corporation is entitled to the same fair and
4 impartial consideration and to justice by the same legal
5 standards as an individual.

6 Now, the questions of fact that you are to determine
7 are in the papers called the pleadings where it is alleged
8 by the Dolans that FV-I breached a contract. Now, what is
9 a contract? A contract is agreement between two or more
10 parties, the preliminary step of the making of which is an
11 offer by one and acceptance by the other in which the
12 minds of the parties meet and concur in understanding the
13 terms. A contract is the meeting of the minds of at least
14 two parties. It involves an offer and an acceptance, and
15 must bind both parties. The essentials of a contract are:
16 A person or entity able to contract, a person or entity to
17 be contracted with, a thing to be contracted for, good and
18 sufficient consideration, clear and explicit words to
19 express the contract, and the assent of both the
20 contracting parties.

21 In South Carolina, a contract may be in writing or it
22 may be oral, that is by word of mouth, or it may be a
23 combination of those types, that is some things in writing
24 some things orally, or by word of mouth. A contract
25 contemplates an agreement enforceable at law between two

1 or more parties for the doing or not doing of some
2 specific thing. And the contract must create legal
3 obligation. A contract is an agreement which creates an
4 obligation and its essentials are: Competent parties,
5 subject matter, consideration, mutuality of agreement, and
6 mutuality of obligation.

7 A contract is a transaction involving two or more
8 parties where each becomes obligated to the other with
9 reciprocal right to demand performance of what is promised
10 by each respectively. There exists in every contract an
11 unspoken but legally enforceable promise of good faith and
12 fair dealing.

13 To recover for a breach of a contract, a party must
14 establish three elements by the preponderance of the
15 evidence: One, a binding contract entered into by the
16 parties; two, breach or unjustifiable failure to perform
17 the contract; and three, damage suffered by the party as a
18 direct and proximate result of the breach. A contract may
19 give a right to demand performance but no cause of action
20 arises until a party refuses or neglects to perform some
21 duty required by the terms of the contract. The party
22 claiming breach of contract must prove a breach or
23 unjustifiable failure by the other party to perform the
24 contract.

25 A person who signs a contract or other written

1 document cannot avoid the effect of a document by claiming
2 he did not read it. A person signing a document is
3 responsible for reading the document and ensuring its
4 contents. That is to say every contracting party owes a
5 duty to the other party, to the contract, and to the
6 public to learn the contents of a document before he or
7 she signs it. One who signs a written instrument has a
8 duty to exercise reasonable care to protect himself or
9 herself and such duty to requires that he read the
10 contract which he or she signs. Simply stated, a person
11 who signs a contract or written document is bound by the
12 terms and condition of the writer.

13 Now, what are damages recoverable under a contract
14 theory? The damages recoverable for a breach of a
15 contract are those which flow as a natural consequence of
16 the breach or those damages which may be reasonably be
17 supposed to have been within the contemplation of the
18 parties at time the contract was entered into. Generally,
19 the damages to which one is entitled for a breach of
20 contract are those which arise naturally from the breach,
21 or those which reasonably may have supposed to have been
22 within contemplation of the parties at the time the
23 contract was entered into.

24 One who seeks to recover damages for a breach of
25 contract to which he was party must show that the contract

1 has been performed on his part or at least that he was, at
2 the appropriate time, able, ready, and willing to perform
3 it. A party who has been injured by the breach of a
4 contract is entitled to recover the amount of the loss.
5 That is to say he is entitled insofar as this can be
6 done by a monetary award to be placed in the same position
7 that he would have occupied if the contract had been
8 performed. Where two parties have made a contract which
9 one of them has broken, the damages which the other party
10 ought to receive in respect to such breach of contract
11 should be such as may be fairly and reasonably considered
12 to arise naturally occurring and according to the usual
13 course of things from the breach of the contract itself,
14 or such damages as may be reasonable supposed to have been
15 within contemplation of the parties at the time they made
16 it as a probable result of the breach.

17 Now, ladies and gentlemen, you have been sworn as
18 fair and impartial jurors sworn to impartially try and
19 determine the facts of the case, and when you comply your
20 oath to do so, no one has a right to criticize your
21 verdict and you will have fully discharged your duty as
22 jurors. You are to decide this case according to the
23 testimony that you have heard from the lips of the sworn
24 witnesses, along with other evidence introduced during the
25 trial.

1 Now, during your deliberations you may only discuss
2 the case in the jury room with your fellow jurors because
3 they have seen and heard the same evidence you have seen
4 and heard. However, you must not discuss the case with
5 anyone else until you have returned a verdict and the case
6 is at an end. Whenever a member of the jury requires a
7 break whether it be for smoking, restroom, or otherwise,
8 please discontinue your deliberations until that juror
9 returns. After your service in this trial has ended, you
10 have the right to either refuse to discuss the verdict or
11 to discuss the verdict as much as you choose to do so. If
12 you choose to discuss the verdict, you are able to stop
13 any discussion at any point, and if the person with whom
14 you are speaking continues to discuss the verdict, please
15 report that person to the Clerk of the Court.

16 Now, ladies and gentlemen, your verdict must be a
17 unanimous one. Madame Forelady, when the jury agrees on a
18 verdict, you will indicate your verdict in the space
19 provided on the jury form and sign your name as the
20 forelady, and then knock on the jury room door and inform
21 the bailiff that you have reached a bailiff. At that
22 time, we will return you to this courtroom and receive
23 your verdict.

24 Now, in just a moment Madame Forelady and ladies and
25 gentlemen, I'm going to ask you to retire to your jury

1 deliberation room. I'm going to ask you not to begin your
2 deliberations until you receive this piece of paper I'm
3 about to explain along with all the exhibit. This, Madame
4 Forelady, is the jury's verdict form. As has been shown
5 to you on the board, it has about two questions on here.
6 It says, The jury must unanimously agree on the verdict.
7 Once you have completed this form, the foreperson of the
8 jury should sign and date the form. The question is: Did
9 the Dolans prove by a preponderance of the evidence that
10 FV-I Inc. breached the contract, yes or no. If your
11 answer to the question is yes, then please set forth the
12 amount of the damages and there's a line drawn for your
13 use. If your answer is no, Madame Forelady, then you
14 should stop and sign the verdict form and put today's date
15 where indicated right here.

16 Now again, I have told you previously and I tell you
17 again: All of these exhibits that are here that the
18 lawyers have used and put on the screen belong to you, the
19 jury. They are for your consideration. I'm going to ask
20 you to retire in just a moment, and when I do, I'm going
21 to ask the lawyers to come up and go through all the
22 numbers that my Madame Court Reporter has kept and ensure
23 all the documents are there. I assure you that documents
24 are easily moved around in this courtroom. One of them
25 may be up here, one of them may be over where the

1 projector is, but it's vitally important that whatever has
2 been introduced come to you in one package for your
3 consideration. So again, I'm going to ask you not to
4 begin deliberation for just a matter of minutes. I'm
5 going to ask the lawyers to come up and ensure all
6 documents are there. Once that is done, I'm going to ask
7 my bailiff to put this on top of those. My bailiff will
8 then deliver all exhibit to you. When my bailiff brings
9 the exhibits and this on top, that is your signal to go.
10 It is your chance then to talk as much or as little and as
11 long or as short as you like about this matter in reaching
12 a verdict. Until then, please, please don't begin your
13 deliberations. Hold off just a minute. Madame Forelady,
14 if you would take them out.

15 (The jury left open court at 5:14 p.m.)

16 THE COURT: Any exceptions, gentlemen?

17 MR. RADEKER: Can't think of any.

18 MR. WYMAN: No, your Honor.

19 THE COURT: Please come forward, take your time but
20 move as quickly as you can. Let's make sure we have all
21 the documents.

22 (Jury began deliberations at 5:17 p.m.)

23 (The jury entered the courtroom at 6:12 p.m.)

24 THE COURT: Has the jury reached a verdict?

25 JUROR: Yes, sir, we have.

1 THE COURT: Would you hand the verdict to my bailiff,
2 please. Madame Clerk, would you publish the verdict,
3 please.

4 VERDICT

5 THE CLERK: In the matter of FV-I, Inc. versus Bryon
6 Dolan and Lisa Dolan, case number 2012-CP-32-2816, did the
7 Dolans provide -- prove by a preponderance of the evidence
8 that FV-I breached the contract? No. If this is, in
9 fact, your verdict, please raise your right hand. All
10 jurors have raised their right hand.

11 THE COURT: Polling of the jury, gentlemen?

12 MR. RADEKER: No, Your Honor.

13 THE COURT: Okay. Polling is waived. Madame
14 Forelady, ladies and gentlemen of the jury, thank you so
15 very much for your assistance in this matter. We could
16 not do what we do here without you, and we appreciate you
17 very much. It is late in the day. I was not going to be
18 long-winded at all. It's about 12, 13 after. But again,
19 we thank you for your service this week.

20 This does conclude your jury service. There will not
21 be another trial started tomorrow. The lawyers on the
22 other cases and Trey and I will be here, but we'll be
23 doing what's called nonjury matters. In the event you
24 just want to see what we do on cases like that, you're
25 certainly welcome to be here. Again, I will be here along

1 with lawyers about 8:00 a.m. We'll start at 9:00 and work
2 up until we get finished tomorrow. Again, this is your
3 courtroom and your courthouse, and we appreciate your
4 service. Madame Forelady -- do you need her to sign
5 anything whatsoever?

6 THE CLERK: No, sir.

7 THE COURT: Madame Forelady, your last obligation or
8 duty as a forelady will be to take your jury -- you want
9 to go to the jury room to get their buttons and badges
10 or you can leave the badges. Your last job is to lead
11 them up here and turn in buttons and badges, and with
12 that, that concludes your jury service. Thank you so very
13 much.

14 (The jury left open court at 6:14 p.m.)

15 THE COURT: First of all, I want to thank the lawyers
16 for trying the case. Everyone here did a very good job.
17 I appreciate the level of preparation that has gone into
18 this. It is unquestionable you guys have put tons of time
19 into this case. You knew this case inside and out,
20 backward and forward, so I appreciate that. Everyone did
21 a good job on the case. Unfortunately, there's always
22 someone who prevails and someone who does not, but I can
23 absolutely say with certainty -- and I can't always say
24 that -- everybody here was well prepared.

25 Are there motions? I've already granted the ten

1 days. Certainly if there are any motions whatsoever, you
2 can get those to me within ten days. I'll consider those.
3 Just send them to me through my law clerk, Trey. Anything
4 else from anybody?

5 MR. GWYNNE: No, Your Honor.

6 MR. RADEKER: No, Your Honor.

7 THE COURT: Thank you, gentlemen.

8 (Whereupon, the proceedings were concluded.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

I, Aminah R. Hardy, RPR, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Lexington County, South Carolina, on the
17th day of April, 2014.

December 18th, 2014

Aminah R. Hardy

Aminah R. Hardy, CM

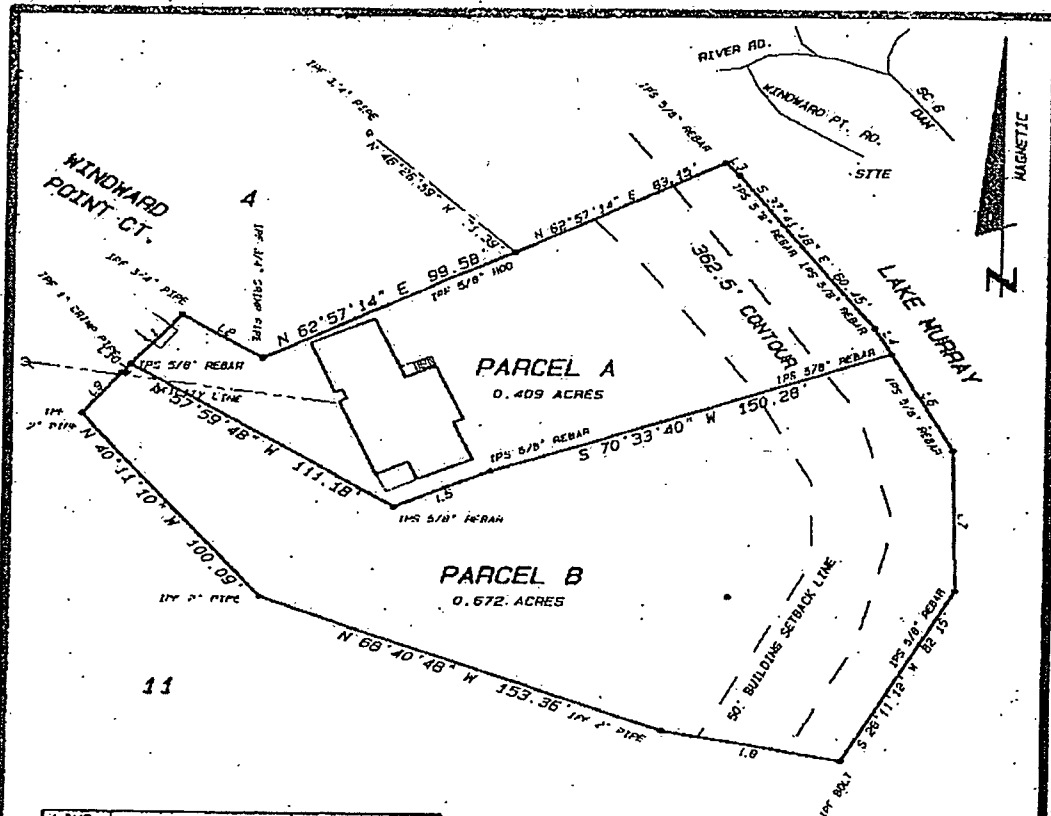
Instrument: 2002006250

Book/Page: R 6978 : 31

Date/Time: 02/05/2002 16:53:21:343

Document: 02

2882886250 FILED, RECORDED, INDEXED
02/05/2002 16:53:21:343
Rec Fee: \$5.00 St Fee: \$0.00
Co Fee: \$0.00 Pages: 1
Lexington County ROD Debra H. Gunter
PLAT STANDARD Bk: Pg 6978:31



LINE	BEARING	DISTANCE
L1	N 40°29'37" E	27.42
L2	S 58°02'13" E	33.90
L3	S 44°20'48" E	7.33
L4	S 28°40'48" E	12.41
L5	S 65°46'00" W	36.84
L6	S 28°40'48" E	45.89
L7	S 01°19'48" E	59.00
L8	N 79°11'45" W	65.59
L9	N 40°13'05" E	22.36
L10	N 40°29'37" E	5.05



LEXINGTON COUNTY
PLANNING COMMISSION

FEB 05 2002

SUBDIVISION SURVEY FOR **LISA S. DOLAN**

LEXINGTON COUNTY, SOUTH CAROLINA

SCALE: 1" = 50'

JANUARY 28, 2002

THE SAME BEING SHOWN AS LOT 5 ON A PLAT FOR J. L. CASTERLINE DATED FEBRUARY 11, 1906, BY ENRIGHT SURVEYING, INC. AND RECORDED IN THE ROD OFFICE FOR LEXINGTON COUNTY IN PLAT BOOK 229 AT PAGE 292.

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO OBVIOUS OR APPARENT ENCROACHMENTS, PROJECTIONS, OR SETBACKS AFFECTING THE PROPERTY OTHER THAN THOSE SHOWN. BASED ON INFORMATION FROM LEXINGTON COUNTY THE FLOOD PLAIN ON LAKE MURRAY IS THE 362.5' CONTOUR AND IS SHOWN, THE LOT IS ABOVE THIS CONTOUR.

PROJECT: 10499
FB: 357
TNS: 2621-01-011

WHITWORTH & ASSOCIATES, INC.

5146 AUGUSTA ROAD - PO BOX 1073 - LEXINGTON, SC - 29071 - (803) 359-6441

WILLIAM T. WHITWORTH, PLS #3440



This document not to scale

**PLAINTIFF'S
EXHIBIT**

ADJUSTABLE RATE NOTE

(LIBOR One-Year 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

March 28, 2005
[Date]

Columbia
[City]

South Carolina
[State]

540 Windward Point Court, Columbia, SC 29212
[Property Address]

1 BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U S \$ 721,000 00 (this amount is called "Principal"), plus interest, to the order of the Lender The Lender is Branch Banking and Trust Company of South Carolina

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

I understand that the Lender may transfer this Note The 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 4 500 % The interest rate I will pay will 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 any 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 payment on the first day of each month beginning on See Interest-Only Addendum

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 April 1, 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 301 College Street, Greenville, SC 29601

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 \$ See Interest-Only Addendum 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

DOC # 532051

APPL # 7000426711

LOAN #

MULTISTATE ADJUSTABLE RATE NOTE - WSJ One-Year LIBOR - Single Family - Fannie Mae
UNIFORM INSTRUMENT

Form 3526 6/01

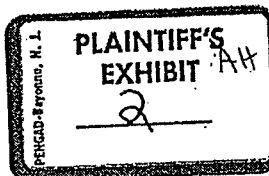
U2M -166N (0210)

VMP MORTGAGE FORMS (800)521 7291

Page 1 of 4

Initials

[Handwritten Signature]



PL - 001516

4 INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of April, 2008, and on that day every 12th 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 one-year 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 date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which 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 Two and One Quarter percentage points (2.250%) 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 6.500% or less than 2.500%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 9.500%.

(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 the Note.

I may make a full Prepayment or partial Prepayments without paying a 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 the Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payment 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

DOC # 532052

APPL # 7000426711

LOAN # [REDACTED]

1244P-166N (0210)

Page 2 of 4

Form 3526 6/81

Initials

PL - 001517

Record on Appeal 307

me which 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.

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 15 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 5.000% 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 which 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.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or 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 which might result if I do not keep the promises which I make in this Note.

DOC # 532053

APPL # 1000426711

LOAN # [REDACTED]

156N (0210)

Page 3 of 4

Form 3526 6/01

Initials [Signature]

PL - 001518

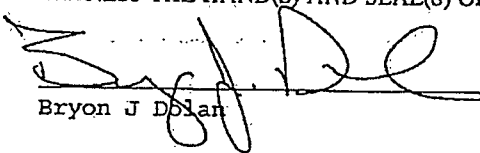
That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

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 may also 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.

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


Bryon J Dolan

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

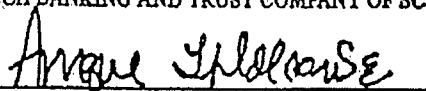
-Borrower

PAY TO THE ORDER OF
BRANCH BANKING AND TRUST COMPANY

WITHOUT RECOURSE
BRANCH BANKING AND TRUST COMPANY OF SC

[Sign Original Only]

BY


ANGELA T HOLCOMBE, VP

DOC # 532054

APPL # 7000426711

LOAN #

Form 3526 6/01

U2MP-166N (0210)

Page 4 of 4

PL - 001519

Record on Appeal 309

INTEREST-ONLY ADDENDUM

ADJUSTABLE RATE NOTE

This INTEREST-ONLY ADDENDUM made this the 28th day of March, 2005, is incorporated in and shall be deemed to amend and supplement the Adjustable Rate Note (the "Note") and the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") and Rider of the same date given by the undersigned (the "Borrower") to secure the Note to Branch Banking and Trust Company of South Carolina (the "Lender") of the same date covering the property described in the Security Instrument and located at 540 Windward Point Court, Columbia, SC 29212 (Property Address)

THIS ADDENDUM SUPERCEDES Section 3 (A), (B) and (C) of the Note. None of the other provisions of the Note are changed by this addendum.

3 PAYMENTS

(A) Time and Place of Payments

I will make a payment every month. This payment will be for interest only for the first 120 months. Beginning with the 121 month, my monthly payment will consist of principal and interest in an amount sufficient to fully amortize the unpaid principal balance of the Note over the remaining term of the Note.

I will make my monthly payments on the first day of each month beginning on May 1, 2005. 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 if the payment includes both principal and interest it will be applied to interest before Principal. If on April 1, 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 payment at 301 College Street, Greenville, SC 29601 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

Each of my initial interest-only monthly payments will be in the amount of U S \$ 2,703.75. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly interest-only payment will reflect changes in the interest rate that I must pay. Changes in my monthly payment of principal and interest 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 interest-only payment and my monthly payment of principal and interest, as applicable, in accordance with Section 4 of this Note.

DOC # 583801
BB381 (0207) UNSO 0207

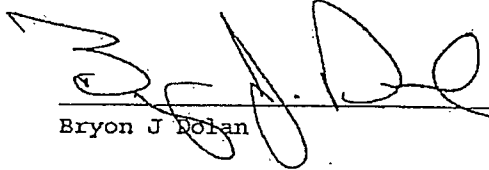
APPL # 7000426711
Page 1 of 2

LOAN #

PL - 001520

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Interest-Only Addendum

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

 (Seal) _____ (Seal)
Bryon J. Dolan -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

B8381 (0207)

Page 2 of 2

DOC # 583802

APPL # 7000426711

LOAN # 

PL - 001521

Record on Appeal 311

2005016313 FILED, RECORDED, INDEXED
03/31/2005 10:20:03:327
Rec Fee: \$25.00 St Fee: \$0.00
Co Fee: \$0.00 Pages: 20
Lexington County R00 Debra M. Gunter
MORTGAGE Bk:Pg 10015:280

Return To

Prepared By

[Space Above This Line For Recording Data]

MORTGAGE

MIN

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 March 28, 2005 together with all Riders to this document.
- (B) "Borrower" is Bryon J Dolan and Lisa S. Dolan

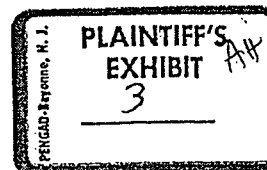
Borrower is the mortgagor under this Security Instrument

(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 number of P O Box 2026, Flint, MI 48501-2026, tel (888) 679-MERS.

DOC # 524481 APPL # 7000426711 LOAN # [REDACTED]
SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

6A(SC) (0005) 02 Form 3041 1/01
Page 1 of 15 UH51 0005 09 Initials [Signature]

VMP MORTGAGE FORMS (800)521 7291



PL - 000169

(D) "Lender" is Branch Banking and Trust Company of South Carolina

Lender is a Corporation
organized and existing under the laws of South Carolina
Lender's address is 301 College Street, Greenville, SC 29601

(E) "Note" means the promissory note signed by Borrower and dated March 28, 2005.

The Note states that Borrower owes Lender Seven Hundred Twenty One Thousand and No/100

(U S \$ 721,000 00) plus interest Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 2035

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

(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	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

(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 (a) 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 Section 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

DOC # 524482

APPL # 7000426711

6A(SC) (0005) 02

Page 2 of 15

Initials

LOAN #

Form 3041 1/01

PL-000170

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 as a "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

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 of Lexington

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

See Attached Exhibit A

Parcel ID Number 002621-01-063
540 Windward Point Court
Columbia
("Property Address")

which currently has the address of

[Street]
[City], South Carolina 29212 [Zip Code]

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

DOC # 524483

APPL # 7000426711

LOAN #

6A(SC) (0005) 02

Page 3 of 15

Initials

Form 3041 1/01

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 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

DOC # 524484

APPL # 7000426711

12/11 -6A(SC) (0005) 02

Page 4 of 15

Initials

LOAN #

Form 3041 1/01

PL - 000172

Record on Appeal 315

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, as 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 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 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.

DOC # 524485

APPL # 7000426711

UHP -6A(SC) (0005) 02

Page 5 of 15

Initials

[Handwritten initials]

LOAN #

Form 3041 1/01

PL - 000173

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 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.

DOC # 524486

APPL # 7000426711

1001-6A(SC) (0005) 02

Page 6 of 15

Initials

[Handwritten signature]

LOAN #

Form 3041 1/01

PL - 000174

Record on Appeal 317

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

DOC # 524487

APPL # 7000426711

6A(SC) (0005) 02

Page 7 of 15

Initials

LOAN #

Form 3041 1/01

PL - 000175

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.

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.

DOC # 524488

APPL # 7000426711

U211-6A(SC) (0005) 02

Page 8 of 15

Initials

LOAN #

Form 3041 1/01

PL - 000176

Record on Appeal 319

(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 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.

DOC # 524489

APPL # 7000426711

LOAN #

1211-6A(SC) (0005) 02

Page 9 of 15

Initials

Form 3041 1/01

PL - 000177

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.

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.

DOC # 524490

APPL # 7000426711

① -6A(SC) (0005) 02

Page 10 of 15

Initials

LOAN #

Form 3041 1/01

PL - 000178

Record on Appeal 321

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 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

DOC # 524491

APPL # 7000426711

001-6A(SC) (0005) 02

Page 11 of 15

Initials

LOAN #

Form 3041 1/01

PL - 000179

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 Substances, 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.

DOC # 524492

APPL # 7000426711

6A(SC) (0005) 02

Page 12 of 15

Initials

LOAN #

Form 3041 1/01

PL - 000180

Record on Appeal 323

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 Section 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.

DOC # 524493

APPL # 7000426711

6A(SC) (0005) 02

Page 13 of 15

Initials

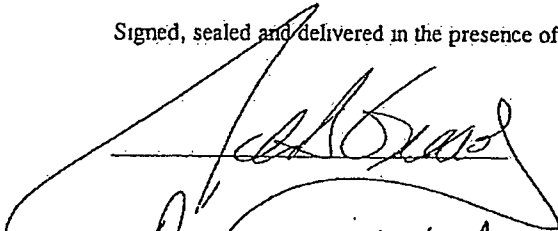
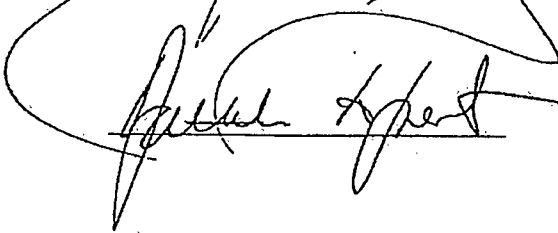
LOAN #

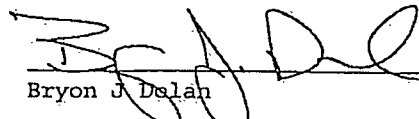
Form 3041 1/01

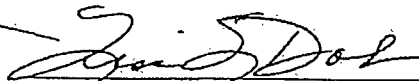
PL - 000181

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

Signed, sealed and delivered in the presence of


Bryon J. Dolan (Seal)
-Borrower


Lisa S. Dolan (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
Borrower

(Seal)
-Borrower

(Seal)
-Borrower

DOC # 524494
221D-6A(SC) (0005) 02

APPL # 7000426711
Page 14 of 15

LOAN # 
Form 3041 1/01

PL - 000182

Record on Appeal 325

STATE OF SOUTH CAROLINA,
County of Lexington

Personally appeared before me the undersigned witness
and made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed, deliver
the within written Mortgage, and that he/she with
the other subscribing witness

witnessed the execution thereof

Sworn to before me this 28th day of March, 2005

My Commission Expires 60-15-08

Notary Public for South Carolina

DOC # 524495

APPL # 7000426711

LOAN #

6A(SC) (0005) 02

Page 15 of 15

Initials

Form 3041 1/01

PL - 000183

ADJUSTABLE RATE RIDER

(LIBOR One-Year Index (As Published In *The Wall Street Journal*) - Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 28th day of March, 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 (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to Branch Banking and Trust Company of South Carolina

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

540 Windward Point Court, Columbia, SC 29212
[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE 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 4 500 % 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 April, 2008 and on that day every 12th month thereafter Each date on which my interest rate could change is called a "Change Date "

DOC # 531931

APPL # 7000426711

LOAN #

MULTISTATE ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family -
Fannie Mae UNIFORM INSTRUMENT

VMP-166R (0401) Form 3189 6/01

UM50 0401

Page 1 of 4

Initials

VMP Mortgage Solutions, Inc
(800)521-7291



PL - 000184

Record on Appeal 327

(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 one-year 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 date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index which 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 Two and One Quarter percentage points (2.250%) 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 6.500% or less than 2.500%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 9.500%.

(E) Effective Date of Changes

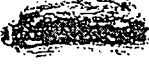
My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(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.

DOC # 531932

APPL # 7000426711

LOAN # 

VMP-166R (0401)

Page 2 of 4

Initials 

Form 3189 6/01

PL - 000185

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

DOC # 531933

APPL # 1000426711

LOAN #

UMP-166R (0401)

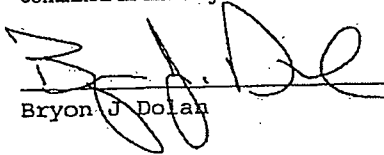
Page 3 of 4

Initials

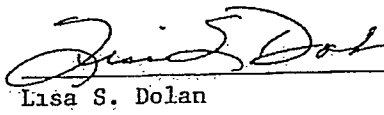
Form 3189 6/01

PL - 000186

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider

 (Seal)
Bryon J. Dolan -Borrower

____ (Seal)
-Borrower

 (Seal)
Lisa S. Dolan -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

DOC # 531934

APPL # 7000426711

LOAN # 

-166R (0401)

Page 4 of 4

Form 3189 6/01

PL - 000187

EXHIBIT "A"

All that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Lot 5B, fronting on Windward Point Ct on a plat prepared for Bryon J & Lisa Dolan by Whitworth & Associates, Inc., dated December 5, 2002 and recorded in the Office of the ROD for Lexington County in Book 7757, page 154, and having such metes and bounds as shown on said plat

This being a portion of the property conveyed to Bryon J Dolan by deed of James L Casterline and Dorothy C Casterline, dated September 30, 1999 and recorded in Book 5490, page 159 and deed conveying $\frac{1}{2}$ interest from Bryon J Dolan to Lisa S Dolan, dated August 24, 2000 and recorded in Book 5936, page 326

STATE OF SOUTH CAROLINA

FILED IN THE COURT OF COMMON PLEAS

COPY

COUNTY OF LEXINGTON

DOCKET NO.

2009 MAY 13 A 8:19

Branch Banking and Trust Company,

Plaintiff,

BETH A. CARPIS
CLERK OF COURT
LEXINGTON, SC

LIS PENDENS
Deficiency Judgment Demanded

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank
and Trust Company, Inc.;

Defendant(s).

2009CP3202263

2009-LP-32-00819

(004335-01341)

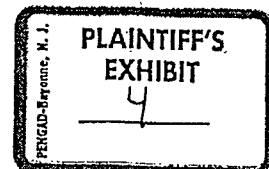
NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Bryon J. Dolan and Lisa S. Dolan to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Branch Banking and Trust Company of South Carolina (MINE# 100159966122742991) dated March 28, 2005, and recorded in the Office of the RMC/ROD for Lexington County on March 31, 2005, in Mortgage Book R10015 at Page 280.

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

ALL that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Lot 5 (but sometimes known as Lot 5B or Parcel B), fronting on Windward Point Ct. on a plat prepared for Bryon J. and Lisa Dolan by Willyworth & Associates, Inc., dated December 4, 2002 and recorded in the Office of the ROD for Lexington County in Book R7757 at Page 154, and having such metes and bounds as shown on said plat.

This being a portion of the property conveyed to Bryon J. Dolan, by deed of James L. Casterline, Jr. and Dorothy C. Casterline dated September 30, 1999 and recorded October 15, 1999 in Book 5490 at Page 159; subsequently, Bryon J. Dolan conveyed a one half undivided interest in the subject property to Lisa S. Dolan by deed dated August 22, 2000 and recorded August 23, 2000 in Book 5936 at Page 326. Also, property conveyed to Bryon J. Dolan and Lisa S. Dolan by deed of South Carolina Electric & Gas Company dated February 4, 2002 and recorded February 5, 2002 in Book R6978 at Page 27.

Property Address: 540 Windward Point Court
Columbia, SC 29212



EN(S# 002621-01-01)

Kevin T Hardy

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar #68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar #5500) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar #74030) William S. Kochler (SC Bar #74935)
Kevin T. Hardy (SC Bar #76015) Benjamin J. Powell (SC Bar #77205)
John P. Feiner (SC Bar #77460) Kelsey K. Brockbank (SC Bar #77519)
220 Executive Center Drive, Suite 109, Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
May 12, 2009

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

DOCKET NO.

Branch Banking and Trust Company 2004 MAY 13 A 8:19

Plaintiff:

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

SUMMONS AND NOTICES
(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE

Deficiency Judgment Demanded

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank
and Trust Company, Inc.;

Defendant(s).

2009CP3202263

(004335-01341)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, 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.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Branch Banking and Trust Company.

Kevin T Hardy

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69053) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar #68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar #5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar #74030) William S. Koelliker (SC Bar #74935)
Kevin T. Hardy (SC Bar #76015) Benjamin J. Powell (SC Bar #77205)
John P. Fenner (SC Bar #77460) Kelsey R. Brockbank (SC Bar #77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-1444

Columbia, South Carolina
May 12, 2009

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Branch Banking and Trust Company,

Plaintiff,

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank
and Trust Company, Inc.;

Defendant(s).

(004335-01341)

IN THE COURT OF COMMON PLEAS
FILED
DOCKET NO.

2009 MAY 13 A 8:19

BETH A. GARRIGU
CLERK OF COURT
LEXINGTON SC.

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE.

Deficiency Judgment Demanded.

2009CP3202263

Plaintiff alleges:

GENERAL ALLEGATIONS

1. This is an action for the foreclosure of a mortgage upon certain real estate in Lexington County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.
3. Plaintiff is the current owner and holder of the Note and Mortgage described hereafter and the subject of this action. The premises covered and affected by the said mortgage and by the foreclosure thereof is described as follows:

ALL that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Lot 5B, fronting on Winward Point Ct, on a plat prepared for Bryon J. and Lisa Dolan by Withworth & Associates, Inc., dated December 4, 2002 and recorded in the Office of the ROD for Lexington County in Book R7757 at Page 154, and having such metes and bounds as shown on said plat.

This being a portion of the property conveyed to Bryon J. Dolan by deed of James L. Casterline, Jr. and Dorothy C. Casterline dated September 30, 1999 and recorded October 15, 1999 in Book 5490 at Page 159; subsequently, Bryon J. Dolan conveyed a one half undivided interest in the subject property to Lisa S. Dolan by deed dated August 22, 2000 and recorded August 24, 2000 in Book 5936 at Page 326. Also, property conveyed to Bryon J. Dolan and Lisa S. Dolan by deed of South Carolina Electric & Gas Company dated February 4, 2002 and recorded February 5, 2002 in Book R6978 at Page 27.

Property Address: 540 Windward Point Court
Columbia, SC 29212

TMS# 002621-01-011

4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.

6. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the Mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

7. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth below, or some part thereof, but that such interests or liens are junior and subsequent to the lien of the Plaintiff's Mortgage, or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. First Citizens Bank and Trust Company, Inc., by virtue of a mortgage given by Bryon Dolan a/k/a Bryon J. Dolan and Lisa S. Dolan in the amount of \$250,000.00, dated December 29, 2006, and recorded January 4, 2007 in Book R11662 at Page 69.

FOR A FIRST CAUSE OF ACTION
(Reformation)

8. The Plaintiff incorporates the allegations of Paragraphs 1-7 herein.

9. Heretofore, on or about March 28, 2005, Bryon J. Dolan made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of \$721,000.00, payable in monthly installments of principal and interest of 2,703.75 commencing on May 1, 2005.

10. In order to secure the payment of the Note according to the terms and conditions thereof, Bryon J. Dolan and Lisa S. Dolan made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Branch Banking and Trust Company of South Carolina (M/R# 100159966122742991) a certain real estate Mortgage covering the previously described

property and any and all improvements to the property, including but not limited to a mobile/manufactured home;

11. The Mortgage was signed, witnessed and probated March 28, 2005; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Lexington County on March 31, 2005, in Mortgage Book R10015 at Page 280.

12. The legal description as shown on said Mortgage and described in Paragraph 3, is incorrect in its identification of lot reference. Upon review of the recorded documents related to the subject property, Plaintiff is informed and believes that the legal description should read as follows:

All that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Lot 5 (but sometimes known as Lot 5B or Parcel B), fronting on Winward Point Ct. on a plat prepared for Bryon J. and Lisa Dolan by Withworth & Associates, Inc., dated December 4, 2002 and recorded in the Office of the ROD for Lexington County in Book R7757 at Page 154, and having such metes and bounds as shown on said plat.

This being a portion of the property conveyed to Bryon J. Dolan by deed of James L. Casterline, Jr. and Dorothy C. Casterline dated September 30, 1999 and recorded October 15, 1999 in Book 5490 at Page 159; subsequently, Bryon J. Dolan conveyed a one half undivided interest in the subject property to Lisa S. Dolan by deed dated August 22, 2000 and recorded August 24, 2000 in Book 5936 at Page 326. Also, property conveyed to Bryon J. Dolan and Lisa S. Dolan by deed of South Carolina Electric & Gas Company dated February 4, 2002 and recorded February 5, 2002 in Book R6978 at Page 27.

13. Plaintiff is informed and believes it is entitled to reformation of its Mortgage so as to correct the lot reference in the legal description on the Mortgage to read as described in Paragraph 12.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of Mortgage)

14. The Plaintiff incorporates the allegations of Paragraphs 1-13 herein.

15. This cause of action is for the foreclosure of the Mortgage described above.

16. Heretofore, on or about March 28, 2005, Bryon J. Dolan made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of \$721,000.00, payable in monthly installments of principal and interest of 2,703.75 commencing on May 1, 2005.

17. In order to secure the payment of the Note according to the terms and conditions thereof, Bryon J. Dolan and Lisa S. Dolan made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Branch Banking and Trust Company of South Carolina (NIN# 100159966122742991) a certain real estate Mortgage covering the previously described property and any and all improvements to the property, including but not limited to a mobile/manufactured home;

18. The Mortgage was signed, witnessed and probated March 28, 2005; hereafter the Mortgage was recorded in the Office of the RMC/ROD for Lexington County on March 31, 2005, in Mortgage Book R 10015 at Page 280.

19. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

20. Any notice required by the terms of the Mortgage or by state or federal statutes has been given to the applicable Defendant(s) prior to the commencement of this action.

21. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for December 1, 2008, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of December 1, 2008, the principal sum of \$721,000.00, with interest from November 1, 2008; advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

22. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is such sum as the Court may find appropriate.

23. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

24. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly demanded against Bryon J. Dolan.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters and set forth herein and:

- (1) Under the direction of this Court, grant reformation of the Plaintiff's Mortgage;
- (2) Direct the RMC/ROD to annotate the public records to reflect ownership of the Mortgage in the Plaintiff;
- (3) Ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action;
- (4) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes or insurance premiums which may be due and have been advanced by the Plaintiff, with reasonable attorney's fees, and for the costs of this action;
- (5) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(6) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgage(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(7) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

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

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

Third, to the distribution of any surplus pursuant to Rule 71, SCRPC.

(8) Issue an order directing the Sheriff of Lexington County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary.

(9) Order such other and further relief as may be just and proper.

Kevin T Hardy

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Walters (SC Bar #5938) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Curley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Kochler (SC Bar # 73935)
Kevin T. Hardy (SC Bar #76015) Benjamin J. Powell (SC Bar #77205)
John P. Feinert (SC Bar # 77460) Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-1444

Columbia, South Carolina
May 13, 2009

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Branch Banking and Trust Company,

Plaintiff,

v.

Bryon J. Dolan; Lisa S. Dolan; JE
Communications, Inc.,

Defendant(s).

(004335-01417)

FILED COURT OF COMMON PLEAS

DOCKET NO.

2009 JUN 19 A 8:27

RECEIVED

LIS PENDENS

Deficiency Judgment Demanded

2009CP3202811

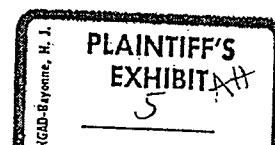
2009-LP-32-1044

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Bryon J. Dolan and Lisa S. Dolan to Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Branch Banking and Trust Company of South Carolina (MIN #100159966132194613) dated November 28, 2006, and recorded in the Office of the RMC/ROD for Lexington County on November 29, 2006, in Mortgage Book R11571 at Page 109. This Mortgage is subject to a Loan Modification Agreement dated November 7, 2008 and recorded November 26, 2008 in Book R13266 at Page 47.

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

All that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Lot 5A on that plat prepared for Bryon J. & Lisa Dolan by Whitworth & Associates, Inc., dated December 5, 2002 and recorded in the Office of the ROD for Lexington County in Plat Book 7757, Page 154, and having such boundaries and measurements as are shown on said plat, reference to which is hereby craved for a more complete and accurate description, be all measurements a little more or less.

This being a portion of the property conveyed to Bryon J. Dolan by deed of James L. Casterline, Jr. and Dorothy C. Casterline dated September 30, 1999 and recorded October 15, 1999 in Book 5490 at Page 159; subsequently, Bryon J. Dolan conveyed a one half undivided interest in the subject property to Lisa S. Dolan by deed dated August 22, 2000 and recorded August 24, 2000 in Book 5936 at Page 326. Also, property conveyed to Bryon J. Dolan and Lisa S. Dolan by deed of South Carolina Electric & Gas Company dated February 4, 2002 and recorded February 5, 2002 in Book R6978 at Page 27.



Property Address: 544 Windward Point Court
Columbia, SC 29212

TMS# 002621-04-011

Kevin T Hardy

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar #68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar #5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar #74030) William S. Kohler (SC Bar #74935)
Kevin T. Hardy (SC Bar #76015) Benjamin J. Powell (SC Bar #77205)
John P. Fenner (SC Bar #77460) Kelsey K. Bruckbank (SC Bar #77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-1444

Columbia, South Carolina
June 18, 2009

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Branch Banking and Trust Company,

Plaintiff

v.

Bryon J. Dolan; Lisa S. Dolan; JE
Communications, Inc.;

Defendant(s).

FILED IN THE COURT OF COMMON PLEAS

DOCKET NO.

2009 CP 3202811

CLERK OF COURT
SUMMONS AND NOTICES
(NON-JURY)
FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Demanded

2009CP3202811

(004335-01117)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, 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.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Branch Banking and Trust Company.

Kevin T Hardy

Rogers Townsend & Thomas, PC

ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #59581)	Cheryl H. Fisher (SC Bar #13213)
Reginald P. Corley (SC Bar #69453)	Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar #68635)	Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar #53003)	Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar #74030)	William S. Koehler (SC Bar #74935)
Kevin T. Hardy (SC Bar #76013)	Benjamin J. Powell (SC Bar #77205)
John P. Feiner (SC Bar #77460)	Kelsey K. Brockbank (SC Bar #77519)
220 Executive Center Drive, Suite 109	Post Office Box 100200 (29202)
Columbia, SC 29210	(803) 741-4344

Columbia, South Carolina
June 18, 2009

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Branch Banking and Trust Company, 2009 JUN 19 A 8:27

Plaintiff,

TELLA CARRIGG
CITIZEN'S COURT
LEXINGTON, SC

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Demanded

v.

Bryon J. Dolan; Lisa S. Dolan; JE
Communications, Inc.;

Defendant(s).

2009CP3202817

(004335-01417)

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Lexington County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.
3. Plaintiff is the owner and holder of the Note and Mortgage described hereafter and the subject of this action.
4. The Subject note and mortgage are not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac; and, the current loan servicer is not currently participating in the Home Affordable Modification Program ("HMP").
5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.
7. Heretofore, on or about November 28, 2006, Bryon J. Dolan made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of \$1,000,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Bryon J. Dolan and Lisa S. Dolan made, executed and delivered unto Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Branch Banking and Trust Company of South Carolina (MIN #100159966132194613) a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Lot 5A on that plat prepared for Bryon J. & Lisa Dolan by Whitworth & Associates, Inc., dated December 5, 2002 and recorded in the Office of the ROD for Lexington County in Plat Book 7757, Page 154, and having such boundaries and measurements as are shown on said plat, reference to which is hereby traced for a more complete and accurate description, be all measurements a little more or less.

This being a portion of the property conveyed to Bryon J. Dolan by deed of James L. Casterline, Jr. and Dorothy C. Casterline dated September 30, 1999 and recorded October 15, 1999 in Book 5490 at Page 159; subsequently, Bryon J. Dolan conveyed a one half undivided interest in the subject property to Lisa S. Dolan by deed dated August 22, 2000 and recorded August 24, 2000 in Book 5936 at Page 326. Also, property conveyed to Bryon J. Dolan and Lisa S. Dolan by deed of South Carolina Electric & Gas Company dated February 4, 2002 and recorded February 5, 2002 in Book R6978 at Page 27.

Property Address: 544 Windward Point Court
Columbia, SC 29212

TMS# 002621-01-011

9. The Mortgage was signed, witnessed and probated November 28, 2006; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Lexington County on November 29, 2006, in Mortgage Book R11571 at Page 109. This Mortgage is subject to a Loan Modification Agreement dated November 7, 2008 and recorded November 26, 2008 in Book R13266 at Page 47.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a First lien on the mortgaged premises.

11. Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable Defendant(s) prior to the commencement of this action.

12. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for January 1, 2009, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of January 1, 2009, the principal sum of \$1,017,706.00, with interest from December 1, 2008, advances, late charges, and also for the costs and disbursements of

this action, including attorney's fees.

13. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly demanded against Bryon J. Dolan.

14. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

15. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

16. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. JE Communications, Inc., by virtue of a mortgage given by Bryon J. Dolan and Lisa S. Dolan in the amount of \$65,000.00, dated February 12, 2009, and recorded February 12, 2009 in Book R13392 at Page 80.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a First lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

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

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantees(s) of the mortgagor(s), and/or tenant(s) occupying or

exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

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

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

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Lexington County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

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

Kevin T Hardy

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel E. Waters (SC Bar #5958)	Cheryl H. Fisher (SC Bar #15213)
Reginald P. Gidley (SC Bar #69453)	Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635)	Michael P. Morris (SC Bar #73560)
Eve Motenlock Stacey (SC Bar # 5300)	Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030)	William S. Koehler (SC Bar #74935)
Kevin T. Hardy (SC Bar #76015)	Benjamin J. Powell (SC Bar #77205)
John P. Feiner (SC Bar # 77460)	Kelsey K. Broekbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109, Post Office Box 100200 (29202)	
Columbia, SC 29210 (803) 744-4444	

Columbia, South Carolina
June 18, 2009

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FORECLOSURE
MASTER IN EQUITY DEED

TO ALL TO WHOM THESE PRESENTS SHALL COME OR BE MADE KNOWN:

Or whom the same may in anywise concern, James O. Spence, Master in Equity for the
County and State aforesaid SEND GREETING:

WHEREAS, Branch Banking and Trust Company, on or about June 19, 2009, did exhibit
its complaint in the Court of Common Pleas in the County and State aforesaid, Case No. 09-CP-32-2811,
against Bryon J. Dolan, et al.

And the Cause, being at issue before James O. Spence, Master in Equity, came on to be heard on
January 4, 2011, when the said James O. Spence, after a full hearing thereof, and mature deliberation in
the Premises, Did Order, Adjudge and Decree that the premises hereinafter mentioned and described
should be sold at public auction on the terms and for the purposes mentioned in said Decretal Order, as by
reference thereto, on file in the said Court will appear; and after having duly advertised the said premises
for sale by Public outcry, on February 7, 2011, which sale, according to statute, was made final on March
9, 2011. I, the said James O. Spence did then, openly and publicly, and according to the custom of
auction, sell and dispose of the said premises below described, unto Branch Banking and Trust Company
for \$1,100,000.00 being, at that price, the highest bidder for the same.

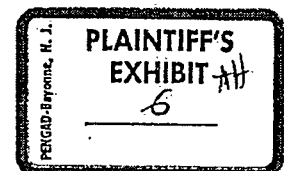
NOW, KNOW ALL MEN, That I, the said Master in Equity in consideration of the
premises, and also in consideration of the sum of \$1,100,000.00 paid me by the below-named Grantee,
the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these
Presents, do grant, bargain, sell and release unto the below named Grantee, its successors and assigns:

Branch Banking and Trust Company
301 College Street, 6th Floor
Greenville, SC 29601

All that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being
in the County of Lexington, State of South Carolina, being shown and delineated as Lot 5A on that plat
prepared for Bryon J. & Lisa Dolan by Whitworth & Associates, Inc., dated December 5, 2002 and
recorded in the Office of the ROD for Lexington County in Plat Book 7757, Page 154, and having such
boundaries and measurements as are shown on said plat, reference to which is hereby craved for a more
complete and accurate description, be all measurements a little more or less.

This being a portion of the property conveyed to Bryon J. Dolan by deed of James L. Casterline, Jr. and
Dorothy C. Casterline dated September 30, 1999 and recorded October 15, 1999 in Book 5490 at Page
159; subsequently, Bryon J. Dolan conveyed a one half undivided interest in the subject property to Lisa
S. Dolan by deed dated August 22, 2000 and recorded August 24, 2000 in Book 5936 at Page 326. Also,
property conveyed to Bryon J. Dolan and Lisa S. Dolan by deed of South Carolina Electric & Gas
Company dated February 4, 2002 and recorded February 5, 2002 in Book R6978 at Page 27.

TMS# 002621-01-011



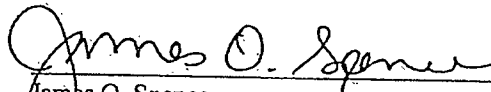
1102)

TOGETHER with all and singular the rights, members, hereditaments and appurtenances whatsoever, to the said premises belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, possession, property, benefit, claim and demand whatsoever, both at law and in equity, of the said Bryon J. Dolan and Lisa S. Dolan and of all the parties to the said suit and of all other persons rightfully claiming or to claim the same, or any part thereof, by, from or under them, or either of them.

Subject to assessments, taxes, easements, conditions and restrictions of record and otherwise affecting the property.

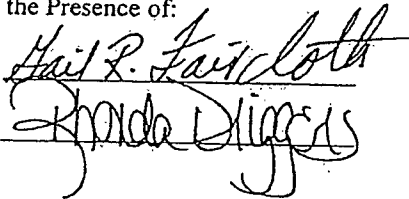
TO HAVE AND TO HOLD, the said premises with its hereditaments, privileges and appurtenances unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, I, the said James O. Spence under and by virtue of the said Decree, have hereunto set my Hand and Seal at Lexington, South Carolina this 25th day of April, 2011



James O. Spence
Master in Equity for Lexington County

Sealed and Delivered in
the Presence of:



STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

ACKNOWLEDGMENT

S.C. Code §30-5-30

(Effective January 1, 1995)

I, Rhonda Wiggers, a Notary Public for the State of South Carolina, do hereby certify that James O. Spence, Master in Equity for Lexington County, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS our hands and seals on this 25th day of April, 2011.

Rhonda Wiggers
Notary Public for South Carolina
My commission expires: 10/28/18

Index by: James O. Spence, Master in Equity for Lexington County

Titleholders(s) at filing of Lis Pendens: Bryon J. Dolan and Lisa S. Dolan

Prepared by:

Rogers Townsend & Thomas, PC (mp1/004335-01417)
P.O. Box 100200
Columbia, SC 29202-3200

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF LEXINGTON

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

1. Deed to property located at 544 Windward Point Court, Columbia, SC 29212, TMS# 002621-01-011, was executed by James O. Spence, Master in Equity, to Branch Banking and Trust Company on April 25, 2011.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. code Ann. Section 12-24-10 et. seq. because the deed is:

#13. Transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Transfer fee exemption #13.



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)

Reginald P. Corley (SC Bar #69453)

Ellie C. Floyd (SC Bar #68635)

Eve Moredock Stacey (SC Bar #5300)

Robert P. Davis (SC Bar #74030)

Shawn R. Willis (SC Bar #71155)

John P. Fetner (SC Bar #77460)

Vance L. Brabham, III (SC Bar #71250)

220 Executive Center Drive
Columbia, SC 29210

Cheryl H. Fisher (SC Bar #15213)

Jennifer W. Rubin (SC Bar #16727)

Michael P. Morris (SC Bar #73560)

Mary R. Powers (SC Bar #16534)

William S. Kochler (SC Bar #74935)

Benjamin J. Powell (SC Bar #77205)

Kelsey K. Lipscomb (SC Bar #77519)

Andrew W. Montgomery (SC Bar #79893)

Post Office Box 100200 (29202)
(803) 744-4444

Sworn to before me this 11 day of May, 2011.

Umiketa Patel
Notary Public for South Carolina

My Commission Expires: 10/8/2018

(004335-01417)

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Branch Banking and Trust Company,

Plaintiff,

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank
and Trust Company, Inc.;

Defendant(s).

(004335-01341)

Samuel C. Waters, Esquire
Attorney for the Plaintiff

Bryon J. Dolan, Pro Se

Lisa S. Dolan, Pro Se

B. Lindsay Crawford, III, Esquire
Attorney for First Citizens Bank and Trust Company, Inc.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-32-2263

JUDGMENT OF FORECLOSURE AND SALE
Deficiency Judgment Waived

BETH A. CARRIS
CLERK OF COURT
LEXINGTON SC

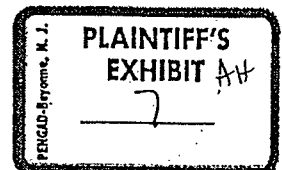
2010 MAY 26 P 2:08

FILED

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned. Plaintiff filed a timely motion for summary judgment and a hearing was held May 24, 2010 at 03:00 PM. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on May 13, 2009. The amended Lis Pendens was filed on June 2, 2009.
2. The Summons and Complaint were filed on May 13, 2009. The amended Summons and Complaint were filed on June 2, 2009.
3. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
4. The Defendant(s) are in default and that the Defendant(s) Bryon J. Dolan and Lisa S. Dolan are not in the Military Service of the United States of America, as contemplated under The



Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit or order filed herein.

5. No Defendant raised any issues related to Plaintiff's standing to prosecute this action.

6. Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant(s).

7. Bryon J. Dolan filed an answer, Pro Se.

8. Lisa S. Dolan filed an answer, Pro Se.

9. First Citizens Bank and Trust Company, Inc. filed an answer through their attorney, B. Lindsay Crawford, III, Esquire.

10. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.

11. Bryon J. Dolan for value received, made, executed and delivered a(n) Adjustable Rate Note dated March 28, 2005 promising thereby to pay to Plaintiff or its predecessor the sum of \$721,000.00 with interest at 4.5% per annum. Other terms and conditions are stated in the Adjustable Rate Note, of record herein.

12. Additionally, the Plaintiff timely presented an affidavit from the Plaintiff itemizing the dollar amount claimed in this matter, as well as a detailed memorandum of law in support of Plaintiff's summary judgment motion. After carefully considering the facts and arguments presented, I find that Plaintiff is entitled to summary judgment and is further entitled to a judgment of foreclosure and sale.

13. To better secure the payment of the Adjustable Rate Note described above, Bryon J. Dolan and Lisa S. Dolan made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Branch Banking and Trust Company of South Carolina (MIN# 100159966122742991) a certain real estate Mortgage in writing, dated March 28, 2005 covering real property in Lexington County, which is the same as that described in the Complaint. This Mortgage was filed on March 31, 2005, and is of record in the Office of RMC/ROD in Book R10015 at Page 280. This Mortgage was assigned to the Plaintiff herein by assignment recorded on October 12, 2009 in Book 13894 at Page 6.

FOR A FIRST CAUSE OF ACTION
(Reformation of Mortgage)

14. I find that the legal description as shown on said mortgage is incorrect according to the recorded surveys of the subject property. Therefore, Plaintiff is entitled to reformation of its Mortgage so as to correct the legal description on the Mortgage to read as follows:

ALL that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Lot 5 (but sometimes known as Lot 5B or Parcel B), fronting on Winward Point Ct. on a plat prepared for Bryon J. and Lisa Dolan by Withworth & Associates, Inc., dated December 4, 2002 and recorded in the Office of the ROD for Lexington County in Book R7757 at Page 154, and having such metes and bounds as shown on said plat.

This being a portion of the property conveyed to Bryon J. Dolan by deed of James L. Casterline, Jr. and Dorothy C. Casterline dated September 30, 1999 and recorded October 15, 1999 in Book 5490 at Page 159; subsequently, Bryon J. Dolan conveyed a one-half undivided interest in the subject property to Lisa S. Dolan by deed dated August 22, 2000 and recorded August 24, 2000 in Book 5936 at Page 326. Also, property conveyed to Bryon J. Dolan and Lisa S. Dolan by deed of South Carolina Electric & Gas Company dated February 4, 2002 and recorded February 5, 2002 in Book R6978 at Page 27.

Property Address: 540 Windward Point Court
Columbia, SC 29212

TMS# 002621-01-011

FOR A SECOND CAUSE OF ACTION
(Foreclosure of the Mortgage)

15. This Mortgage constitutes a First Priority lien on the subject property, subject only to ad valorem taxes or other liens/taxes given priority by statute.

16. Plaintiff is the owner and holder of the Note and Mortgage described hereafter and the subject of this action. Any notice required by the terms of the Mortgage or by state or federal statutes has been given to the applicable defendant(s) prior to the commencement of this action.

17. Payment due on the Adjustable Rate Note has not been made as provided for therein, and the Plaintiff, as the holder or nominee for the holder, thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Adjustable Rate Note and First Mortgage in the hands of the attorney herein for collection by foreclosure.

18. The sum of \$7,825.00 is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Adjustable Rate Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services

of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time. Plaintiff has advanced \$3,135.00 to its counsel as partial payment of the attorney fee and this amount appears in Plaintiff's advances.

19. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Adjustable Rate Note, with interest at the rate provided in the Adjustable Rate Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Adjustable Rate Note and Mortgage, is as follows:

(a)	Principal due December 1, 2008	\$721,000.00
(b)	Interest from November 1, 2008 through May 24, 2010 at 3.125% per annum	\$48,960.70
(c)	Advances (Escrow advances, corporate charges, paid attorney fees, paid costs and expenses from the foreclosure action, and/or other charges)	\$13,112.67
(d)	Late Charges	\$2,283.21
(e)	Attorney Fee (awarded herein, but unpaid)	\$4,690.00
TOTAL debt secured by Adjustable Rate Note and Mortgage, including interest to date shown		\$790,046.58

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 3.125% per annum (pursuant to the terms of the Adjustable Rate Note and First Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the First Mortgage through the date to which such interest is computed.

20. Plaintiff is seeking the usual foreclosure of the First mortgage and has in the Complaint (or subsequently thereto in writing) expressly waived the right to a personal or deficiency judgment.

21. The following Defendant(s) may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendant(s) may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

a. First Citizens Bank and Trust Company, Inc., by virtue of a mortgage given by Bryon Dolan a/k/a Bryon J. Dolan and Lisa S. Dolan in the amount of \$250,000.00, dated December 29, 2006, and recorded January 4, 2007 in Book R11662 at Page 69.

IT IS THEREFORE ORDERED:

22. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Order dated May 22, 2009, and the foreclosure action may proceed.

23. The subject Mortgage is hereby ordered reformed to correct the legal description on the Mortgage to read as described in Paragraph fourteen (14) of this Judgment of Foreclosure and Sale, and the RMC/ROD is hereby directed to annotate the indices accordingly so as to give notice in the public records.

24. There is due on the Adjustable Rate Note and First Mortgage set forth in the Complaint the sum of \$790,046.58, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

25. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

26. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

27. The Defendant(s) liable for the aforesaid judgment debt of the Adjustable Rate Note and Mortgage including interest at the rate of 3.125% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

28. On default of payment at or before the time of the sale of the property, the

mortgaged property described hereinafter shall be sold at public auction at the Lexington County Judicial Center, in the City of Lexington, and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid by no later than 4:00 p.m. on the day of the sale. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the note rate of 3.125%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.

f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

29. A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

30. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale.

31. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 20 days after date of sale, 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 a full compliance shall be secured.

32. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

33. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus 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.

34. 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 sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

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

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

35. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Lexington County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

36. In the event the successful bidder is other than the Defendant(s) 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 in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

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

38. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

39. The deed of conveyance made pursuant to the foreclosure sale shall contain

the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

40. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

41. The following is a description of the property herein ordered to be sold:

ALL that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Lot 5 (but sometimes known as Lot 5B or Parcel B), fronting on Winward Point Ct. on a plat prepared for Bryon J. and Lisa Dolan by Withworth & Associates, Inc., dated December 4, 2002 and recorded in the Office of the ROD for Lexington County in Book R7757 at Page 154, and having such metes and bounds as shown on said plat.

This being a portion of the property conveyed to Bryon J. Dolan by deed of James L. Casterline, Jr. and Dorothy C. Casterline dated September 30, 1999 and recorded October 15, 1999 in Book 5490 at Page 159; subsequently, Bryon J. Dolan conveyed a one half undivided interest in the subject property to Lisa S. Dolan by deed dated August 22, 2000 and recorded August 24, 2000 in Book 5936 at Page 326. Also, property conveyed to Bryon J. Dolan and Lisa S. Dolan by deed of South Carolina Electric & Gas Company dated February 4, 2002 and recorded February 5, 2002 in Book R6978 at Page 27.

Property Address: 540 Windward Point Court
Columbia, SC 29212

TMS# 002621-01-011

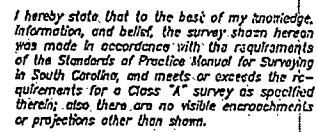
S/
James O. Spence
Master in Equity

5-25, 2010
Lexington, South Carolina

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2010 MAY 26 2:08

FILED



Boyce H. Crow SC PLS 9757

Record on Appeal 361

2011040327 FILED, RECORDED, INDEXED
2011-10-17 08:22:33
REC FEE: \$8.00 ST FEE: \$8.00
CO FEE: \$0.00 Pages: 3
Lexington County R.O.D. Debra H. Gunter
MORTGAGE REL Bk:Pg 15118:3

STATE OF SOUTH CAROLINA)

PARTIAL RELEASE
OF

REAL ESTATE MORTGAGE

(Mortgage Book 10015 at Page 280)

(Assignment at Book 13894 at Page 6)

COUNTY OF LEXINGTON)

(Assignment at Book 15087 at Page 321)

This Partial Release of Mortgage Lien is executed as of the 5 day of October, 2011 by FV-I, INC. IN TRUST FOR MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC (the "Mortgagee").

For valuable consideration, the receipt of which is hereby acknowledged, Mortgagee, as the owner and holder of the above-referenced mortgage, does hereby release the real property described on Exhibit A attached hereto and incorporated herein from the lien of that certain Mortgage given by Bryon J. Dolan and Lisa S. Dolan as "Borrower" to Mortgage Electronic Registration Systems, Inc. ("MERS"), dated March 28, 2005, and recorded in the Office of the Register of Deeds for Lexington County, South Carolina in Mortgage Book 10015 at page 280 on March 31, 2005, which Mortgage was subsequently assigned by MERS to Branch Banking and Trust Company ("BB&T") by Assignment of Mortgage dated September 25, 2009 and recorded in the aforesaid records in Book 13894 at Page 6 on October 12, 2009, and which Mortgage was then subsequently assigned by BB&T to Mortgagee by Assignment of Mortgage dated September 30, 2011 and recorded in the aforesaid records in Book 15087 at Page 321.

Except as to the property described herein released, the lien of the Real Estate Mortgage shall continue in full force and effect. (Assignment at Book 15087 at Page 321)

IN WITNESS WHEREOF, the undersigned has caused its seal to be affixed hereto and these presents to be subscribed by its duly authorized officer, this 5 day of October, 2011.

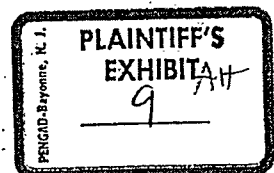
Signed, sealed and delivered in the presence of: FV-I, INC. IN TRUST FOR MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC

Ivette Rosinski
Witness 1 Ivette Rosinski

By: Courtney J
Printed Name: Courtney Ehinger

Daniel Chambers
Witness 2 Daniel Chambers

Title: Vice President



STATE OF TEXAS)

COUNTY OF DALLAS)

ACKNOWLEDGEMENT

I, Alicia Stewart, a Notary Public in and for the State of Texas, do hereby certify that Courtney Ehinger, Vice President of FV-I, Inc. in trust for Morgan Stanley Mortgage Capital Holdings LLC personally appeared before me and acknowledged the due execution of the foregoing instrument this 5th day of October, 2011.

Alicia Stewart (SEAL)

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires: 5-20-14

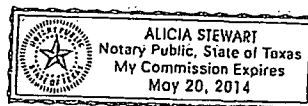


Exhibit A

All that tract or parcel of land lying and being in Lexington County, South Carolina, being shown and designated as "Parcel B-2/1043 sq. ft." on plat prepared for Norris L. and JoAnn Bowen dated September 14, 2011, prepared by Survey & Mapping Services of South Carolina, Inc., and being recorded on September 30, 2011 in the Office of Deeds for Lexington County in Book 15084 at page 258, and having such metes and bounds as shown on said plat.

This being a portion of Lexington County Tax Map No. 002621-01-011 (?)

From: bryon.dolan@bandlproperties.com
Sent: Wednesday, October 12, 2011 11:08 AM
To: Flanagan, Kevin SFW
Subject: RE: Reinstatement Figures

Thanks Kevin!

I'll review and determine what course to take. We've had two showings this past week on the house and was told a possible contract may be coming within the week after the 2nd couple spent an hour in the home yesterday. I saw the prequalification letter for this couple so I know they're capable of closing. We'll see what happens.
Thanks again for the numbers.

Bryon

From: Flanagan, Kevin SFW [mailto:FlanaganK@saxonmsi.com]
Sent: Wednesday, October 12, 2011 11:01 AM
To: bryon.dolan@bandlproperties.com
Subject: Reinstatement Figures

Mr. Dolan,

I ran the reinstatement figures for your loan as you requested; and the amount to bring your loan current as of 10/14/11 is 35,603.88. This includes the DQ payments, late fees, legal fees and other advances made on the account. Please note your loan is still an Interest only loan so there is no change to the balance amount of 721,000. There are a couple options available to bring your account current, you can either pay the full amount or we can set you up on a repayment plan up to 12 months to repay the amount (in addition to your monthly payment).

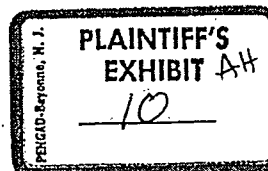
I also need to point out you have an escrow shortage of 26,039.05 (this is not included in the 35,603.88 to bring your loan current). I am attaching the breakdown of this amount which are tax payments and forced insurance that has been placed on the property. If you can show you are maintaining insurance and the period you have maintained, I can have these forced insurance amounts removed. However, the tax amounts will need to be repaid and we can discuss the options available to repay this amount.

Let me know if you have any questions.

Thank you
Kevin Flanagan

Kevin Flanagan
VP, Distressed Servicing
Saxon Mortgage
3701 Regent Blvd.
Irving, Texas 75063
Work: (972) 570-6264
Fax: (972) 570-9378
flanagank@saxonmsi.com

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager.



October 12, 2011

Bryon J Dolan
540 Windward Point CT # C
Columbia, SC 29212

Re: Loan Number [REDACTED]

These are the reinstatement figures for the referenced loan. Please be advised, we must receive this amount no later than 10/14/2011 to stop collection/foreclosure proceedings. This amount may not be accepted after this date.

(Additional anticipated legal fees of \$ 1,182.00 are included below:)

Payments due	23,073.89
Late Charges	3,300.89
Legal fees	1,182.00
Recoverable Corporate Advances	8,857.23
Total Suspense (Credit)	810.13
TOTAL AMOUNT DUE	35,603.88

The total amount due on your loan is \$ 35,603.88 and must be made by certified funds. If you have any questions, please contact our office at (800) 594-8422.

Special Servicing
Saxon

Overnight Address:
Saxon Mortgage Services, Inc.
4700 Mercantile Drive
Fort Worth, Texas 76137

Wiring Instructions:
Account: [REDACTED]
Bank: Wells Fargo, San Francisco, California
Routing No.: 121000248
Account Name: SMSI Wire Clearing Account

Include: Mortgagors name and loan number, Attention: Special Servicing

CC132/033/TN3

PL - 001815

Loan # [REDACTED] lan

Transaction	Date	Amount	Balance
Beginning Balance (B&T)	8/5/09		\$0.00
Hazard Insurance	10/23/09	(\$434.21)	(\$434.21)
Hazard Insurance	12/9/09	(\$302.06)	(\$736.27)
Hazard Insurance	12/18/09	(\$5,983.00)	(\$6,719.27)
Delq 2009 Lexington County Tax	08/16/10	(\$4,001.01)	(\$10,720.28)
Tax Penalty	08/16/10	(\$645.15)	(\$11,365.43)
Lender-Placed Insurance (07/21/10-11)	11/11/10	(\$5,086.00)	(\$16,451.43)
County Tax	11/16/10	(\$4,502.16)	(\$20,953.59)
Lender-Placed Insurance (07/21/11-12)	07/29/11	(\$5,086.00)	(\$26,039.59)
Escrow Payment	09/30/11	\$0.54	(\$26,039.05)

PL-001816

Statement Date
01/18/12

+ 0362101 000007401 09SL52 0916841 P1 P7

BRYON J DOLAN
540 WINDWARD POINT CT
COLUMBIA SC 29212-8404



WELCOME TO SPECIALIZED LOAN SERVICING, LLC

Your Home Loan

It is our pleasure to welcome you as a customer of Specialized Loan Servicing, LLC. Effective 01/20/2012 the servicing of your loan has been transferred from Saxon Mortgage Services, Inc to us. Specialized Loan Servicing is pleased to be the new servicer of your Home loan. We also wish to assure you that the terms and conditions of this transfer will not affect any original loan documents other than the terms directly related to the servicing of your loan.

As your Home loan provider, Specialized Loan Servicing is committed to courteous and responsive service, accurate and timely handling of your payments, and simple, direct answers to your questions. For prompt response in all communications with us, please remember to reference your account number 100SS74234.

Payment Procedures

Beginning 01/20/2012, all future payments should be mailed to Specialized Loan Servicing. Your previous servicer will not accept payments from you beginning on the date listed above. Attached is your first payment coupon. Beginning next month you will receive a monthly billing statement.

If your monthly payment includes additional funds for the payment of taxes and insurance, please refer to the General Tax and Insurance sections on page 2 of this statement.

“КГБ140”

HOW TO CONTACT SLS

For up-to-the minute information about your account, use our 24-hour automated information system. To ask about this statement or general up-to-the-minute account information, please call 1-800-315-4SLS (4757), Monday - Friday 6 a.m. - 6 p.m. MST. TDD: 1-800-268-9419, Monday - Friday 8:00 a.m. to 5:00 p.m. MST. See *Abila español* - 1-800-315-4SLS (4757).

Or write to us at:

General Customer Service Inquiries: P.O. Box 636005
Littleton, CO 80163-6005

Tax Department

P.O. Box 961059
Ft. Worth, TX 76161-0059
Phone: 1-866-801-1373
Fax: 1-817-826-0460

Insurance Department

P.O. Box 620188
Doraville, GA 30362
Phone: 1-800-441-4145
Fax: 1-678-475-8763

Payments:

Attn: Remittance Processing
P.O. Box 105219
Atlanta, GA 30348-5219

Overnight Deliveries:

8742 Lucent Blvd., Suite 300
Highlands Ranch, CO 80129

Our Website - www.sls.net
How to reach your previous servicer:
Saxon Mortgage Services, Inc
PO Box 161439
Fort Worth TX 76161
800-594-8422

(If not a toll free number, you may call collect.)

Detach and return with payment



A fee up to \$25.00 will be charged for each returned payment except as otherwise limited by law.

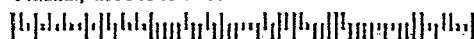
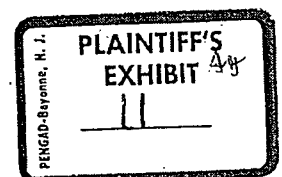
PAYMENT INSTRUCTIONS

1. Please
 - Do not send cash
 - Do not staple your check to the payment coupon
 - Do not include correspondence
2. Write your account number on your check or money order.
3. Write in any additional amounts you are including. (If the total is more than \$5,000, please send certified check.)
4. Make your check payable to:
Specialized Loan Servicing
Attn: Remittance Processing

Payment Amount	\$1877.62

The amount shown above is taken from preliminary data. Your current billing statement will be mailed within 7 business days. That statement will contain all of your payment information along with a return envelope for your payment. If you do not receive your statement, please call our customer care center at the number listed above.

Specialized Loan Servicing, LLC
PO Box 105219
Atlanta, GA 30348-5219

[illegible]



8742 Lucero Blvd.
Suite 300
Highlands Ranch, CO 80128
1-800-315-4SLS (#757)

Account Number
[REDACTED]
1st Mortgage
Property Address
540 Windward Pt CT
Columbia SC 29212

Statement Date
01/18/12

General Tax and Insurance Information

Your monthly home loan payment may include an amount to be deposited into an escrow or impound account from which we pay the insurance and/or taxes. We may review this account during the first 12 months to ensure that our monthly payment to this account is appropriate.

1. Any property tax bill sent directly to you should be forwarded immediately to Specialized Loan Servicing Tax Department, so that you can be assisted in avoiding penalties incurred by late payments. Also, you should be sure that you have applied for all money-saving tax exemptions available through your tax authority.
2. The terms of your mortgage loan require that you maintain insurance coverage for at least the amount of the outstanding balance of your loan, or 100% of the insurable value of the improvements. It also must show Specialized Loan Servicing in the mortgagee clause. You can have an active part in determining your monthly escrow payment by verifying with your insurance agent the exact amount of insurance you need to carry, and reminding them that your renewal policy must be sent directly to us well before the renewal date. Without a policy in our office within fifteen days prior to the renewal date, we may have to place coverage with an agent of our choice to protect our security interest. Any insurance correspondence should be forwarded immediately to Specialized Loan Servicing Insurance Department.
3. If you wish to make a mid-term insurance policy substitution, you are responsible for canceling the previous policy and paying the new carrier. You must send us a copy of the cancellation notice for the prior policy, a copy of the new policy with the appropriate mortgagee clause and a paid receipt for the first year's premium.
4. We encourage you to contact your insurance company immediately to verify that your policy reflects Specialized Loan Servicing LLC as your new loan servicer. Your mortgage clause must read as follows: "Specialized Loan Servicing LLC, its successors and/or assigns." Please also provide your agent with your new account number and Specialized Loan Servicing address.
5. To monitor this escrow account, we perform an escrow analysis annually, resulting in a payment adjustment based on the most recent amounts paid for taxes and insurance. The new payment will collect for the current year exactly what was previously paid out. Because we cannot anticipate the local tax increases or insurance costs, an increase in these factors will result in escrow changes and/or shortages.

Additional Important Information

Optional Insurance - SLS does not currently offer life insurance or disability insurance. If you were previously enrolled in this service, it will no longer be part of your monthly payment. You should contact your provider to arrange for payment or cancellation of this service.

Monthly Automatic payment drafting - Specialized Loan Servicing is pleased to offer this service. Simply contact our Customer Service department at 1-800-315-4SLS (#757). If you previously arranged with your prior Servicer to have your monthly mortgage payment drafted from your bank account, that service was automatically discontinued when your loan was transferred to SLS. If you would like to continue to have your monthly mortgage payment drafted from your bank account, you must enroll with SLS in order to take advantage of this service for your future payments.

End of Year Statements - Every year, in January, we will send you an accounting of your loan for the previous calendar year along with a statement of taxes and interest paid for income taxes purposes. Please be sure to keep us advised of any change in your mailing address.

Important Messages

For your protection, please be advised that we are attempting to collect a debt and any information obtained will be used for that purpose. Calls will be monitored and recorded for quality assurance purposes. If you do not wish for your call to be recorded, please notify the customer service associate when calling.

Attention to any Customer in Bankruptcy or who has received a bankruptcy discharge of this debt: please be advised that this letter constitutes neither a demand for payment of the captioned debt nor a notice of personal liability to any recipient hereof who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code, however, it may be a notice of possible enforcement of our lien against the collateral property, which has not been discharged in your bankruptcy.



5742 Lucent Blvd.
Suite 300
Highlands Ranch, CO 80129
1-800-315-4SL5 (4757)

Account Number
[REDACTED]
1st Mortgage
Property Address
540 Windward Pt CT
Columbia SC 29212

Statement Date
01/18/12

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

Welcome to Specialized Loan Servicing LLC. It is our pleasure to welcome you as a customer. Your home loan servicing was recently transferred to us and this is your official notice of the transfer, as legally required. Your home loan was previously serviced by Saxon Mortgage Services, Inc and you officially became a Specialized Loan Servicing LLC customer effective 01/20/2012. Going forward, Specialized Loan Servicing will handle the servicing of your home loan, which means collecting your monthly home loan payments and handling related issues. Please note the terms and conditions of your mortgage loan documents do not change in any way, other than terms directly related to the servicing of your home loan.

Except in limited circumstances, the law requires that your present servicer send you a notice at least 15 days prior to the effective servicing transfer date, which is also the date in which your first payment is due to Specialized Loan Servicing. Your present servicer may have provided this notice as part of your loan closing documents. If this is the case, please note that your first payment will be due to Specialized Loan Servicing. Specialized Loan Servicing must also send you this transfer notice no later than 15 days after the transfer date, which is why you are receiving this notice as part of your welcome package.

The date that Saxon Mortgage Services, Inc will stop accepting payments from you is 01/20/2012. All payments due on or after 01/20/2012 should be sent to Specialized Loan Servicing. Your payment options are listed below.

IF YOUR PROPERTY IS LOCATED IN THE STATE OF TEXAS: Complaints regarding the servicing of your mortgage should be sent to the Department of Savings and Mortgage Lending, 2601 N. Lamar, Suite 201, Austin, Texas 78705. A toll-free consumer hotline is available at 1-877-276-5550.

Finally, we want to make you aware of certain rights you have under RESPA. A summary is provided at the bottom of this notice.

ABOUT YOUR RIGHTS UNDER "RESPA"

You should be aware of your rights as a consumer with a home loan. These are explained in detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA)(12 U.S.C. 2605). Some of the highlights are as follows:

If during the first 60 days after your first payment is due to Specialized Loan Servicing, you mistakenly send your payment to Saxon Mortgage Services, Inc, Specialized Loan Servicing is not allowed to charge you a late fee, or to report you to the credit bureau during the 60 day period stated above.

If you send a "qualified written request" to Specialized Loan Servicing concerning the servicing of your loan, we must provide you with a written acknowledgement within 5 Business Days of the receipt of your request. A "qualified written request" is a written correspondence which includes your name and account number and your reasons for the request. Writing a note on your payment coupon or envelope is not considered a "qualified written request". Inquiries or information sent to us via our website is not considered a "qualified written request".

Qualified written request must be sent to:

Attn: Customer Care Support
P.O. Box 636005
Littleton, CO 80163-6005

Specialized Loan Servicing has 30 Business Days after receiving your request to make any appropriate corrections to your account. We must provide you with a written clarification about any dispute about your account. During this 30 Business Day period, we may not provide information to a consumer reporting agency concerning any overdue payment related to your qualified written request. However, this does not prevent us from initiating foreclosure if proper grounds exist under your loan documents.

A Business Day is any day excluding legal public holiday (state or federal), Saturday or Sunday.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.



6742 Lillian Blvd.
Suite 500
Highlands Ranch, CO 80129
1-800-375-4353 (4757)

Account Number
1st Mortgage
Property Address
540 Woodward Pl CT
Columbia SC 29212

Statement Date
01/18/12

IMPORTANT PAYMENT OPTIONS INFORMATION FOR YOUR RECORDS

Address Payment To:
Specialized Loan Servicing
P.O. Box 105219
Atlanta, GA 30348-5219

Regular Payment Instructions:

- For payments made by regular mail, and in proper form, please allow 10 days for processing.
- Payments received on a business day prior to 9:00 p.m. EST and in proper form will be effective dated and processed as of the date of receipt.

Avoid Delays in Payment Processing:

- Always mail the payment in proper form, which is with coupon in window envelope provided, writing your account number on the check. Failure to do any of these steps may result in a delay in posting.
- **DO NOT SEND CASH.**
- Do not send correspondence with your payment. Send all correspondence to the address listed on this statement.
- In the event that you do not receive your monthly billing statement, **DO NOT DELAY PAYMENT.** Write your account number on your check and mail it to the payment address provided in this statement. Payments must be sent in proper form to avoid a delay in processing.

Payment Options:

- Monthly automatic draft - it's free and easy, just call our Customer Care Center today and sign up.
- Visit our web site and pay on line. There is a fee for this service. Payment received prior to 6:00 p.m. MST will be effective dated the same day.
- Pay by phone. You may use our automated service by calling the Customer Care Center or by speaking with a Customer Care associate. There is a fee for this service. Payment received by 6:00 p.m. MST will be effective dated the same day.
- Payments sent via certified mail or overnight must be sent to the address on this statement. Failure to do so may result in a delay of posting.

- DOLAN BRYON (Saxon Hist 07-22-10 - 01-24-12)

TRANSACTION AMOUNT	PRIN PD/ BALANCE	INTEREST	ESCROW PD/ BALANCE	AMOUNT	OTHER CODE/DESCRIPTION
11-16-11 03-11 152	LATE FEE ASSESSED				
0.00	0.00	0.00	0.00	90.13-1	LATE CHARGE
11-02-11 00-00 631	PROPERTY PRESERVATION DISBURSEMENT				
12.00	0.00	0.00	0.00		
10-27-11 00-00 632	STATUTORY EXPENSE DISBURSEMENT				
59.00	0.00	0.00	0.00		
10-27-11 00-00 632	STATUTORY EXPENSE DISBURSEMENT				
150.00	0.00	0.00	0.00		
10-17-11 03-11 152	LATE FEE ASSESSED				
0.00	0.00	0.00	0.00	90.13-1	LATE CHARGE
10-05-11 00-00 631	PROPERTY PRESERVATION DISBURSEMENT				
85.00	0.00	0.00	0.00		
10-03-11 02-11 168	ESCROW ADVANCE REPAYMENT				
0.00	0.00	0.00	0.02-	0.02	
10-03-11 02-11 173	PAYMENT				
0.00	0.00	1,877.60	0.02	1,877.62-	09-30-11
10-03-11 01-11 168	ESCROW ADVANCE REPAYMENT				
0.00	0.00	0.00	0.02-	0.02	NEW PRINCIPAL/ESCROW BALANCES
10-03-11 01-11 173	PAYMENT				
0.00	0.00	1,877.60	0.02		09-30-11
10-03-11 12-10 168	ESCROW ADVANCE REPAYMENT				
0.00	0.00	0.00	0.02-	0.02	NEW PRINCIPAL/ESCROW BALANCES
10-03-11 12-10 173	PAYMENT				
0.00	0.00	1,877.60	0.02		09-30-11
10-03-11 11-10 168	ESCROW ADVANCE REPAYMENT				
0.00	0.00	0.00	0.02-	0.02	NEW PRINCIPAL/ESCROW BALANCES
10-03-11 11-10 173	PAYMENT				
0.00	0.00	1,877.60	0.02		09-30-11
10-03-11 10-10 168	ESCROW ADVANCE REPAYMENT				
0.00	0.00	0.00	0.02-	0.02	NEW PRINCIPAL/ESCROW BALANCES
10-03-11 10-10 173	PAYMENT				
0.00	0.00	1,877.60	0.02		09-30-11
10-03-11 09-10 168	ESCROW ADVANCE REPAYMENT				
0.00	0.00	0.00	0.02-	0.02	NEW PRINCIPAL/ESCROW BALANCES
10-03-11 09-10 173	PAYMENT				
0.00	0.00	1,877.60	0.02		09-30-11
10-03-11 08-10 168	ESCROW ADVANCE REPAYMENT				
0.00	0.00	0.00	0.02-	0.02	NEW PRINCIPAL/ESCROW BALANCES
10-03-11 08-10 173	PAYMENT				
0.00	0.00	1,877.60	0.02		09-30-11
26,039.17- NEW PRINCIPAL/ESCROW BALANCES					

1P6241-45C
REQ BY SLS 012012
OBRYON J DOLAN
LOAN NUMBER: [REDACTED]

CUSTOMER ACCOUNT ACTIVITY STATEMENT
DATE 01/20/12
PAGE 03

ACTIVITY FOR PERIOD 02-01-10 - 01-20-12

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
10-03-11	07-10	168	ESCROW ADVANCE REPAYMENT	
	0.00	0.00	0.00	0.02-
				0.02

Page 2

- DOLAN BRYON (Saxon Hist 07 22 10 - 01 24 12)

10-03-11	07-10	173	PAYMENT	0.00	1,877.60	0.02	26,039.19-	NEW PRINCIPAL/ESCROW BALANCES	09-30-11
10-03-11	06-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02		
10-03-11	06-10	173	PAYMENT	0.00	1,877.60	0.02	26,039.21-	NEW PRINCIPAL/ESCROW BALANCES	09-30-11
10-03-11	05-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02		
10-03-11	05-10	173	PAYMENT	0.00	1,877.60	0.02	16,898.58-	NEW PRINCIPAL/ESCROW BALANCES	09-30-11
09-30-11	05-10	493	ARM LOAN ADJUSTMENT				26,039.23-	NEW PRINCIPAL/ESCROW BALANCES	
NEW INTEREST RATE: 0.03125						NEW PRIN & INT PAYMENT:		1,877.60	
09-30-11	04-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02		
09-30-11	04-10	173	PAYMENT	0.00	2,553.54	0.02	26,039.25-	NEW PRINCIPAL/ESCROW BALANCES	
09-30-11	03-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02		
09-30-11	03-10	173	PAYMENT	0.00	2,553.54	0.02	26,039.27-	NEW PRINCIPAL/ESCROW BALANCES	
09-30-11	02-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02		
09-30-11	02-10	173	PAYMENT	0.00	2,553.54	0.02	7,660.68-	NEW PRINCIPAL/ESCROW BALANCES	
09-30-11	01-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02		
09-30-11	01-10	173	PAYMENT	0.00	2,553.54	0.02	26,039.31-	NEW PRINCIPAL/ESCROW BALANCES	
09-30-11	12-09	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02		
09-30-11	12-09	173	PAYMENT	0.00	2,553.54	0.02	26,039.33-	NEW PRINCIPAL/ESCROW BALANCES	
09-30-11	11-09	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02		
09-30-11	11-09	173	PAYMENT	0.00	2,553.54	0.02	26,039.35-	NEW PRINCIPAL/ESCROW BALANCES	

1P6241-45C
 REQ BY SLS 012012
 OBRYON J DOLAN
 LOAN NUMBER: [REDACTED]

CUSTOMER ACCOUNT ACTIVITY STATEMENT

DATE 01/20/12
 PAGE 04

ACTIVITY FOR PERIOD 02-01-10 - 01-20-12

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
09-30-11	10-09	168	ESCROW ADVANCE	
	0.00	0.00	0.00	0.02
09-30-11	10-09	173	PAYMENT	
	0.00	0.00	2,553.54	0.02
09-30-11	09-09	168	ESCROW ADVANCE	
	0.00	0.00	0.00	0.02

Page 3

- DOLAN BRYON (Saxon Hist 07 22 10 - 01 24 12)

09-30-11	09-09	173	PAYMENT	0.00	2,553.54	0.02	
						26,039.39-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	08-09	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	08-09	173	PAYMENT	0.00	2,553.54	0.02	
						26,039.41-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	07-09	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	07-09	173	PAYMENT	0.00	2,553.54	0.02	
						26,039.43-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	06-09	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	06-09	173	PAYMENT	0.00	2,553.54	0.02	
						26,039.45-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	05-09	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	05-09	173	PAYMENT	0.00	2,553.54	0.02	22,982.04-
						26,039.47-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	05-09	493	ARM LOAN ADJUSTMENT				
			NEW INTEREST RATE: 0.04250				NEW PRIN & INT PAYMENT: 2,553.54
09-30-11	04-09	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	04-09	173	PAYMENT	0.00	3,004.17	0.02	
						26,039.49-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	03-09	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	03-09	173	PAYMENT	0.00	3,004.17	0.02	
						26,039.51-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	02-09	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	02-09	173	PAYMENT	0.00	3,004.17	0.02	
						26,039.53-	NEW PRINCIPAL/ESCROW BALANCES

1P6241-45C
 REQ BY SLS 012012
 OBRYON J DOLAN
 LOAN NUMBER: [REDACTED]

CUSTOMER ACCOUNT ACTIVITY STATEMENT

DATE 01/20/12
 PAGE 05

0

ACTIVITY FOR PERIOD 02-01-10 - 01-20-12

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
09-30-11	01-09	168	ESCROW ADVANCE	
	0.00	0.00	0.00	0.02
09-30-11	01-09	173	PAYMENT	
	0.00	0.00	3,004.17	0.02
				26,039.55-
09-30-11	12-08	168	ESCROW ADVANCE	
	0.00	0.00	0.00	0.02
09-30-11	12-08	173	PAYMENT	
	65,250.00	0.00	3,004.17	0.02
				50,229.05
				26,039.57-
09-13-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	85.00	0.00	0.00	0.00

Page 4

- DOLAN BRYON (Saxon Hist 07 22 10 - 01 24 12)

08-24-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT			
	12.00		0.00	0.00	0.00	
08-23-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT			
	85.00		0.00	0.00	0.00	
08-17-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT			
	95.00		0.00	0.00	0.00	
08-16-11	12-08	152	LATE FEE ASSESSED			
	0.00		0.00	0.00	0.00	90.13-1 LATE CHARGE
08-12-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT			
	65.00		0.00	0.00	0.00	
08-10-11	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS			
	50.00		0.00	0.00	0.00	
08-10-11	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS			
	50.00		0.00	0.00	0.00	
08-09-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT			
	60.00		0.00	0.00	0.00	
08-01-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT			
	12.00		0.00	0.00	0.00	
07-26-11	12-08	161	ESCROW ADVANCE			
	5,086.00		0.00	0.00	5,086.00	
07-26-11	07-11	351	HAZARD INSURANCE			
	5,086.00		0.00	0.00	5,086.00	
					26,039.59	NEW PRINCIPAL/ESCROW BALANCES
07-16-11	12-08	152	LATE FEE ASSESSED			
	0.00		0.00	0.00	0.00	90.13-1 LATE CHARGE
07-15-11	00-00	630	ATTORNEY ADVANCE DISBURSEMENT			
	85.00		0.00	0.00	0.00	
07-12-11	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS			
	200.00		0.00	0.00	0.00	
07-12-11	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS			
	200.00		0.00	0.00	0.00	
06-28-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT			
	12.00		0.00	0.00	0.00	

1P6241-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 01/20/12
 REQ BY SLS 012012 PAGE 06
 OBRYON J DOLAN
 LOAN NUMBER: [REDACTED]

0 ACTIVITY FOR PERIOD 02-01-10 - 01-20-12

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
06-16-11	12-08	152	LATE FEE ASSESSED	
	0.00		0.00	0.00
05-25-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	12.00		0.00	0.00
05-16-11	12-08	152	LATE FEE ASSESSED	
	0.00		0.00	0.00
04-28-11	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
	50.00		0.00	0.00
04-28-11	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
	95.00		0.00	0.00
04-26-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	12.00		0.00	0.00
04-18-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	65.00		0.00	0.00
04-16-11	12-08	152	LATE FEE ASSESSED	
	0.00		0.00	0.00
04-12-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	100.00		0.00	0.00
04-11-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	

150.00 0.00 0.00 0.00
 03-25-11 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 60.00 0.00 0.00 0.00
 03-25-11 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 50.00 0.00 0.00 0.00
 03-23-11 00-00 632 STATUTORY EXPENSE DISBURSEMENT
 50.00 0.00 0.00 0.00
 03-23-11 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 12.00 0.00 0.00 0.00
 03-16-11 12-08 152 LATE FEE ASSESSED
 0.00 0.00 0.00 93.88-1 LATE CHARGE
 02-24-11 00-00 632 STATUTORY EXPENSE DISBURSEMENT
 47.20 0.00 0.00 0.00
 02-23-11 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 12.00 0.00 0.00 0.00
 02-16-11 12-08 152 LATE FEE ASSESSED
 0.00 0.00 0.00 93.88-1 LATE CHARGE
 01-28-11 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 6,245.00- 0.00 0.00 0.00
 01-28-11 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 6,245.00- 0.00 0.00 0.00
 01-24-11 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 12.00 0.00 0.00 0.00
 01-18-11 12-08 152 LATE FEE ASSESSED
 0.00 0.00 0.00 93.88-1 LATE CHARGE
 12-22-10 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 10.50 0.00 0.00 0.00
 1P6241-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 01/20/12
 REQ BY SLS 012012 PAGE 07
 OBRYON J DOLAN
 LOAN NUMBER:

0 ACTIVITY FOR PERIOD 02-01-10 - 01-20-12
 PROCESS DUE TRANSACTION TRANSACTION EFFECTIVE DATE
 DATE DATE CODE DESCRIPTION OF TRANSACTION

 TRANSACTION PRIN PD/ ESCROW PD/ OTHER
 AMOUNT BALANCE INTEREST BALANCE AMOUNT CODE/DESCRIPTION

 12-09-10 00-00 632 STATUTORY EXPENSE DISBURSEMENT
 95.00 0.00 0.00 0.00
 11-29-10 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 10.50 0.00 0.00 0.00
 11-16-10 12-08 161 ESCROW ADVANCE
 4,502.16 0.00 0.00 4,502.16
 11-16-10 12-10 312 COUNTY TAX DISBURSEMENT
 4,502.16- 0.00 0.00 4,502.16-
 20,953.59- NEW PRINCIPAL/ESCROW BALANCES
 11-11-10 12-08 161 ESCROW ADVANCE
 5,086.00 0.00 0.00 5,086.00
 11-11-10 07-10 351 HAZARD INSURANCE
 5,086.00- 0.00 0.00 5,086.00-
 16,451.43- NEW PRINCIPAL/ESCROW BALANCES
 10-28-10 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 10.50 0.00 0.00 0.00
 10-18-10 12-08 152 LATE FEE ASSESSED
 0.00 0.00 0.00 93.88-1 LATE CHARGE
 10-11-10 00-00 630 ATTORNEY ADVANCE DISBURSEMENT
 250.00 0.00 0.00 0.00
 10-08-10 00-00 632 STATUTORY EXPENSE DISBURSEMENT
 47.20 0.00 0.00 0.00
 09-30-10 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 10.50 0.00 0.00 0.00
 09-30-10 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS

275.00 0.00 0.00 0.00
 09-20-10 00-00 632 STATUTORY EXPENSE DISBURSEMENT
 50.00 0.00 0.00 0.00
 09-20-10 00-00 630 ATTORNEY ADVANCE DISBURSEMENT
 150.00 0.00 0.00 0.00
 09-20-10 00-00 630 ATTORNEY ADVANCE DISBURSEMENT
 150.00 0.00 0.00 0.00
 09-09-10 00-00 632 STATUTORY EXPENSE DISBURSEMENT
 100.00 0.00 0.00 0.00
 08-25-10 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 10.50 0.00 0.00 0.00
 08-16-10 12-08 161 ESCROW ADVANCE
 4,646.16 0.00 0.00 4,646.16
 08-16-10 12-09 328 TAX PENALTY
 645.15- 0.00 0.00 645.15-
 11,365.43- NEW PRINCIPAL/ESCROW BALANCES
 08-16-10 12-09 325 DELINQUENT TAX PAYMENT
 4,001.01- 0.00 0.00 4,001.01-
 10,720.28- NEW PRINCIPAL/ESCROW BALANCES
 07-29-10 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 6,719.27- 0.00 0.00 0.00
 1P6241-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 01/20/12
 REQ BY SLS 012012 PAGE 08
 OBRYON J DOLAN
 LOAN NUMBER:

0 ACTIVITY FOR PERIOD 02-01-10 - 01-20-12

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
07-29-10	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
6,245.00-		0.00	0.00	0.00
07-22-10	12-08	161	ESCROW ADVANCE	
6,719.27		0.00	0.00	6,719.27
07-22-10	12-08	170	PRE-DISTRIBUTED FUNDS	
6,719.27-		0.00	0.00	6,719.27-
				6,719.27- NEW PRINCIPAL/ESCROW BALANCES
07-22-10	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
7,439.33		0.00	0.00	0.00
07-22-10	12-08	132	LATE FEE WAIVED	
0.00		0.00	0.00	0.00 2,470.97-1 LATE CHARGE
07-22-10	12-08	142	NEW LOAN SETUP	
0.00		721,000.00-	0.00	0.00
		721,000.00		NEW PRINCIPAL/ESCROW BALANCES

 1P6241-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 01/20/12
 REQ BY SLS 012012 PAGE 01
 0
 BRYON J DOLAN
 540 WINDWARD POINT CT # C
 COLUMBIA SC 29212

0 *****

CURRENT ACCOUNT INFORMATION						
LOAN NUMBER	DATE	TOTAL PAYMENT DUE	PRINCIPAL & INTEREST PAYMENT	LOAN INTEREST RATE	CURRENT PRINCIPAL BALANCE	ESCROW BALANCE
2000599079	03-01-11	1877.62	0.00	3.12500	0.00	

 0 ACTIVITY FOR PERIOD 02-01-10 - 01-20-12
 Page 7

- DOLAN BRYON (Saxon Hist 07 22 10 - 01 24 12)

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
01-20-12	03-11	132	LATE FEE WAIVED	
	0.00	0.00	0.00	0.00
01-20-12	03-11	132	LATE FEE WAIVED	
	0.00	0.00	0.00	0.00
01-20-12	03-11	132	LATE FEE WAIVED	
	0.00	0.00	0.00	0.00
01-20-12	03-11	132	LATE FEE WAIVED	
	0.00	0.00	0.00	0.00
01-20-12	03-11	156	LOAN TRANSFERRED	
	0.00	721,000.00	0.00	30,631.47
				810.13-
				NEW PRINCIPAL/ESCROW BALANCES
01-20-12	03-11	168	ESCROW ADVANCE REPAYMENT	
	0.00	0.00	0.00	30,631.47-30,631.47
01-19-12	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	65.00	0.00	0.00	0.00
01-10-12	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	12.00	0.00	0.00	0.00
12-16-11	03-11	152	LATE FEE ASSESSED	
	0.00	0.00	0.00	0.00
				90.13-1 LATE CHARGE
12-09-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	3.73	0.00	0.00	0.00
12-07-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	12.00	0.00	0.00	0.00
12-06-11	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
	6.10	0.00	0.00	0.00
11-18-11	03-11	161	ESCROW ADVANCE	
	4,592.42	0.00	0.00	4,592.42
11-18-11	12-11	312	COUNTY TAX DISBURSEMENT	
	4,592.42-	0.00	0.00	4,592.42-
				30,631.47- NEW PRINCIPAL/ESCROW BALANCES
11-17-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	32.00	0.00	0.00	0.00

1P6241-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 01/20/12
 REQ BY SLS 012012 PAGE 02

OBRYON J DOLAN
 LOAN NUMBER: [REDACTED]
 0 ACTIVITY FOR PERIOD 02-01-10 - 01-20-12

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
11-16-11	03-11	152	LATE FEE ASSESSED	
	0.00	0.00	0.00	0.00
				90.13-1 LATE CHARGE
11-02-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	12.00	0.00	0.00	0.00
10-27-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	59.00	0.00	0.00	0.00
10-27-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	150.00	0.00	0.00	0.00
10-17-11	03-11	152	LATE FEE ASSESSED	
	0.00	0.00	0.00	0.00
				90.13-1 LATE CHARGE
10-05-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	85.00	0.00	0.00	0.00
10-03-11	02-11	168	ESCROW ADVANCE REPAYMENT	
	0.00	0.00	0.00	0.02-
				0.02

DOLAN BRYON (Saxon Hist 07 22 10 - 01 24 12)

10-03-11	02-11	173	PAYMENT	0.00	1,877.60	0.02	1,877.62-	09-30-11
						26,039.05-	NEW PRINCIPAL/ESCROW BALANCES	
10-03-11	01-11	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02	
10-03-11	01-11	173	PAYMENT	0.00	1,877.60	0.02		09-30-11
						26,039.07-	NEW PRINCIPAL/ESCROW BALANCES	
10-03-11	12-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02	
10-03-11	12-10	173	PAYMENT	0.00	1,877.60	0.02		09-30-11
						26,039.09-	NEW PRINCIPAL/ESCROW BALANCES	
10-03-11	11-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02	
10-03-11	11-10	173	PAYMENT	0.00	1,877.60	0.02		09-30-11
						26,039.11-	NEW PRINCIPAL/ESCROW BALANCES	
10-03-11	10-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02	
10-03-11	10-10	173	PAYMENT	0.00	1,877.60	0.02		09-30-11
						26,039.13-	NEW PRINCIPAL/ESCROW BALANCES	
10-03-11	09-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02	
10-03-11	09-10	173	PAYMENT	0.00	1,877.60	0.02		09-30-11
						26,039.15-	NEW PRINCIPAL/ESCROW BALANCES	
10-03-11	08-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02	
10-03-11	08-10	173	PAYMENT	0.00	1,877.60	0.02		09-30-11
						26,039.17-	NEW PRINCIPAL/ESCROW BALANCES	

1P6241-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 01/20/12
 REQ BY SLS 012012 PAGE 03
 OBRYON J DOLAN
 LOAN NUMBER: [REDACTED]

0 ACTIVITY FOR PERIOD 02-01-10 - 01-20-12

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
		TRANSACTION AMOUNT	PRIN PD/ BALANCE INTEREST ESCROW PD/ BALANCE OTHER- AMOUNT CODE/DESCRIPTION	
10-03-11	07-10	168	ESCROW ADVANCE REPAYMENT	
		0.00	0.00 0.00 0.02-	0.02
10-03-11	07-10	173	PAYMENT	09-30-11
		0.00	0.00 1,877.60 0.02	
			26,039.19-	NEW PRINCIPAL/ESCROW BALANCES
10-03-11	06-10	168	ESCROW ADVANCE REPAYMENT	
		0.00	0.00 0.00 0.02-	0.02
10-03-11	06-10	173	PAYMENT	09-30-11
		0.00	0.00 1,877.60 0.02	
			26,039.21-	NEW PRINCIPAL/ESCROW BALANCES
10-03-11	05-10	168	ESCROW ADVANCE REPAYMENT	
		0.00	0.00 0.00 0.02-	0.02
10-03-11	05-10	173	PAYMENT	09-30-11
		0.00	0.00 1,877.60 0.02	16,898.58-
			26,039.23-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	05-10	493	ARM LOAN ADJUSTMENT	
			NEW INTEREST RATE: 0.03125 NEW PRIN & INT PAYMENT: 1,877.60	
09-30-11	04-10	168	ESCROW ADVANCE REPAYMENT	
		0.00	0.00 0.00 0.02-	0.02

- DOLAN BRYON (Saxon Hist 07 22 10 - 01 24 12)

09-30-11	04-10	173	PAYMENT	0.00	2,553.54	0.02	
						26,039.25-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	03-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	03-10	173	PAYMENT	0.00	2,553.54	0.02	
						26,039.27-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	02-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	02-10	173	PAYMENT	0.00	2,553.54	0.02	7,660.68-
						26,039.29-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	01-10	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	01-10	173	PAYMENT	0.00	2,553.54	0.02	
						26,039.31-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	12-09	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	12-09	173	PAYMENT	0.00	2,553.54	0.02	
						26,039.33-	NEW PRINCIPAL/ESCROW BALANCES
09-30-11	11-09	168	ESCROW ADVANCE	0.00	0.00	0.02-	0.02
09-30-11	11-09	173	PAYMENT	0.00	2,553.54	0.02	
						26,039.35-	NEW PRINCIPAL/ESCROW BALANCES

1P6241-45C
 REQ BY SLS 012012
 OBRYON J DOLAN
 LOAN NUMBER: XXXXXXXXXX

CUSTOMER ACCOUNT ACTIVITY STATEMENT

DATE 01/20/12
PAGE 04

0
 ACTIVITY FOR PERIOD 02-01-10 - 01-20-12

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION			EFFECTIVE DATE OF TRANSACTION
TRANSACTION AMOUNT	PRIN PD/ BALANCE	INTEREST	ESCROW PD/ BALANCE	-----OTHER----- AMOUNT CODE/DESCRIPTION		
09-30-11	10-09	168	ESCROW ADVANCE	REPAYMENT		
0.00	0.00	0.00	0.02-	0.02		
09-30-11	10-09	173	PAYMENT			
0.00	0.00	2,553.54	0.02			
			26,039.37-	NEW PRINCIPAL/ESCROW BALANCES		
09-30-11	09-09	168	ESCROW ADVANCE	REPAYMENT		
0.00	0.00	0.00	0.02-	0.02		
09-30-11	09-09	173	PAYMENT			
0.00	0.00	2,553.54	0.02			
			26,039.39-	NEW PRINCIPAL/ESCROW BALANCES		
09-30-11	08-09	168	ESCROW ADVANCE	REPAYMENT		
0.00	0.00	0.00	0.02-	0.02		
09-30-11	08-09	173	PAYMENT			
0.00	0.00	2,553.54	0.02			
			26,039.41-	NEW PRINCIPAL/ESCROW BALANCES		
09-30-11	07-09	168	ESCROW ADVANCE	REPAYMENT		
0.00	0.00	0.00	0.02-	0.02		
09-30-11	07-09	173	PAYMENT			
0.00	0.00	2,553.54	0.02			
			26,039.43-	NEW PRINCIPAL/ESCROW BALANCES		
09-30-11	06-09	168	ESCROW ADVANCE	REPAYMENT		
0.00	0.00	0.00	0.02-	0.02		
09-30-11	06-09	173	PAYMENT			
0.00	0.00	2,553.54	0.02			

Page 10

[REDACTED] - DOLAN BRYON (Saxon Hist 07 22 10 - 01 24 12)
 26,039.45- NEW PRINCIPAL/ESCROW BALANCES
 09-30-11 05-09 168 ESCROW ADVANCE REPAYMENT
 0.00 0.00 0.02- 0.02
 09-30-11 05-09 173 PAYMENT
 0.00 0.00 2,553.54 0.02 22,982.04-
 26,039.47- NEW PRINCIPAL/ESCROW BALANCES
 09-30-11 05-09 493 ARM LOAN ADJUSTMENT
 NEW INTEREST RATE: 0.04250 NEW PRIN & INT PAYMENT: 2,553.54
 09-30-11 04-09 168 ESCROW ADVANCE REPAYMENT
 0.00 0.00 0.02- 0.02
 09-30-11 04-09 173 PAYMENT
 0.00 0.00 3,004.17 0.02
 26,039.49- NEW PRINCIPAL/ESCROW BALANCES
 09-30-11 03-09 168 ESCROW ADVANCE REPAYMENT
 0.00 0.00 0.02- 0.02
 09-30-11 03-09 173 PAYMENT
 0.00 0.00 3,004.17 0.02
 26,039.51- NEW PRINCIPAL/ESCROW BALANCES
 09-30-11 02-09 168 ESCROW ADVANCE REPAYMENT
 0.00 0.00 0.02- 0.02
 09-30-11 02-09 173 PAYMENT
 0.00 0.00 3,004.17 0.02
 26,039.53- NEW PRINCIPAL/ESCROW BALANCES
 IP6241-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 01/20/12
 REQ BY SLS 012012 PAGE 05
 OBRYON J DOLAN
 LOAN NUMBER: [REDACTED]

0 ACTIVITY FOR PERIOD 02-01-10 - 01-20-12
 PROCESS DUE TRANSACTION TRANSACTION EFFECTIVE DATE
 DATE DATE CODE DESCRIPTION OF TRANSACTION

 TRANSACTION PRIN PD/ ESCROW PD/ OTHER
 AMOUNT BALANCE INTEREST BALANCE AMOUNT CODE/DESCRIPTION

 09-30-11 01-09 168 ESCROW ADVANCE REPAYMENT
 0.00 0.00 0.00 0.02- 0.02
 09-30-11 01-09 173 PAYMENT
 0.00 0.00 3,004.17 0.02
 26,039.55- NEW PRINCIPAL/ESCROW BALANCES
 09-30-11 12-08 168 ESCROW ADVANCE REPAYMENT
 0.00 0.00 0.02- 0.02
 09-30-11 12-08 173 PAYMENT
 65,250.00 0.00 3,004.17 0.02 50,229.05
 26,039.57- NEW PRINCIPAL/ESCROW BALANCES
 09-13-11 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 85.00 0.00 0.00 0.00
 08-24-11 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 12.00 0.00 0.00 0.00
 08-23-11 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 85.00 0.00 0.00 0.00
 08-17-11 00-00 632 STATUTORY EXPENSE DISBURSEMENT
 95.00 0.00 0.00 0.00
 08-16-11 12-08 152 LATE FEE ASSESSED
 0.00 0.00 0.00 90.13-1 LATE CHARGE
 08-12-11 00-00 632 STATUTORY EXPENSE DISBURSEMENT
 65.00 0.00 0.00 0.00
 08-10-11 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 50.00 0.00 0.00 0.00
 08-10-11 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 50.00- 0.00 0.00 0.00
 08-09-11 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 60.00 0.00 0.00 0.00
 08-01-11 00-00 631 PROPERTY PRESERVATION DISBURSEMENT

[REDACTED] - DOLAN BRYON (Saxon Hist 07 22 10 - 01 24 12)
 12.00 0.00 0.00 0.00
 07-26-11 12-08 161 ESCROW ADVANCE
 5,086.00 0.00 0.00 5,086.00
 07-26-11 07-11 351 HAZARD INSURANCE
 5,086.00- 0.00 0.00 5,086.00-
 26,039.59- NEW PRINCIPAL/ESCROW BALANCES
 07-16-11 12-08 152 LATE FEE ASSESSED
 0.00 0.00 0.00 0.00 90.13-1 LATE CHARGE
 07-15-11 00-00 630 ATTORNEY ADVANCE DISBURSEMENT
 85.00 0.00 0.00 0.00
 07-12-11 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 200.00- 0.00 0.00 0.00
 07-12-11 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 200.00 0.00 0.00 0.00
 06-28-11 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 12.00 0.00 0.00 0.00
 1P6241-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT
 REQ BY SLS 012012 DATE 01/20/12
 OBRYON J DOLAN PAGE 06
 LOAN NUMBER: [REDACTED]

0 ACTIVITY FOR PERIOD 02-01-10 - 01-20-12

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
06-16-11	12-08	152	LATE FEE ASSESSED	
	0.00		0.00 0.00 0.00	90.13-1 LATE CHARGE
05-25-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	12.00		0.00 0.00 0.00	
05-16-11	12-08	152	LATE FEE ASSESSED	
	0.00		0.00 0.00 0.00	90.13-1 LATE CHARGE
04-28-11	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
	50.00		0.00 0.00 0.00	
04-28-11	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
	95.00-		0.00 0.00 0.00	
04-26-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	12.00		0.00 0.00 0.00	
04-18-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	65.00		0.00 0.00 0.00	
04-16-11	12-08	152	LATE FEE ASSESSED	
	0.00		0.00 0.00 0.00	93.88-1 LATE CHARGE
04-12-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	100.00		0.00 0.00 0.00	
04-11-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	150.00		0.00 0.00 0.00	
03-25-11	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
	60.00		0.00 0.00 0.00	
03-25-11	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
	50.00		0.00 0.00 0.00	
03-23-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	50.00		0.00 0.00 0.00	
03-23-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	12.00		0.00 0.00 0.00	
03-16-11	12-08	152	LATE FEE ASSESSED	
	0.00		0.00 0.00 0.00	93.88-1 LATE CHARGE
02-24-11	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	47.20		0.00 0.00 0.00	
02-23-11	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	12.00		0.00 0.00 0.00	
02-16-11	12-08	152	LATE FEE ASSESSED	
	0.00		0.00 0.00 0.00	93.88-1 LATE CHARGE

01-28-11 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 6,245.00- 0.00 0.00 0.00
 01-28-11 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 6,245.00 0.00 0.00 0.00
 01-24-11 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 12.00 0.00 0.00 0.00
 01-18-11 12-08 152 LATE FEE ASSESSED
 0.00 0.00 0.00 93.88-1 LATE CHARGE
 12-22-10 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 10.50 0.00 0.00 0.00
 1P6241-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT
 REQ BY SLS 012012- DATE 01/20/12
 0BRYON J DOLAN PAGE 07
 LOAN NUMBER:

0 ACTIVITY FOR PERIOD 02-01-10 - 01-20-12

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
12-09-10	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
95.00		0.00	0.00	0.00
11-29-10	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
10.50		0.00	0.00	0.00
11-16-10	12-08	161	ESCROW ADVANCE	
4,502.16		0.00	0.00	4,502.16
11-16-10	12-10	312	COUNTY TAX DISBURSEMENT	
4,502.16-		0.00	0.00	4,502.16-
			20,953.59-	NEW PRINCIPAL/ESCROW BALANCES
11-11-10	12-08	161	ESCROW ADVANCE	
5,086.00		0.00	0.00	5,086.00
11-11-10	07-10	351	HAZARD INSURANCE	
5,086.00-		0.00	0.00	5,086.00-
			16,451.43-	NEW PRINCIPAL/ESCROW BALANCES
10-28-10	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
10.50		0.00	0.00	0.00
10-18-10	12-08	152	LATE FEE ASSESSED	
0.00		0.00	0.00	93.88-1 LATE CHARGE
10-11-10	00-00	630	ATTORNEY ADVANCE DISBURSEMENT	
250.00		0.00	0.00	0.00
10-08-10	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
47.20		0.00	0.00	0.00
09-30-10	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
10.50		0.00	0.00	0.00
09-30-10	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
275.00		0.00	0.00	0.00
09-20-10	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
50.00		0.00	0.00	0.00
09-20-10	00-00	630	ATTORNEY ADVANCE DISBURSEMENT	
150.00		0.00	0.00	0.00
09-20-10	00-00	630	ATTORNEY ADVANCE DISBURSEMENT	
150.00		0.00	0.00	0.00
09-09-10	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
100.00		0.00	0.00	0.00
08-25-10	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
10.50		0.00	0.00	0.00
08-16-10	12-08	161	ESCROW ADVANCE	
4,646.16		0.00	0.00	4,646.16
08-16-10	12-09	328	TAX PENALTY	
645.15-		0.00	0.00	645.15-
			11,365.43-	NEW PRINCIPAL/ESCROW BALANCES
08-16-10	12-09	325	DELINQUENT TAX PAYMENT	

4,001.01- [REDACTED] - DOLAN BRYON (Saxon Hist 07 22 10 - 01 24 12)
 0.00 0.00 4,001.01-
 10,720.28- NEW PRINCIPAL/ESCROW BALANCES
 07-29-10 00-00 745 RESTRICTED CORPORATE ADVANCE ADJUSTMENTS
 6,719.27- 0.00 0.00 0.00
 1P6241-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 01/20/12
 REQ BY SLS 012012 PAGE 08
 OBRYON J DOLAN
 LOAN NUMBER: [REDACTED]
 0 ACTIVITY FOR PERIOD 02-01-10 - 01-20-12

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
07-29-10	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
6,245.00-		0.00	0.00	0.00
07-22-10	12-08	161	ESCROW ADVANCE	
6,719.27		0.00	0.00	6,719.27
07-22-10	12-08	170	PRE-DISTRIBUTED FUNDS	
6,719.27-		0.00	0.00	6,719.27-
				6,719.27- NEW PRINCIPAL/ESCROW BALANCES
07-22-10	00-00	745	RESTRICTED CORPORATE ADVANCE ADJUSTMENTS	
7,439.33		0.00	0.00	0.00
07-22-10	12-08	132	LATE FEE WAIVED	
0.00		0.00	0.00	2,470.97-1 LATE CHARGE
07-22-10	12-08	142	NEW LOAN SETUP	
0.00		721,000.00-	0.00	0.00
		721,000.00		
				NEW PRINCIPAL/ESCROW BALANCES

 1P6241-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 01/20/12
 REQ BY SLS 012012 PAGE 01

2011038377 FILED, RECORDED, INDEXED
2011-09-30 14:19:47:330
REC FEE: \$7.00 ST FEE: \$0.00
CO FEE: \$0.00 Pages: 2
Lexington County R.O.D. Debra M. Gunter
MORTGAGE MOD Bk:Pg: 15084:266

STATE OF SOUTH CAROLINA)
) MORTGAGE MODIFICATION
COUNTY OF LEXINGTON) BOOK 10015 PAGE 280

WHEREAS, the undersigned did, for good and valuable consideration, on or about March 28, 2005, grant, deliver, bargain, sell, and transfer to Branch Banking & Trust Company of South Carolina an interest in Lot 5-B fronting on Windward Point, and shown and delineated on a Plat prepared for Bryon J Dolan and Lisa Dolan by Whitworth & Associates dated December 5, 2002 recorded in the Office of Deeds for Lexington County in Book 7757 at Page 154; and

WHEREAS, this transaction is secured by a Mortgage recorded in the Office of Deeds for Lexington County in Book 10015 at Page 280; and

WHEREAS, the Mortgage was assigned to FV1, Inc in trust for Morgan Stanley Mortgage Capital Holdings, LLC c/o Saxon Mortgage Services, Inc, 3701 Regent Blvd, Irving TX 75063 by Assignment recorded in Book 14959 at Page 331; and

WHEREAS, the undersigned have negotiated with the Owners of the adjacent property for a non-exclusive Easement for Ingress/Egress to said Property; and

WHEREAS, the undersigned are desirous of modifying the property description of the mortgage to include this additional easement.

NOW THEREFORE, for and in consideration of the sum of (\$ 3.00) in hand paid; the receipt of which is herewith acknowledged, the undersigned modify the property description of the Mortgage by adding the following description of Easement to the property description and making it a part of the property encumbered by the Mortgage lien:

A non-exclusive Easement for ingress/egress to Lot 5 (a/k/a Lot 5-B) over, through and across Lot 5-A (a/k/a Parcel "A") as shown and delineated upon that certain Plat prepared for Norris L Bowen and Jo Ann Bowen by Survey & Mapping Services dated September 14, 2011, recorded in the Office of Deeds for Lexington County and being more particularly described as "New Ingress/Egress Easement to 540 Windward Point Ct." shown as a small triangular shaped



portion of Lot 5-A having an area of (206.25 ft² ±) located at the north-east line between
Windward Point Court and Lot 5-A.

IN WITNESS WHEREOF, the undersigned have placed their hands and seals this 29
Day of September, 2011

Ronald R. Hall
Alita K. Taylor
Ronald R. Hall
Alita K. Taylor

Bryon J. Dolan
Bryon J. Dolan
Lisa Dolan
Lisa Dolan

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly
sworn, doth depose and state that (s)he saw the within named Bryon J. Dolan and
Lisa Dolan sign, seal and deliver the within Document for the purposes set forth
therein; and that (s)he with the other witnesses whose signatures appear above
witnessed the execution thereof.

Alita K. Taylor
Witness

Sworn To Before Me This 29 Day of September, 2011

Ronald R. Hall (L.S.)
Notary Public for South Carolina

My Commission Expires: 6-30-2015

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FV-I, Inc. in trust for Morgan Stanley Mortgage
Capital Holdings, LLC,

Plaintiff,

vs.

Bryon J. Dolan; Lisa S. Dolan; First Citizens
Bank and Trust Company, Inc.; Wells Fargo
Bank, N.A.; Branch Banking and Trust
Company,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 12-CP-32-2816

PLAINTIFF'S RESPONSES TO
DEFENDANTS BRYON J. DOLAN
AND LISA S. DOLAN'S
FIRST SET OF REQUESTS TO ADMIT

(511792.00355 CSG)

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEYS FOR DEFENDANTS BRYON
J. DOLAN AND LISA S. DOLAN:

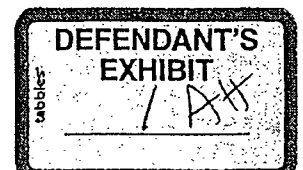
Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, FV-I, Inc. in trust
for Morgan Stanley Mortgage Capital Holdings, LLC, ("Plaintiff"), by and through its
undersigned counsel, submit the following Responses to the Requests to Admit of Defendants
Bryon J. Dolan and Lisa S. Dolan ("Defendants").

REQUEST TO ADMIT

1. A servicer of the loan subject of this case entered into an agreement with the
Defendants on or around the end of August or in September of 2011.

RESPONSE: Plaintiff admits that on or about September 22, 2011 Plaintiff's loan
servicer, Saxon Mortgage Services, Inc. ("Saxon"), and Defendants entered into an agreement
related to a partial release of the subject property in exchange for a payment of \$65,250.

2. This servicer was servicing the loan on behalf of the Plaintiff.



RESPONSE: Plaintiff admits that when the agreement was signed on or about September 22, 2011 Saxon was servicing the loan on behalf of Morgan Stanley Mortgage Capital Holdings, LLC.

3. This servicer was servicing the loan on behalf of a predecessor in interest of the Plaintiff.

RESPONSE: Plaintiff admits that when the agreement was signed on or about September 22, 2011 Saxon was servicing the loan on behalf of Morgan Stanley Mortgage Capital Holdings, LLC.

4. The Defendants performed under the agreement.

RESPONSE: Upon information and belief Plaintiff admits all parties performed under the agreement that was signed on or about September 22, 2011.

5. The Plaintiff (itself or through its servicer) would not allow the Defendants to perform under the agreement.

RESPONSE: Denied. Pursuant to the terms of the agreement signed on or about September 22, 2011 accepting the two \$3,000 payments were at Saxon's "sole discretion."

6. The Plaintiff (itself or through its servicer) refused to accept payments from the Defendants.

RESPONSE: Denied. Pursuant to the terms of the agreement signed on or about September 22, 2011 accepting the two \$3,000 payments were at Saxon's "sole discretion." The

agreement does not obligate Saxon to accept any funds from the borrowers other than the \$65,250 amount from the closing of property address 544 Windward Point Court and then apply those funds to the borrowers' loan pursuant to the terms of the subject note and mortgage.

7. The Plaintiff followed its ordinary procedures regarding the matters subject of this case.

RESPONSE: Plaintiff objects to the term "ordinary procedures" due to the fact that this term is not defined and Plaintiff is unable to adequately respond. Subject to this objection, Plaintiff admits that at all relevant times Plaintiff and its loan servicers complied with its obligations under the subject loan documents.



Charles S. Gwynne Jr. (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

October 30, 2013

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 2012-CP-32-2816

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have caused to be served a copy of the foregoing documents upon counsel of record by U.S. Mail, postage prepaid, on October 30, 2013, at the following address(es):

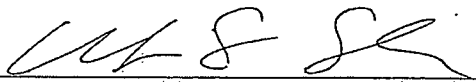
Document(s) Served:

Plaintiff's Responses to Defendants Bryon J. Dolan and Lisa S. Dolan's First Set of Requests to Admit

Counsel Served:

Andrew S. Radeker, Esquire
Harrison & Radeker, P.A.
PO Box 50143
Columbia, SC 29250

Adam H. Schanz, Esquire
Crawford & von Keller, LLC
PO Box 4216
Columbia, SC 29204


Charles S. Gwynne Jr. (SC Bar # 73844)

July 21, 2010

Bryon J Dolan
540 Windward Point Ct # C
Columbia, SC 29212-8404

Re: Loan Number 2000599079

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF OWNERSHIP OF MORTGAGE LOAN
(15 U.S.C. § 1641(g))

You are hereby notified that the ownership of your mortgage loan has been assigned, sold or transferred to Morgan Stanley Mortgage Capital Holdings, LLC, 1585 Broadway, New York, New York 10036, telephone 888-731-9031 ("Creditor"), effective 06/25/2010.

Information about your Mortgage Loan:

Borrower Name(s): Bryon J Dolan
Property Address: 540 Windward Point Ct, Columbia, SC 29212
Original Loan Amount: \$721,000.00

The assignment, sale or transfer of ownership of your loan does not affect any term or condition of your mortgage loan, other than terms directly related to the ownership of your loan.

The servicer of your loan, and the party who has authority to act on behalf of the above referenced Creditor, is Saxon Mortgage Services, Inc. (your "Mortgage Loan Servicer"). If you have any questions relating to the assignment, sale or transfer of your mortgage loan, please call Saxon toll free at 800-594-8422 between 7:00 a.m. and 10:00 p.m. Central Time, Monday through Friday, and between 8:00 a.m. and 2:00 p.m. Central Time on Saturday. The mailing address for your Mortgage Loan Servicer is:

Saxon Mortgage Services, Inc.
ATTN: Customer Service Center
P.O. Box 163405
Fort Worth, TX 76161-0105

The payment address where you should send your mortgage payments is:

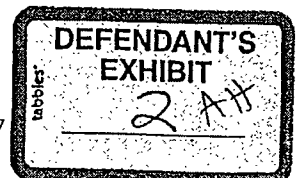
Saxon Mortgage Services, Inc.
ATTN: Cashiering
P.O. Box 161818
Fort Worth, TX 76161-1818

Payments should be made to the Mortgage Loan Servicer at the Payment address identified above, or as otherwise noted in any transfer of Servicing Disclosure you may receive.

Evidence of ownership of your mortgage debt is maintained by the Mortgage Loan Servicer.

If you have any questions regarding your mortgage loan or this disclosure, please contact Saxon Mortgage Services, Inc. at 800-594-8422 during the hours noted above.

PL - 001667



SAXON

4708 Mercantile Drive North
Fort Worth, TX 76137

REPRESENTATION OF PRINTED DOCUMENT

160-54168-0000165-001-1-110-000-000-000

BRYON J DOLAN
540 WINDWARD POINT CT # C
COLUMBIA SC 29212-8404

Date: July 26, 2010
Saxon Loan Number: 2000599079
Property Address: 540 Windward Point Ct
Columbia SC 29212

Welcome to Saxon Mortgage Services, Inc. (Saxon). Saxon has acquired the servicing of your mortgage loan from Branch Banking & Trust Company effective July 21, 2010. Saxon is committed to making the transfer of your loan a smooth process. Through people, passion and performance we will strive to exceed your expectations by providing the quality service you deserve. Please take a moment to read the content of this letter as it provides pertinent information for servicing your loan.

A Few Important Points

While this sort of transfer is common in today's mortgage lending industry, we have considered how this transfer may affect you and want to cover some of the changes you will see:

1. Branch Banking & Trust Company will stop accepting your mortgage payments after July 20, 2010. Until that date, send payments to:
Branch Banking & Trust Company
Attention: Mortgage Servicing Center
301 College Street
Greenville SC 29601
2. Saxon will start accepting payments from you on July 21, 2010. Starting on that date all payments should be sent to Saxon. There may be an initial posting delay due to the servicing transfer but it will not negatively impact your payment record.
3. For your convenience Saxon offers several payment options:
 - Send your payment (check or money order) via USPS to:

Saxon Mortgage Services, Inc.
Attention: Payment Processing
P.O. Box 161818
Fort Worth, TX 76161-1818

- Western Union Quick Collect
 - Pay through our Interactive Voice Response system (IVR) when you call our Customer Call Center at 800-594-8422
 - Pay online at www.saxononline.com
 - Electronic Bank Draft (ACH)
 - Set-up a Western Union Phone Pay with one of our representatives at our Customer Call Center
4. Your first statement from Saxon will arrive in August 2010. If you do not receive it by then, please call 800-594-8422.
 5. If you have already mailed your next payment to Branch Banking & Trust Company and it is received after the transfer date, it will be forwarded to Saxon for processing. Once again, there will not be a negative impact on your payment record.
 6. If your payment is issued by a third party, or if you make your payment through a bill pay service or online service, please take the appropriate action to ensure that your new account number and new payment mailing address are updated with the third party or service provider.

How to Contact Us

Should you have any questions, here are the applicable mailing addresses, toll-free numbers, and hours of operation.

IF YOU HAVE QUESTIONS REGARDING THE TRANSFER OF SERVICING, CONTACT YOUR PRESENT SERVICER AT

CUSTOMER CARE
800-295-5744
Monday-Thursday 8:30 a.m. - 5:00 p.m. ET
Friday 8:30 a.m. - 6:00 p.m. ET

CORRESPONDENCE
Branch Banking & Trust Company
Attention: Mortgage Servicing Center
301 College Street
Greenville, SC 29601

IF YOU HAVE ANY OTHER QUESTIONS OR CONCERNS, CONTACT SAXON AT

CUSTOMER CARE
800-594-8422
Monday-Thursday 7:00 a.m. - 10:00 p.m. CT
Friday 7:00 a.m. - 7:00 p.m. CT
Saturday 8:00 a.m. - 2:00 p.m. CT

CORRESPONDENCE
Saxon
P.O. Box 163405
Fort Worth, TX 76161

For your convenience, saxononline.com is available to you 24 hours a day. Saxon Mortgage Services, Inc. is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose.

SAXON

Detach and return lower portion with your payment

TEMPORARY COUPON

Please use this coupon if you do not receive a billing statement before the due date.

LOAN NUMBER	"CURRENT" PAYMENT	DELINQUENT PAYMENT	OTHER FEES	UNPAID LATE CHARGES	SUSPENSE CREDIT	TOTAL PAYMENT	DUE ON OR BEFORE
2000599079	\$3,004.18					\$3,004.18	

SAXON MORTGAGE SERVICES, INC.
PO BOX 961105
FORT WORTH TX 76161-0105

|||||

"LATE" FEE	RECEIVED AFTER	TOTAL LATE PAYMENT

ADDITIONAL PRINCIPAL	
ADDITIONAL ESCROW	
TOTAL ENCLOSED	

If remitting more than the amount due, please specify how Excess funds will only be applied to principal if there are no or escrow advance.

DEFENDANT'S
EXHIBIT

PL - 001683

INTERNET REPRINT

Record on Appeal 393

REPRESENTATION OF PRINTED DOCUMENT

Your Monthly and Annual Statement

Every month you will receive a detailed statement from Saxon reflecting all your activity and key financial data. Your first monthly statement will arrive in August 2010. In January 2011, you will receive two separate annual statements, one from Branch Banking & Trust Company and one from Saxon. These annual statements will report the amount of interest, real estate taxes and any mortgage insurance premiums you paid during the time each of us serviced your loan in 2010.

1. Property Taxes

If an escrow reserve is maintained to pay your property taxes, Saxon will continue to collect the funds and pay the taxes. If your property is located in a homeowner area that requires that the tax statement be mailed to you (Pennsylvania, New Jersey or Illinois), please place your Saxon loan number on the statement and forward a copy to: Saxon Mortgage Services, Inc., Attn: Tax Department, P.O. Box 163405, Fort Worth TX 76161.

2. Fire/Hazard/Flood Insurance

Any fire, flood or homeowners insurance policy carried on your property must continue to be paid. All such policies will be transferred to Saxon and will remain in full force. The transfer of your mortgage servicing will not affect the payment of your insurance renewal premiums. However, we recommend that you contact your insurance agent to advise that your loan servicing has been transferred and to mail future renewals to:

Saxon
P.O. Box 202076
Florence, SC 29502-2076

3. Optional Insurance

The transfer of servicing rights may affect the terms or continued availability of any optional coverage such as life, accidental death, disability or other optional coverage. If you have been paying premiums/fees for optional insurance products along with your mortgage, you must contact your optional insurance provider directly to determine your continuation privileges and make arrangements for payment. Saxon will not transfer the policy or collect the policy or collect the premiums. If you have such insurance, please contact your insurance carrier regarding any renewal options you may have or feel free to contact us to assist you with these inquiries.

Notice of Assignment, Sale or Transfer of Servicing Rights

Please note, the assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer or at closing. Your new service provider must also send you this notice not later than 15 days after this effective date or at closing.

Notice Regarding Real Estate Settlement Procedures ACT (RESPA)

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of a transfer of loan servicing, a loan payment received by your previous service provider before its due date may not be treated by us as late and a late fee may not be imposed. Except as prohibited by RESPA, Saxon may report information about your account to credit bureaus; late payments, missed payments or other defaults on your account may be reflected.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a "Qualified Written Request" concerning the servicing of your loan, we must provide you with a written acknowledgment within 20 business days of receipt of your request. A Qualified Written Request is written correspondence, other than notice on a payment coupon or other payment medium supplied by the service provider that includes your name, account number and reasons for your request. A "business day" is a day on which Saxon is open to the public for carrying on substantially all of its business functions. No later than 60 business days after receiving your request, we must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During the 60-business-day period, we may not provide any information to a consumer reporting agency concerning any overdue payment related to such period or Qualified Written Request. However, this does not prevent Saxon from initiating foreclosure if proper grounds exist under the mortgage documents.

ALL QUALIFIED WRITTEN REQUESTS MUST BE MAILED OR FAXED TO:

Saxon Mortgage Services, Inc.
Attn: Customer Relations
P.O. Box 163405
Fort Worth, TX 76161

OR

Attn: Customer Relations
888-261-1918 (Fax)

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that section. You should seek legal advice if you believe your rights have been violated.

Tax Identification Number (TIN) / Social Security Number - W9 Certification:

Consumer checks received by Saxon Mortgage Services via U.S. Mail or at our offices will be electronically presented for payment, subject to ACH rules and regulations. The debit transaction uses the check only as a source document for pertinent information and the actual check will be destroyed within 14 days of the settlement date of the entry. Consumers need to check their monthly bank statement for the check serial number of each ARC entry.

Under the penalties of perjury I certify that the information on this form is true, correct and complete, and that I am not subject to backup withholding due to failure to report interest and dividend income, and that I am a U.S. person.

(The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.)

Borrower's SSN: _____ Co-Borrower's SSN: _____

Borrower's Signature: _____ Co-Borrower's Signature: _____

CHANGE OF ADDRESS OR PHONE NUMBER: Please indicate any changes to your address or phone number.

New Mailing address: _____ Home Phone: _____

_____ Borrower Work #: _____

_____ Co-Borrower Work #: _____

PL - 001684

SAXON

3701 Regent Blvd.
Irving, TX 75063
972.570.6264 phone
972.570.9378 facsimile

September 22, 2011

Bryon and Lisa Dolan
540 Windward Point Court
Columbia, SC 29212

RE: Bryon and Lisa Dolan ("Borrowers")
Saxon Loan #2000599079 ("Loan")
540 Windward Point Court, Columbia, SC 29212 (the "Property")

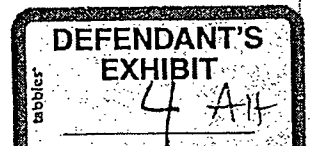
Dear Mr. and Mrs. Dolan:

I have reviewed your request for a partial release of land contained in the Property's legal description of the mortgage dated March 28, 2005, in connection with the sale of the property located at 544 Windward Point Court. Subject to the satisfaction of all the conditions as described below, Saxon (on behalf of the holder of the Loan), consents to a partial release of the mortgage lien pertaining to 1,043 square feet of the Property, as more particularly described as Parcel B-2 on the attached survey prepared on September 14, 2011 by Survey & Mapping Services of South Carolina, Inc. The conditions are as follows:

1. At the time of the closing, the new owners of the 544 Windward Point Court property shall accept and approve the new survey showing the ingress/egress easement to the Property, which will be recorded with the register of deeds office in Lexington County, South Carolina, and which shall be retained for the benefit of the Property. Borrowers shall provide Saxon with a recorded copy of the survey for Saxon's records. Saxon shall prepare the partial release of lien document.
2. As consideration for Saxon's consent to the partial release, the sum of Sixty Five Thousand Two Hundred Fifty Dollars (\$65,250) shall be held in escrow by the title company closing the sale of 544 Windward Point Court, to be wired to Saxon immediately after the closing and funding of the transaction. Saxon's wiring instructions are attached hereto. The funds will be applied to the Loan. Borrowers shall ensure that a HUD-1 delineating these amounts will be delivered to my attention prior to the closing. The sale of the partial release of land shall be recorded for \$65,250 as required by the buyer and the buyer's lender of 544 Windward Point Court, so as to be added to the sales price of the purchase contract for 544 Windward Point Court.
3. Borrowers shall list the Property for sale with the intention of the sale closing on or before December 30, 2011 (3 months from the date of the sale closing of 544 Windward Point Court, which shall occur no later than September 30, 2011). The sale transaction for the Property shall be an "arms-length" transaction, and Borrowers shall retain a neutral third-party realtor to represent them in the sale of the Property. Saxon shall advise Borrowers of the asking price to include in the listing. In the event the sale of the Property does not close on or before December 30, 2011, Saxon may in its sole discretion elect to extend the time frame by an additional two (2) months. In such event, Borrowers shall remit monthly payments to Saxon of Three Thousand Dollars (\$3,000) for each month of the two-month extension period.

Saxon Mortgage Services, Inc. is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. If your loan is currently in bankruptcy, this notice is being sent for informational purposes only. This notice is not intended as an attempt to collect, assess, or claim against or demand payment from any person who is protected by the U.S. Bankruptcy Code. If you have recently been discharged of your personal liability on this debt due to your Chapter 7 bankruptcy, Saxon is not seeking to collect, recover or offset the debt as a personal liability. We intend only to enforce and collect the debt against the collateral as permitted by applicable state law. This communication is only for the purpose of protecting our right to enforcement of the lien on the collateral.

Visit us on the web at www.saxononline.com.



SAXON

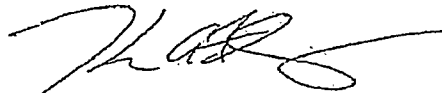
3701 Regent Blvd.
Irving, TX 75063
972.570.6264 phone
972.570.9378 facsimile

4. After the Property is listed for sale, Borrowers will have the option of completing a financial package and delivering same to Saxon for review of a potential loan modification. However, Borrowers acknowledge that Borrowers may not discontinue the listing unless and until a decision regarding a potential loan modification has been made.
5. Borrowers acknowledge that Saxon has no further obligation to release any portion of the mortgage lien against the Property (other than as described herein), unless and until the Loan is fully satisfied.
6. Notwithstanding the foregoing, Borrowers agree that if the closing of the 544 Woodward Point Court sale does not occur by September 30, 2011, this Agreement shall self-operatively be rendered null and void.

This letter agreement supersedes all prior negotiations, representations, understandings or agreements (oral or written) between the parties. In the event that Borrowers fail to comply with any of these provisions, Saxon shall reserve all rights and remedies afforded to it at law, in equity or otherwise. Please indicate your agreement with these terms, by executing this letter agreement where indicated below, and return a signed copy to me.

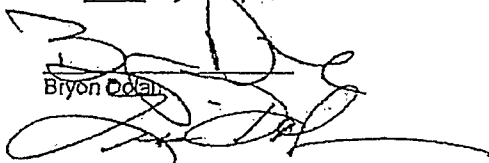
Sincerely,

SAXON MORTGAGE SERVICES, INC.



Kevin A. Flanagan
Vice President

AGREED AND ACCEPTED
this 22 day of September 2011



Bryon Dolan

Lisa Dolan

KAF:ajn
Enclosure: September 14, 2011 Survey
Attachment: Wiring Instructions

Saxon Mortgage Services, Inc. is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. If your loan is currently in bankruptcy, this notice is being sent for informational purposes only. This notice is not intended as an attempt to collect, assess, or claim against or demand payment from any person who is protected by the U.S. Bankruptcy Code. If you have recently been discharged of your personal liability on this debt due to your Chapter 7 bankruptcy, Saxon is not seeking to collect, recover or offset the debt as a personal liability. We intend only to enforce and collect the debt against the collateral as permitted by applicable state law. This communication is only for the purpose of protecting our right to enforcement of the lien on the collateral.

Visit us on the web at www.saxononline.com.

PL - 000424

bryon.dolan@bandlproperties.com

From: bryon.dolan@bandlproperties.com
Sent: Saturday, April 12, 2014 12:43 PM
To: 'bryondolan@yahoo.com'
Subject: FW: Wire

From: Flanagan, Kevin SFW [mailto:FlanaganK@saxonmsi.com]
Sent: Friday, September 30, 2011 12:00 PM
To: bryon.dolan@bandlproperties.com
Subject: Wire

Mr. Dolan,

We received the wire this morning; just waiting for the copy of the ingress/egress that was logged in at the county for recording. Thank you.

Kevin Flanagan
VP, Distressed Servicing
Saxon Mortgage
3701 Regent Blvd.
Irving, Texas 75063
Work: (972) 570-6264
Fax: (972) 570-9378
flanagank@saxonmsi.com

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.



Charlie Gwynne

From: bryon.dolan@bandlproperties.com
Sent: Wednesday, October 12, 2011 11:08 AM
To: Flanagan, Kevin SFW
Subject: RE: Reinstatement Figures

Thanks Kevin!

I'll review and determine what course to take. We've had two showings this past week on the house and was told a possible contract may be coming within the week after the 2nd couple spent an hour in the home yesterday. I saw the prequalification letter for this couple so I know they're capable of closing. We'll see what happens.
Thanks again for the numbers.

Bryon

From: Flanagan, Kevin SFW [mailto:FlanaganK@saxonmsi.com]
Sent: Wednesday, October 12, 2011 11:01 AM
To: bryon.dolan@bandlproperties.com
Subject: Reinstatement Figures

Mr. Dolan,
I ran the reinstatement figures for your loan as you requested; and the amount to bring your loan current as of 10/14/11 is 35,603.88. This includes the DQ payments, late fees, legal fees and other advances made on the account. Please note your loan is still an Interest only loan so there is no change to the balance amount of 721,000. There are a couple options available to bring your account current, you can either pay the full amount or we can set you up on a repayment plan up to 12 months to repay the amount (in addition to your monthly payment).

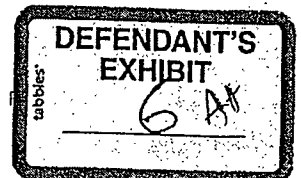
I also need to point out you have an escrow shortage of 26,039.05 (this is not included in the 35,603.88 to bring your loan current). I am attaching the breakdown of this amount which are tax payments and forced insurance that has been placed on the property. If you can show you are maintaining insurance and the period you have maintained, I can have these forced insurance amounts removed. However, the tax amounts will need to be repaid and we can discuss the options available to repay this amount.

Let me know if you have any questions.

Thank you
Kevin Flanagan

Kevin Flanagan
VP, Distressed Servicing
Saxon Mortgage
3701 Regent Blvd.
Irving, Texas 75063
Work: (972) 570-6264
Fax: (972) 570-9378
flanagank@saxonmsi.com

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager.



This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.

October 12, 2011

Bryon J Dolan
540 Windward Point CT # C
Columbia, SC 29212

Re: Loan Number 2000599079

These are the reinstatement figures for the referenced loan. Please be advised, we must receive this amount no later than 10/14/2011 to stop collection/foreclosure proceedings. This amount may not be accepted after this date.

(Additional anticipated legal fees of \$ 1,182.00 are included below:)

Payments due	23,073.89
Late Charges	3,300.89
Legal fees	1,182.00
Recoverable Corporate Advances	8,857.23
Total Suspense (Credit)	810.13
TOTAL AMOUNT DUE	35,603.88

The total amount due on your loan is \$ 35,603.88 and must be made by certified funds. If you have any questions, please contact our office at (800) 594-8422.

Special Servicing
Saxon

Overnight Address:
Saxon Mortgage Services, Inc.
4700 Mercantile Drive
Fort Worth, Texas 76137

Wiring Instructions:
Account: 4121837207
Bank: Wells Fargo, San Francisco, California
Routing No.: 121000248
Account Name: SMSI Wire Clearing Account

Include: Mortgagors name and loan number, Attention: Special Servicing

CC132/033/TN3

PL - 001815

Kathryn:

From: bryon.dolan@bandlproperties.com
Sent: Monday, January 09, 2012 11:41 AM
To: 'Flanagan, Kevin SFW'
Subject: RE: Reinstatement Figures
Mr. Flanagan,

I hope you had a wonderful Christmas as well as a happy new year.

I hate to bother you with this trivial matter but I don't have a mailing address for Saxon Mortgage as to where the payments should go to. I emailed Alicia Carter last week requesting this information but still have not heard from her. I am trying to get a \$3000.00 payment in the mail to you as was previously discussed. Could you please send me a mailing address.

Thanks,

Bryon Dolan

From: Flanagan, Kevin SFW [mailto:Flanagank@axonmsi.com]
Sent: Wednesday, October 12, 2011 11:01 AM
To: bryon.dolan@bandlproperties.com
Subject: Reinstatement Figures

Mr. Dolan,

I ran the reinstatement figures for your loan as you requested; and the amount to bring your loan current as of 10/14/11 is 35,603.88. This includes the DQ payments, late fees, legal fees and other advances made on the account. Please note your loan is still an Interest only loan so there is no change to the balance amount of 721,000. There are a couple options available to bring your account current, you can either pay the full amount or we can set you up on a repayment plan up to 12 months to repay the amount (in addition to your monthly payment).

I also need to point out you have an escrow shortage of 26,039.05 (this is not included in the 35,603.88 to bring your loan current). I am attaching the breakdown of this amount which are tax payments and forced insurance that has been placed on the property. If you can show you are maintaining insurance and the period you have maintained, I can have these forced insurance amounts removed. However, the tax amounts will need to be repaid and we can discuss the options available to repay this amount.

Let me know if you have any questions.

Thank you
Kevin Flanagan

Kevin Flanagan
VP, Distressed Servicing
Saxon Mortgage
3701 Regent Blvd.
Irving, Texas 75063
Work: (972) 570-6264
Fax: (972) 570-9378
flanagank@axonmsi.com

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate,



4/15/2013

Record on Appeal 401

distribute or copy this e-mail.

SAXON

4700 Mercantile Drive North
Fort Worth, TX 76137-3605
(817) 665-7200 - (817) 665-7400 Fax

January 23, 2012

Bryon J Dolan
540 Windward Point CT # C
Columbia, SC 29212

Re: Loan Number 2000599079

This letter is to advise you that we encountered issues with the payment.
The following depicts the reason(s):

- ☐ No personal checks are accepted, please remit Certified Funds
- ☐ Unable to identify. Please resubmit with appropriate account information.
- ☐ The check is not signed/endorsed properly
- ☐ The written and numerical amounts on the check do not agree
- ☐ The payment amount is not correct
- ☐ There has been a default on the Repayment Plan Agreement
- ☐ The funds are insufficient to liquidate the account
- ☐ The check is not acceptable due to the MICR line
- ☐ The check is post dated
- ☐ We do not hold the lien. Please forward to the prior servicer
- ☐ The item was returned to us unpaid and marked as 'non sufficient funds'
- ☐ The item was returned to us unpaid and marked as 'not authorized'
- ☐ The item was returned to us unpaid and marked as 'payment stopped'
- ☐ The item was returned to us unpaid and marked as 'irregular signature'
- ☐ The item was returned to us unpaid and marked as 'account invalid or closed'
- ☐ Other: CHECK# 194076 IN AMOUNT OF 3000.00; RETURNED DUE TO STATUS OF LOAN.

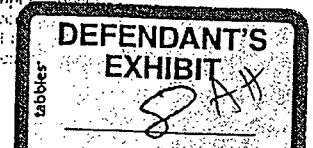
Thank you for your prompt attention to this matter. If you have any questions or need assistance, please feel free to contact our office, Customer Service Department toll-free at (888) 422-6451.

Customer Service Department
Saxon

CA100/031/ER7

Saxon Mortgage Services, Inc. is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose.
If your loan is currently in bankruptcy, this notice is being sent for informational purposes only. This notice is not intended as an attempt to collect a debt, or claim against or demand payment from any person who is protected by the U.S. Bankruptcy Code. If you have recently been declared bankrupt under Chapter 7 or Chapter 11 of the U.S. Bankruptcy Code, Saxon is not seeking to collect, recover or offset the debt from your personal liability on this debt due to your Chapter 7 bankruptcy. Saxon is not seeking to collect, recover or offset the debt from your personal liability on this debt due to your Chapter 11 bankruptcy. Saxon is not seeking to collect, recover or offset the debt from your personal liability on this debt due to your Chapter 11 bankruptcy. Saxon is not seeking to collect, recover or offset the debt from your personal liability on this debt due to your Chapter 11 bankruptcy. This communication is for the purpose of protecting our right to enforcement of the lien on the collateral.

Visit us on the web at www.saxonline.com



Record on Appeal 403

THIS DOCUMENT CONTAINS ULTRAVIOLET FIBERS, CHEMICALLY REACTIVE PAPER, A VOID PANTOGRAPH, MICROPRINT SIGNATURE LINE, BLEED THROUGH NUMBERING AND A WATERMARK ON THE BACK.

Ameris
Bank



194076

REMITTER: Loan #2000599079/Bruce Nolan

64-175
612

01/09/2012

PAY TO THE
ORDER OF: *Saxon Mortgage*

THREE THOUSAND DOLLARS AND ZERO CENTS

\$***3,000.00

DOLLARS

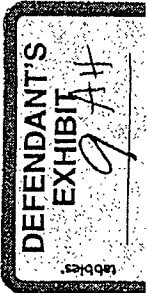


Martha A. Nelson

⑈ 194076 ⑈ ⑈ 064201754 ⑈

2020026213⑈

26-Sep-11	00-Jan-00	FOR	1		\$WS	FIDELITY AUTOPROC - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS REPROJECTED THE STEP SALE SCHEDULED FOR TO 9/30/2011. REASON: HOLD ENDED. COMMENTS: HOLD ENDED. STATUS: ACTIVE, APPROVAL NOT REQUIRED.
26-Sep-11	00-Jan-00	FOR	1		\$WS	TERESA WHITE - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS ENDED THE HOLD. HOLD END DATE: 09/30/2011. HOLD TYPE: COURT DELAY
26-Sep-11	00-Jan-00	FOR	1		\$WS	TERESA WHITE - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS ENDED THE HOLD. HOLD END DATE: 09/30/2011. HOLD TYPE: COURT DELAY
26-Sep-11	00-Jan-00	TSK	1		SCE	THE LITIGATION ON THIS LOAN IS NOW CLOSED/RESOLVEDPLEASE CONTACT THE LEGAL DEPARTMENT IF ADDITIONAL INFORMATION IS NEEDED. THANKS
26-Sep-11	00-Jan-00	SER	1		SCE	***LITIGATION CLOSED***
27-Sep-11	00-Jan-00	SER	1		GH2	CLD A3P RONNY FLOYD THE REALTOR AT 803-730-4077, LEFT HIM A MESSAGE TO CALL ME BK.
28-Sep-11	00-Jan-00	COL	1	009	AOC	TEL REALTOR LMTC MACHINE
28-Sep-11	00-Jan-00	LMT	1		AOC	RECEIVED MESSAGE FROM RONNY. FLOYD.HE STATED PROPERTY IS LISTED AND ONLY HAD 1 SHOWING
29-Sep-11	00-Jan-00	FOR	1		\$WS	NAKIA WILLIAMS 58-99 (ONLY INV A-01, B-02, C-12/29,D-01) - INTERCOM FROM: NAKIA WILLIAMS 58-99 (ONLY INV A-01, B-02, C-12 - 29,D-01) / SUBJECT: RE: LOSS MIT PACKAGE / MESSAGE: ALICIA, THE HOLD REQUEST HAS BEEN CLOSED, SO THE PACKAGE IS NO LONGER NEEDED. F
29-Sep-11	00-Jan-00	FOR	1		\$WS	ALICIA PARLER - INTERCOM MESSAGE: / READ: 9/29/2011 2:24:13 PM / FROM: WILLIAMS 58-99 (ONLY INV A-01, B-02, C-12/29,D-01), NAKIA / TO: PARLER,ALICIA; / CC: / INTERCOM TYPE: GENERAL UPDATE / SUBJECT: RE: LOSS MIT PACKAGE /
30-Sep-11	00-Jan-00	FOR	1		\$WS	KATIE TAGER - (CONT) - TERMINATED BY THIS ACTION.
30-Sep-11	00-Jan-00	FOR	1		\$WS	KATIE TAGER - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS PLACED THE FILE ON HOLD. HOLD REASON: COURT DELAY. HOLD COMMENTS: THE FORECLOSURE INTERVENTION LOSS MIT PACKAGE WAS SENTOUT TO THE BORROWER FOR COMPLETION ON 09/19/2011. THEY HAVE THIRTY DAYS
30-Sep-11	00-Jan-00	TSK	1		MH9	WIRE REC'D ON 9/30 IAO 65,250.00
30-Sep-11	00-Jan-00	TSK	1		C8M	PLEASE POST 5 PMTS @ \$3004.19; 12 PMTS @ \$2553.56; 10 PMTS @ \$1877.62; REMAINDER OF FUNDS TO SUSPENSE; THANK YOU
30-Sep-11	00-Jan-00	TSK	1		C8M	POSTING INSTRUCTIONS NOTATED ON CSHWIR
30-Sep-11	00-Jan-00	TSK	1	CSH	MSX	CLOSED - TASK COMPLETED AS REQUESTED WIRE REC'D IAO 65250.00



30-Sep-11	00-Jan-00	FOR	1		\$WS	TERESA WHITE - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS ENDED THE HOLD. HOLD END DATE: 10/20/2011. HOLD TYPE: COURT DELAY
30-Sep-11	00-Jan-00	FOR	1		\$WS	FIDELITY AUTOPROC - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS REPROJECTED THE STEP SALE SCHEDULED FOR TO 10/20/2011. REASON: HOLD ENDED. COMMENTS: HOLD ENDED. STATUS: ACTIVE, APPROVAL NOT REQUIRED.
03-Oct-11	00-Jan-00	TSK	1		C8M	9/30 CSHWIR TASK WAS NOT FULLY COMPLETED; NEED TO POST 10 PMTS @ \$1877.62 AND REMAINDER OF FUNDS (\$810.13) TO SUSPENSE;
03-Oct-11	00-Jan-00	LMT	1		MM2	ASSIGNED TO OTH
03-Oct-11	00-Jan-00	TSK	1	CSH	J9L	CLOSED - TASK COMPLETED AS REQUESTED APPLIED 10 PYMT FOR A TOTAL OF \$18776.20 FROM SUSPENSE AS REQUESTED.
06-Oct-11	00-Jan-00	COL	1	082	***	OCCUPANCY UNKNOWN CONDITION ON 1AM01
06-Oct-11	00-Jan-00	COL	1	002	DVX	TEL C1 HOME AGENT HANGUP
10-Oct-11	00-Jan-00	FOR	1		\$WS	ALICIA PARLER - INTERCOM FROM: ALICIA PARLER - TO: WILLIAMS 69-99 (ONLY INV A01, A10, B02, B42, C12THRUC29, D01), NAKIA - 973VM; / MESSAGE: ON 09/19/2011 WE SENT THE PACKAGE TO THE BORROWER AND IT HAS NOT BEEN RETURNED. PLEASE ADVISE IF THE BORROWER RETURNED
10-Oct-11	00-Jan-00	TSK	1		MM2	PLEASE KILL AND BILL FC, MONEY HAS BEEN RECEIVED FOR THE NEGOTIATED PARTIAL RELEASE APPROVED BY KF1
10-Oct-11	00-Jan-00	TSK	1		SHC	SHUT DOWN FCL PROCESS DUE TO LOSS MIT ACTIVITY
10-Oct-11	00-Jan-00	FOR	1		\$WS	SHATARA - 38CMJ HOUSTON 34-68 (ONLY INV A01, A10, B02, B42, C12THR - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS CREATED A PROCESS-LEVEL ISSUE FOR THIS LOAN. ISSUE TYPE: FC STOP - LOSS MIT. ISSUE COMMENTS: PLEASE CLOSE AND BILL FILE DUE TO FUNDS HAVE
10-Oct-11	00-Jan-00	FOR	1		SHC	SHUT DOWN FCL PROCESS DUE TO LOSS MIT ACTIVITY
11-Oct-11	00-Jan-00	COL	1	996	***	BR108 STANDARD BREACH LETTER LETTER SENT
11-Oct-11	00-Jan-00	COL	1		RD9	BREACH LETTER SENT
11-Oct-11	00-Jan-00	LMT	1		OTH	EMAILED RT FOR SHOWING UPDATE
12-Oct-11	00-Jan-00	COL	1	LCC	TN3	CC132 Foreclosure R LETTER SENT
01-Nov-11	00-Jan-00	COL	1	082	***	ORIGINAL OWNER CONDITION ON 102811 1AM01
03-Nov-11	00-Jan-00	LMT	1		JL2	ASSIGNED TO NM4
11-Nov-11	00-Jan-00	LMT	1		NM4	LMTC W/ RONNY FLOYS
11-Nov-11	00-Jan-00	COL	1	009	NM4	TEL REALTOR LMTC MACHINE
18-Nov-11	00-Jan-00	LMT	1		NM4	LMTC W/ RONNY FLOYS
18-Nov-11	00-Jan-00	COL	1	009	NM4	TEL REALTOR LMTC MACHINE
22-Nov-11	00-Jan-00	COL	1	002	MM2	TEL C1 HOME LMTC MACHINE

22-Nov-11	00-Jan-00	LMT	1		MM2	CALLED BOTH #'S FOR HOMEOWNERS TO CONFIRM LISTING PRICE AND ACTIVITY THAT WERE IN TERMS WITH AGREEMENT SIGNED LMTCB ON 1ST # , NO ONE PICKED UP 2ND #
22-Nov-11	00-Jan-00	LMT	1		MM2	803-730-2520 803-234-8273
22-Nov-11	00-Jan-00	LMT	1		MM2	CALL OUT TO REALTOR RONNIE FLOYS 803 730 4077 LMTCB
22-Nov-11	00-Jan-00	COL	1 009		MM2	TEL REALTOR LMTC MACHINE
22-Nov-11	00-Jan-00	LMT	1		MM2	RETURN CALL T
22-Nov-11	00-Jan-00	COL	1 009		MM2	TEL REALTOR DISCUSSED SHRT SAL
22-Nov-11	00-Jan-00	LMT	1		MM2	PRICED AT 949K
22-Nov-11	00-Jan-00	LMT	1		MM2	WORKING TO STILL GET TRAFFIC AND OFFERS , HE IS GETTING TRAFFIC , JUST SOME ISSUES ON GETTING OFFERS , ON E OFFER COMING HOWEVER PERSON WHO WANTS TO BUY WAS WAITING ON FINALIZAION OF DIVORCE WHICH IS STILL IN PROCESS
29-Nov-11	00-Jan-00	COL	1 001		MM2	TEL HOME LMTC MACHINE
29-Nov-11	00-Jan-00	LMT	1		MM2	LEFT MESSAGES ON BOTH NUMBERS
30-Nov-11	00-Jan-00	COL	1		RD9	FC REVIEW - APPROVED
30-Nov-11	00-Jan-00	COL	1 899		RD9	REVIEWED LOAN FOR FCL REFERRAL-APPROVED.NO PTP,NO R PP,LOAN MOD,\$IN SUSP. NO HAMP OR LOAN MOD APPROVED. SCRA CHECKED-NOT ACTIVE.ALL DOCS IN IMAGING
01-Dec-11	00-Jan-00	COL	1 082		***	ORIGINAL OWNER CONDITION ON 112911 1AM01
02-Dec-11	00-Jan-00	TSK	1		NM4	PLEASE ORDER AN INTERIOR BPO(NO CONTRACT, WHOLE LOAN) POC IS RONNIE FLOYS-803-730-4077) PLEASE ORDER A RECONCILED VALUE ONCE COMPLETED
05-Dec-11	00-Jan-00	TSK	1		SA7	BPO ORDERED
09-Dec-11	00-Jan-00	LMT	1		NM4	LMTC W/ RONNY FLOYS
09-Dec-11	00-Jan-00	COL	1 009		NM4	TEL REALTOR LMTC MACHINE
12-Dec-11	00-Jan-00	TSK	1		SA7	PER VENDOR, "OUR AGENT INFORMED US THAT THE POC PROVIDED (RONNIE FLOYS AT 803-730-4077) IS WORKING WITH OUR AGENT TO PROVIDE ACCESS, BUT THE HOME OWNER HAS DENIED ACCESS. IS THERE ANY FURTHER INFORMATION AVAILABLE TO ASSIST OUR AGENT IN GAINING INTERIOR A
12-Dec-11	00-Jan-00	TSK	1		SA7	PER REQUESTOR, "PLEASE CLOSE THE TASK." CANCELLINGTHE ORDER; CLOSING TASK.
14-Dec-11	00-Jan-00	FOR	1		SWS	RYAN COTTON - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HAS CREATED A PROCESS-LEVEL ISSUE FOR THIS LOAN.ISSUE TYPE: RECON REVIEW CLIENT PROCEEDFC REQUEST. ISSUE COMMENTS: FC PROCEEDING IN MSP, PLEASE OPEN PROCEED FC ISSUE TO PROVIDE PROCEED INSTRUCTION

15-Dec-11	00-Jan-00	FOR	1		SWS	DANIEL -46FKN CHAMBERS 00-49 ONLY INV A01 AND A10 - SYSTEM UPDATED FOR THE FOLLOWING EVENT: USER HASENDED THE ISSUE ASSOCIATED WITH THIS LOAN. ISSUE TYPE: RECON REVIEW CLIENT PROCEED FC REQUEST. COMMENTS: SYSTEMS HAVE BEEN UPDATED.
15-Dec-11	00-Jan-00	COL	1	002	MM2	TEL C1 HOME LMTC MACHINE
15-Dec-11	00-Jan-00	COL	1	899	MM2	LMTCB 803 7302520
15-Dec-11	00-Jan-00	LMT	1		MM2	SEE DLQ1 FOR CALL OUT ATTEMPTS TO SPEAK WITH H/O , C1 IS NOT ALLOWING ACCESS FOR ANOTHER IBPO TO PURSUE SHORT SALE AND FIND OUT WHAT CLOSERNM4 AND REALTOR RONNIE FLOYS NEED TO DROP PROPERTY TO TO GET AN OFFER , SIGNED AGREEMENT WITH KF IS TO GET PROEPERTY
15-Dec-11	00-Jan-00	COL	1	002	MM2	TEL C1 HOME NO ANSWER
15-Dec-11	00-Jan-00	COL	1	899	MM2	NO ANSWER AT 803 234 8273
15-Dec-11	00-Jan-00	FOR	1		SWS	RYAN COTTON - INTERCOM FROM: CHAMBERS 00-49 ONLY INV A01 AND A10 , DANIEL -46FKN - TO: COTTON, RYAN; /
16-Dec-11	00-Jan-00	LMT	1		NM4	LMTC W/ RONNIE FLOYD
16-Dec-11	00-Jan-00	COL	1	009	NM4	TEL REALTOR LMTC MACHINE
28-Dec-11	00-Jan-00	COL	1	009	MM2	TEL REALTOR LMTC MACHINE
28-Dec-11	00-Jan-00	COL	1	899	MM2	LMTCB AT 803 730 2520
28-Dec-11	00-Jan-00	COL	1	002	MM2	TEL C1 HOME DISCUSSED SHRT SAL
28-Dec-11	00-Jan-00	COL	1	899	MM2	CALLED AND SPOKE TO C1 ON 803-234 8273 SEE LMTN
28-Dec-11	00-Jan-00	LMT	1		MM2	SPOKE TO C1 AND HOUSE STILL PRICED AT THE 949K , 2OR 3 SHOWINGS , BUT SLOW ECAUSE OF WINTER , ADVSD WOULD BE GEARING UP TO SEND IN THE 3K FOR JAN AND FEB ; IN REVIEW OF THE ACCOUNT , SAW REFFERRED 12/9 , FIFTH / THIRD BANK HOLDS 2ND SO SALES PRICE WILL BE
04-Jan-12	00-Jan-00	COL	1	082	***	ORIGINAL OWNER CONDITION ON 123111 1AM01
05-Jan-12	00-Jan-00	FOR	1		SWS	KRISTINE BENSON - SYSTEM UPDATED FOR THE FOLLOWINGEVENT: USER HAS CREATED A PROCESS-LEVEL ISSUE FOR THIS LOAN.ISSUE TYPE: RECON REVIEW REFERRALS PRODUCTION. ISSUE COMMENTS: FC ACTIVATED IN MSP, HOWEVER AUTOMATION FAILED TO LAUNCH FC IN LPS DESKTOP. PLEASE
12-Jan-12	00-Jan-00	LMT	1		MM2	SPOKE TO C1 IN A FOLLOW UP PHONE CALL REGARDING CHECK FOR 3K SENT IN MAIL AND HADNT BEEN RECEIVED YET , ADVISED THAT WOULD HAVE TO GET THIS POSTED , ALSO ADVISED OF TRANSFER DATE AND TERMS
12-Jan-12	00-Jan-00	COL	1	002	MM2	TEL C1 HOME DISCUSS LM OPTIONS
18-Jan-12	00-Jan-00	COL	1	899	P4A	WE RECEIVED FUNDS IAO 3000/00 EMAILED WHOLE LOANS FOR ADVSING

18-Jan-12	00-Jan-00	COL	1 899	MM2	DO NOT SEND FUNDS BACK , NEE TO BE APPLIED TO ACCOU NT ASKED FF TO REACH OUT TO ME PRIOR TO SENDING BAC K OR POSTING
18-Jan-12	00-Jan-00	COL	1 899	CJ2	AFS APPROVAL TRECEIVED RETURN ALL FUNDS NO ACTIVE A GREEMENT ON FILE

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Branch Banking and Trust Company

Plaintiff,

v.

Bryon J. Dolan; Lisa S. Dolan; First
Citizens Bank and Trust Company, Inc.;

Defendant(s).

(011101-00112)

FILED

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-32-2263

9 36

DETHA. CARRISS
CLERK OF COURT

CONSENT ORDER RELEASING
FORECLOSURE PORTION OF JUDGMENT
AND CLOSING CASE
Deficiency Judgment Waived

SCANNED

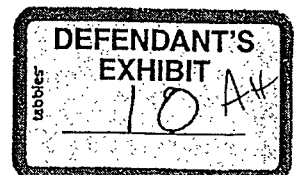
MT

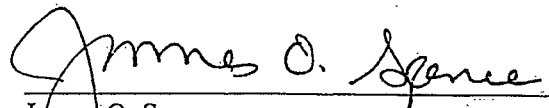
It appears that the Defendant(s)' default under the Note dated March 28, 2005, and secured by a first mortgage filed in Mortgage Book R10015 at Page 280 covering real property more fully described in the Complaint filed in this action, has been cured. Accordingly, Plaintiff, without waiving any of its rights under the Note and Mortgage, has moved to release the portion of the Judgment of Foreclosure and Sale as pertains to the cause of action for Foreclosure of Mortgage. The remaining portion(s) of the Judgment of Foreclosure and Sale, and if applicable, any Release of Lien filed herein, has/have not been released by Plaintiff and therefore, shall remain in full force and effect.

NOW, THEREFORE, as it is no longer equitable that the judgment should have prospective application and pursuant to Rule 60(b)(5) of the South Carolina Rules of Civil Procedure,

IT IS HEREBY ORDERED:

1. Any Release of Lien filed herein, remains in full force and effect.
2. The portion of the Judgment of Foreclosure and Sale pertaining to the cause of action for Foreclosure of Mortgage under the terms of Plaintiff's Note and Mortgage is hereby released.
3. The Lis Pendens pertaining thereto be marked cancelled in the records of the Clerk of Court for Lexington County, South Carolina.
4. The Note and Mortgage of the Defendant are hereby reinstated without merger into the judgment released herein as fully as if the herein released judgment had not been obtained; and
5. Plaintiff is authorized and permitted to withdraw any original exhibits pertaining to the litigation of this case, including but not limited to, the original Note and the original Mortgage.
6. The case is hereby Ordered closed.




James O. Spence
Master in Equity

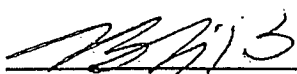
Nov. 15, 2011
Lexington, South Carolina

I SO MOVE


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)	Cheryl H. Fisher (SC Bar #15213)
Reginald P. Cadey (SC Bar #69453)	Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar #68635)	Michael P. Morris (SC Bar #73560)
Eye Moredock Stacey (SC Bar #5300)	Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar #74030)	William S. Koehler (SC Bar #74935)
Vance L. Brabham, III (SC Bar #71250)	Jaclynn B. Goings (SC Bar #77501)
John P. Fetner (SC Bar #77460)	Kelsey K. Lipscomb (SC Bar #77519)
Andrew W. Montgomery (SC Bar #79893)	Taryn M. Zange (SC Bar #70357)
Benjamin J. Powell (SC Bar #77205)	
220 Executive Center Drive	Post Office Box 100200 (29202)
Columbia, SC 29210	(803) 744-4444

I CONSENT:


B. Lindsay Crawford
Post Office Box 4216
Columbia, SC 29204
Attorney for First Citizens Bank and Trust Company, Inc.

DETHA CARRICO
CLERK OF COURT

2011 NOV 16 A 9:36

FILED

011101-00112
Columbia, South Carolina
October 18, 2011

2137

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Branch Banking and Trust Company, INC.

Plaintiff,

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank
and Trust Company, Inc.;

Defendant(s).

FILED

NOV 16 A 9:36

LETHA A. CARRIGGS
CLERK OF COURT

IN THE COURT OF COMMON PLEAS

DOCKET NO. 09-CP-32-2263

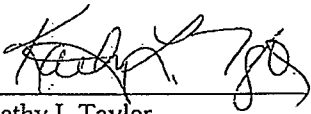
CERTIFICATE OF MAILING
Deficiency Judgment Waived

(011101-00112)

The undersigned, says that he/she mailed a copy of the proposed Order Vacating Judgment of Foreclosure and Sale (Foreclosure of Mortgage) in the above-referenced foreclosure action upon the Defendant(s) by placing copies of the proposed Partial Dismissal of Judgment of Foreclosure and Sale in the United States Mail, postage paid, to be mailed to the said Defendant(s) at the following addresses:

Bryon J. & Lisa S. Dolan
540 Windward Point Court
Columbia, SC 29212

B. Lindsay Crawford
Post Office Box 4216
Columbia, SC 29204
Attorney for First Citizens Bank and Trust Company, Inc.


Kathy L Taylor

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

FORM 4

JUDGMENT IN A CIVIL CASE

ORIGINAL

CASE NO. 09-CP-32-2263

Branch Banking and Trust Company

FILED

Bryon J. Dolan; Lisa S. Dolan; First Citizens
Bank and Trust Company, Inc.;

2011 NOV 16 A 9:36

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar # 68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar # 5300), Mary R. Powers (SC Bar# 16534), Robert P. Davis (SC Bar# 74030), William S. Koehler (SC Bar# 74935), Shawn R. Willis (SC Bar # 71155), Benjamin J. Powell (SC Bar #77205), John P. Fetner (SC Bar # 77460), Kelsey K. Lipscomb (SC Bar# 77519), Vance L. Brabham, III (SC Bar #71250), Andrew W. Montgomery (SC Bar #79893)

Attorneys for the Plaintiff
Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444
(803) 343-7013 - Fax
info@rtt-law.com

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

James O. Sauer 11-15-11
Circuit Court Judge/Master in Equity/Special Referee Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Samuel C. Waters (SC Bar #5958)
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202-3400
ATTORNEY(S) FOR THE PLAINTIFF(S)
(011101-00112)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Bryon J. & Lisa S. Dolan
540 Windward Point Court
Columbia, SC 29212

B. Lindsay Crawford, III
Post Office Box 4216
Columbia, SC 29204
Attorney for First Citizens Bank and Trust Company, Inc.

Occupant
540 Windward Point Court
Columbia, SC 29212

Court Reporter:

SAXON

3701 REGENT BLVD
IRVING, TX 75063

March 15, 2011

62230 0000133 001
BRYON J DOLAN
540 WINDWARD POINT CT # C
COLUMBIA SC 29212-8404

Re: Loan Number: 2000599079

Dear Valued Customer(s):

This letter is to inform you that Saxon Mortgage Services, Inc. has recalculated your interest rate and payment, as provided in your note. The recalculated interest rate will be effective April 1, 2011 and your new monthly payment of principal and interest or interest only, depending on your note, will be effective May 1, 2011.

Your previously disclosed interest rate was 3.12500% and your previously disclosed monthly payment of principal and interest or interest only was \$1,877.60. Your previously disclosed interest rate was based upon the previous index value of 0% plus the margin of 2.25000% rounded as required in your note, and subject to any caps or limitations established in your note.

Your new interest rate is 3.00000% and your new payment of principal and interest or interest only is \$1,802.50. Your new interest rate is based upon the current index value of .79750% plus the margin of 2.25000% rounded as required in your note, and subject to any caps or limitations established in your note. Your new payment is determined according to your note by using the new interest rate, your projected unpaid principal balance of \$721,000.00 and the term of your loan. Your new monthly payment does not include any escrow amounts.

If you are a borrower on this loan and have filed for bankruptcy protection, this letter is for informational purposes only and is NOT attempting to collect, recover, or offset any discharged debt as your personal responsibility.

Thank you for the opportunity to be of service. If you need additional information, please contact our Customer Service Center at 888-422-6451.

*For purposes of this letter, this amount includes only principal and interest or interest only and does not include any escrow amounts. The actual amount of your payment may include escrow amounts.

Sincerely,

Saxon Mortgage Services, Inc.

SS 1211-Seasoned - 051308

HUD-Approved Housing Counseling Agency toll free number - (888) 569-4287

Saxon Mortgage Services, Inc. is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. If your loan is currently in bankruptcy, this notice is being sent for informational purposes only. This notice is not intended as an attempt to collect, assess, or claim against or a person who is protected by the U.S. Bankruptcy Code. If you have recently been discharged of your personal liability on this debt due to your Chapter 11 or 13 bankruptcy, we are not seeking to collect, recover or offset the debt as a personal liability. We intend only to enforce and collect the debt against the collateral as per law. This communication is only for the purpose of protecting our right to enforcement of the lien on the collateral.

Visit us on the web at www.saxonline.com.

INTERNET REPRINT



Record on Appeal 415

SAXON

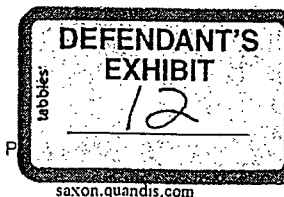
VALUE RECONCILIATION WORKSHEET

Loan Number	2000599079
Purpose of Request	Foreclosure
Investor	MSMCH, LLC.
Project	Short Payoff Whole Loan
Property Address	540 WINDWARD POINT CT
City, State, Zip Code	COLUMBIA, SC, 29212 8404
Date of Reconciliation	09/06/2011
Current BPO Value	970,000.00
Date of Current BPO	9/5/2011
Current List Status	Listed
Current List Price	\$999,999.00
Current List Date	02/12/2011

Base Value of comparable sale listing research	\$950,000.00
Current property condition adjustment	\$0.00
Functional and/or External obsolescence adjustment	\$0.00
Neighborhood condition adjustment	\$0.00
Discount applied for REO inventory and Default Information	\$0.00
Vacant property discount	\$0.00
Discount for current market conditions	\$(100,000.00)

30-day As-is (Liq.) Value	\$850,000
30-day Repaired (Liq.) Value	\$850,000
Value Type Used for Estimate	30 day

Scope of Work, Certification, Intended Use and
User, Purpose and Limiting Conditions on file.



Foreclosure Review - Verification for Morgan Stanley/Saxon Loans

November 30, 2011

Loan number 2000599079

Investor ID: A01 Investor name: Msmch, Llc.

Lien position: First Mortgage Only Conventional

First interest rate: 3.12500

Borrower: Bryon J Dolan

Additional borrower(s):

Mailing address: 540 Windward Point CT # C, Columbia, SC 29212

Property address: 540 Windward Point Ct, Columbia SC 29212-8404

Unpaid principal balance: \$ 721,000.00

Suspense funds: Yes or No

Suspense Amount: \$ 810.13

Loan due date: 03-01-11 Last pay date: 10-03 Breach Letter date: 10-12-11

Has the breach letter expired? Yes or No (No=do not refer)

Was the breach letter sent to all borrowers? Yes or No (No=do not refer)

Verified current breach letter in Imaging? Yes or No (No=do not refer)

Date State required notice sent:

Verified State notice in Imaging? Yes or No (No=do not refer)

Loss Mitigation options offered: Yes or No

Check all that apply: 1) Modification

2) Repay Plan

3) Deed in Lieu

4) Short Sale

5) Forbearance

Active Repay Plan present in notes? Yes or No (Yes=do not refer)

Promise to Pay or Scheduled Phone Pay present? Yes or No
(Yes=do not refer)

If property is in Arkansas, was the AR package sent 10 days prior to review?
Yes or No (No=do not refer)

If property is in Pennsylvania and the UPB is less than \$221,540 the PA ACT 6 letter must be sent in addition to the breach letter, at least 30 days prior to review.

Date RG165 letter sent:

Has the RG165 letter expired? Yes or No (No=do not refer)

Valuation: 910,000

Occupancy Status: vacant occupied unknown

Property vacant: Yes or No Last inspection date:

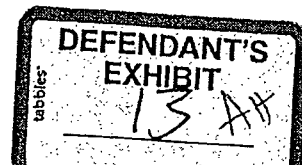
If vacant, has maintenance been ordered/completed: Yes or No
Date completed:

Is the property the borrower's primary residence Yes or No

Borrower contact established: Yes or No

Contact attempt in the last 30 days: Yes or No

Date of last contact attempt:



Reason for default:

Other, see notes

Were HUD letters sent (FHA Loans only)?:

CC190 HUD 426 Letter ☐ Yes or ☐ No (No=do not refer)

CC199 HUD Face to Face ☐ Yes or ☐ No (No=do not refer)

CC189 SCRA Notice ☐ Yes or ☐ No (No=do not refer)

1st Legal Date required by: (FHA Loans Only)

FNMA & FHLMC loans only: (Effective 10/1/11 Items 1-3)

1. Was QRPC established? ☐ Yes or ☐ No
(Contact codes for QRPC include: 026 Phone with borrower, 027 Phone with co-borrower, 038 Face to face and 039 Written QRPC)
2. Was the Borrower Solicitation Package CC327 sent at least 30 days ago?
☐ Yes or ☐ No (No=do not refer)
3. Has the Borrower Response Package, completed or substantially complete, been received and placed into imaging (FINPAK)? ☐ Yes or ☐ No.
If Yes, has the borrower accepted an offer for FCL alternatives?
☐ Yes or ☐ No (Yes=do not refer)

SCRA/DOD verified-Is borrower, co-borrower or additional borrower on active duty? ☐ Yes or ☒ No (Yes=do not refer)

SCRA PDF verified? ☒ Yes or ☐ No (No=do not refer)

Loan history/comments:

loan has no reason for denial.

Foreclosure recommendations:

Refer to FCL.

Manager signature:
(FHA loans only)



Reviewer signature:

RG130/035/RD9



6742 Lakoni Blvd.
Suite 300
Highlands Ranch, CO 80129
1-800-315-4SLS (4757)

Account Number
1005874834
1st Mortgage
Property Address
540 Windward Pt CT
Columbia SC 29212

Statement Date
01/18/12

General Tax and Insurance Information

Your monthly home loan payment may include an amount to be deposited into an escrow or impound account from which we pay the insurance and/or taxes. We may review this account during the first 12 months to ensure that our monthly payment to this account is appropriate.

1. Any property tax bill sent directly to you should be forwarded immediately to Specialized Loan Servicing Tax Department, so that you can be assisted in avoiding penalties incurred by late payments. Also, you should be sure that you have applied for all money-saving tax exemptions available through your tax authority.
2. The terms of your mortgage loan require that you maintain insurance coverage for at least the amount of the outstanding balance of your loan, or 100% of the insurable value of the improvements. It also must show Specialized Loan Servicing in the mortgagee clause. You can have an active part in determining your monthly escrow payment by verifying with your insurance agent the exact amount of insurance you need to carry, and reminding them that your renewal policy must be sent directly to us well before the renewal date. Without a policy in our office within fifteen days prior to the renewal date, we may have to place coverage with an agent of our choice to protect our security interest. Any insurance correspondence should be forwarded immediately to Specialized Loan Servicing Insurance Department.
3. If you wish to make a mid-term insurance policy substitution, you are responsible for canceling the previous policy and paying the new carrier. You must send us a copy of the cancellation notice for the prior policy, a copy of the new policy with the appropriate mortgagee clause and a paid receipt for the first year's premium.
4. We encourage you to contact your insurance company immediately to verify that your policy reflects Specialized Loan Servicing LLC as your new loan servicer. Your mortgage clause must read as follows: "Specialized Loan Servicing LLC, its successors and/or assigns." Please also provide your agent with your new account number and Specialized Loan Servicing address.
5. To monitor this escrow account, we perform an escrow analysis annually, resulting in a payment adjustment based on the most recent amounts paid for taxes and insurance. The new payment will collect for the current year exactly what was previously paid out. Because we cannot anticipate the local tax increases or insurance costs, an increase in these factors will result in escrow changes and/or shortages.

Additional Important Information

Optional Insurance - SLS does not currently offer life insurance or disability insurance. If you were previously enrolled in this service, it will no longer be part of your monthly payment. You should contact your provider to arrange for payment or cancellation of this service.

Monthly Automatic payment drafting - Specialized Loan Servicing is pleased to offer this service. Simply contact our Customer Service department at 1-800-315-4SLS (4757). If you previously arranged with your prior servicer to have your monthly mortgage payment drafted from your bank account, that service was automatically discontinued when your loan was transferred to SLS. If you would like to continue to have your monthly mortgage payment drafted from your bank account, you must enroll with SLS in order to take advantage of this service for your future payments.

End of Year Statements - Every year, in January, we will send you an accounting of your loan for the previous calendar year along with a statement of taxes and interest paid for income taxes purposes. Please be sure to keep us advised of any change in your mailing address.

Important Messages

For your protection, please be advised that we are attempting to collect a debt and any information obtained will be used for that purpose. Calls will be monitored and recorded for quality assurance purposes. If you do not wish for your call to be recorded, please notify the customer service associate when calling.

Attention to any Customer in Bankruptcy or who has received a bankruptcy discharge of this debt: please be advised that this letter constitutes neither a demand for payment of the captioned debt nor a notice of personal liability to any recipient hereof who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code, however, it may be a notice of possible enforcement of our lien against the collateral property, which has not been discharged in your bankruptcy.



8742 Lucent Blvd.
Suite 300
Highlands Ranch, CO 80129
1-800-315-SLS (4757)

Account Number
100587-1834
1st Mortgage
Property Address
540 Windward Pl CT
Columbia SC 29212

Statement Date
01/18/12

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

Welcome to Specialized Loan Servicing LLC. It is our pleasure to welcome you as a customer. Your home loan servicing was recently transferred to us and this is your official notice of the transfer, as legally required. Your home loan was previously serviced by Saxon Mortgage Services, Inc and you officially became a Specialized Loan Servicing LLC customer effective 01/20/2012. Going forward, Specialized Loan Servicing will handle the servicing of your home loan, which means collecting your monthly home loan payments and handling related issues. Please note the terms and conditions of your mortgage loan documents do not change in any way, other than terms directly related to the servicing of your home loan.

Except in limited circumstances, the law requires that your present servicer send you a notice at least 15 days prior to the effective servicing transfer date, which is also the date in which your first payment is due to Specialized Loan Servicing. Your present servicer may have provided this notice as part of your loan closing documents. If this is the case, please note that your first payment will be due to Specialized Loan Servicing. Specialized Loan Servicing must also send you this transfer notice no later than 15 days after the transfer date, which is why you are receiving this notice as part of your welcome package.

The date that Saxon Mortgage Services, Inc will stop accepting payments from you is 01/20/2012. All payments due on or after 01/20/2012 should be sent to Specialized Loan Servicing. Your payment options are listed below.

IF YOUR PROPERTY IS LOCATED IN THE STATE OF TEXAS: Complaints regarding the servicing of your mortgage should be sent to the Department of Savings and Mortgage Lending, 2601 N. Lamar, Suite 201, Austin, Texas 78705. A toll-free consumer hotline is available at 1-877-276-5550.

Finally, we want to make you aware of certain rights you have under RESPA. A summary is provided at the bottom of this notice.

ABOUT YOUR RIGHTS UNDER "RESPA"

You should be aware of your rights as a consumer with a home loan. These are explained in detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA)(12 U.S.C. 2605). Some of the highlights are as follows:

If during the first 60 days after your first payment is due to Specialized Loan Servicing, you mistakenly send your payment to Saxon Mortgage Services, Inc, Specialized Loan Servicing is not allowed to charge you a late fee, or to report you to the credit bureau during the 60 day period stated above.

If you send a "qualified written request" to Specialized Loan Servicing concerning the servicing of your loan, we must provide you with a written acknowledgement within 5 Business Days of the receipt of your request. A "qualified written request" is a written correspondence which includes your name and account number and your reasons for the request. Writing a note on your payment coupon or envelope is not considered a "qualified written request". Inquiries or information sent to us via our website is not considered a "qualified written request". Qualified written request must be sent to:

Attn: Customer Care Support
P.O. Box 636005
Littleton, CO 80163-6005

Specialized Loan Servicing has 30 Business Days after receiving your request to make any appropriate corrections to your account. We must provide you with a written clarification about any dispute about your account. During this 30 Business Day period, we may not provide information to a consumer reporting agency concerning any overdue payment related to your qualified written request. However, this does not prevent us from initiating foreclosure if proper grounds exist under your loan documents.

A Business Day is any day excluding legal public holiday (state or federal), Saturday or Sunday.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.



6742 Lucant Blvd.
Suite 300
Highlands Ranch, CO 80129
1-800-315-4SLS (4757)

Account Number
1005874834
1st Mortgage
Property Address
540 Windward Pt CT
Columbia SC 29212

Statement Date
01/18/12

IMPORTANT PAYMENT OPTIONS INFORMATION FOR YOUR RECORDS

Address Payment To:
Specialized Loan Servicing
P.O. Box 105219
Atlanta, GA 30348-5219

Regular Payment Instructions:

- For payments made by regular mail, and in proper form, please allow 10 days for processing.
- Payments received on a business day prior to 9:00 p.m. MST and in proper form will be effective dated and processed as of the date of receipt.

Avoid Delays in Payment Processing:

- Always mail the payment in proper form, which is with coupon in window envelope provided, writing your account number on the check. Failure to do any of these steps may result in a delay in posting.
- **DO NOT SEND CASH.**
- Do not send correspondence with your payment. Send all correspondence to the address listed on this statement.
- In the event that you do not receive your monthly billing statement, **DO NOT DELAY PAYMENT.** Write your account number on your check and mail it to the payment address provided in this statement. Payments must be sent in proper form to avoid a delay in processing.

Payment Options:

- Monthly automatic draft - It's free and easy, just call our Customer Care Center today and sign up.
- Visit our web site and pay on line. There is a fee for this service. Payment received prior to 6:00 p.m. MST will be effective dated the same day.
- Pay by phone. You may use our automated service by calling the Customer Care Center or by speaking with a Customer Care associate. There is a fee for this service. Payments received by 6:00 p.m. MST will be effective dated the same day.
- Payments sent via certified mail or overnight must be sent to the address on this statement. Failure to do so may result in a delay of posting.



THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

02/25/13

BRYON J DOLAN
540 WINDWARD PT CT
COLUMBIA SC 29212

Loan number: 1005874834
Property address: 540 WINDWARD PT CT
COLUMBIA SC 29212

NOTICE OF INTEREST RATE AND PAYMENT ADJUSTMENT

As provided by the terms of your loan documents, the next scheduled interest rate and payment adjustments are reflected below.

	Prior change	New
INDEX VALUE	1.06555	0.76250
MARGIN	2.25000	2.25000
INTEREST RATE	3.37500	3.00000
RATE EFFECTIVE DATE		04/01/13
PRINCIPAL BALANCE		721000.00
PRINCIPAL & INTEREST PAYMENT	2027.81	1802.50
NEW PAYMENT EFFECTIVE DATE		05/01/13

Your new interest rate and payment amount indicated above are the maximum allowable considering applicable payment and/or rate caps for this period. The principal balance is projected on the assumption that scheduled payments will be paid.

The new interest rate is calculated using the current index value and the margin. Please be advised, this rate may vary, based on the maximum and/or minimum rate allowed and the rounding factor designated by the terms of your loan documents.

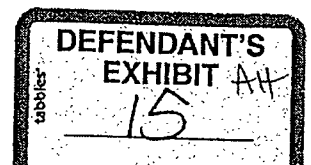
Your next interest rate change is scheduled for 04/01/14 and the next principal and interest payment change is scheduled for 05/01/14. Please be aware that the above information does not include any optional product premium or required Escrow payment. Adjustments to your escrow may cause interim changes to your total payment due.

If this is the first interest change, your "prior" information above will be blank.

If you have any general questions, please contact our Customer Care Department at (800) 315-4757, Monday through Friday, 6 am to 6 pm (MST). TDD Number (800) 268-9419, Monday through Friday, 8 am to 5 pm (MST).

BANKRUPTCY NOTICE - IF YOU ARE A CUSTOMER IN BANKRUPTCY OR A CUSTOMER WHO HAS RECEIVED A BANKRUPTCY DISCHARGE OF THIS DEBT: PLEASE BE ADVISED THAT THIS NOTICE IS TO ADVISE YOU OF THE STATUS OF YOUR MORTGAGE LOAN. THIS NOTICE CONSTITUTES NEITHER A DEMAND FOR PAYMENT NOR A NOTICE OF PERSONAL LIABILITY TO ANY RECIPIENT HEREOF, WHO MIGHT HAVE RECEIVED A DISCHARGE OF SUCH DEBT IN ACCORDANCE WITH APPLICABLE BANKRUPTCY LAWS OR WHO MIGHT BE SUBJECT TO THE AUTOMATIC STAY OF SECTION 362 OF THE UNITED STATES BANKRUPTCY CODE. HOWEVER, IT MAY BE A NOTICE OF POSSIBLE ENFORCEMENT OF THE LIEN AGAINST THE COLLATERAL PROPERTY, WHICH HAS NOT BEEN DISCHARGED IN YOUR BANKRUPTCY. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT OUR CUSTOMER CARE CENTER AT (800) 305-6057, MONDAY THROUGH FRIDAY, 8 AM TO 5 PM (MST).

8742 Lucent Blvd., Suite 300
Highland Ranch, Colorado 80129



Record on Appeal 423



Adjustable Rate Mortgage (ARM) Loan Notification

Having an ARM loan means that the interest rate you pay on your loan balance may change. The frequency of these changes will depend on the terms contained in your loan documents. These loans may be a 2-year ARM, a 5-year ARM, or a 7-year ARM based on the number of years before an interest rate change may occur. It is common for the interest rate to change every 6 months after the fixed rate period has expired.

The interest rate change on your loan is driven by the movement of an interest rate index which is published on the financial page of most major newspapers. The interest rate index used for your loan is stated in your loan documents.

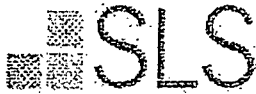
The current interest rate index, plus the margin, and any other limits listed in your loan documents determine the new interest rate you will pay. The interest rate for your loan may increase or decrease. Interest rate changes may occur because the interest rate index has changed, the initial interest rate was discounted, or the initial interest rate was higher than the interest rate index plus the margin.

In most cases, each time an interest rate change occurs, your monthly payment of principal and interest will be adjusted. This adjustment is based on your new interest rate, your current loan balance, and the remaining loan term. If your interest rate has increased, your monthly principal and interest payment will increase as well. Your monthly payment may continue to increase with each subsequent interest rate change until a maximum interest rate change or ceiling is reached.

Please refer to your original loan documents to determine the interest rate change frequency and interest rate limits on your mortgage loan.

You are currently being notified of an interest rate or monthly payment change. If you are unable to afford your new monthly payment, please contact our Executive Services Department immediately at (800) 268-9956, Monday through Friday, 6 am to 6 pm (MST). TDD Number (800) 268-9419, Monday through Friday, 8 am to 5 pm (MST). There may be other options available to assist you.

8742 Lucent Blvd., Suite 300
Highland Ranch, Colorado 80129



THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

04/10/14

BRYON J DOLAN
540 WINDWARD PT CT
COLUMBIA SC 29212

RE: Property Address: 540 WINDWARD PT CT
COLUMBIA SC 29212
Loan Number: 1005874834

Dear BRYON J DOLAN

Per your request, the following amount is needed to reinstate the above referenced mortgage loan:

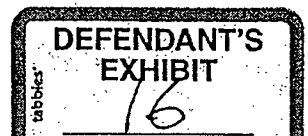
Payments Due Through	
04/01/14	\$131326.26
Late Charges:	\$3296.96
Fees:	\$0.00
Property Inspections:	\$ 158.90
Legal Fees:	\$500.00
Unpaid Escrow Shortage:	\$0.00
Corporate Advances:	\$ 33421.93
BPO:	\$ 0.00
Suspense 1:	\$ (810.13)
Suspense 2:	\$ (.00)
TOTAL REINSTATEMENT	\$ 167893.92

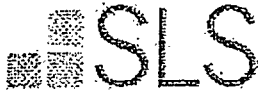
CERTIFIED FUNDS REQUIRED

While payment to reinstate the loan will bring your monthly payments contractually current, a shortage in your escrow account may still exist. The next analysis of your escrow account is scheduled for 01/01/15 and your monthly payment may increase to collect any shortage that exists.

The above figures are good through 04/20/14 except for advances on items such as taxes, insurance, or property inspections that may take place after the date of this letter, and during the time funds are in transit to this office. Because interest accruals, late charges, and other expenses may be incurred, the amount required to bring the account current on the date of actual delivery of your payment to Specialized Loan Servicing LLC ("SLS") may be greater than the amount provided above. Prior to remitting funds, please contact us at 1-800-306-6059 from 6:00 a.m. until 9:00 p.m. MT Monday through Friday to request verification of the above amount.

Please see important disclosures on the following page





You have the right to cure or reinstate the account after any acceleration and the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration. Additionally, your request for reinstatement figures does not stop any pending foreclosure action from proceeding or adverse credit reporting from occurring.

This letter is not intended to act as a payoff statement or demand for you to pay the account in full. If you wish to obtain a payoff statement, please call us at 1-800-315-4757 from 6:00 a.m. until 6:00 p.m. MT Monday through Friday or fax your request to 1-720-241-7218.

Sincerely,

Customer Resolution
Specialized Loan Servicing LLC

BANKRUPTCY NOTICE - If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt, please be advised that this notice is to advise you of the status of your mortgage loan. This notice constitutes neither a demand for payment nor a notice of personal liability to any recipient hereof, who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code. However, it may be a notice of possible enforcement of the lien against the collateral property, which has not been discharged in your bankruptcy. If you have questions, please contact us at 1-800-306-6057.

Kathryn

m: bryon.dolan@bandlproperties.com
Sent: Friday, January 06, 2012 12:59 PM
To: 'Carter, Alicia SFW'
Subject: RE: 2000599079 / 540 Windward Point Ct

Alicia,

Can you please send me the address where I should send my mortgage payments to. I don't have an address on file.

This is for loan# 2000599079/540 Windward Point Court, Columbia, SC 29212

Thanks,

Bryon Dolan

From: Carter, Alicia SFW [mailto:CarterA2@saxonmsi.com]
Sent: Wednesday, August 31, 2011 10:47 AM
To: 'Bryon Dolan'
Subject: RE: 2000599079 / 540 Windward Point Ct

Hello Mr. Dolan,

Just checking to see if you received the agreement from Mr. Flanagan and if you were able to retain a realtor to market and sell your home. Also, please let me know if you were contacted by the agent completing the BPO. Thanks,

Alicia Carter

Late Stage Distressed Servicing

SAXON

3701 Regent Blvd

Irving, Texas 75063

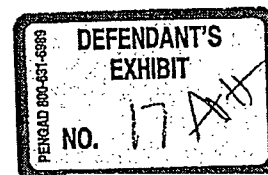
Work Phone: 888 422 6451 X 216491

Fax #: 817 852 2959

cartera2@saxonmsi.com



Please consider the environment before printing this email.



Record on Appeal 427

Charlie Gwynne

From: bryon.dolan@bandlproperties.com
Sent: Friday, September 23, 2011 10:33 AM
To: Flanagan, Kevin
Subject: RE: Closing

Kevin,

Could you please fax/email me the previous document you sent to Ronnie Floyd Realty stating Saxon would release the parcel but show the NEW amount of \$65,250.00. Mr. Floyd is out this way showing another piece of property and wants to pick it up so he can take it to the closing attorney.

Fax# is: 866-248-0509

Thanks.

From: Flanagan, Kevin SFW [mailto:FlanaganK@saxonmsi.com]
Sent: Thursday, September 22, 2011 4:22 PM
To: 'bryon.dolan@bandlproperties.com'
Subject: RE: Closing

Bryon,
Fax received; let's get this done!
Thanks.

From: bryon.dolan@bandlproperties.com [mailto:bryon.dolan@bandlproperties.com]
Sent: Thursday, September 22, 2011 3:07 PM
To: Flanagan, Kevin SFW
Subject: RE: Closing

Kevin,

What fax number to send the agreement to?

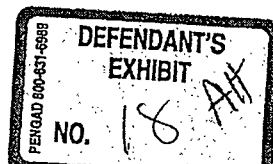
Thanks.

From: Flanagan, Kevin SFW [mailto:FlanaganK@saxonmsi.com]
Sent: Thursday, September 22, 2011 3:29 PM
To: 'bryon.dolan@bandlproperties.com'
Subject: RE: Closing

Bryon,
Yes, 3,750 is correct, my typo below.

Yes, I have the updated survey with the partial release. Regarding the recording of the partial release, once I receive the wire # for the 65,250 (revised amount due Saxon less the 3,750); Saxon will expedite the filing of the partial release. The release will not occur until I have the Wire #. I would check with 1st citizens on their process so the timing is synced up.

As per the agreement, I will need confirmation the easement has been sent for recording once the 544 is closed.



PL - 001798

Attached is the updated agreement and survey. Please sign and return.

Thanks.

From: bryon.dolan@bandlproperties.com [mailto:bryon.dolan@bandlproperties.com]
Sent: Thursday, September 22, 2011 1:41 PM
To: Flanagan, Kevin SFW
Subject: RE: Closing

Kevin,

The amount needs to be for \$3,750.00. I am absolutely tapped to make all the other commitments.

Closing could be Monday at 4:00pm or Thursday Sept 29th, 4:00 pm. Closing Attorney still has not received DHEC Septic Tank approval letter for house next door (Done deal but formal DHEC letter not yet received) and if not received by 12:00pm tomorrow closing will be Sept. 29th (We all need time to look at the HUD before signing off). Also, you should have received the updated survey showing the parcel release and you told me earlier that your legal dept. was going to prepare the partial release document...has your legal had time to do? If not, could they have it in place by Monday?

Bryon

From: Flanagan, Kevin SFW [mailto:Flanagank@saxonmsi.com]
Sent: Thursday, September 22, 2011 2:33 PM
To: 'bryon.dolan@bandlproperties.com'
Subject: RE: Closing

When is the closing for 544? Is it still tomorrow? I will agree to give up the 3500 to get this done.

I am going to send you an updated agreement as some of the terms have changed from the last agreement.

Thanks

From: bryon.dolan@bandlproperties.com [mailto:bryon.dolan@bandlproperties.com]
Sent: Thursday, September 22, 2011 1:19 PM
To: Flanagan, Kevin SFW
Subject: RE: Closing

Kevin,

There are many factors that come into play with first citizens stance on this partial release that are unrelated to this particular deal. Since human emotions are involved, some people at first citizens cannot compartmentalize each different issue and make a 'good' business decision. Hence the reason for the higher requested payout than would normally have been required (They are not going to look for this same % ratio when it comes to doing a short sell). Also, I was probably 'too honest' with them in explaining our deal and they just could not get past the '\$69,000' they saw you getting. You and I both know any deal should have been calculated only on the \$30,000.

COPY

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON 2014 APR 16

P 1:16

Case No. 2012-CP-32-2816

FV-I, Inc., in trust for Morgan Stanley
Mortgage Capital Holdings LLC, JETHA A. CARRIGE
CLERK OF COURT
LEXINGTON, SC

Plaintiff,

vs.

Bryon J. Dolan; Lisa S. Dolan; First
Citizens Bank and Trust Company, Inc.;
Wells Fargo Bank, N.A.; Branch Banking
and Trust Company;

Defendants.

**DOLAN DEFENDANTS'
MEMORANDUM OF LAW**

Defendants Bryon J. Dolan and Lisa S. Dolan (hereinafter "the Defendants" or "the Dolans") hereby submit this memorandum of law in connection with the trial of and anticipated pre-trial motions in the above-captioned action.

FV-I'S ANTICIPATED MOTION *IN LIMINE*

The Plaintiff, FV-I, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC ("FV-I"), has indicated it will argue a motion *in limine* to exclude *any* evidence of the communications between Bryon Dolan and Kevin Flanagan of Saxon Mortgage Services (then FV-I's mortgage servicer) leading up to the signing of a September 22, 2011, agreement document. The Dolans expect this argument will be made under the parol evidence rule.

The parol evidence rule is a poorly named rule of law, since it is not a rule of evidence at all but, rather, one of the substantive law of contract construction. "The parol evidence rule has been held inapplicable to tort causes of action (including negligent misrepresentation) since the rule is one of *substantive contract law*." Redwend Ltd. Partnership v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003) (emphasis added). The rule is applicable in cases where a party argues that the terms of a contract are *different from* what is contained in an integrated writing.

E.g., Crafton v. Brown, 346 S.C. 347, 550 S.E.2d 904 (Ct. App. 2001) (“Where the terms of [a] written guaranty are clear and complete, extrinsic evidence of agreements or understandings contemporaneous with or prior to its execution cannot be used to contradict, explain, or vary its terms, in the absence of fraud, accident, or mistake in its procurement”). “When a contract is *silent* as to a particular matter, parol evidence is admissible to reveal the parties’ true intent.” Keith v. River Consulting, Inc., 365 S.C. 500, 506, 618 S.E.2d 302, 305 (Ct. App. 2005) (emphasis added).

Here, the September 22, 2011, agreement document is silent as to whether the funds paid under it will be sufficient to bring the loan current or have been agreed to be sufficient to bring the loan current. Indeed, determining what amount is sufficient to bring a defaulted note current will almost always depend upon matters that are not contained in the terms of the documents – the date of default, how much had already been paid on the loan, the existence and amount of expenses properly chargeable to the debt at issue.

Also, if a contract’s language is ambiguous, parol evidence may be admitted to show the intention of the parties, which is a question of fact. S.C. Dept. of Natural Resources v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). The Dolans’ primary contention is that the terms of the writing at issue are silent as to whether the funds being “applied to the loan” will bring the loan current, and parol evidence is admissible on that point for that reason. If the Court, however, determines that the words “applied to the loan” do speak to this point, they are ambiguous. Applied to the loan *how*? And producing what result? These questions are unanswered by the language of this document.

FV-I argues that Windham v. Honeycutt, 279 S.C. 109, 302 S.E.2d 856 (1983), and Conran v. Yager, 263 S.C. 417, 211 S.E.2d 228 (1975), support its position here. They do not.

This argument is grounded in a misapprehension of whether the contract at issue between the Dolans and FV-I is subject to the Statute of Frauds. It is not.

The Statute of Frauds, S.C. Code Ann. § 32-3-10, has five subsections. Subsections (1) (contract to charge an executor or administrator upon a promise to answer damages from his own estate), (2) (contract to answer for the debt of another), (3) (contract in consideration of marriage), and (5) (agreement that cannot be performed within one year) plainly do not apply. S.C. Code Ann. § 32-3-10. Our state Supreme Court has spoken to the applicability of subsection (4) – contract “to charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them” – and held it “can only be applied to contracts which have in view the *transfer* of an interest ‘in or concerning’ lands[.]” Carter v. McCall, 193 S.C. 456, 8 S.E.2d 844, 847 (1940) (emphasis in original). “The term ‘interest’ in land as used in the statute of frauds, means some portion of the title or right of possession, *and does not include agreements which may affect land but which do not contemplate the transfer of any title, ownership or possession.*” Id. at 846 (quoting 20 R.C.L., p. 535, emphasis added by S.C. Sup. Ct.). “The very words of the statute ‘any contract or sale of lands . . . or any interest in or concerning them’ contemplate the *sale or transfer* of some title or interest therein, so as to confer upon the transferee some right of possession or ownership.” Id. (emphasis and ellipsis in original).

The Windham case cited by FV-I was an action for specific performance of a contract to sell land. 279 S.C. at 109. Accordingly, the contract involved in it fell within the ambit of the Statute of Frauds. Id. at 110. The counterclaim in the Conran case cited by FV-I was premised upon the existence of an oral promise being part of an otherwise written contract *to sell land*. 263 S.C. at 419. The Statute of Frauds thus applied to it, as well. Id. at 421. The Statute of

Frauds issue in Conran had nothing to do with the note involved in that case or the plaintiff's claim on that note. Id. at 419-21. Nor did the Statute of Frauds issue in that case concern a modification at all. Id.

Subsection (4) of the Statute of Frauds has a narrow construction. See id. The agreement here at issue does not fall within its narrow ambit. Here, the only contract under which anyone agreed to transfer an interest in land is the one under which the Dolans sold part of their yard to their new neighbors, not the contract they made with FV-I through its servicer.

Additionally, there is no indication in any case law known to the undersigned that the Statute of Frauds or the parol evidence rule have any applicability at all to a claim for violation of the Unfair Trade Practices Act, and it is not logical that either such rule would apply to such a claim. Further, "[n]either the parol evidence rule nor a merger clause in a contract prevents one from proceeding on tort theories of negligent misrepresentation and fraud." Slack v. James, 364 S.C. 609, 614 S.E.2d 636, 640 (2005). This may be important if amendment of the pleadings to conform to the proof to assert such a claim is allowed at trial in this case. See Rule 15(b), SCRPC.

BREACH OF CONTRACT CLAIM – PARTICULAR ISSUES

Ambiguity. "A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation. It is a question of law for the court whether the language of a contract is ambiguous. Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties. The determination of the parties' intent is then a question of fact." S.C. Dept. of Natural Resources, 345 S.C. at 623.

It is well settled that ambiguous language in a contract document should be interpreted strongly in favor of the party who did not draft the document and against the party who did.

E.g., So. Atlantic Financial Servs., Inc. v. Middleton, 356 S.C. 444, 447, 590 S.E.2d 27, 29 (2003); Mid-Continent Refrigerator Co. v. Way, 263 S.C. 101, 109, 208 S.E.2d 31, 35 (1974). Any conflict between clauses in a contract must be resolved in favor of the non-drafting party. Mid-Continent Refrigerator, 263 S.C. at 109.

“The conduct of the parties is entitled to great weight in interpreting an ambiguous contract.” Langston v. Niles, 265 S.C. 445, 458, 219 S.E.2d 829, 834 (1975). In cases of doubt, the interpretation of a contract that the evidence shows was shared by both parties to it is determinative. Kitchens v. Lee, 221 S.C. 59, 66, 69 S.E.2d 67, 69 (1952). The behavior of the parties to the contract in carrying it out is evidence that may speak to their mutual interpretation of the contract terms. Langston, 265 S.C. at 458 (in interpreting ambiguous terms, noting behavior of parties after agreement struck); Kitchens, 221 S.C. at 66 (same).

Modification. Under South Carolina law, “[t]he general rule is that a written contract may be modified by oral agreement even when the contract expressly states that all changes must be in writing.” King v. PYA/Monarch, 317 S.C. 385, 390, 453 S.E.2d 885 (1995); accord Adamson v. Marianne Fabrics, Inc., 301 S.C. 204, 207, 391 S.E.2d 249 (1990); 30 S.C. Juris. Contracts § 77. The parol evidence rule does not apply to modifications, as they occur after, not prior to or contemporaneously with, the entry into a contract. Adamson, 301 S.C. at 207.

UNFAIR TRADE PRACTICES

An action for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, lies where there is a violation of the Act (i.e., an unfair or deceptive act in trade or commerce that impacts the public interest) that proximately causes damages to the plaintiff. See, e.g., Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 417, 458 S.E.2d 431 (Ct. App. 1995). “‘Trade’ and ‘commerce’ shall include the . . . distribution of any

services and any property, tangible or intangible, . . . and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.” S.C. Code Ann. § 39-5-10(b). To recover under the SCUTPA, the claimant must show: (1) the other party engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the claimant suffered damages as a result. Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). The South Carolina Supreme Court has stated that demonstrating the potential for an unfair trade practice’s repetition is a demonstration of the requisite “adverse effect on the public interest[,]” though the Court has never held that showing potential for repetition is the *only* way to prove impact on the public interest. Crary v. Diebelli, 329 S.C. 385, 388, 496 S.E.2d 21 (1998). The Court has “specifically declined” to hold that such potential for repetition must be demonstrated by any particular means and has stated that “each case must be evaluated on its own merits.” Id.

FV-I will likely argue that because the Dolans claim a breach of contract here, there can be no liability under the SCUTPA. The simple presence of a contractual relationship between the parties and a breach of that contract by one of them will not, however, rule out liability of the breaching party under the SCUTPA; if it did, a claim for violation of the SCUTPA would be available to practically no one. In fact, we know that the mere presence of a contractual relationship between the parties will not defeat a SCUTPA claim, because our courts have upheld such claims where there were contracts between the parties. See Singleton v. Stokes Motors, Inc., 358 S.C. 369, 595 S.E.2d 461 (2004) (car dealership/car buyer contract); Wright, 372 S.C. at 23 (same). When the “mere breach of contract” cases discuss the principle at issue, they state that the SCUTPA “is not available to redress a private wrong *where the public interest*

is *unaffected*” and that “a deliberate or intentional breach of a valid contract, *without more*, does not constitute a violation of the Unfair Trade Practices Act.” Columbia East Assocs. V. Bi-Lo, Inc., 299 S.C. 515, 522, 386 S.E.2d 259, 263 (Ct. App. 1989) (emphasis added). To prove the “more[,]” to prove that the public interest is affected, all one needs to show is potential – just *potential* – for repetition. Crary, 329 S.C. at 388; Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 475, 480, 351 S.E.2d 347, 350-51 (Ct. App. 1986).

HEARSAY AND THE BUSINESS RECORDS EXCEPTION

One exception to the hearsay rule is usually called the “business records exception,” though whether the document involved is a record of a business is not what must be shown to satisfy the exception. Rule 803(6), SCRE; S.C. Code Ann. § 19-5-510. The elements of this hearsay exception are as follows:

[A] memorandum, reports, records, or data compilation, in any form, of acts, events, conditions, or diagnoses can be admissible if they are (1) made at or near the time of the event recorded; (2) prepared by someone with or from information transmitted by a person with knowledge; (3) made and kept in the course of a regularly-conducted business activity; (4) identified by the custodian or a qualified witness who can testify regarding the mode of preparation of the record; and (5) found to be trustworthy by the court.

High v. High, 389 S.C. 226, 239, 697 S.E.2d 690, 696-97 (Ct. App. 2010) (citing Rule 803(6), SCRE).

Rule 803(6), SCRE, and S.C. Code Ann. § 19-5-510 have the same substantive requirements, as the language of the latter statute notes:

A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the

sources of information, method and time of preparation were such as to justify its admission.

To authenticate a document as falling under the “business records” exception, a witness qualified to do so must provide sufficient testimony to establish each element of the exception. Connelly v. Wometco Enters., Inc., 314 S.C. 188, 192, 442 S.E.2d 204, 206 (Ct. App. 1994). Otherwise, the document is simply inadmissible hearsay. Id. “A business record without evidence about the manner in which it is prepared or the source of its information does not meet the requirements in either section 19-5-510 or Rule 803(6), SCRE.” State v. Rice, 375 S.C. 302, 331, 652 SE.2d 409, 424 (Ct. App. 2007).

It is, of course, necessary that the witness have knowledge of how the record was prepared. State v. Sarvis, 317 S.C. 102, 107, 450 S.E.2d 606, 609 (Ct. App. 1994). This includes knowledge of who made the record, to satisfy the requirement that it be established that the document was “prepared by someone with or from information transmitted by a person with knowledge[.]” Rule 803(6)(2), SCRE.

Further, “[b]usiness record entries must have been made at or near the time of the act to which they relate; the purpose of this mandate is to aid in establishing that the record was honestly and fairly kept.” Rice, 375 S.C. at 332. A determination by the court that the document is trustworthy, based on proof adduced through the authenticating witness, is a requirement of admissibility. Indeed, § 19-5-510 “gives the trial court control to exclude or require additional proof if the authenticity or trustworthiness of the business record is suspect.” Rice, 375 S.C. at 330.

The Supreme Court of Missouri has held that “a document that is prepared by one business cannot qualify for the business records exception merely based on another business’s records custodian testifying that it appears in the files of the business that did not create the

record.” CACH, LLC v. Askew, 358 S.W.3d 58, 63 (Mo. 2012). This is in accord with the law of other states as well, at least of Wisconsin, Texas, Pennsylvania, and New York (and probably others). Palisades Collection, LLC v. Kalal, 781 N.W.2d 503, 510 (Wis. Ct. App. 2010) (to authenticate under business records exception, witness “must have personal knowledge of how the account statements were prepared and that they were prepared in the ordinary course of [the original creditor’s] business”); Riddle v. Unifund CCR Partners, 298 S.W.3d 780, 782-83 (Tex. App. 2009) (“the witness must have personal knowledge of the manner in which the records were prepared”); Martinez v. Midland Credit Mgmt., Inc., 250 S.E.3d 481, 485 (Tex. App. 2008) (purported business records inadmissible where witness “does not provide any information that would indicate that he (or she) is qualified to testify as to the record-keeping practices of the ‘predecessor’”); Standard Textile Co. v. Nat’l. Equip. Rental, Ltd., 437 N.Y.S.2d 398, 398 (N.Y. App. Div. 1981) (plaintiff’s employee “was not a qualified witness to testify as to the record keeping of another entity” absent personal knowledge of the document’s creation”); Commonwealth Financial Systems v. Smith, 2001 PA Super 30, *6 (Pa. Super Ct. 2011) (witness “could not say for certain whether [industry] requirements had actually been followed in the preparation and maintenance of those records because, simply put, he was never in a position to know”).

It appears that South Carolina law is consistent with the law of these sister states on this point. Our Supreme Court has held that a sheriff’s department’s receipt of a record from another office “would not qualify the detective [witness who received the document] to testify to the identity and mode of preparation of the report or whether it was made in the regular course of business at or near the time of the accident” subject of the report. State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983).

THE "BEST EVIDENCE" RULE

Ordinarily, a witness may not testify as to the contents of a writing. Rule 1004, SCRE; W.R. Grace & Co. v. La Munion, 245 S.C. 1, 138 S.E.2d 337 (1964); Moore-v. Postal Telegraph-Cable Co., 202 S.C. 225, 24 S.E.2d 361 (1943); Mayfield v. So. R. Co., 85 S.C. 165, 67 S.E. 132 (1910); Rose v. Winnsboro Nat'l. Bank, 41 S.C. 191, 18 S.E. 487 (1894). This rule is, for some reason, often called the "best evidence" rule.

DAMAGES AT DIRECTED VERDICT STAGE

Courts have long since passed the point of denying recovery to a wronged party simply because he cannot prove the amount of his loss with an exact amount. Gaines W. Harrison & Sons, Inc. v. J.I. Case Co., 180 F. Supp. 243 (D.S.C. 1960). Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. While neither the existence, causation, nor amount of damages can be left to conjecture, guess, or speculation, proof with mathematical certainty of the amount of loss or damage is not required. Whisenant v. James Island Corp., 277 S.C. 102, 13, 81 S.E.2d 794, 796 (1981); see also Piggy Park Enterprises, Inc. v. Schofield, 251 S.C. 385, 162 S.E.2d 705 (1968); Gray v. Southern Facilities, Inc., 256 S.C. 558, 183 S.E.2d 438 (1971)). Where "a reasonable basis of computation is afforded" and the resulting harm may only be approximate, circumstances "which will permit a reasonably close estimate of the loss" provide a basis for determining a jury questions of damages. Proctor v. Dept. of Health and Environmental Control, 368 S.C. 279, 628 S.E.2d 496 (Ct. App. 2006). In fact, the perplexity concerning the determination of the question and amount of damages "rarely, if ever, defeats a cause of action." Powers v. Calvert Fire Ins. Co., 216 S.C. 309, 57 S.E.2d 638 (S.C. 1950). "In

such cases courts ordinarily depend upon the wisdom and fairness of the good men and true who compose the jury[.]” Id.

AMENDMENT OF PLEADINGS UNDER RULE 15(b)

Amendments of the pleadings to conform to the proof at trial are permitted under Rule 15(b), SCRCP, and should be liberally allowed when no prejudice to the opposing party will result. E.g., Collins Entertainment, Inc. v. White, 363 S.C. 546, 611 S.E.2d 262 (Ct. App. 2005). The prejudice envisioned by the rule is a lack of notice that the new issue would be tried *and* a lack of opportunity to oppose the issue. Id. The party opposing amendment is required to demonstrate prejudice in order to succeed in preventing such an amendment. Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999).

The Dolans may make a motion to amend under Rule 15(b) to include a claim for negligent misrepresentation or breach of contract accompanied by fraudulent act, depending on what the evidence shows at trial.

Negligent misrepresentation. “Negligent misrepresentation has been described as an ‘emerging and developing field of law.’” Michael G. Sullivan & Douglas S. MacGregor, Elements of Civil Causes of Action 288 (3rd ed. 2006) (quoting Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 419 S.E.2d 795 (Ct. App. 1992)). It is an action in negligence (thus, not one with a heightened burden of proof). Id. “Recovery in a negligent misrepresentation action is based upon negligent conduct and predicated upon a negligently made false statement where a party suffers either injury or loss as a consequence of relying upon the misrepresentation inducing him or her to enter a contract or business transaction.” Id. Negligent misrepresentation has the following elements: 1) a false representation by the defendant; 2) the defendant’s pecuniary interest in making the statement; 3) the defendant owed a duty of care to see that he

communicated truthful information to the plaintiff; 4) the defendant breached the duty by failing to exercise due care; 5) the plaintiff justifiably relied upon the representation; and 6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation. Bishop Logging Co. v. John Deere Equip. Co. 317 S.C. 502, 528 n. 6, 455 S.E.2d 183 (Ct. App. 1995).

Breach of contract accompanied by fraudulent act. To recover for a breach of contract accompanied by fraudulent act, a party must show 1) a breach of contract, 2) fraudulent intent relating to the breach, and 3) a fraudulent act accompanying the breach. Harper v. Ethridge, 290 S.C. 112, 348 S.E.2d 374, 378 (1986); Minter v. GOCT, Inc., 322 S.C. 525, 473 S.E.2d 67 (Ct. App. 1996). All three elements are present here.

Fraudulent intent with regard to a breach of contract is "normally proved by circumstances surrounding the breach[.]" Floyd v. Country Squires Mobile Homes, Inc., 287 S.C. 51, 336 S.E.2d 502 (Ct. App. 1985). It may or may not involve false representations. Ball v. Canadian American Express Co., Inc., 314 S.C. 272, 442 S.E.2d 620 (Ct. App. 1994).

A fraudulent act is one characterized by dishonesty in fact, unfair dealing, or unlawful appropriation of someone else's property by design. Harper, 348 S.E.2d at 378; Ball, 314 S.C. 272; Perry v. Green, 313 S.C. 250, 437 S.E.2d 150 (Ct. App. 1993). Though the act is distinct from the breach, it must accompany it and not be too remote in either time or character. Smith v. Canal Ins. Co., 275 S.C. 256, 269 S.E.2d 348 (1980); Shelton v. Oscar Meyer Foods Corp., 319 S.C. 81, 459 S.E.2d 851 (Ct. App. 1995), *aff'd* 325 S.C. 248, 418 S.E.2d 706 (1997). It may happen before, along with, or after the breach. Floyd, 287 S.C. 51.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)

ATTORNEY FOR DEFENDANTS
BRYON J. DOLAN AND LISA S. DOLAN

Columbia, South Carolina
April 16, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 18 2014

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

SC Court of Appeals

James O. Spence, Master in Equity, Lexington County

Case No. 2012-CP-32-2816

174525

FV-I, Inc., in trust for Morgan Stanley Mortgage
Capital Holdings LLC Appellant,

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank and Trust Company, Inc.; Wells Fargo
Bank, N.A.; Branch Banking and Trust Company.....Defendants,

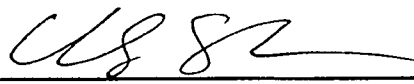
Of whom

Bryon J. Dolan and Lisa S. Dolan, are Respondents.

NOTICE OF APPEAL

FV-I, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC appeals the Order of the Honorable James O. Spence filed November 21, 2014 ("Order"). FV-I, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC received written notice of the November 21, 2014 Order on December 1, 2014. The Order is attached hereto as Exhibits A.

December 16, 2014


Charles S. Gwynne Jr. (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109
(29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
Attorney for the Appellant
Rogers Townsend & Thomas, PC and its staff are debt collectors

Other Counsel of Record:

Andrew S. Radeker, Esquire
Harrison & Radeker, P.A.
PO Box 50143
Columbia, SC 29250
(803) 779-2211
Attorney for Respondents

Adam H. Schanz, Esquire
Crawford & von Keller, LLC
PO Box 4216
Columbia, SC 29204
(803) 753-4491
Attorney for Defendant First Citizens Bank and Trust Company, Inc.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JAN 20 2015

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

SC Court of Appeals

James O. Spence, Master in Equity, Lexington County

Appellate Case No.: 2014-002710

FV-I, Inc., in trust for Morgan Stanley Mortgage
Capital Holdings LLC Appellant,

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank and Trust Company, Inc.; Wells Fargo
Bank, N.A.; Branch Banking and Trust Company.....Defendants,

Of whom

Bryon J. Dolan and Lisa S. Dolan, are Respondents.

INITIAL BRIEF OF APPELLANT

Charles S. Gwynne Jr. (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
Attorney for the Appellant
Rogers Townsend & Thomas, PC and its staff are debt collectors

TABLE OF CONTENTS

Table of Authorities	3
Statement of Issues on Appeal	4
Statement of the Case	5
Statement of Facts	6
Arguments	8
I. WHETHER THE MASTER-IN-EQUITY ERRED IN STAYING THE EQUITABLE FORECLOSURE CLAIM AND EQUITABLE COUNTERCLAIM FOR ACCOUNTING PENDING THE RESPONDENTS' APPEAL OF THE JURY VERDICT ON THE LEGAL COUNTERCLAIMS FOR BREACH OF CONTRACT AND VIOLATION OF THE UNFAIR TRADE PRACTICES ACT	8
II. WHETHER THE MASTER-IN-EQUITY ERRED IN RULING THE JURY'S DETERMINATION IN THE TRIAL ON THE LEGAL COUNTERCLAIMS FOR BREACH OF CONTRACT AND VIOLATION OF THE UNFAIR TRADE PRACTICES ACT IS BINDING ON THE COURT IN THE BIFURCATED TRIAL ON THE EQUITABLE FORECLOSURE CLAIM AND EQUITABLE COUNTERCLAIM FOR ACCOUNTING	10
Conclusion	13

TABLE OF AUTHORITIES

CASES

<u>Alabama v. Blue Bird Body Co.,</u> 573 F.2d 309, 318 (5th Cir.1978).....	8
<u>Cobb v. S. Carolina Dep't of Transp.,</u> 365 S.C. 360, 365-66, 618 S.E.2d 299, 302 (2005).....	8
<u>Culbertson v. Clemens,</u> 332 S.C. 20, 23, 471 S.E.2d 163, 164 (1996).....	9
<u>Creighton v. Coligny Plaza Ltd. Partnership,</u> 334 S.C. 96, 108, 512S.E.2d 510, 516 (Ct.App. 1998).....	8, 9
<u>Ex parte Wilson,</u> 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005).....	9
<u>Fortune v. Gibson,</u> 304 S.C. 279, 403 S.E.2d 674 (Ct.App.1991).....	8, 9
<u>Humbert v. State,</u> 345 S.C. 332, 548 S.E.2d 862 (2001).....	8
<u>Wachovia Bank, Nat. Ass'n v. Blackburn,</u> 407 S.C. 321755 S.E.2d 437 (2014).....	7, 11

OTHER AUTHORITIES

South Carolina Rules of Civil Procedure Rule 42(b).....	5, 7, 8, 9, 11, 12
Federal Rules of Civil Procedure Rule 42(b).....	8
South Carolina Appellate Court Rules Rule 205.....	9
Rule 241.....	9

STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE MASTER-IN-EQUITY ERRED IN STAYING THE EQUITABLE FORECLOSURE CLAIM AND EQUITABLE COUNTERCLAIM FOR ACCOUNTING PENDING THE RESPONDENTS' APPEAL OF THE JURY VERDICT ON THE LEGAL COUNTERCLAIMS FOR BREACH OF CONTRACT AND VIOLATION OF THE UNFAIR TRADE PRACTICES ACT.
- II. WHETHER THE MASTER-IN-EQUITY ERRED IN RULING THE JURY'S DETERMINATION IN THE TRIAL ON THE LEGAL COUNTERCLAIMS FOR BREACH OF CONTRACT AND VIOLATION OF THE UNFAIR TRADE PRACTICES ACT IS BINDING ON THE COURT IN THE BIFURCATED TRIAL ON THE EQUITABLE FORECLOSURE CLAIM AND EQUITABLE COUNTERCLAIM FOR ACCOUNTING

STATEMENT OF THE CASE

This lawsuit arises out of the foreclosure of a residential real estate mortgage. Appellant, FV-I, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC, filed its Lis Pendens, Summons, and Complaint on July 9, 2012. (Complaint) Respondents, Bryon J. Dolan and Lisa S. Dolan, filed an Answer and Counterclaim on August 10, 2012. Defendants asserted an equitable counterclaim for Accounting, and legal counterclaims for Breach of Contract and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). (Answer and Counterclaim)

By Order filed May 1, 2014, Appellant and Respondents agreed and stipulated to bifurcate the action pursuant to Rule 42(b), SCRCP, thereby severing the Respondents' legal counterclaims for Breach of Contract and SCUTPA from Appellant's foreclosure claim and Respondents' equitable counterclaim for Accounting. As part of the May 1, 2014 Order, the equitable foreclosure claim and equitable counterclaim for Accounting were referred to the Lexington County Master-in-Equity. (Order filed May 1, 2014).

On April 17, 2014, the legal counterclaims were heard before a jury with The Honorable R. Keith Kelly presiding. A directed verdict was granted in favor of Appellant on the SCUTPA claim, and a jury verdict was returned in favor of Appellant on the Breach of Contract counterclaim. (April 17, 2014 Trial Transcript pp. 139-142 and Jury Verdict). Subsequently, Judge Kelly denied Respondent's motion for a new trial and motion to reconsider the order. (Orders filed May 16, 2014 and June 19, 2014).

On June 25, 2014, Respondents' filed a Notice of Appeal to the South Carolina Court of Appeals indicating that they intend to appeal the orders of the Honorable R.

Keith Kelly. The Respondents appeal of the Jury verdict, Appellate Case No. 2014-001384, remains pending before the Court of Appeals.

On July 14, 2014, Appellant filed a Motion to Dismiss Respondents' appeal in Appellate Case No. 2014-001384 due to the fact that there has not been a final judgment on the Respondents' equitable claims. (Appeal Motion filed July 14, 2014). On August 25, 2014, the Court of Appeals issued an Order denying Appellant's Motion to Dismiss but did not address the underlying merits of the motion. The Court of Appeal's Order allows the parties to address the appealability of the legal counterclaims in their briefs to the court. The Court of Appeals has not issued a stay of the equitable claims pending before the Master-in-Equity. (Order filed August 25, 2014).

Also, on July 14, 2014, Appellant filed a Motion to Proceed with Trial with the Master-in-Equity seeking to go forward with its foreclosure cause of action while the Respondents' Appeal was still pending. (Plaintiff's Motion filed July 14, 2014). Appellant filed a subsequent Memorandum of Law in Support of Bond Requirement. (Plaintiff's Memorandum filed October 16, 2014). By Order filed November 21, 2014 ("Order") the Master-In-Equity issued an Order staying the foreclosure action until such time as the Respondents' appeal of the jury verdict and directed verdict is resolved. (Order filed November 21, 2014). Appellant received written notice of entry of the Order on December 1, 2014. Appellant filed its Notice of Appeal to this Court on December 16, 2014.

STATEMENT OF THE FACTS

In their Answer and Counterclaims, the Respondents allege that Appellant breached a written contract that modified the terms of the Note and Mortgage and this

breach by the Appellant caused their default under the terms of the Note and Mortgage. (Answer and Counterclaim Pars. 20-25). The verdict of the jury at the April 17, 2014 trial held that the Respondents did not prove by a preponderance of the evidence that Appellant breached the contract. (Jury Verdict). The Respondents also asserted a counterclaim for violation of the South Carolina Unfair Trade Practices Act and the Appellant received a directed verdict on this cause of action at the April 17, 2014 trial. (April 17, 2014 Trial Transcript pp. 139-142).

In the consent Order Bifurcating Action and Referring Foreclosure Claim to Master-In-Equity, dated April 17, 2014 and filed on May 1, 2014, Appellant and Respondents agreed to bifurcate the action pursuant to Rule 42(b), SCRPC. The Respondents' counterclaims for Breach of Contract and Unfair Trade Practices were severed from Plaintiff's foreclosure action and separate trials were ordered. Appellant's foreclosure claim and Respondents' equitable counterclaim for Accounting was referred to The Honorable James O. Spence, Master in Equity for Lexington County. Both parties fully consented to bifurcate the case under Rule 42(b), SCRPC. (Order filed May 1, 2014).

In the Order on appeal, the Master-in-Equity ruled the equitable claims currently pending before him should be stayed because the outcome of the jury trial directly affects the equitable claims. (Order filed November 21, 2014 pp. 4, 7-8). In his ruling, the Master-in-Equity cited the case of Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 755 S.E.2d 437 (2014). The Master-in-Equity noted the "'the jury's determination of common factual issues shall be *binding* upon the court' in the following bench trial. Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 330, 755 S.E.2d 437, 442 (2014) (emphasis added)." (Order filed November 21, 2014 p. 4).

ARGUMENTS

I. WHETHER THE MASTER-IN-EQUITY ERRED IN STAYING THE EQUITABLE FORECLOSURE CLAIM AND EQUITABLE COUNTERCLAIM FOR ACCOUNTING PENDING THE RESPONDENTS' APPEAL OF THE BIFURCATED JURY VERDICT ON THE LEGAL COUNTERCLAIMS FOR BREACH OF CONTRACT AND VIOLATION OF THE UNFAIR TRADE PRACTICES ACT.

“A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice.” Creighton v. Coligny Plaza Ltd. Partnership, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct.App. 1998) (citing Fortune v. Gibson, 304 S.C. 279, 403 S.E.2d 674 (Ct.App.1991)). One of the fundamental principles of bifurcation is that “a trial may be bifurcated only if the issues are so distinct that a trial of each alone would not result in injustice.” Fortune v. Gibson, 304 S.C. 279, 281, 403 S.E.2d 674, 675 (Ct.App. 1991) “If South Carolina Rule of Civil Procedure 42(b) contemplated bifurcation before the same jury only, there would be no need for the requirement that the issues be distinct.” Id. “Indeed, it has been expressly recognized that the ‘distinct issues’ requirement ‘is dictated for the very practical reason that if separate juries are allowed to pass on issues involving overlapping legal and factual questions the verdicts rendered by each could be inconsistent.’ Id. at 281-282 (quoting Alabama v. Blue Bird Body Co., 573 F.2d 309, 318 (5th Cir.1978) (interpreting Fed.R.Civ.P. 42(b)).

If a trial judge has not ruled upon an issue, it will not be considered on appeal. Cobb v. S. Carolina Dep't of Transp., 365 S.C. 360, 365-66, 618 S.E.2d 299, 302 (2005) (citing Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001)). Barring some statutory exceptions not applicable here, South Carolina courts have repeatedly held that as a general rule, appeal may only be taken after a final judgment has been rendered. Ex parte

Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (citing Culbertson v. Clemens, 332 S.C. 20, 23, 471 S.E.2d 163, 164 (1996).

Rule 205, SCACR states:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. *Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.* (emphasis added).

SCACR 241 is the rule which discusses stays. Notably, it states, “[t]he lower court ... retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.”

Both Rule 205 and Rule 241 make it clear that the lower court retains jurisdiction over, and may proceed notwithstanding the notice of appeal, with portions of the case not affected by the order appealed.

In the present case, the filing of a notice of appeal as to the bifurcated jury trial on the legal counterclaims does not affect the distinct equitable claims pending before the Master-in-Equity and therefore does not create a stay. By consenting to bifurcating the case under Rule 42(b), SCRCF, the Respondents consented and acknowledged that the bifurcated claims have distinct issues, a trial of each alone would not result in injustice, and that there are no overlapping legal and factual questions that would result in inconsistent verdicts or judgments. (See Creighton v. Coligny Plaza Ltd. Partnership, 334 S.C. 96, 512 S.E.2d 510, (Ct.App. 1998) and Fortune v. Gibson, 304 S.C. 279, 403 S.E.2d 674 (Ct.App.1991))

At the jury trial on April 17, 2014, the Respondents sought only monetary damages from Appellant on the legal counterclaims for breach of contract. (April 17, 2014 Trial Transcript pp. 14-24 and 178-191 and Jury Verdict form). A potential award of monetary damages at some point in the future on the legal counterclaims would not form the basis of a defense to Appellant's right to foreclose its mortgage in the bifurcated foreclosure trial. When the foreclosure case proceeds the Respondents are still free to assert any and all defenses they may have to the foreclosure action.

As evidence of the fact that the Respondents only sought monetary damages at the jury trial on April 17, 2014; the verdict form approved by all parties only lists damages for the breach of contract claim in the form of monetary damages. (Jury Verdict form). Additionally, in their Answer and Counterclaim the Respondents are only seeking monetary damages in the form of "treble damages, reasonable attorney's fees, and costs" for the violation of the Unfair Trade Practices Act. (Answer and Counterclaim Par. 52).

II. WHETHER THE MASTER-IN-EQUITY ERRED IN RULING THE JURY'S DETERMINATION IN THE TRIAL ON THE LEGAL COUNTERCLAIMS FOR BREACH OF CONTRACT AND VIOLATION OF THE UNFAIR TRADE PRACTICES ACT IS BINDING ON THE COURT IN THE BIFURCATED TRIAL ON THE EQUITABLE FORECLOSURE CLAIM AND EQUITABLE COUNTERCLAIM FOR ACCOUNTING

In determining the order of trial:

"(1) If both the complaint and the counterclaim are in equity, the entire matter is triable by the court.

(2) If both are at law, the issues are triable by a jury.

(3) If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.

(4) If the complaint is equitable and the counterclaim is legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim unless a valid jury trial waiver exists that encompasses the counterclaim. If such a waiver does not exist, the proper procedure for handling the counterclaims is as follows:

(a) The trial judge may, pursuant to Rule 42(b), order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding.

(b) If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the most imperative circumstances, the at law claim must be tried first. If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first.

(c) If the claims are to be tried in a single proceeding and there are factual issues common to both claims, the jury shall first determine the legal issues. The court may then determine the equitable claims, but the jury's determination of common factual issues shall be binding upon the court.”

Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 329-330, 755 S.E.2d 437, 441-442 (2014)

Pursuant to the reasoning in the Blackburn case, the Master-in-Equity erred in ruling the factual findings in the jury trial is binding on the court in the equitable trial. The Blackburn case holds that when “claims are to be tried in a single proceeding”...“the jury's determination of common factual issues shall be binding upon the court.” Id. (emphasis

added). When the case is bifurcated and separate trials are ordered, as in this case, pursuant the Rule 42(b), SCRCF, "the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the most imperative circumstances, the at law claim must be tried first. If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first." Id. In this case, the order bifurcating the case is silent on this issue about whether there are common factual issues. The Master-in-Equity is not the Judge who bifurcated the case and therefore did not make the determination regarding which action should be tried first and if there factual issues common to both claims.

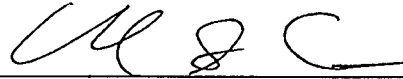
Respondents assume as a matter of law there are common factual issues in both claims. However, as discussed in Section I above the Respondents only sought monetary damages in the jury trial. A potential award of monetary damages at some point in the future on the legal counterclaims would not form the basis of a defense to Appellant's right to foreclose its mortgage. Therefore, the Respondents position at trial, including their consent to bifurcate the case under Rule 421(b), SCRCF, demonstrates their implicit view that the factual issues involved in the jury trial are distinct and will not result in inconsistent verdicts.

CONCLUSION

Appellant therefore respectfully submits that the Order staying the foreclosure case should be reversed and the Appellant be allowed to proceed with its foreclosure trial.

Respectfully submitted,

January 15, 2015



Charles S. Gwynne Jr. (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
Attorney for the Appellant
Rogers Townsend & Thomas, PC and its staff are debt collectors

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

RECEIVED

JUL 01 2015

R. Keith Kelly, Circuit Judge

SC Court of Appeals

Appellate Case No. 2014-001384
Common Pleas Case No. 2012-CP-32-2816

FV-I, Inc. in trust for Morgan Stanley Mortgage Capital Holdings LLC,...Respondent,

v.

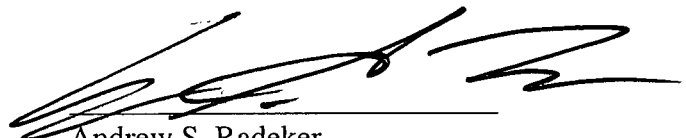
Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank and Trust Company, Inc.; Wells
Fargo Bank, N.A.; Branch Banking and Trust Company, Defendants,

Of whom Bryon J. Dolan and Lisa S. Dolan are the.....Appellants.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be
included by any of the parties and not any other material.

Respectfully submitted,



Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellants