THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPELLANT CASE NUMBER 2015-001119

RECEIVED
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SC Court of Appeals

APPEAL FROM AIKEN COUNTY

SECOND JUDICIAL CIRCUIT

COURT OF COMMON PLEAS

REFEREE JAMES MARTIN HARVEY, JR

CASE NO. 2012-CP-02-00699

BANK OF AMERICA, N.A.....RESPONDENT

V.

CAROLYN S. DEANER.....APPELLANT

RECORD ON APPEAL

Janiere Taylor, Esq./Charles Gwynne,Esq.

Robert Muckenfuss, Esq./Trent Grissom,Esq.

Respondent

Carolyn S. Deaner

Appellant, Pro Se

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APPELLANT PROPOSES THE FOLLOWING BE INCLUDED IN THE RECORD ON APPEAL:

NOTE: **Each Listed Designation will follow the page number.**

DESIGNATION: 1

1. **ORIGINAL COMPLAINT...filed 3/19/ 2012.**

   (contains pages 1-4)

   Notice Fair Debt (contains 1 page)

   Notice of Foreclosure Intervention...filed 3/19/2012 .

   (contains 1-2 pages)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

PLAINTIFF,

vs.

Carolyn S. Deaner,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

COMPLAINT 2012-CP-02-00699

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

DEFICIENCY WAIVED

COPY
ORIGINAL FILED

MAR 19 2012
am 3:35 pm
AIKEN COUNTY
CLERK OF COURT

F12-00992

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

1. That the Plaintiff is a corporation/limited liability company organized and existing under and by virtue of the laws of the State of United States of America; and that the Defendant(s) Carolyn S. Deaner, is upon information and belief, a citizen(s) and resident(s) of the County of Aiken, State of South Carolina.

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

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

4. That on or about June 26, 2007, for value received, Carolyn S. Deaner, did execute and deliver to Quicken Loans, Inc., a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Carolyn S. Deaner promised to pay to Quicken Loans, Inc., the sum of Ninety-Seven Thousand Six Hundred And 00/100 Dollars ($97,600.00), together with interest thereon at the rate of Seven And 00/100 per cent (7.00%) per annum.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Carolyn S. Deaner, did execute and deliver on June 26, 2007 unto Mortgage Electronic Registration Systems, Inc., as nominee for Quicken Loans, Inc., its successors and assigns, a mortgage covering the following described property:

Legal description and property address:
THE FOLLOWING DESCRIBED REAL PROPERTY, TO WIT:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, SITUATE, LYING AND BEING IN BELVEDERE, AIKEN COUNTY, SOUTH CAROLINA, DESIGNATED AS LOT 10, BLOCK B, ON A PLAT OF SURVEY OF PINECREST SUBDIVISION, SECTION I, MADE BY CRANSTON & ASSOCIATES, DATED October 3. 1966, REVISED UNDER DATE OF MARCH 29, 1968, AND RECORDED IN PLAT BOOK 3, AT PAGE 151, RECORDS OF AIKEN COUNTY; AND ACCORDING TO SAID PLAT, BEING BOUNDED, NOW OR FORMERLY, AND MEASURING, MORE OR LESS, AS FOLLOWS: NORTH BY KERSHAW DRIVE ON TWO LINES, MEASURING RESPECTIVELY 43.0 FEET AND 78.0 FEET; EAST BY LOT NO, 9, SAID

BLOCK, 153.0 FEET; SOUTH BY LANDS OF TROTTER REALTY COMPANY, 71.22 FEET; AND WEST BY LOT 11, SAID BLOCK 149.03 FEET. REFERENCE IS HEREBY MADE TO SAID PLAT FOR A MORE COMPLETE AND ACCURATE DESCRIPTION OF THE SUBJECT PROPERTY.

THIS BEING THE SAME PROPERTY INTENDED TO BE CONVEYED TO CAROLYN S. DEANER FROM MAROLYN D. SPOORES, INDIVIDUALLY AND AS TRUSTEE OF THE VELDA K. DEANER REVOCABLE TRUST DATED JUNE 28, 2002, AMENDED AND RESTATED OCTOBER 11, 2002, AND FURTHER AMENDED ON DEMEMBER 20, 2002 DONALD D. DEANER, JR., MICHAEL A. DEANER, BY DEED DATED OCTOBER 4, 2004 AND RECORDED OCTOBER 13, 2004, IN BOOK 2458 AT PAGE 111.

704 Kershaw Drive, North Augusta, SC 29841
TMS# 012-14-06-051

6. Thereafter said mortgage was recorded in Book RB-4149 at page 773 on July 16, 2007 in the office of the Register of Deeds of Aiken County.

7. Thereafter, by virtue of an assignment dated April 29, 2011, recorded May 9, 2011, in Mortgage Book RB-4356 at page 932, Mortgage Electronic Registration Systems, Inc. assigned said mortgage unto BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP.

8. Thereafter, by virtue of a corporate merger, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP merged with Bank of America, N.A. making Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP the present lien holder and Plaintiff herein

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

10. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

11. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

12. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

13. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings,

and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

14. The monthly payments due on said note and mortgage are in default since July 1, 2010, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of July 1, 2010 the sum of Ninety-Four Thousand One Hundred Seventy-Eight And 44/100 Dollars ($94,178.44), together with interest at the rate of seven and 00/100 per cent (7.00 %) per annum from June 1, 2010 and also for the costs and disbursements of this action, including attorney's fees.

15. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

~~16. That the servicer is participating in the Home Affordable Modification Program (HMP). The HMP~~ modification process specified by the Guidelines or Supplemental directive has been completed without resulting in a modification because the modification of the loan would cause excessive forbearance in violation of the Treasury Department Guidelines.

17. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

18. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

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

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

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

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

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

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

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

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

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

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

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

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

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

PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KELLER C. FOSTER
TERESA D. VAN VLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Columbia, South Carolina
March 19, 2012

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

1. The amount of the debt is stated in paragraph 14 of the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. The debt as described in the Complaint attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor(s), within thirty (30) days after the receipt of this notice, disputes the validity of the debt or some portion thereof.
4. If the debtor(s) notify the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor(s) by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor(s) makes a written request to the creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor(s) by the creditor's law firm.
6. Written requests should be addressed to Korn Law Firm, P.A., Post Office Box 11264, Columbia, South Carolina 29211-1264.
7. This notice should NOT be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

COPY
ORIGINAL FILED
MAR 19 2012
am 3:35pm
AIKEN COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP.

PLAINTIFF,

vs.

Carolyn S. Deaner,

DEFENDANT(S).

F12-00992

IN THE COURT OF COMMON PLEAS

NOTICE OF FORECLOSURE INTERVENTION

2012-CP.02.00699

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

DEFICIENCY WAIVED

COPY
ORIGINAL FILED

MAR 19 2012
am 3:35pm
AIKEN COUNTY
CLERK OF COURT

TO: **Carolyn S. Deaner:**

PLEASE TAKE NOTICE THAT pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01, (hereinafter "Order"), you may have a right to Foreclosure Intervention. PLEASE BE ADVISED THAT THE TERMS AND CONDITION OF THIS ORDER ONLY APPLY TO MORTGAGE FORECLOSURE PROCEEDINGS CONCERNING **OWNER-OCCUPIED DWELLINGS**, WHICH IS DEFINED BY THE ORDER AS REAL PROPERTY THAT IS THE PRINCIPAL RESIDENCE OF ANY MORTGAGOR.

To be considered for any available Foreclosure Intervention, you may communicate with and otherwise deal with the Plaintiff through its law firm, KORN LAW FIRM, P.A., P. O. Box 11264, 1300 Pickens Street, Columbia, SC 29201 or call (803) 252-5817. KORN LAW FIRM, P.A., represents the Plaintiff in this action and does **not** represent you. Under our ethical rules, we are prohibited from giving you any legal advice.

You must submit any requests for Foreclosure Intervention consideration within 30 days from the date of this Notice. Attached is a request form for your use. **IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION, YOUR MORTGAGE COMPANY/AGENT MAY PROCEED WITH A FORECLOSURE ACTION.** If you have already pursued loss mitigation with the Plaintiff, this Notice does not guarantee the availability of loss mitigation options or further review of your qualifications.

*IF THIS MORTGAGE FORECLOSURE PROCEEDING CONCERNS A **NON-OWNER OCCUPIED DWELLING**, THE TERMS AND CONDITIONS OF THE ORDER **DO NOT APPLY** TO THIS PROCEEDING.*

BY: _____
PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KELLER C. FOSTER
TERESA D. VAN VLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

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

Dated 3/19, 2012

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

Request for Foreclosure Intervention
File No.: F12-00992

This document is exchanged exclusively for the purpose of foreclosure intervention pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01.

Property Address: 704 Kershaw Drive, North Augusta, SC 29841

_____ I am the owner but do not occupy the property.

_____ I am the owner of and occupy the property.

Is this street address correct? ☐ Yes ☐ No

If Yes, please include proof of occupancy such as a utility bill, military orders, voter registration card, etc.

If No, what is the correct street address: _____

_____ I am actively working with the mortgage company to resolve my mortgage account's delinquency and last spoke with the mortgage company on _____.

_____ I submitted a complete loss mitigation package to the mortgage company on _____.

I am interested in the following type(s) of loss mitigation **(please note that you may not qualify for any or all of these foreclosure intervention options)**:

_____Reinstatement

_____Payoff

_____Payment Plan

_____Forbearance Agreement

_____Loan Modification

_____Deed in Lieu

_____Short Sale

_____Other:_____

PLEASE NOTE THAT YOU MAY NOT QUALIFY FOR ALL THE OPTIONS LISTED ABOVE. NO REPRESENTATION OF ANY KIND IS BEING MADE REGARDING THE AVAILABILITY OF ANY LOSS MITIGATION OPTION OR YOUR QUALIFICATION FOR ANY OPTION.

_____I elect not to participate in any Foreclosure Intervention.

☐ I am represented by counsel in this foreclosure action.

My attorney's name, address, and phone number is: _____

_____

_____

Contact #'s:

Home:_____

Cellular:_____

Work:_____

Other:_____

May we leave a phone message? At home ☐ Yes ☐ No

On your cellular phone: ☐ Yes ☐ No At work ☐ Yes ☐ No

May we call your cell phone? ☐ Yes ☐ No

May we send you an e-mail message? ☐ Yes ☐ No

Email: _____

PRINT NAME: _____

_____ (Signature)

Date: _____

Please note, if you are represented by counsel in the foreclosure action KORN LAW FIRM, P.A., will only communicate with you through your counsel.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

DESIGNATION: 2

2. Defendant's MOTION TO DISMISS FORECLOSURE ACTION AND NOTICE OF MOTION...filed 4/12/2012.

   (contains pages 1-5)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A. successor by merger to BAC Home Loans Servicing, L.P. f/k/a Countywide Home Loans Servicing, L.P.,

PLAINTIFF

VS

Carolyn S. Deaner,
DEFENDANT(S)

F12-00992

IN THE COURT OF COMMON PLEAS

LIS PENDENS 2012-LP-02-00192

(NON-INJURY MORTGAGE FORECLOSURE)

C/A NO: 2012-CP-02-00699

MOTION TO DISMISS FORECLOSURE ACTION and NOTICE OF MOTION

NOW COMES DEFENDANT CAROLYN S. DEANER, and hereby moves the Court for an Order dismissing Carolyn S. Deaner from this action on grounds that Plaintiffs, Bank of America, N.A. successor by merger to BAC Home Loans Servicing, L.P. f/k/a/ County Wide Home Loans Servicing, L.P. is not the Party or Parties of Interest, Investor, Lien Holder or Holder in Due Course and can not foreclose on said loan as the promissory note, security instrument is no more and has been converted, dissolved, changed by the note being securitized into a stock without notification, approval or authorization of the Defendant borrower constituting a breach of contract, a default and violation of the contract by Quicken Loans, Inc., Mortgage Electronic Registration Systems, Inc. (MERS) and Plaintiff as their actions destroyed the Lender Borrower relationship and disrupted the chain of title.

MERS, NOT BEING THE PAYEE ON THE NOTE, HAS NO RIGHT TO ASSIGN, AND HAVING NO OWNERSHIP RIGHTS IN THE NOTE CANNOT TRANSFER IT, (Huntington National Bank v, Brown, case No. CV-09-702894 Cuyahoga County, Ohio) AND THEREFORE, THE PLAINTIFF HAS NO STANDING TO BRING FORECLOSURE AND IS NOT THE TRUE PARTY OF INTEREST. (Many States as well as Attorney Generals throughout the United States are suing MERS for civil conspiracy, unjust enrichment, fraudulent and negligent misrepresentation and practices and other wrongful acts. Delaware, attorney General Nov.1, 2011, New Mexico Court, Oct.1, 2011, Bank of America Home Loan Servicing, LP f/k/a Countywide, neither of which was the original Lender, Cuyahoga County, Ohio Court issued the foreclosing bank did not have the standing to foreclose and was not the party of interest, Dec.7, 2011, Guilford County, NC sues Lender processing services, MERS, Bank of America numerous other banks arising out of filing fraudulent mortgage foreclosure documents in connection with securitizations, & Register of Deeds, March 15, 2012 filed a 47 page lawsuit against MERS for robo signing which led to production of fraudulent mortgage records within county's registry of deeds and disrupts of title chains, summary judgment defeated and securitization documents compelled in Oregon, North Carolina Court of appeals affirms trial courts Dismissal of Foreclosure in what appears to be a direct attack on the alleged authority of robo indorsements, and June18, 2010 a Florida trial court decision dismissed a foreclosure filed by Aurora Loan Services, LLC which claimed a right to foreclosure by virtue of a MERS Assignment. In dismissing the complaint, the Court specifically found that the purported assignment was "completely ineffective, and also, "assignment of mortgage" was fatally flawed and ineffective., March 29, 2012 ,US district Court of Hawaii, Deutsche Bank National Trust company as Trustee, etc v. Williams, civil. 11-00632 JMS/RLP, March 29, 2012.)

Also, the Defendant claims that without "consensus as idem", an agreement to the same thing, there is no binding contract. (Peerless), Raffles v. Wichelhaus, 2 H.&C.906 (1894). This principle has been adopted into the American common law tradition and has become a bedrock of our contract

dispute jurisprudence. The Utah Supreme Court has recently held that a lack of meeting of the minds, a mistake as to fact, can justify a rescission of the contract. A single party may rescind a contract when, at the time the contract is made, the parties make a mutual mistake about a material fact, the existence of which is a basic assumption of the contract" Deep Creeek, LLC v. Utah State Armory BD., 2008 UT 3, 17 (quoting Mooney v. GR & Assocs., 746P.2d 1174 (Utah Ct. App. 1978) Also, "when one party's mistake of fact is coupled with knowledge of the mistake by the other party or a mistake is produced by fraud or other inequitable conduct by the non erring party, the mistake provides for reformation or rescission". Guardian St. Bank v. F.C. Stangle III, 778, P.2d 1, 12 (1989) Utah. A recent Federal Circuit Court Judge has found Countywide and Bank of America guilty of robo signers, fraudulent assignments and mortgage fraud and has levied a 25 billion dollar restitution. Defendant has notified Plaintiff the loan is rescinded via certified mail.

WHEREFORE, the promissory note, security deed, deed of trust or any negotiable instrument no longer exists, therefore, the Plaintiff cannot foreclose and has violated the False Claims Act by not being the party of interest requiring triple damages by the Court. The note with assignment

proof and securitization discovery is not attached to the Plaintiff's claim, therefore the Plaintiff does not have a right to foreclose. The note was converted to a stock and attached to a REMIC (Real Estate Mortgage Investment Conduit), so the note, security instrument, deed of trust, etc. is invalid. The note has to be in its entirety to be valid and enforceable, and in addition, MERS has no power to assign the original note.

The true Holder is unknown, and Plaintiff has not shown it even owns the mortgage, and therefore, has no claim to any of the Defendant borrower's property. If the Plaintiff does not have a right to collect the mortgage payments and foreclose, it is not the party of interest and may not legally bring a foreclosure lawsuit against the owner. Further, the Plaintiff must prove the loan was not written off by the REMIC, and perfected chain of title from origination, to the REMIC, and from the REMIC back to the Plaintiff, otherwise, Plaintiff is in violation of SC Title 29, chapter 3, Article 5, section 29-3-320, liability for failure to enter satisfaction. When a loan defaults, Fannie Mae pulls the loan from the pool and marks it "paid in full".

The Plaintiff, the foreclosing party, should have to prove, not only proper possession and ownership of the note and the rights under it, but also, intent of delivery, manner of delivery and actual delivery of the mortgage instrument under Article 9 of UCC. The Mortgage Loan Conveyance

Provisions of PSA set forth requirements to prove intent of delivery, manner of delivery and actual delivery of the mortgage instruments. MERS, SOLELY ACTING AS A NOMINEE FOR THE ORIGINAL LENDER, QUICKEN LOANS, INC. IS WITHOUT THE POWER TO TRANSFER A NOTE WHICH IT DID NOT, DOES NOT, AND CAN NEVER OWN, Defendant declares, a MERS Mortgage is not really a mortgage, but rather an unsecured debt and was named in bankruptcy.

Therefore, Plaintiff is barred by the doctrine of waiver, laches, unclean hands, unjust enrichment, and RICO failing to demonstrate that Plaintiff had standing at the time of filing of the foreclosure violating the False Claims Act requiring triple damages by the Court.

All statements by Plaintiff on Legal Description first page and all other pages of their claim are denied and disputed by Defendant, and DEFENDANT requests the COURT to Dismiss the Foreclosure Action and case based on facts set forth and Defendant prays for restitution by the Court as Court deems just and proper.

This the 12th day of April, 2012.

CAROLYN S. DEANER
DEFENDANT
704 KERSHAW DRIVE
NORTH AUGUSTA/BELVEDERE, SC
29841
PHONE: (706) 399-5496

TBD
ATTORNEY FOR DEFENDANT

DESIGNATION: 3

3. Legal aid Attorney, Adam Protheroe's, MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS.....filed 5/5/2012.

   (contains pages 1-4)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicin, LP f/k/a Coutrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS** **DOCKET NO. 2012-CP-02-00699**

COPY
ORIGINAL FILED
JUN 05 2012
AIKEN COUNTY
CLERK OF COURT

The Defendant, Carolyn S. Deaner, submits the following memorandum of law in support of her motion to dismiss the Plaintiff's claims.

INTRODUCTION

In June of 2007, Defendant took out a mortgage loan with Quicken Loans, Inc. On March 19, 2012, this action was filed by Bank of America, N.A. seeking to foreclose on this loan. For the reasons that follow, Defendant disputes Plaintiff's right to seek foreclosure and requests that this case be dismissed pursuant to Rule 12(b) SCRCP.

ARGUMENT

Defendant has raised a number of issues in her Motion to Dismiss Foreclosure Action, but confines argument here to the fact that Plaintiff has not sufficiently alleged that it has standing to bring this action. Defendant contends that Plaintiff's allegation that Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS") assigned Defendant's Mortgage to Plaintiff is insufficient as a matter of law because MERS does not have any interest in the Promissory Note (hereinafter "Note) and therefore cannot assign any interest in said Note to Plaintiff. Because Plaintiff has not alleged that it is entitled to enforce the Note, Plaintiff lacks standing to bring this action and has failed to state a claim upon which relief can be granted.

The court may dismiss a claim where the defendant shows that the plaintiff has failed to state facts sufficient to constitute a cause of action. Hambrick v. GMAC Mortg. Corp., 370 S.C. 118; 634 S.E.2d 5 (Ct. App., 2006). The court must base its decision solely on the allegations in the complaint and all properly plead factual allegations are deemed admitted for the purpose of the motion. However, a motion under Rule 12(b)(6) or 12(c) does not admit conclusions of law. Carolina Winds v. Joe Harden Builder, 297 S.C. 74; 374 S.E.2d 897 (Ct. App., 1988) (rev'd on other grounds).

Plaintiff has alleged, among other things, that MERS assigned Defendant's Mortgage to Plaintiff by an Assignment of Mortgage (hereinafter "AOM") dated April 29, 2011 and that BAC Home Loans Servicing, LP f/k/a Coutrywide Home Loans Servicing, LP have merged with Plaintiff making Plaintiff successor by merger to these companies. Compl. ¶ 7 and 8. The Complaint contains no other allegations regarding the assignment, negotiation, or transfer of the Note or of any succession in interest between Plaintiff and Quicken Loans, Inc. As a result, Plaintiff has failed to allege how it is that Plaintiff is entitled to enforce Defendant's Note by foreclosing on her home.

"Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." United States Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 375; 684 S.E.2d 199, 205 (Ct. App. 2009). This would include proving by a preponderance of the evidence that Plaintiff is the owner of the Note *and* Mortgage and that Defendant had defaulted on the Note. *See* 385 S.C. at 375; 684 S.E.2d at 199 (citing Franklin Credit Mgmt. Corp. v. Nicholas, 73 Conn. App. 830, 812 A.2d 51, 57-58 (Conn. App. Ct. 2002)). Plaintiff is required to plead and prove that it has received rights in both the Note and the Mortgage because "[t]he assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee absent some indication that the parties also intended to transfer the debt." S.C. Nat'l Bank v. Halter, 293 S.C. 121, 128, 359 S.E.2d 74, 77 (Ct. App. 1987).

Thus, taking Plaintiff's allegations as true for the purposes of this Motion, Plaintiff's assertion that MERS assigned Defendant's mortgage to Plaintiff may be sufficient to pass an interest in the Mortgage. However, because Plaintiff was not the original lender and not the

original payee on the Note, Plaintiff will need to show that it became entitled to enforce the Note. Generally, promissory notes are negotiable instruments subject to Article 3 of the UCC as enacted in South Carolina in Code Sections 36-3-101 *et seq*. A person or entity is entitled to enforce a negotiable instrument if they are: (1) a holder of the instrument, (2) a non-holder in possession of the instrument who has the rights of a holder, or (3) a person not in possession of the instrument who is entitled to enforce it under S.C. Code Ann. § 36-3-309 or § 36-3-418(d). The requirements to establish a right to enforce a negotiable instrument are detailed in Article 3 of the UCC and need not be repeated here. The important point is that Plaintiff has not alleged any right to enforce Defendant's Note either through the provisions of Article 3 or otherwise. The only relevant allegation Plaintiff has made – that MERS assigned Defendant's mortgage to Plaintiff – is insufficient to transfer any interest in the Note for the reasons that follow.

The role of MERS has been much debated recently, but one thing that is clear is that MERS has no ownership interest in promissory notes and thus no ability to assign these notes. In MERS v. Nebraska Dept of Banking and Finance, MERS brought an action contesting the Nebraska Department of Finance's finding that MERS was a "mortgage banker" under Nebraska law and subject to license and registration requirements as a result. 270 Neb. 529; 704 N.W.2d 784 (Neb. 2005). In that case, MERS argued that 'it does not own the promissory notes secured by the mortgages and has no right to payments made on those notes. MERS explains that it merely 'immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur.'" 270 Neb. at 533, 704 N.W.2d at 786. Since MERS argued and prevailed on this position, it would be estopped to deny that it has ownership of Defendant's Note now and could transfer that ownership to Plaintiff. "When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him." Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 252, 489 S.E.2d 472, 477 (1997). Because MERS admits that it has no ownership interest in promissory notes, it is impossible for MERS to have assigned Plaintiff any interest in Defendant's Note by virtue of the AOM.

While a challenge to a Plaintiff's right to foreclose based on their failure to plead proper assignment of a promissory note may appear to be a "technical" defense that bears no relation to any rights of the Defendant, this is only an appearance. The Defendant has an overriding interest

in making sure that, if her home is foreclosed and sold to pay a debt, the party that brings the action and conducts the sale is a party that is actually entitled to enforce the Note. Article 3 of the UCC provides that payment of a promissory note is only effective to discharge the obligation on that promissory note if payment is made to a person that is entitled to enforce the note. S.C. Code Ann. § 36-3-601(a). If Defendant's home were foreclosed and sold and the proceeds paid to a party who was not entitled to enforce the note under the UCC, then Defendant's obligation under the note would not be discharged and she would remain liable to pay the note to whoever was entitled to enforce. Requiring Plaintiff to plead and prove that it is entitled to enforce the Note protects Defendant from the risk of double liability.

CONCLUSION

For the reasons stated above, Defendant respectfully requests that Plaintiff's Complaint be dismissed pursuant to Rule 12 SCRCP.

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES

Date: 5/31/12
Orangeburg, SC

By: Adam Protheroe
SC Bar No. 78442, Fed Id No. 11033
P.O. Box 1646
Orangeburg, SC 29116
[o] (803) 533-0116 ext. 4616
[f] (803) 534-5556
adamprotheroe@sclegal.org

Attorney for the Defendant

DESIGNATION: 4

4. E-mailed Copy of original Note from Quicken Loans, Inc. with attached Letter. (stating original promissory was signed originally on legal sized white paper). (contains pages 1-5)

Copy of Emailed Note from Quicken Loans & Letter original was on legal sized white paper

MERS MIN: 100039032121864686

3212186468
Deaner, Carolyn

NOTE

June 26, 2007 [Date] | North Augusta [City] | SC [State]

704 Kershaw Dr
North Augusta, SC 29841
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 97,600.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Quicken Loans Inc.

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 7.000%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(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 1st day of each month beginning on September 1, 2007. 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 August 1, 2037, 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 P.O. Box 553154, Detroit, MI 48255-3154 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 649.34

4. 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 date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % 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.

7. 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.

8. 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.

9. 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.

q03212186468 0140 173 0203

10. 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. 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.

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.

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

Carolyn S. Deaner 06/26/2007 (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

[Sign Original Only]

q03212186460 0140 173 0303

Quicken Loans
Engineered to Amaze

1050 Woodward Avenue | Detroit, MI 48226 | www.quickenloans.com

May 14, 2013

Carolyn Deaner
704 Kershaw Dr.
North Augusta, SC 29841
Loan# 3212186468

Dear Ms. Deaner,

On June 26, 2007 you closed a thirty year refinanced with Quicken Loans. One of the documents you signed at closing was the Note. This document was provided to you on legal sized white paper. On July 30, 2007 you were provided a Notice of Assignment, Sale or Transfer of Servicing Rights stating that your mortgage loan will be transferred from Quicken Loans to Countrywide Home Loans, Inc. Per your Note, it does state that you understand that the lender may transfer this Note.

If you have any additional questions or concerns, please feel free to contact me at 800-863-4332 ext. 36451.

Sincerely,

Kelly Burek
Resolution Advocate

DESIGNATION: 5

5. Copy of Note from Bank of America attorney's.

   (contains pages 1-4)

MERS MIN: 100039032121864686

3212186468
Deaner, Carolyn

NOTE

June 26, 2007
[Date]

North Augusta
[City]

SC
[State]

704 Kershaw Dr
North Augusta, SC 29841
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 97,600.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Quicken Loans Inc.

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 7.000%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(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 1st day of each month beginning on September 1, 2007. 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 August 1, 2037, 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 P.O. Box 553154, Detroit, MI 48255-3154 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 649.34.

4. 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 date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

SC Conversion Law Cannot alter, change or make different

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % 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.

7. 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.

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8. 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.

9. 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.

10. 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. 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.

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.

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

06/26/2007 (Seal)
Carolyn S. Deaner -Borrower

(Seal) -Borrower

(Seal) -Borrower

WITHOUT RECOURSE
Pay To the Order of
Countrywide Bank, FSB
QUICKEN LOANS, INC.
By
SCOTT JOHNSON
CAPTURE MANAGER

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

PAY TO THE ORDER OF
Countrywide Home Loans, Inc
WITHOUT RECOURSE
COUNTRYWIDE BANK, FSB

(Seal) -Borrower

BY Laurie Meder
LAURIE MEDER
SENIOR VICE PRESIDENT

No Date

No Date

[Sign Original Only]

q03212186468 0140 173 0303

NO DATES

PAY TO THE ORDER OF

WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC

BY: Michele Sjolander

MICHELE SJOLANDER
EXECUTIVE VICE PRESIDENT

DESIGNATION: 6

6. Assignment of April 29, 2011...filed May 9, 2012.

   (see attached 2 assignments showing different signatures for same name for Dominique Johnson and Cynthia Santos in Florida indicating robo-signed document).

   (contains 6 pages)

Aiken County - NOT AN OFFICIAL COPY

See Robo Signing

2011010187
ASSIGNMENT
RECORDING FEES $6.00
PRESENTED & RECORDED:
05-09-2011 09:55 AM
JUDITH WARNER
REGISTER OF MESNE CONVEYANCE
AIKEN COUNTY, SC
BY: MARILYN SEIGLER DEPUTY
BK: RB 4356
PG: 932 - 932

Recording Requested By:
Bank of America
Prepared By: **Youda Crain**
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

DocID# **11017223107618879**
Tax ID: **10-078-0-08-004**
Property Address:
704 KERSHAW DR
North Augusta, SC 29841
SC0-AM 1384145 4/29/2011

This space for Recorder's use

MIN #: 100039032121864686 MERS Phone #: 888-679-6377

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is **3300 S.W. 34TH AVENUE, SUITE 101 OCALA, FL 34474** does hereby grant, sell, assign, transfer and convey unto **BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP** whose address is **13150 WORLD GATE DR, HERNDON, VA 20170** all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

Original Lender:	**QUICKEN LOANS INC**
Original Borrower(s):	**CAROLYN S. DEANER, A SINGLE WOMAN**
Date of Mortgage:	**6/26/2007**
Original Loan Amount:	**$97,600.00**

Recorded in **Aiken County, SC** on: **7/16/2007**, book **RB 4149**, page **973** and instrument number **2007023608**

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on
Dated: 04/29/2011

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: Dominique Johnson
Dominique Johnson, Assistant Secretary

Witness: Cynthia Santos

Witness: Malik Basurto

State of **California**
County of **Ventura**

On April 29th, 2011 before me, **Deborah L. Beard**, Notary Public, personally appeared **Dominique Johnson**, who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity (~~ies~~), and that by ~~his/her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public: **Deborah L. Beard**
My Commission Expires: **6/26/2013**

(Seal)

DEBORAH L. BEARD
Commission # 1853913
Notary Public - California
Ventura County
My Comm. Expires Jun 26, 2013

Recording Requested By:
Bank of America
Prepared By: Danilo Cuenca
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

DocID# 33913415514169058
Property Address:
1416 N 40th Ave
Hollywood, FL 33021-4959
FL0-AM 16426359 11/25/2011

This space for Recorder's use

MIN #: 1000157-0006593960-1 MERS Phone #: 888-679-6377

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474 does hereby grant, sell, assign, transfer and convey unto THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS INC., ASSET-BACKED CERTIFICATES, SERIES 2006-10 whose address is 101 BARCLAY ST - 4W, NEW YORK ,NY 10286
all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

OFFICIAL COPY

Original Lender: AMERICA'S WHOLESALE LENDER
Original Borrower(s): ELVIRA IRASTORZA-PRIETO, A MARRIED WOMAN AND JUAN PABLO PRIETO, A MARRIED MAN
Date of Mortgage: 4/13/2006
Original Loan Amount: $200,000.00
Recorded in Broward County, FL on: 5/3/2006, book 41939, page 713 and instrument number 106032056

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on 11-28-11

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: _____ By: _____
Cynthia Santos Assistant Secretary Dominique Johnson Assistant Secretary

Witness: Martha Munoz Witness: Swarupa Slee

State of California
County of Ventura

On NOV 28 2011 before me, Barbara J. Gibbs, Notary Public, personally appeared Cynthia Santos and Dominique Johnson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

BARBARA J. GIBBS
Commission # 1864186
Notary Public - California
Los Angeles County
My Comm. Expires Sep 9, 2013

Notary Public: Barbara J. Gibbs (Seal)
My Commission Expires: September 9, 2013

Fee Robo Signing

Recording Requested By:
Bank of America
Prepared By: Danilo Cuenca
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

DocID# 13720419459520077
Property Address:
11690 NW 20th Dr
Coral Springs, FL 33071-5700
FLO-AM 16479857 11/25/2011

This space for Recorder's use

MIN #: 1001337-0003618672-7 MERS Phone #: 888-679-6377

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 3300 S.W. 34TH AVENUE, SUITE 101 OCALA, FL 34474 does hereby grant, sell, assign, transfer and convey unto BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP whose address is 400 NATIONAL WAY, SIMI VALLEY, CA 93065 all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

OFFICIAL COPY

Original Lender: COUNTRYWIDE BANK, FSB
Original Borrower(s): MATTHEW L KLEIN, A SINGLE PERSON
Date of Mortgage: 4/20/2009
Original Loan Amount: $117,826.00
Recorded in Broward County, FL on: 5/15/2009, book 46229, page 681 and instrument number 108615918

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on 11-28-11

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: Cynthia Santos Assistant Secretary

By: Dominique Johnson Assistant Secretary

Witness: Martha Munez

Witness: Swarupa Slee

State of California
County of Ventura

On NOV 28 2011 before me, Barbara J. Gibbs, Notary Public, personally appeared Cynthia Santos and Dominique Johnson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

BARBARA J. GIBBS
Commission # 1864186
Notary Public - California
Los Angeles County
My Comm. Expires Sep 9, 2013

Notary Public: Barbara J. Gibbs (Seal)
My Commission Expires: September 9, 2013

Recording Requested By:
Bank of America
Prepared By: Danilo Cuenca
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

DocID# 2012273526821077

Property Address:
247 NW 105th Ter
Coral Springs, FL 33071-7913
FLO-AM 16479177 11/25/2011

This space for Recorder's use

MIN#: 100016500008608605 MERS Phone #: 888-679-6377

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474 does hereby grant, sell, assign, transfer and convey unto BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP whose address is 451 7TH ST.SW #B-133, WASHINGTON DC 20410 all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

OFFICIAL COPY

Original Lender: SHELTER MORTGAGE COMPANY, L.L.C.
Original Borrower(s): JOHN N DEMBECK AND CYNTHIA L DEMBECK, HUSBAND AND WIFE
Date of Mortgage: 4/15/2009
Original Loan Amount: $341,676.00
Recorded in Broward County, FL on: 4/16/2009, book OR46139, page 154 and instrument number 108537468

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on 11-28-11

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: _____ By: _____

Cynthia Santos Assistant Secretary Dominique Johnson Assistant Secretary

Witness: Martha Munoz Witness: Swarupa Slee

State of California
County of Ventura

On NOV 28 2011 before me, Barbara J. Gibbs, Notary Public, personally appeared Cynthia Santos and Dominique Johnson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

BARBARA J. GIBBS
Commission # 1864186
Notary Public - California
Los Angeles County
My Comm. Expires Sep 9, 2013

Notary Public: Barbara J. Gibbs (Seal)
My Commission Expires: September 9, 2013

Recording Requested By:
Bank of America
Prepared By: Danilo Cuenca
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

DocID# 20914986599782791

Property Address:
6361 SW 35th St
Miramar, FL 33023-5014

FLO-AM 16469457 11/23/2011

This space for Recorder's use

MIN #: 100039248214195594 MERS Phone #: 888-679-6377

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 3300 S.W. 34TH AVENUE, SUITE 101 OCALA, FL 34474 does hereby grant, sell, assign, transfer and convey unto BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP whose address is 400 NATIONAL WAY, SIMI VALLEY, CA 93065 all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

OFFICIAL COPY

Original Lender: FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION
Original Borrower(s): BENNY COOK AND ADRIENNE N. COBB, HUSBAND AND WIFE
Date of Mortgage: 2/21/2007
Original Loan Amount: $305,210.00

Recorded in Broward County, FL on: 2/27/2007, book 43663, page 866 and instrument number 106868408

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on 11-28-11

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: _____ By: _____

Cynthia Santos Assistant Secretary Dominique Johnson Assistant Secretary

Witness: Martha Munoz Witness: Swarupa Slee

State of California
County of Ventura

On NOV 28 2011 before me, Barbara J. Gibbs, Notary Public, personally appeared Cynthia Santos and Dominique Johnson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

BARBARA J. GIBBS
Commission # 1864186
Notary Public - California
Los Angeles County.
My Comm. Expires Sep 9, 2013

Notary Public: Barbara J. Gibbs (Seal)
My Commission Expires: September 9, 2013

Recording Requested By:
Bank of America
Prepared By: **Danilo Cuenca**
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

DocID# 19312809061712400

Property Address:
7668 NW 50th Ct
Coral Springs, FL 33067-2052

FLO-AM 16426290 11/25/2011

This space for Recorder's use

MIN #: 1001310-2060302045-2 MERS Phone #: 888-679-6377

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474 does hereby grant, sell, assign, transfer and convey unto **THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE HOLDERS OF SAMI II TRUST 2006-AR6, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-AR6** whose address is **9062 OLD ANNAPOLIS RD, COLUMBIA, MD 21045** all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

OFFICIAL COPY

Original Lender: **AMNET MORTGAGE, INC., DBA AMERICAN MORTGAGE NETWORK OF FLORIDA**
Original Borrower(s): **CHRISTINE WRAY AND GARFIELD WRAY, WIFE AND HUSBAND**
Date of Mortgage: **5/4/2006**
Original Loan Amount: **$900,000.00**

Recorded in **Broward County, FL** on: **5/17/2006**, book **OR 42041**, page **860** and instrument number **106080858**
ReRecorded in **Broward County, FL** on: **6/1/2006**, book **42129**, page **996** and instrument number **106124843**

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on 11-28-11

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: _____ By: _____

Cynthia Santos Assistant Secretary — Dominique Johnson Assistant Secretary

Witness: Martha Munoz — Witness: Swarupa Slee

State of California
County of Ventura

On NOV 28 2011 before me, Barbara J. Gibbs, Notary Public, personally appeared Cynthia Santos and Dominique Johnson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

BARBARA J. GIBBS
Commission # 1864186
Notary Public - California
Los Angeles County
My Comm. Expires Sep 9, 2013

Notary Public: Barbara J. Gibbs (Seal)
My Commission Expires: September 9, 2013

DESIGNATION: 7

7. Acceptance of Foreclosure Intervention...filed 5/31/2012.

   (contains page 1)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicin, LP f/k/a Coutrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **ACCEPTANCE OF FORECLOSURE INTERVENTION** DOCKET NO. 2012-CP-02-00699

TO: Plaintiff and all other interested parties

The Defendant, Carolyn S. Deaner, by and through her undersigned attorney, hereby accepts her right to be considered for all means of foreclosure intervention pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01 or any other applicable guidelines. Defendant is the owner and occupant of the subject property as her principal residence.

FILED 31 May 2012
Liz Godard
C.C.C.P.&G.S.
3:00 pm Angel Miles am
Deputy Clerk

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES

Date: 5/30/2012
Orangeburg, SC

By: Adam Protheroe
SC Bar No. 78442; Fed. Id. 11033
P.O. Box 1646
Orangeburg, SC 29116
[o] (803) 533-0116 ext. 4616
[f] (803) 534-5556
adamprotheroe@sclegal.org

Attorney for the Defendant

DESIGNATION: 8

8. Notice of Denial of Loan Modification...filed 4/9/2013.

   (contains pages 1-2)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

PLAINTIFF,

vs.

Carolyn S. Deaner,

DEFENDANTS.

L12-00992

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-02-00699

NOTICE OF DENIAL OF LOAN MODIFICATION OR OTHER MEANS OF LOSS MITIGATION

TO: ADAM PROTHEROE, ATTORNEY FOR DEFENDANT CAROLYN S. DEANER:

PLEASE TAKE NOTICE THAT this is an action for the foreclosure of owner occupied real property. Pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01, that

1. the Mortgagor has been served with a notice of the Mortgagor's right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation;

2. the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention;

3. the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee;

4. after completion of the foreclosure intervention process, the Mortgagor does not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines of the Mortgagee applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process;

5. the Mortgagor has been denied for loss mitigation due to an inability to create an affordable payment equal to thirty-one percent (31%) of the Mortgagor's reported monthly gross income without changing the terms of the Mortgagor's loan beyond the requirements of the

FILED 4.9 2013

C.C.C.P.&G.S. 8:30am

Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

PLAINTIFF,

vs.

Carolyn S. Deaner,

DEFENDANTS.

L12-00992

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-02-00699

NOTICE OF DENIAL OF LOAN MODIFICATION OR OTHER MEANS OF LOSS MITIGATION

TO: ADAM PROTHEROE, ATTORNEY FOR DEFENDANT CAROLYN S. DEANER:

PLEASE TAKE NOTICE THAT this is an action for the foreclosure of owner occupied real property. Pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01, that

1. the Mortgagor has been served with a notice of the Mortgagor's right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation;

2. the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention;

3. the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee;

4. after completion of the foreclosure intervention process, the Mortgagor does not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines of the Mortgagee applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process;

5. the Mortgagor has been denied for loss mitigation due to an inability to create an affordable payment equal to thirty-one percent (31%) of the Mortgagor's reported monthly gross income without changing the terms of the Mortgagor's loan beyond the requirements of the

program.

You have thirty (30) days from the date of the mailing of this Notice to file and serve an answer or other response to the Summons and Complaint.

KORN LAW FIRM, P.A.

H. Guyton Murrell, SC Bar No: 64134
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

April 4
~~March~~ ___, 2013
Columbia, South Carolina
N:\PD\ L12-00992

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

PLAINTIFF,

vs.

Carolyn S. Deaner,

DEFENDANTS.

L12-00992

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-02-00699

CERTIFICATE OF SERVICE

I, Dustin A. Brasington, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that a copy of **PLAINTIFF'S NOTICE OF DENIAL OF LOAN MODIFICATION OR OTHER MEANS OF LOSS MITIGATION** was served on counsel for Defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Adam Protheroe, Esquire
South Carolina Legal Services
Post Office Box 1646
Orangeburg, SC 29116
ATTORNEY FOR DEFENDANT CAROLYN S. DEANER

this 5 day of ~~March~~ April, 2013.

KORN LAW FIRM, P.A.

Dustin A. Brasington
Paralegal to H. Guyton Murrell

Columbia, South Carolina
N:\PD\ L12-00992

DESIGNATION: 9

9. **ORDER OF JUDGE EARLY granting a 60 day STAY from date of HEARING of June 3, 2013 to August 2, 2013...filed 6/17/2013.**

   (contains pages 1-4)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **ORDER RELIEVING SOUTH CAROLINA LEGAL SERVICES/ADAM PROTHEROE AS COUNSEL FOR DEFENDANT** DOCKET NO. 2012-CP-09-00699 FILED JUNE 17 2013 Liz Godard C.C.C.P.&G.S. Lisa Comer DEPUTY CLERK 8:30am

This matter comes before the Court upon Attorney Adam Protheroe's motion to be relieved as counsel for the defendant Carolyn S. Deaner. After reviewing the pleadings and hearing the arguments of counsel and the parties, this Court finds that:

1. All parties in interest were notified of the hearing scheduled in this case for June 3, 2013 at 1:00p.m. Attorney Adam Protheroe and Carolyn S. Deaner were present at the hearing.

2. Ms. Deaner did not offer objection to Attorney Protheroe's motion to be relieved other than to request additional time to find substitute counsel.

3. Good cause exists to relieve Attorney Protheroe as Ms. Deaner's counsel and to grant Ms. Deaner 60 days from the date of the above-referenced hearing to obtain substitute counsel.

IT IS THEREFORE ORDERED THAT

A. South Carolina Legal Services and Attorney Adam Protheroe are hereby relieved as counsel for the defendant Carolyn S. Deaner in the above-captioned case.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 17th day of June 2013
Liz Godard
C.C.C.P.&G.S. Aiken County, S.C.
Lisa Comer
Deputy Clerk

DOE

B. The above-captioned case is hereby stayed for 60 days from the date of the hearing in this matter (until August 2, 2013) to allow Ms. Deaner time to obtain substitute counsel.

It is so **ORDERED**

Date: June 10, 2013 _____ Judge

6-10-, S.C.

FILED June 17 2013

Liz Godard

C.C.C.P.&G.S.

Lisa Comer

Deputy Clerk 8:30 am

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 17th day of June 2013

Liz Godard

C.C.C.P.&G.S. Aiken County, S.C.

Lisa Comer

Deputy Clerk

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0200699

Bank of America, NA Countrywide Home Loans Servicing, LP	BAC Home Loans Servicing, LP	Carolyn S Deaner FILED June 17 2013 Liz Godard C.C.P.&G.S. Lisa Comer Deputy Clerk 8:30 am
PLAINTIFF(S)		DEFENDANT(S)
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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. ☐ See Page 2 for additional information.

☐ **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 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)

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.**

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 17th day of June 2013

Liz Godard
C.C.C.P.&G.S. Aiken County, S.C.

Lisa Comer
Deputy Clerk

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **6-17-2013**, and a copy mailed first class or placed in the appropriate attorney's box on **6-17-2013**, to attorneys of record or to parties (when appearing pro se) as follows:

John Brian Kelchner
PO Box 11264
Columbia, SC 292111264

ATTORNEY(S) FOR THE PLAINTIFF(S)

Carolyn S Deaner
704 Kershaw Drive North Augusta, SC 29841
Adam Protheroe
126 Associate Pkwy. Orangeburg, SC 29116

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Liz Godard by Lisa Comer
Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 17th day of June 2013.

Liz Godard
C.C.C.P.&G.S. Aiken County, S.C.
Lisa Comer
Deputy Clerk

FILED June 17 2013
Liz Godard
C.C.C.P.&G.S.
Lisa Comer
Deputy Clerk 8:30am

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

DESIGNATION: 10

10. **Motion To Amend Summons and Complaint.....filed 6/10/2015.**

    (contains, pages 1-10)

    (FILED DURING JUDGE EARLY'S 60 DAY STAY FROM 6/3/2013 TO 8/2/2013.....filed in error...not valid)

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	C/A NO: 2012-CP-02-00699
Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Plaintiff, vs. Carolyn S. Deaner, Defendant.	**NOTICE OF MOTION AND MOTION TO AMEND SUMMONS AND COMPLAINT**

L12-00992

TO: DEFENDANT CAROLYN S. DEANER:

YOU WILL PLEASE TAKE NOTICE that the attorney for Plaintiff will, on the 10th day after service hereof, or as soon thereafter as counsel may be heard, move before the Court, pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, for an Order granting Plaintiff's Motion to Amend Summons and Complaint.

This motion is made on the grounds that Plaintiff intends to amend its Summons and Complaint to show that Bank of America, N.A. possesses the original note and has standing to enforce that note. A copy of Plaintiff's proposed Amended Summons and proposed Amended Complaint are attached hereto and incorporated herein as **Exhibit A, and Exhibit B**, respectively.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, the undersigned hereby certifies that prior to filing this Motion he communicated with opposing counsel and attempted in good faith to resolve this matter.

H. Glyton Murrell, SC Bar No. 64134
Korn Law Firm, P.A.
Post Office Box 12369
Columbia, South Carolina 29211-2369
(803) 252-5817
ATTORNEY FOR PLAINTIFF

June 6, 2013
Columbia, South Carolina

6.10.2013
Liz Godard
Anita Knoepfle
Deputy Clerk

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	C/A NO: 2012-CP-02-00699
Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, PLAINTIFF, vs. Carolyn S. Deaner, DEFENDANT(S).	**AMENDED SUMMONS**

F12-00992

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P.O. Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

6.10.2013

Liz Godard
C.C.P.&G.S.

Anita Knowlde
Deputy Clerk

EXHIBIT A PAGE 1 OF 2

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-in-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

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

_____
PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KELLER C. FOSTER
TERESA D. VAN VLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Columbia, South Carolina
June ___, 2013

EXHIBIT A PAGE 2 OF 2

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	C/A NO: 2012-CP-02-00699
Bank of America, N.A. successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, PLAINTIFF, vs. Carolyn S. Deaner, DEFENDANT(S).	**AMENDED COMPLAINT**

F12-00992

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

1. That the Plaintiff is a corporation/limited liability company organized and existing under and by virtue of the laws of the State of United States of America; and that the Defendant(s) Carolyn S. Deaner, is upon information and belief, a citizen(s) and resident(s) of the County of Aiken, State of South Carolina.

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

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

4. That on or about June 26, 2007, for value received, Carolyn S. Deaner, did execute and deliver to Quicken Loans, Inc., a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Carolyn S. Deaner promised to pay to Quicken Loans, Inc., the sum of Ninety-Seven Thousand Six Hundred And 00/100 Dollars ($97,600.00), together with interest thereon at the rate of Seven And 00/100 per cent (7.00%) per annum.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Carolyn S. Deaner, did execute and deliver on June 26, 2007

Filed 6.10.13
Liz Galand
C.C.P.&G.S.
Anita Knoepfel
Deputy Clerk

EXHIBIT B PAGE 1 OF 5

unto Mortgage Electronic Registration Systems, Inc., as nominee for Quicken Loans, Inc., its successors and assigns, a mortgage covering the following described property:

Legal description and property address:
THE FOLLOWING DESCRIBED REAL PROPERTY, TO WIT:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, SITUATE, LYING AND BEING IN BELVEDERE, AIKEN COUNTY, SOUTH CAROLINA, DESIGNATED AS LOT 10, BLOCK B, ON A PLAT OF SURVEY OF PINECREST SUBDIVISION, SECTION I, MADE BY CRANSTON & ASSOCIATES, DATED October 3, 1966, REVISED UNDER DATE OF MARCH 29, 1968, AND RECORDED IN PLAT BOOK 3, AT PAGE 151, RECORDS OF AIKEN COUNTY, AND ACCORDING TO SAID PLAT, BEING BOUNDED, NOW OR FORMERLY, AND MEASURING, MORE OR LESS, AS FOLLOWS: NORTH BY KERSHAW DRIVE ON TWO LINES, MEASURING RESPECTIVELY 43.0 FEET AND 78.0 FEET; EAST BY LOT NO. 9, SAID
BLOCK, 153.0 FEET; SOUTH BY LANDS OF TROTTER REALTY COMPANY, 71.22 FEET; AND WEST BY LOT 11, SAID BLOCK 149.03 FEET. REFERENCE IS HEREBY MADE TO SAID PLAT FOR A MORE COMPLETE AND ACCURATE DESCRIPTION OF THE SUBJECT PROPERTY.

THIS BEING THE SAME PROPERTY INTENDED TO BE CONVEYED TO CAROLYN S. DEANER FROM MAROLYN D. SPOORES, INDIVIDUALLY AND AS TRUSTEE OF THE VELDA K. DEANER REVOCABLE TRUST DATED JUNE 28, 2002, AMENDED AND RESTATED OCTOBER 11, 2002, AND FURTHER AMENDED ON DEMEMBER 20, 2002 DONALD D. DEANER, JR., MICHAEL A. DEANER, BY DEED DATED OCTOBER 4, 2004 AND RECORDED OCTOBER 13, 2004, IN BOOK 2458 AT PAGE 111.

704 Kershaw Drive, North Augusta, SC 29841
TMS# 012-14-06-051

6. Thereafter said mortgage was recorded in Book RB-4149 at page 773 on July 16, 2007 in the office of the Register of Deeds of Aiken County.

7. Thereafter, by virtue of an assignment dated April 29, 2011, recorded May 9, 2011, in Mortgage Book RB-4356 at page 932, Mortgage Electronic Registration Systems, Inc. assigned said mortgage unto BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP.

8. Thereafter, by virtue of a corporate merger, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP merged with Bank of America, N.A. making Bank of America, N.A. successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP the present lien holder and Plaintiff herein.

9. Bank of America is the current owner and has possession of the subject note and is the assignee of the security instrument.

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

11. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

12. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

13. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

14. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

15. The monthly payments due on said note and mortgage are in default since July 1, 2010, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on

said note and mortgage as of July 1, 2010 the sum of Ninety-Four Thousand One Hundred Seventy-Eight And 44/100 Dollars ($94,178.44), together with interest at the rate of seven and 00/100 per cent (7.00 %) per annum from June 1, 2010 and also for the costs and disbursements of this action, including attorney's fees.

16. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

17. That the servicer is participating in the Home Affordable Modification Program (HMP). The HMP modification process specified by the Guidelines or Supplemental directive has been completed without resulting in a modification because the modification of the loan would cause excessive forbearance in violation of the Treasury Department Guidelines.

18. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

19. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

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

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

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

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

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

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

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

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

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

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

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

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

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

_____ _____ _____
PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KELLER C. FOSTER
TERESA D. VAN VLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Columbia, South Carolina
June ___, 2013

EXHIBIT B PAGE 5 OF 5

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

Plaintiff,

vs.

Carolyn S. Deaner,

Defendant.

L12-00992

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-02-00699

CERTIFICATE OF SERVICE

I, Dustin A. Brasington, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO AMEND SUMMONS AND COMPLAINT** was served on the Defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Carolyn S. Deaner, Pro Se Defendant
704 Kershaw Drive
N. Augusta, SC 29841
PRO SE DEFENDANT

this 7 day of June, 2013.

KORN LAW FIRM, P.A.

Dustin A. Brasington
Paralegal to H. Guyton Murrell

Columbia, South Carolina
L12-00992

FILED 6 10 2013
Liz Godard
C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)
)
Bank of America, N.A.,) CASE NO. 2012-CP-02-00699
[X] Plaintiff,)
vs.) **MOTION AND ORDER INFORMATION**
Carolyn S. Deaner,) **FORM AND COVER SHEET**
[ ] Defendants.)

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Dean A. Hayes, SC Bar No. 66066 Post Office Box 12369 Columbia, SC 29211 telephone: (803) 252-5817 fax: (803) 231-2060 e-mail: dean.hayes@kornlaw firm.com other:	Carolyn S. Deaner, Pro Se Defendant 704 Kershaw Drive N. Augusta, SC 29841

[X] **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
[ ] **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
[ ] **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Amend Summons and Complaint
Estimated Time Needed: 15 Minutes Court Reporter Needed: YES [X] NO [ ]

SECTION II: Motion/Order Type

[ ] Written motion attached
[ ] Form Motion/Order:
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff [X] Defendant [ ] Date Submitted 6 June 2013

SECTION III: Motion Fee

[X] PAID – AMOUNT: $25.00
[ ] EXEMPT: [ ] Rule to Show Cause in Child or Spousal Support
[ ] Domestic Abuse or Abuse and Neglect
(check reason) [ ] Indigent Status [ ] State Agency v. Indigent Party
[ ] Sexually Violent Predator Act [ ] Post Conviction Relief
[ ] Motion for Stay in Bankruptcy
[ ] Motion for Publication [ ] Motion for Execution (Rule 69, SCRCP)
[ ] Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
[ ] Other:

JUDGE'S SECTION

[ ] Motion Fee to be paid upon filing of the attached order.
[ ] Other:

JUDGE

CODE:_____ Date:

CLERK'S VERIFICATION

Collected by: _____ Date File:
(print name)

[✓] MOTION FEE COLLECTED: Ck# 204717
[ ] CONTESTED - AMOUNT DUE: rpt

Filed 6-10-13
Luis Lopez
U.C.C.P.&Q.S.
Anita Knoepke
Deputy Clerk

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS
Bank of America, N.A., [X] Plaintiff, vs. Carolyn S. Deaner, [ ] Defendants.	))))))	CASE NO. 2012-CP-02-00699 **MOTION AND ORDER INFORMATION FORM AND COVER SHEET**

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Dean A. Hayes, SC Bar No. 66066 Post Office Box 12369 Columbia, SC 29211 telephone: (803) 252-5817 fax: (803) 231-2060 e-mail: dean.hayes@kornlawfirm.com other:	Carolyn S. Deaner, Pro Se Defendant 704 Kershaw Drive N. Augusta, SC 29841

[X] MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
[ ] FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
[ ] PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Amend Summons and Complaint
Estimated Time Needed: 15 Minutes Court Reporter Needed: YES [X] NO [ ]

SECTION II: Motion/Order Type

[ ] Written motion attached
[ ] Form Motion/Order:
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff [X] Defendant [ ] — Date Submitted: 6 June 2013

SECTION III: Motion Fee

[X] PAID – AMOUNT: $25.00
[ ] EXEMPT: (check reason)
[ ] Rule to Show Cause in Child or Spousal Support
[ ] Domestic Abuse or Abuse and Neglect
[ ] Indigent Status [ ] State Agency v. Indigent Party
[ ] Sexually Violent Predator Act [ ] Post Conviction Relief
[ ] Motion for Stay in Bankruptcy
[ ] Motion for Publication [ ] Motion for Execution (Rule 69, SCRCP)
[ ] Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
[ ] Other:

JUDGE'S SECTION

[ ] Motion Fee to be paid upon filing of the attached order.
[ ] Other:

JUDGE
CODE:_____ Date:

CLERK'S VERIFICATION

Collected by: _____
(print name)

Date File:

[ ] MOTION FEE COLLECTED:
[ ] CONTESTED – AMOUNT DUE:

COPY
ORIGINAL FILED
JUN 10 2013
AIKEN COUNTY
CLERK OF COURT

DESIGNATION: 11

11. Answer To Plaintiff's Amended Summons and Complaint...filed 7/3/2013.

    (contains pages 1-37)

    (FILED DURING JUDGE EARLY'S 60 DAY STAY FROM 6/3/2013 TO

    8/2/2013.....filed in error, not valid, See Answer... filed 8/5/2013).

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **ANSWER TO PLAINTIFF'S AMENDED SUMMONS AND COMPLAINT** **DOCKET NO. 2012-CP-02-00699**

7.3
R.C.P.&G.S.
330
Deputy Clerk

THE DEFENDANT WILL RESPECTFULLY SHOW ANSWER TO PLAINTIFF'S AMENDED SUMMONS AND COMPLAINT (Exhibit A & B) UNTO THE HONORABLE COURT:

1. Defendant denies all allegations of Plaintiff's Complaint and demands strict proof thereof.

2. Defendant specifically denies that conditions precedent to Plaintiff's right of action, right to attorney fees and or right to accelerate herein were performed or met by Plaintiff or the same was waived by Defendant.

3. Standing is a question of whether the Plaintiff has alleged such a personal stake in the outcome of a controversy as to warrant invocation of the court's jurisdiction and to justify the court exercising its remedial powers on the Plaintiff's behalf. A Plaintiff must have sufficient stake in the outcome of an otherwise justiciable controversy in order to obtain judicial resolution

of that controversy. An example, "here, Federal Home Loan concedes that there is no evidence that it had suffered any injury at the time it commenced this foreclosure action. Thus, because it failed to establish an interest in the note or mortgage at the time it filed suit, it had no standing. (Federal Home Loan Mtge.Corp. v. Schwartzwald, 134 Ohio St.3d 13, 979 N.E.2d 1214 (2012). Defendant demands the Pooling and Servicing Agreement, a key piece of documentation needed from the Plaintiff in order for the Judge to determine whether the Trust owns the loan being foreclosed and the Master Loan Schedule as the Master Loan Schedule establishes whether the subject mortgage was every transferred to the Trust. Therefore, while both are essential, if the alleged loan was never transferred to the trust, then the Trust, simple put, cannot sue to collect on something it does not own. "The party seeking to foreclosure must present evidence that it owns and holds the note and morgage in question in order to proceed with foreclosure action." Lizio v. McCullom, 36 So.3d 927,929 (Fla 4thDCA 2010. See also Verizzo v. New York, 28 So3d 976,978 (Fla 2dDCA 2010) "providing that "there is a genuine issue of material fact as to whether the Bank of New York owns and holds the Note and has standing to foreclose the mortgage". The Plaintiff failed to allege in the body of the original complaint pleading that, in addition, to holding the subject Note and mortgage, it also owns these instruments prohibits it from asserting the proper chain of ownership of the instruments from their inception.

4. Defendant specifically states Plaintiff does not have the capacity to sue or bring this action and this action is therefore barred. UCC 3-306, there cannot be a holder in due course on a promissory note after the bank deposits it. They do an off balance sheet entry and is called a off balance sheet bookkeeping.(FASB)(GAAP)(ISAB). The ORIGINATOR of the NOTE is the CREDITOR on the payables side of the LEDGER, not the Debtor. Defendant brings in a recoupment claim in behalf of the real party of interest which is the Defendant because she is the ultimate creditor raising the claim against the liability side of the account. THE PLAINTIFF'S COMPLAINT MUST BE DISMISSED BECAUSE OF ITS FAILURE TO PLEAD ITS CAPACITY TO SUE. Moreover, a complaint's facial defect can be attacked appropriately for lack of capacity to sue pursuant to Federal Rule of Civil Procedure 9(a) by a MOTION TO DISMISS WHICH CAN BE JUSTIFIED UNDER FEDERAL RULE OF CIVIL PROCEDURE 12 (b)(6), i.e., failure to state a claim upon which relief can be granted. (Klebanow v. New York Produce Exchange, 344 F.2d 294 (2d Cir.1965). See also 2A J. Moore &Lucas, Moore's Federal Practice 12.07-08 (2d ed.1982) and 5 C. Wright & A. Miller, Federal Practice and Procedure,

1292-1295, 1360 (1069 & Supp.1981). Furthermore, the Comment to the Rule (2004) Version), states that "if a party involved in a suit in other than his individual capacity, the capacity in which he is a party should be indicated in the caption of the pleading. The Plaintiff has given no agency relationship to Fannie Mae Trust and investors in the pleading. Although the capacity issue is new, it is important to note that Judges in circuit courts have routinely recognized the legitimacy of the capacity defense and are routinely granting Defendant's Motion to Dismiss based on these grounds, particularly in cases for mortgage foreclosures. See e.g. HSBC v. Montogomery, Pinellas Case 52-2009-CA-005696; Wachovia v. Matacchiero, Pinellas Case No. 52-2009-16936-CI-13; Boiln v. HSBC, Pinellas Case 08-005190-CI-19. Defendant in regard to Rule 1.120(a) specifically asserts that Plaintiff has failed to plead any facts which identify its entity-status.

The Defendant is the creditor and the Plaintiff is the debtor on the liability ledger. This proves a remedy. The G-7 endorsed it. The Defendant has a right to setoff. Auditors such as Price Waterhouse are aware of this. They are experts at auditing off balance sheet accounts. There is off balance sheet financing, payable and receivables. These auditors are the only ones that are aware of these issues. Chief accountants for the SEC are aware, and the SEC is also the enforcement agent for this practice. Defendant's loan has been securitized into a security. Everyone thinks a note is a liability, but it is not. Under UCC 4(a), 104(c), it says that the originator is the sender of the first fund transfer. The Defendant is the first funds transferor. UCC 3-105 (a)(c), subsection (a) talks about issue and (c) talks about issuer. It defines the issuer as the transferor of the first funds transfer , which is the drawer and maker, and in this case is the Defendant. UCC 8-102 (12), (15) AND (9) defines what an entitlement holder is and 8-201(3). UCC 8-501 says I am identified as the person with securities and entitlement rights on the books of a banking intermediary. They call them intermediaries under Article 8 because it involves securities. Under Article 8, the Defendant is the holder of entitlement and possessory rights to the proceeds of the transaction because the Defendant was the originator of the first funds transfer on the accounts payable side of the ledger and entitled to the funds. A promissory note is an asset to the Defendant. When the Defendant gave the note to the original Lender or beneficiary, and he deposits it, it becomes a cash item to the bank. In 1986, Justice Marshall, "We should assume, absent convincing evidence to the contrary, that congress intended for the term "promissory note" to derive its meaning from the ordinary sources of Commercial Law.

The note in this case, however, was the equivalent of "money". FDIC concedes, as it must, that Congress has determined that a promissory note generally constitutes money or its equivalent. Moreover, that statutory definition comports with economic reality. Promissory Notes typically are negotiable instruments, and therefore, readily convertible into cash...unconditional and equivalent to money, and especially if the note is negotiated. (U.S. Supreme Court, FDIC v Philadelphia Gear Corp.,476 U.S. 426 442 (1986). They issue a cash receipt to the depositor. The bank gets a cash receipt that is equivalent of money. It is what passes as money in the society. After it is deposited, then the Defendant deposited money in an account. This is a cash proceed under Title 12 of the USC. The Defendant is the creditor and is bringing this up as a defense. This is why the Plaintiff cannot be a holder in due course. UCC 3-302 defines a holder in due course and is subject to 3-106(d) which says that where an instrument is involved, there cannot be a holder in due course and would be subject to the defenses and claims that a drawer and maker as the originator of first funds transfer can bring against the payee, which is the Plaintiff, bank and predecessors and successors. The reason the Plaintiff cannot be a holder in due course is because the Defendant is the creditor who can trump any claim that a holder might have on that instrument. The Defendant as originator and maker is claiming setoff, because Plaintiff and predecessors sold an unregistered note AND IS NOT AN ENTITLEMENT HOLDER. They cannot be a holder in due course because they are taking it subject to administrative and commercial claims, every time there is a clause in the instrument. This whole process is not about mortgages at all, because they sold the note and received the funds and closed the account by assuming they have repaid the originator of the loan which was never done, thus Defendant has been misrepresented and deceived and claims a conspiracy to defraud. The real intent is to create derivatives to create a security and bond market to finance all commercial and corporate activity. The Note is not under a negotiable instrument anymore, it is a SECURITY. Under U.S. Law, securitization is illegal because it is fraudulent. Enron was involved in securitization. "Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud', and entitles party deceived to a void contract or recover damages." (Barnsdall Refining Corn. v. Birnam Wood Oil Co., 92 F 26 817). Pursuant to S.C. Code Ann.35-1-1210 of the Prior Act, it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to: (a) employ any device, scheme or

artifice to defraud; (b) make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading: or (c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a person. By not producing these documents at time of the complaint, Plaintiff has acted in deceit as the following will show. The non negotiable Promissory Note is a security under South Carolina Law and Fannie Mae claims all their notes are non negotiable as explained in this document..

The banks have made as an estimate over 9 times the value of my originated Note without Defendant's knowledge and created an investment contract without my knowledge or authorization and has withheld owed monies to the Defendant. This is gross misrepresentation and deception on the part of Plaintiff, and Plaintiff's predecessors and successors. "If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." (Menominee River Co. v. Augustus Spies L & C Co., 147 Wis 559.572: 132 NW 1122).

Under Title 12 USC 1813 (L)(1), when you deposit a promissory note, it becomes a cash item. The Defendant is the creditor on the payables side of the ledger. The Plaintiff owes the Defendant the money and the Defendant is entitled to recoupment. Under Civil Rule 13, the Defendant is bringing a mandatory counterclaim for recoupment and applying the setoff. This is all equitable action in admiralty style instruments. The Defendant is the originator and the Note is an asset, and recoupment in practice is a counterclaim in a civil procedure, since the Defendant is the creditor on the liability side or accounts payable and the Plaintiff, bank or lending institution is the debtor on the liability side. The Defendant claims her accounts payable as an offset or counterclaim to the financial asset side. Under FAS 140 Defendant claims her setoff. When a deposit is made, it is a cash receipt, a cash proceed. Everything becomes cash proceed in commercial law under Article 9. The bank shows it as a cash proceed. If you give a bank a promissory note, they are required to give you a cash receipt which was not done and is deception, misrepresentation and fraud. The Plaintiff owes the Defendant that money under a recoupment or asset. The Defendant claims a defense in RECOUPMENT under UCC 3-305, and a claim under 3-306 as a possessory and property claim against the cash proceeds under the

liability side of the ledger. In UCC 3-306, there cannot be a holder in due course on a promissory note after they deposit it. They do an off balance sheet entry and is called off balance sheet bookkeeping. The Defendant as the real party of interest brings a claim of recoupment as the ultimate creditor and is raising the claim against the liability side of the account. Walker Todd previously one of the heads of the Cleveland FRB, has been a government witness in court cases and states we are the creditor on the payables side of the ledger. The Plaintiff owes the Defendant the money. The Defendant claims defense and counterclaim because I have an asset the Plaintiff is holding of mine, that they failed to give me credit for, and they are likely carrying my asset on a liability ledger of balance from their accounts receivable. Statute says Defendant has the right to restitution and rescission if they sell an unregistered security and UCC Article 8 and 9 is applicable remedy. The Defendant also has a right to rescind and restitution which is part of recoupment, and Defendant is entitled to setoff to settle the claim. The Defendant is raising the claim and not waiving it. Again, the defendant is the creditor and the Plaintiff is debtor on the liability ledger. That provides a remedy.

DAMAGES exist in that the bank refuses to loan their money. The Plaintiff bank denies the alleged borrower equal protection under the law of contract, by merely exchanging one currency for another and refusing repayment in the same type of currency deposited. The bank refused to fulfill the contract by not loaning the money, and by the bank refusing to be repaid in the same currency, which they deposited as an exchange for another currency. The Plaintiff and Plaintiff's predecessors and successors had no authorization from the Defendant to alter the alleged contract and to refuse to perform by not loaning money, by changing the currency or by refusing repayment in what the bank has written policy to deposit. In the transaction the bank was to loan legal tender to the borrower, in order for the bank to secure a lien. The bank never made the loan, but kept the mortgage note the alleged borrower signed. This allowed the bank to obtain equity in the property (by a lien) and transfer the wealth of the property to the bank without the bank's investment, loan or risk of money. Then the bank receives the alleged borrower's labor to pay principal and interest. What the Defendant owned or should have owned debt free, the bank obtained ownership in, and for free, in exchange for the Defendant receiving a debt, paying interest to the bank, all because the bank refused to loan money and merely exchanged one currency for another. The lien forces payment by threat of foreclosure. The mail is used to extort payment on a contract the bank never fulfilled.

If the bank refuses to perform, then they must return the mortgage note. If the bank wishes to perform, then they must make the loan. The past payments must be returned because the bank had no right to lien the property and extort interest payments. The bank has no right to sell a mortgage note for two reasons. The mortgage note was deposited and the money withdrawn without authorization by using a forged signature, and two, the contract was never fulfilled. The Plaintiff acted without authorization and is involved in a fraud, thereby, damaging the Defendant. PROOF banks deposit notes and issue bank checks...the checks are only as good as the promissory note. Nearly all bank checks are created from private notes. Federal Reserve Bank Notes are Private corporate Notes (chapter 48, 48 Stat 112) Notes are used to discharge notes. (excerpt from Your Money, page 7) The Plaintiff and Plaintiff's predecessors and successors have made the Defendant the depositor and not a borrower. This is fraudulent conversion of the mortgage note. A fraud is a felony.

The Fannie Mae Trust had no right to a Mortgage/Deed of Trust to a purchased Note that was not evidence of a debt or obligation--it can't be a Secured Transaction covered under UCC 9, when it's an Investment Security covered under UCC 8. The Plaintiff should not be able to foreclose on an asset in an Investment Security with an invalid Mortgage, fraudulently procured under the guise of a "Loan", when it wasn't a Loan, but rather the "Purchase of a Note" into an Asset-Backed Investment Security, and the Plaintiff was paid in full, plus a commission for something it did not fund. The Plaintiff and predecessors and successors tricked the Defendant into signing a Mortgage to secure an Investment Security, assign a Beneficial Right it never had to another Beneficiary. Fraud is alleged that the Defendant was tricked into believing it was a loan to procure a Mortgage and the true nature of the Transaction was not disclosed, nor was true nature of the Note being legal tender disclosed to the Defendant or the Note being an asset to the Defendant. Fraud can be alleged that the Pool Insurance paid the Investors after multiple defaults and Foreclosures. If paid, why the foreclosures? Further, fraud can be alleged that the Mortgage (UCC 9) is invalid for an Investment Security/Commercial Paper (UCC 8) (you can't have both). A foreclosure is improper and should be voidable. The direct purchase of the Note by the Trustee for the Trust or SPV appears to violate the procedures specified in the FAS 140 - "Statement of Financial Accounting Standards 140" by the Financial Accounting Standards Board (FASB). The Plaintiff signs a Mortgage Loan Purchase Agreement with a Representative of the Trust, yet the Plaintiff doesn't fund the purchase of the Note, and can't sell what it hasn't

bought. The Pooling and Servicing Agreement clarifies all the fine points the Plaintiff doesn't want the Defendant to know. The Assignment and Assumption Agreement clarifies further. Also, the insurance pays off the investors. The Plaintiff servicer continues to foreclose, even though the investors are paid off which is fraud. And, the Plaintiff has not disclosed the payoff according to South Carolina Rules of entering and recording the fact which is a VIOLATION of South Carolina law and voids the foreclosure. Which bring us to BONY V. FAULK. In this CASE, the note lacked endorsements connecting the originator to BONY as trustee for the foreclosing securitization trust. This set up a MOTION TO DISMISS on the grounds that BONY didn't have any right to do anything—it had no connection with the NOTE. In other words, if the endorsement were created later, then the Plaintiff, Bank of America, had no standing at the time the action was filed because the Trust did not own the note at that time as there is no endorsement to the Fannie Mae Trust. How do we know the Plaintiff attorney isn't engaged in fraud on the court (and a host of other violations of state and federal law)? Critically, the PSA requires a complete chain of endorsement with all intervening endorsements. Anything less is documentation fraud. There are no endorsements to Bank of America or Fannie Mae Trust. Furthermore, Countrywide denies ever sending Notes to the Fannie Mae Trusts as discussed later in this answer.

The Plaintiff is using Defendant's NOTE to expand the money supply without disclosure or authorization from the Defendant, nor was Defendant told the PROMISSORY NOTE had cash value or was legal tender and the loan was not a loan, but indeed, an exchange or swap at the time of the closing. This is conversion fraud and conspiracy as multiple banks are involved. UNDER TITLE 12 USC 1813(L)(1) when you deposit a promissory note, it becomes a cash item. Under Civil Rule 13 Defendant brings a mandatory counterclaim for recoupment. These reports are filed on OMB FORMS, in which the public has a right to disclosure under the privacy act. The FR 2046 balance sheet, OMB #'s 2046, 2049, and 2099 are subject to disclosure under the privacy act, Title 5 USC 552(b)(4). At closing and settlement, the reason they actually call it closing is because they pay off the loan in its entirety. The DEBT is actually EXTINGUISHED. If banks shift the assets off the books, they have to report to the FRB where it went, so we can follow it, and the banks are mandated to give a cash receipt on any deposit which was not done. It is a Demand Deposit Account and the deposit slip has been withheld from Defendant by Plaintiff or Plaintiff's predecessors. Defendant gave original Lender a

promissory Note, they have to record a debt to the Defendant on their liability ledger. Further, banking law forbids selling credits, therefore, DEFENDANT requests Judge to do the set off under HJR 192 as defense and remedy and Defendant claims recoupment and PUBLIC LAW 10 Chap. 48, 48 Stat.112 as defense, remedy, and recoupment.

The Plaintiff at the time of filing a complaint must show the full accounting of the alleged obligation that that are attempting to collect such as, a) FR 29046 balance sheet (OMB #'s 2046, 2049, 2099, b) 1099 OID report, c) S-3/A registration statement, d) 424-B5 prospectus and e) RC-S & RC- B call schedules. The Plaintiff must show they are a creditor following Generally Accepted Accounting Principles (GAAP) whereby true double entry book accounting was performed in issuing my alleged loan showing a debit against the bank's assets as a result of my alleged loan. Without proof of a claim, the Plaintiff has no standing, and Defendant demands up to 3 times the amount of the claim in recoupment pursuant to UCC 3-305 and UCC 3-306.

IN ADDITION, "It has been settled beyond controversy that a national bank, under Federal Law being limited in its powers and capacity, cannot lend its credits by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires" (Howard & Foster Co. v. Citizens Nat'l Bank of Union, 133 SC 202, 130 SE 759 (1926). "THE DOCTRINE OF ULTRA VIRES IS A MOST POWERFUL WEAPON TO KEEP PRIVATE CORPORATIONS WITHIN THEIR LEGITIMATE SPHERES AND TO PUNISH THEM FOR VIOLATIONS OF THEIR CORPORATE CHARTERS, AND IT PROBABLY IS NOT INVOKED TOO OFTEN". (Zinc Carbonate Co. v. First National Bank 103 Wis 125, 79 NW 229). (American Express Co. v. Citizens State bank, 194 NW 430). Ralph M. Hautrey, Secretary of the British treasury states, "banks lend by creating credit (ledger-entry credit, monetized debt). They create the means of payment out of nothing".

Because the note maker, the Defendant, owns the Note and securitizing the Note without the maker's permission constitutes conversion, then the Defendant demands compensation for the conversion and tort.

5. Defendant specifically denies that Plaintiff is the real party of interest and or duly authorized agent of same upon which Plaintiff's alleged claim is based and therefore has no standing to bring this action. (SC Title 32 Section 32-3-10). The Plaintiff, Bank of America, is not the current owner or has possession of the original wet ink subject Note or is the assignee of the security instrument, to the contrary, nor does the instrument constitute a first lien priority mortgage in any way. The Defendant holds title to the property.

6. Defendant specifically denies Plaintiff was the owner of the Note and Mortgage at the time of filing of the foreclosure or hence. Defendant denies Plaintiff held the Defendant's ORIGINAL WET INK SIGNATURE PROMISSORY NOTE or Mortgage as Defendant was denied seeing the Note until January 11, 2013 at which time the Note appeared to be a fraudulent reproduction or computerized eNote. A photocopy or imaged copy of the instrument is not sufficient proof of Holder in due course. PURSUANT of UCC Article 3-3-501(b) 2(1), Defendant is entitled to verify through visual inspection of the original wet inked signature promissory note, allonge and all assignments, together with the original wet inked Deed of Trust/Mortgage in Aiken County upon demand. The Plaintiff only produced a photo copy of the instrument without proper dates on stamps or assignments and no mortgage. Further, Defendant denies Plaintiff is holder of the original Note or is entitled to enforce the Note and is claiming damages according to USC TITLE 18 2071 (a)(b) concerning concealment, removal or mutilation generally. CONSEQUENTLY, Defendant denies Plaintiff's right to enforce the note has been established or proven at all in any way or otherwise. The note is a non negotiable note and must follows the Pooling and Servicing Agreement with endorsements from origination all the way to the Fannie Mae Trust which the Plaintiff has not accomplished or proven. Further, the Defendant denies the note claimed by the Plaintiff is the original "wet ink" original note. Therefore, the Plaintiff has failed to state facts sufficient to state a cause of action, and a mere reference to Plaintiff holding the note is insufficient for a demand for relief and is not grounds to deny Defendant's Motion to Dismiss. The Plaintiff has already sold the Promissory Note and can not fulfill the requirement of presentment under UCC Article 3- 305 (b) 2 (1). And in Section 3-203(b), "but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

In addition, in the deposition of Michele Sjolander, Executive/Senior Vice President of Bank of America, admits she did not place the endorsement on the note and in fact is not allowed in the area where endorsing is supposedly done (at Recontrust, by Recontrust employees) without an escort. She also stated that she does not know the name of the person who supposedly did place the endorsement on the note. She stated that the endorsement is placed on the notes with a rubber stamp onto which her name, Laurie Meder's name and all the other information that appears on the endorsement. In other words, the Countrywide Bank, FSB endorsement to Countrywide Home Loans, Inc (using Laurie Meder's name) and the Countrywide Home Loans, Inc. to "blank" endorsement (using Michele Sjolander's name) is a single stamp that is purportedly placed on notes by employees of Recontrust. And, is why the two endorsements line up perfectly. Mrs. Sjolander also admitted the notes were images and copied on their AS-400, servicing system and imaging system. (Page 30-31) Also, she states the file is scanned and imaged to an electronic file (Page 37)

Mrs. Sjolander even admitted that there is no way to know for sure when the endorsement on the note was placed there, obviously a crucial issue. Long story short, it appears that Mrs. Sojander's only connection to the note in the case, and presumably in other cases such as the Defendant's, is that her stamped name appears on the purported endorsements. She has no personal knowledge of when or if the notes are actually stamped at the Recontrust vaults. The notes are Robo-stamped. You can't just do foreclosures with a rubber stamp on a conveyor belt. (Foreclosure Fraud). (Kirby v. Bank of America, Case No. 2:09-CV-00182-DCB-JMR, Jan 25, 2012, US District Court, S. Dist of MS, Hattiesburg Div.)

Further, Countrywide admits to not conveying Notes to Mortgage Securitization Trusts in the deposition of Ms. DeMartini . (Kemp v. Countrywide, Case 08-02448-JHW p.7). Defendant's alleged loan was a Fannie Mae securitized loan and Plaintiff's Note does not contain the chain of title assignments as required by the Pooling and Servicing Agreement or is the NOTE legally assigned due to no assignments in systematic order to the trust nor any proof of required timing to the Trust thereof. The Fact that Fannie Mae and/or Trust never had possession of the note is FATAL TO THE ENFORCEMENT AND UPON THE SALE OF THE NOTE AND MORTGAGE TO FANNIE MAE an/or TRUST, THE FACT THAT IT WAS NOT PROPERLY ENDORSED TO FANNIE MAE and/or TRUST ALSO DEFEATS THE

ENFORCEBILITY OF THE NOTE. (Kemp v. Countrywide, Case 08-02448-JHW p.11). It is believed the Notes may have been shredded due to their origination of the MERS data recording and tracking system, and the Note was never transferred as legally required. Defendant does know her originated Note was purchased by Fannie Mae Trust and since Fannie Mae never had possession of the Note, they cannot qualify as a "holder" under UCC nor is the Plaintiff a holder or a bearer thereof". (See Dolin v. Damall). In addition, endorsement of the instrument by Fannie Mae is missing which is required to negotiate an instrument. The significance of endorsement and affixation requirements to achieve holder status, and thereby qualify to enforce a note against the maker, the Defendant, was explained in a Third Circuit in Adams v. Madison Realty & Dev.Inc., supra. The Court explained that the maker of the note must have certainty regarding the party who is entitled to enforce the note. Otherwise, the Defendant is exposed to the risk of double payment, or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument. These risks provide makers with a recognizable interest in demanding proof of the chain of title. Consequently, the Defendant here, as maker of the Note, may properly press Plaintiff to establish its holder status. In the Defendant's case, we have neither a proper endorsement on the note itself, nor an allonge that was executed at the time the proof of claim was filed to Fannie Mae Trust. Under these circumstances, neither the Plaintiff or Fannie Mae qualifies as a holder, because Fannie Mae or the Fannie Mae Trust ever came into possession of the Note. Nor does the Plaintiff qualify as a non-holder in possession who has rights of a holder . "A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument" UCC Section 3-301. The Official comment to Section 3-301 adds that this definition: includes a person in possession of an instrument who is not a holder. A non holder in possession of an instrument includes a person that acquired rights as a holder by subrogation or under Section 2-203 (a). The Plaintiff does not have possession of the original Note of a properly indorsed Note, and therefore, may not enforce the note as a non holder in possession.

The Defendant's Note has been securitized and Fannie Mae states all their Notes are non negotiable Notes, therefore PLAINTIFF IS NOT A HOLDER IN DUE COURSE, as described by Matthew D. Weidner, Esq on July 10, 2012 in Foreclosure News and confirmed by Fannie Mae official letter by Lisa O'Donald, Associate General Counsel for Fannie Mae as she states,

"The choice of law provision in the Security Deed was inserted with the expectation that enforcement of the mortgage loan would occur through foreclosure action in which the NOTE reflecting the indebtedness and the Security Deed reflecting the security for repayment of that indebtedness would be considered together as an integrated contract and the choice of law provision in the Security Deed would govern the enforcement of the NOTE. We intended that if a suit to enforce the NOTE were maintained separately from an action to foreclose on the property under the terms of the Security Deed, the applicable law would be determined by the choice of law provisions of the forum jurisdiction". Fannie Mae intended that the Note and Mortgage be read together as an integrated document. The point is clear, the provisions included between both the Note and the mortgage are all bound together in one, integrated, unified document. Therefore , the Note is non negotiable and must comply with all regulations of the Pooling and Servicing Agreement, otherwise, Plaintiff violates the laws and contract under which the investors purchased the securities and constitutes securities fraud. Banks securitize mortgages by selling them to a SPV (a special Purpose vehicle, a Trust). Then they create bonds of trust assets to sell to DTC. The bank cannot foreclose on the note, because they are not a holder and lack standing. The Plaintiff claims to be holder in due course, but that is not possible for there to be a holder in due course of a non negotiable instrument. Non-negotiable instruments are governed by Common Law, not the UCC. One, the note is non negotiable, and two, it is never registered in the public. These instruments cannot appear in court, and if brought into court then there is no subject matter jurisdiction over the claim. The note is non negotiable, so it does not come under the UCC negotiable instruments act, but comes under the contract obligations. It also shows the bank is liable and the originator is the creditor. The note is an asset to the Defendant, which is an asset and a counterclaim for recoupment. Before closing, the note goes into a SPV which now has legal title to these issues, and it creates a new instrument in the place of the note. They create securities and bonds. The Plaintiff is representing the registered security and bond at closing. The statute says Defendant has a right to restitution and rescission if they sell an unregistered security. It is a non negotiable instrument. It could be under UCC article 4 because it was deposited in a bank, but eventually is moved to Article 8 and 9 and is applicable for remedy. Defendant has right to rescission because it is unregistered. Defendant claims all applicable rights to restitution and to rescind alleged loan and mortgage and all applicable claims under the Securities Laws. As soon as the original lender and the Plaintiff

sell the unregistered security, the Defendant is entitled to setoff to settle the claim. The Defendant is raising the claim and is not waiving it. Foreclosure is a damage and Defendant is claiming damages.

IN ADDITION, there is no "Holder in due course" if the note is non-negotiable". (Sirius LC v. Erickson, 156 P. 3d 539-Idoaho:Supreme court 2007). The promissory note is governed by contract law. Further, Defendant denies Plaintiff is a lien holder which is a probable cause charge with no evidence and is an unsupported charge. Defendant rebuts the assumption and presumption under Rules of Evidence.

WHEREFORE, MERS cannot assign the Note and Mortgage as they never held either which may constitute fraud on the court, therefore, Defendant, denies the instrument constitutes a first lien priority mortgage as well as the following:

In June of 2007, Defendant took out a mortgage loan with Quicken Loan, Inc. which involved misrepresentations, non-disclosure of vital facts, theft by taking, conversion fraud, and origination fraud concerning contract law by not disclosing to the Defendant the Note was legal tender treated like cash and deposited without Defendant's knowledge or authorization, and additionally, the exchange or swap, and not a loan, was being processed with the truth being hidden from the Defendant and the deposit slip never sent to the Defendant. Defendant claims no meeting of the minds, contract law violations and rescinds the loan which was previously rescinded prior to Plaintiff filing their complaint. Then on March 19, 2012, this action was filed by Bank of America, N.A. seeking to foreclose on this previously alleged loan with no meeting of the minds as aforementioned. The Utah Supreme Court has recently held that a lack of the meeting of the minds, a mistake as to the fact, can justify rescission of the contract. A single party may rescind a contract when, at the time the contract is made, the parties make a mutual mistake about a material fact, the existence of which is a basic assumption of the contract" (Deep Creek, LLC v. Utah State Armory BD., 2008 UT 3, 17 (quoting Mooney v. GR & Assocs., 746. 2d 1174 (Utah Ct.app.1978. Also, a recent Federal Circuit Court Judge has found Countrywide and Bank of America guilty of robo signers, fraudulent assignments and foreclosure fraud and has levied a $25 Billion dollar restitution. Defendant previously notified Plaintiff the alleged loan is rescinded via certified mail.

For reasons that follow, Defendant disputes Plaintiff's right to foreclose on this loan and requests that this case be dismissed pursuant to Rule 12(b)SCRCP. The Plaintiff has not sufficiently alleged that it has standing to bring this action. Defendant contends that Plaintiff's allegation that Mortgage Electronic Registration systems, Inc. (hereinafter "MERS") assigned Defendant's Mortgage to Plaintiff is insufficient as a matter of law because MERS does not have any interest in the Promissory Note (hereafter "Note") and therefore cannot assign any interest in said Note to Plaintiff. Because Plaintiff has not alleged that it is entitled to enforce the Note, Plaintiff lacks standing to bring this action and has failed to state a claim upon which relief can be granted. The court may dismiss a claim where the defendant shows that a Plaintiff has failed to state facts sufficient to constitute a cause of action. (Hambrick v. GMAC Mortg.Corp, 370S.C.118:634S.E.2d 5(Ct.App.,2006. The Court must base its decision solely on the allegations in the complain and all property please factual allegations are deemed admitted for the purpose of the motion. However, a motion under Rule 12(b)(6) or 12(c) does not admit conclusion of law. (Carolina Winds v. Joe Harden Builder, 297 S.C.74;374 S.E.2d897(Ct.App.,1988) (rev'd on other grounds)

Plaintiff has alleged, among other things, that MERS assigned Defendant's Mortgage to Plaintiff by an Assignment of Mortgage (hereinafter "AOM") dated April 29, 2011 and that BAC Home Loans Servicing, LP f.k.a Countrywide Home Loan Servicing, L.P have merged with the Plaintiff making Plaintiff successor by merger to these companies. Compl. 7 and 8. The complaint contains no other allegations regarding assignments, negotiation, transfer of the Note or any succession in interest between Plaintiff and Quicken Loans, Inc. As a result, Plaintiff has failed to allege how it is that Plaintiff is entitled to enforce Defendant's Note by foreclosing on her home.

Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt". (United States Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 375,; 684 S.E.2d 199, 205 (Ct.App.2009). This would include proving by a preponderance of the evidence that Plaintiff is the owner of the Note and Mortgage and that Defendant had defaulted on the Note. See 385 S.C. at 375; 684 S./E.2d at 199 (citing Franklin Credit Mgmt. Corp. v. Nicholas, 73 Conn. App. 830, 812 A.2d 51, 57-58 (Conn. App. Ct. 2002). Plaintiff is required to plead and prove that it has received rights in both the Note and the

Mortgage because "the assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee absent some indication that the parties also intended to transfer the debt". (S.C. Nat'l Bank v. Halter, 293 S. C. 121, 128, 359 S.E.2d 74,77 (Ct.App.1987).

Because Plaintiff was not the original lender and not the original payee on the Note, Plaintiff will need to show that it became entitled to enforce the Note. The important point is that Plaintiff has not alleged any right to enforce Defendant's Note either through Article 3 or otherwise. The only relevant allegation Plaintiff has made, that MERS assigned Defendant's mortgage to the Plaintiff., is insufficient to transfer any interest in the Note for reasons that follow.

The role of MERS has been much debated recently, but one thing that is clear is that MERS has no ownership interest in promissory notes and thus no ability to assign these notes. In MERS v. NEBRASKA Dept. of Banking and Finance, MERS brought an action contesting the Nebraska Department of Finance's finding that MERS was a "mortgage banker" under Nebraska law and subject to license and registration requirements as a result. (270 Neb. 529; 704 N.W.2d 784 (Neb.2005). In that case, MERS argued that "it does not own the promissory notes secured by the mortgage and has no right to payments made on those notes. MERS explains that it merely "immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur" (270 Neb. at 533, 704 N.W. 2 d at 786. Since MERS argued and prevailed on this position, it would be estopped to deny that it has ownership of Defendant's Note now and could transfer that ownership to Plaintiff. "When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him" (Hayne Fed. Credit Union v Baily, 327 S.C. 242, 252, 489 S.E. 2d 472, 477 (1997). Because MERS admits that it has no ownership interest in promissory notes, it is impossible for MERS to have assigned Plaintiff any interest in Defendant's Note by virtue of the Assignment of Mortgage, AOM. By information and belief, Defendant claims restitution against the Plaintiff as MERS is an shell data system clouding the titles of homeowners and fraudulently placing assignment recordings including robo signing of the assignment in Aiken County on my home records. It is important to note multiple lawsuits have been filed against MERS and the

Plaintiff across the nation and have prevailed with multi millions in settlements by the Plaintiff for fraud and wrongful foreclosures which are too many to list in this document.

While a challenge to a Plaintiff's right to foreclosure based on their failure to plead proper assignment of a promissory note may appear to be a "technical" defense that t bears no relation to any rights of the Defendant, this is only appearance. The Defendant has an overriding interest in making sure that, if her home is foreclosed and sold to pay a debt, the party that brings the action and conducts the sale is a party that is actually entitled to enforce the Note. Article 3 of the UCC provides that payment of a promissory note is only effective to discharge the obligation on that promissory note if payment is made to a person that is entitled to enforce the note. (S.C. Code Ann.36-3-601(a). If the Defendant's home were foreclosed and sold and the proceeds paid to a party who was not entitled to enforce the note under the UCC, the Defendant's obligation under the note would be discharged and she would remain liable to pay the note to whoever was entitled to enforce. Requiring the Plaintiff to plead and prove that it is entitled to enforce the note protects the Defendant from the risk of double liability. Defendant is claiming recoupment, restitution and setoff. Under UCC Article 1 the sale of promissory notes is subject to the statute of frauds.

OF MAJOR CONCERN, is the OFFICE OF THE COMPTROLLER OF THE CURRENCY (hereafter, OCC) signed a CEASE AND DESISTS settlement agreement with MERS on April 13, 2011. Among other things, the CEASE AND DESIST ORDER finds, "We have identified certain deficiencies and unsafe and unsound practices by MERS and MERSCORP that present financial, operational, compliance, legal and reputational risks to MERSCORP and MERS, and to the participating MEMBERS. (OCC No.AA-EC-11-20, Board of Governors; Docket Nos.110051-B-SC-1, 11-051-B-SC-2; FDIC-11-194Bots no.11-040; FHFA No. EAP-11-01). The unlawful assignment of Defendant's mortgage and note by MERS was dated Aril 29, 2011 in flagrant disregard of the OCC CEASE AND DESISTS agreement. Defendant will order an OCC investigation into this deception by the Plaintiff and requests damages as foreclosure is a damage. Noted attorney Philip Kramer, a senior partner at the law firm of Kramer & Kaslow provides insight, MERS Corp is the owner of the Mortgage Electronic Registration Systems (MERS), one of the cornerstones of the current banking crisis.

In order to cut up loans and move the pieces around the world at the speed of electronics again and again and again, until no one is sure who owns what, financial institutions have been using MERS as the "beneficiary", a legal term which in practical terms means they are entitled to foreclose on behalf of the lender, except MERS is nothing more than an electronic data base. They are often named as beneficiary.

However, in order to legally be named as beneficiary they would have had to put up funds on the loan. Not to mention the fact that the recordation itself is not even official. BUT, most importantly, MERS is never a Holder in Due Course. Philip Kramer goes on to observe that, "We are a nation of laws". Everyone knew that MERS didn't have the right to appear as beneficiary, but it would have been inconvenient to act on this because MERS was in widespread use throughout the banking industry. It was wrong, wrong, wrong, but everyone was doing it. ALL FORECLOSURES ASSOCIATED WITH MERS must CEASE AND DESISTS, NOW!!! This is in accordance to the OCC's CONSENT ORDER. Defendant claims a conspiracy to defraud by the Plaintiff by filing a foreclosure on the Defendant and claims civil damages.

In addition, "Merscorp, Inc. and other conspirators were all involved in a fraudulent scheme and RICO enterprise herein complained of. The employees of the MERS, including many licensed attorneys, have become skilled in using the artifice of MERS to sabotage the judicial process to the detriment of borrowers, and over the past several years, have relied upon MERS to do just that". (Figuero v. MERSCORP, Inc. Case 0:10-cv61296-CMA Page 2).

"Similarly beyond the imagination of most persons is and was the scope of the DISHONSTY of the lenders and those acting in furtherance if the scheme including the present Plaintiff. Through the present time, persons acting within the ambit of this conspiracy, most particularly including the Plaintiff herein, have continued to operate consistent with the core principles of dishonesty and obscurantism engendered by the original conspirators. These dark influences have spread throughout the financial services, lending and banking industries into the national economy and beyond, threatening the economic stability of the United States and the world as a whole. This Court is urged in the strongest possible way to apply a presumption of FALSITY when reviewing any documentary evidence in this court by one or more of the Plaintiffs. Such a presumption is not just warranted, it is indeed compelled by the extent to

which the Plaintiffs and those with which they are associated have long acted in a malicious and wanton manner evincing complete contempt for the judicial process and the rights of persons having interests contrary to their own. This is particularly true because the Plaintiffs' contempt for due process is compounded by their specific intention to obviate the requirement that documents prepared for legal use be truthful, authentic, and legitimate."(Figuero v.MERSCORP, Inc. Page 5 &5)

"There is one sort of lie that, when later discovered, constitutes the strongest possible proof of a person's malicious intentions. What is it" A lie about one's name or identity. Many such lies are present in this instance. The whole purpose of the MERS is to allow "servicers" to pretend as if they are someone else: the "owners" of the mortgage here, or the real party of interest. IN FACT THEY ARE NOT". (Figuero v. MERSCOPRP, Inc. Page 5)

In Plaintiff's original complaint #7, Plaintiff claims by virtue of an assignment dated April 29, 2011, Mortgage Electronic Systems, Inc. assigned said mortgage unto BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, the present lien holder and Plaintiff herein. Defendant denies #7 as MERS cannot assign a note or mortgage as they never hold the notes or mortgages and no interest in either. Nor does the mortgage give MERS any rights to the note. A case to note in February 2012 is United States Bankruptcy Judge Robert Grossman (NY) who ruled that MER'S business practices are unlawful. At each transfer, the note and mortgage are supposed to be "assigned" to the new owner. The Judge rejected every aspect of MERS argument. The Court rejected the claim that MERS could be both holder of the mortgage as well as nominee of the "true" owner. It also found that "mortgage of record" is a vague term that does not give one legal standing as mortgagee. Hence, at best, MERS is only a nominee. It rejected MERS claim that as nominee, it can assign mortgages---a nominee has limited rights and those most certainly DO NOT include the right to transfer ownership unless there is specific written instruction to do so. In scarcely veiled anger, the Judge wrote, "According to MERS , the principle/agent relationship among itself and its members is created by the MERS rules of membership and terms and conditions, as well as the Mortgage itself. However, none of the documents expressly creates an agency relationship or even mentions the word, "agency". MERS would have this Court cobble together the documents and draw inferences from the words contained in those documents." Judge Grossman rejected MERS

arguments, saying that mere membership in MERS DOES NOT provide "agency" rights to MERS, and agreeing with the SUPREME COURT of KANSAS that ruled, "The parties appear to have defined the word (nominee) in much the same way that the blind men of Indian legend described an elephant---their description depended on which part they were touching at any given time". He went on to disparage MER'S claim that since in legal theory the "MORTGAGE FOLLOWS THE NOTE', the Court should overlook that MERS separated them. Therefore, the note would be unsecured and the Defendant's bankruptcy was discharged in December 2012. Defendant claims that MERS has irretrievably destroyed the clear chain of title and claims damages due to being forced to quiet title expenses.

In making further assertions, concerning MERS, these facts follow,

a) Assignments were made by "officers" of MERS using delegations of authority of no longer existing MERS predecessors corporations.

b) The Officers of MERS who are allegedly authorized to sign documents on behalf of MERS are not "officers" of the corporation as the term officer of a corporation is legally defined.

c) The MERS assignment is deficient because it omits an assertion that the assignor is the holder under the MERS registry for the MIN number of the mortgage being assigned and the transfer is being recorded on the MERS registry.

d) An interest in a mortgage cannot be conveyed by an endorsement of the mortgage note in blank.

e) Because MERS is a mere nominee/custodian with no legal or beneficial interest in the mortgage note, MERS cannot assign a mortgage note to an assignee. (MERS as a corporation is not a custodian of the promissory notes secured by deeds of trust or other mortgage security instruments for which it serves as nominee)

f) Because MERS is a mere nominee/custodian with no legal or beneficial interests in the mortgage note, the mortgage has been divided from the note rendering the mortgage unenforceable.

g) MERS DISCLAIMS ever holding notes, however, MERS holding of the note endorsed in blank as nominee of a mortgage sold to a mortgage backed securities Trust is a violation of REMIC requirements.

h) Also, MERS holding of the note endorsed in blank as nominee of a mortgage sold to a mortgage backed securities Trust is a violation of warranties and representations contained in the master pooling and servicing agreement and prospectus.

i) MERS was created to perform a service with an ILLEGAL purpose, namely to circumvent the recordation of assignments and payment of recording fees. The issuance of assignments in furtherance of such an ILLEGAL purpose is unenforceable.

j) An assignment of the mortgage note from MERS to the servicer of the note is of either no legal effect or an illegal conversion of the note.

k) Since no evidence of MERS' "ownership" of the underlying note has been offered, and other courts have concluded that MERS does not own the underlying notes, then MERS did not own the underlying note, and it could not transfer the beneficial interest to another. Any attempt to transfer the beneficial interest without ownership of the underlying note is VOID LAW.

And finally, in the case of "The Bank of New York, as Trustee v. Sameeh Alderazi, the Court denied the Motion and stated in denial the following:

a) The court denied the application because the Plaintiff, could not demonstrate that the original mortgagee, Countrywide Home Loans, Inc., had authorized the assignment of the mortgage to the Plaintiff.

b) The assignment to Plaintiff was executed by Mortgage Electronic Reporting System (MERS) a nominee for American Wholesale Lenders. Black's Law Dictionary defines a nominee as "a person designated to act in place of another, usually in a very limited way".

c) An assignment by an agent without authority from the principal is a nullity. Plaintiff failed to provide evidence that Countrywide had authorized MERS to assign its mortgage to Plaintiff.

d) Plaintiff submitted in addition to the MERS assignment, what it purports to be an endorsed note and a corporate resolution of MERS showing that MERS had appointed all officers of Countrywide financial Corporation as assistant secretaries and vice presidents of MERS. This present motion must fail for the same reason as the prior motion as Plaintiff has failed to provide documentation from the Lender that it authorized the assignment.

e) Affidavits are insufficient to establish ownership of the note on fact that purported endorsement is undated. And, the affidavits are based on books and records, not on personal knowledge. Yet the affiants did not produce any of the records on which they based their assertion that Plaintiff possessed an endorsed note at the time the action was commenced.

f) Even putting aside the fact that there is no evidence that Countrywide Financial Corporation and Countrywide Home Loans, Inc. are the same entity, the fact that MERS authorized Countrywide officers to act on its behalf, is not evidence of the converse. It is no evidence that Countrywide authorized MERS officers to act as officers of Countrywide. Further, the fact that Selman (the person who signed the assignment) may have been an officer of both Countrywide and MERS does not alter the fact that she executed the assignment on behalf of MERS.

The face of the assignment indicates that MERS is assigning the mortgage as nominee of America's Wholesale Lender (a trade name for Countrywide), and more importantly, that Selman executed the assignment as assistant vice president of MERS. The assertion that the assignment incorrectly lists Selman's title as assistant vice president of MERS, instead of assistant secretary and vice president of MERS, is of no relevance other than to demonstrate the CASUAL AND CAVALIER manner in which these transactions have been conducted. They provide no evidence that Countrywide in fact approved or authorized the assignment. Similarly, William C. Hultman, Secretary and Treasury of MERS, states in a conclusory fashion in paragraph 8 of his affidavit that Countrywide "instructed MERS to assign the Mortgage to Bank of New York" without offering the basis for that assertion, other than it's role as nominee.

Then Plaintiff claims that by terms of the mortgage MERS as nominee was granted the right and then quotes the right, however, this language is found on page two of the mortgage under section "Borrower's Transfer to Lender of Rights in the Property" and therefore is facially

an acknowledgment by the borrower. The fact that the borrower acknowledged and consented to MERS acting as nominee of the Lender has no bearing on what specific powers and authority the Lender granted MERS as nominee. The PROBLEM is not whether the borrower can object to the assignees' standing, but whether the original Lender, who is not before the Court, actually transferred rights to the Plaintiff. Furthermore, while the mortgage grants some rights to MERS, it does not grant MERS the specific right to assign the mortgage. The only specific rights enumerated in the mortgage are the right to foreclose and sell the property. The general language "to take any action required of the Lender including but not limited to, releasing and canceling this "Security Instrument" is not sufficient to give the nominee authority to alienate or assign a mortgage without getting the mortgagee's explicit authority for the particular assignment.

g) Plaintiff also argues that the agreement between MERS and its members grants MERS the authority to assign the mortgages of it's members and also as mortgagee, however, in this case MERS was named in paragraph (c) of the mortgage as Mortgagee of record for the purpose of recording the mortgage. Being the mortgagee of record for the purpose of recording the mortgage does not confer the right to assign the mortgage absent an instruction to do so from the Lender. Paragraph 2 of the MERS terms and conditions provide that "MERS shall serve as Mortgagee of record with respect to all such mortgage loans solely as a nominee in an administrative capacity", and that "MERS agrees not to assert any rights (other than rights specified in the governing documents) with respect to such mortgage loans or mortgaged properties.". Assigning or alienating a mortgage without an explicit instruction from a Lender to do so, is not acting in an administrative capacity.

Further, paragraph 6 of the terms and conditions provides that, MERS system is not a vehicle for creating or transferring beneficial interests in mortgage loans." Plaintiff has failed to meet the very basic requirement that proof of an agent's authority must be shown from the mouth of the principal not the agent. (Lexow & Jenkins, P.C. v. Hertz Commercial Leasing Corp., 122 AD2d 25, 504 N.Y. S. 2d 192 (2nd Dept 1986), Siegel v. Kentucky Fried Chicken of Long Island, Inc., 108 AD2d 218, 488 N.Y.S.2d 744 (2nd Dept 1985)

As Plaintiff has not shown that it owned the note and mortgage, it has no standing to maintain this foreclosure action. Therefore, the renewed motion for an order of reference must be denied and the action dismissed.

The Court has raised the standing issue sua sponte because, in this case, it goes to the INTEGRITY OF THE ENTIRE PROCEEDING. For a Court to allow a purported assignee to foreclose, in the absence of some proof that the original lender authorized the assignment of the mortgage to them, would cast doubt upon the validity of the title of any subsequent purchasers, should the original lender or successor challenge the assignment at a future date. (Concluding , The Bank of New York, as Trustee v. Sameeh Alderazi)

The Defendant has brought this case to the attention of honorable Court as the assignment by MERS is just the same and Quicken Loans has not given any authority to MERS to assign the Defendant's mortgage. Defendant's Motion to Dismiss is reasonable and with the integrity of the Court. More cases, LLP Mortgage v. Sabine Properties: FINAL DISPOSITION. No Evidence 'MERS' Owned the Note, COULD NOT Assign it. NY SUPREME COURT FINAL DISPOSTION. Here, there are no allegations or evidence that MERS was the owner of the note such that it could assign it to LLP. THUS, the assignment from MERS was insufficient to confer ownership of the note to LLP, and it has NO STANDING TO BRING THIS ACTION. Kluge v. Fumoaz - 145 AD2d at 538 , "holding that the assignment of a mortgage without transfer of the debt is a nullity/the assignment of a mortgage without a valid transfer of the mortgage note is a nullity. (145, AD2 537) Also, NO EVIDENCE MERS PHYSICALLY DELIVERED MORTGAGE AND NOTE. (MERS V. Diana Esposito), MERS not holder owner of note. (HSBC v. Henry Feld)

Further, "in addressing the issue of standing, it is well settled that an action to foreclose on a mortgage may not be brought by one who has no title to it, and absent transfer of the debt, the assignment of the mortgage is a nullity". (GRO-WIT Capital, LTD v. 1080 UTICA, LLC, 2010)

And, FLORIDA APPELLATE COURT UPHOLDS THE CONCEPT OF DETERMINING THE STANDING OF THE FORECLOSING PARTY BEFORE ALLOWING SUMMARY JUDGEMENT. (BAC v. US Bank)

In RE: Walker, Case No.10-21656-E-11 Eastern District of CA Bankruptcy Court rules MERS has NO actionable interest in title. "any attempt to transfer the beneficial interest of a trust deed without ownership of the underlying note is void under California Law." "MERS could not, as a matter of LAW, have transferred the note to Citibank from the original lender, Bayrock Mortgage Corp." The Court's opinion is headlined stating that MERS and Citibank are not the real parties of interest.

Defendant states that MERS could not, as a matter of LAW have transferred the note to Plaintiff, BAC Home Loans Servicing, LP f.k.a. Countrywide Home Loans Servicing, LP from the original Lender as there is no proof of authority. Also, Defendant states that any Mortgage or Note the Plaintiff claims to be holding is without endorsement of a person with personal knowledge of the facts that the complete file concerning this mortgage was transferred to Countrywide or to Fannie Mae Trust and that the copy of the mortgage submitted to the court is authentic and there is no evidence the note is an authentic original copy. (Mers v.Torr)

Lastly, SUMTER COUNTY, SOUTH CAROLINA COURT OF COMMON PLEAS MERS, INC. v. Girdvainis, Case No. 2005-CP-43-0278 (Order dated January 19, 2006, citing to the representations of MERS and court findings in Mortgage Electronic Registration Systems, Inc. v. Nebraska Dept. of Banking and Finance, 270 Neb.529, 704 NW 2d.784). As such, ALL MERS assignments are suspect at best, and may in fact, be fraudulent. The COURT OF COMMON PLEAS OF SUMTER COUNTY, SOUTH CAROLINA also found MERS' rights were not as they were represented to be; the MERS had no rights to collect on any debt because it did not extend any credit: none of the borrowers owe MERS any money; THAT MERS DOES NOT OWN THE PROMISORY NOTES SECURED BY THE MORTGAGES; AND THAT MERS DOES NOT ACQUIRE ANY LOAN OR EXTENSION OF CREDIT SECURED BY A LIEN ON REAL PROPERTY.

7. Defendant states Plaintiff lacks standing to bring an action. (Wells Fargo Bank v. Jordon Cuyahoga App. No. 91675, 2009, Ohio-1092 (holding that Civil Rule 7 (A) does not apply unless a Plaintiff has standing in the first place to invoke the jurisdiction of the court. Accordingly, a bank that is not a mortgagee when suit is filed is not the real party in interest on the date the complaint is filed, and cannot cure it's lack of standing by subsequently obtaining an

interest in the mortgage). Accord, Bank of New York v. Gindele, Hamilton App. No.C-090251, 2010-Ohio-542. In addition, Plaintiff has failed to provide evidence that it was in possession of the original note prior to filing the complaint and foreclosure lawsuit. STANDING, however, includes not just the notion that the party has a "sufficient stake" in the outcome of the litigation, but also, that the party is in fact the "real party of interest." This is the "at least equally - important requirement that the claim be brought by or on behalf of one..."in whom rests, by substantive law, the claim sought to be enforced." (Kumar Corp. v. Nopal Lines, Ltd. 462 So. 2d 1178, 1183 (Fla.3d DCA 1985)

8. Plaintiffs complaint fails to state cause of action upon which relief requested may be granted and therefore this action is barred. "IN ORDER TO STATE A CAUSE OF ACTION, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief". (Med. & Benefits Plan v. Lago, 867 So. 2d 1184 (Fla. 5th DCA 2004).

9. Defendant asserts all terms and condition and rights of the promissory note and mortgage upon which Plaintiff's alleged claim is based. The Defendant is the originator of the Note and owner of the Note. The Note is legal tender and was deposited by the original lender and successors as such, therefore, no loan was made only an exchange or swap. Banking law states credits on bank ledgers cannot be sold. Plaintiff is in violation and claims that a mortgage transaction is a so-called loan, but it is a quid pro quo exchange deceptively called a loan. The evidence of this quid pro quo exchange is in the bookkeeping entries according to GAAP (Generally Accepted Accounting Principles). Title to the promissory Note still belongs to the Defendant. In addition, when a bank grants a loan all they are doing is transferring cash value from the Defendant's promissory note to themselves without knowledge or disclosure to Defendant which is theft. The Plaintiff or predecessors did not loan one cent of the bank's money or its depositors funds to obtain the Defendant's promissory note, but posted the alleged Defendant's promissory note on its books as a deposit from the Defendant to the bank and uses the credit the bank obtains from the alleged borrower via her promissory note to create the check book money they give to her as the so-called loan, and vastly increases the assets of the bank through fractional reserve techniques. Therefore, the debt is discharged upon tender of a promissory Note whether accepted or rejected. Commercial redemption is a legal administrative remedy provided by Congress via Public Policy. There was no exchange of valuable

consideration and Plaintiff has failed to show proof. Defendant states these actions of the Plaintiff are false, deceptive and misleading practices in collecting a debt in violation of Section 1692, Title 15 U.S. Code(the Fair Debt Collection Practices Act, or FDCPA). In addition, "FIRST NATIONAL BANK OF MONTGOMERY v. Jerome Daly 1969, jury decided that the mortgagee didn't owe the bank any money, since it failed to give consideration, because it didn't lend the bank's money, but created the funds out of thin air, in collusion with the Federal Reserve. There's also the 1968 Minnuisota Trail court's decision holding the Federal Reserve Act unconstitutional. Simply, the bank had not fulfilled, maintained or upheld it's part of the requirement for real consideration and the Mortgage contract in whole, for the reason that the "MONEY" was not the "real" property of the bank, as it was created "out of nothing" as soon as the loan agreement was signed, by ledger entry. "Mr. daly explained that the money was in fact not the property of the bank, for it was created out of nothing as soon as the loan agreement was signed". What the banks do when they make loans is to accept PROMISSORY NOTES in exchange for credits. Reserves are unchanged by the loan transactions, but deposit credits constitute new additions to the total deposits of the banking system. In other words: The money does't come out of their existing assets, the bank is simply inventing it, putting up nothing of it's own, except for a theoretical liability on paper. The banks President, Mr. Morgan, tokk the stand and affirmed that, in collusion with, the Federal Reserve Bank, Inc. did create the money out of nothing. Justice Martin V. Mahoney personal memorandum, "in the Judge's personal memorandum he recalled that "the Plaintiff (bank president) admitted that in combination with the Federal Reserve Bank did create the money and credits upon its books by bookkeeping entry. The money and credit first came into existence when they created it. Mr. Morgan admitted that no US Law or Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the Note. The jury found that there was no lawful consideration, and I agree." He also poetically added, "Only God can create something of value out of nothing." And upon this revelation, the court rejected the bank's claim for foreclosure.

10. Defendant asserts all requirements of applicable mortgage foreclosure statutes.

11. Plaintiff is not the lawful assignee of the Promissory Note and Mortgage upon which Plaintiff's alleged claim is based. The Fannie Mae Trust naming the individual investors as the lawful assignees of the Note is demanded. Plaintiff must prove entitlement to promissory notes

was authorized in the Countywide merger with Plaintiff, Bank of America. From information and belief, Countrywide did not sell entitlement rights of promissory notes in the merger with the Plaintiff, Bank of America. Plaintiff has not acquired any financial losses or harm in this matter. And furthermore, for example, on March 1, 2008, a Bank of America spokesperson said that Countrywide's liabilities were factored into the purchase of Countrywide: We bought the company and all of its assets and liabilities...We are aware of the claims and potential claims against the company and have factored those into the purchase." In an interview with the New York times for an article discussing the impact of mortgage-related loss exposure on banks, Bank of America's former CEO confirmed that Bank of America was aware of Countrywide Financial's legal liabilities and accepted them as part of the cost of the acquisition. (United States of America, ex rel. Edward O'Donnell v. Bank of America Corporation, successor to Countrywide Financial Corporation, Countrywide Home Loans, Inc., and full Spectrum Lending, Page 40 of Complaint in intervention of the United States of America). This is proof the PLAINTIFF HAS NOT BEEN HARMED or SUFFERED ANY LOSSES concerning Defendant's case.

12. Plaintiff cannot produce the original "wet ink" Promissory Note and Mortgage upon which this action is based, and therefore, relief requested is barred.

13. Plaintiff is not the holder of the original "wet ink" Promissory Note and Mortgage upon which this action is based, and therefore, relief requested is barred. Bank of America was not given any entitlement to promissory notes from Countrywide in the merger with Countrywide. (Kemp v. Countywide)

14. Plaintiff is not in possession of the original "wet ink" promissory note and Mortgage upon which this action is based and therefore relief requested is barred. Defendant demands strict proof of authenticity by Plaintiff with Court Panel and forensic expert of any Note produced by Plaintiff in Court. The original promissory note belongs to the Defendant as ORIGINATOR and MAKER. Indeed, where the Defendant denies that the Plaintiff seeking foreclosure has an ownership interest in the mortgage, the issue of ownership becomes an issue the Plaintiff must prove. (Carapezza v. Pate, 143 So.2d 346, 347 (Fla.3d DCA 1962)

15. Defendant states that upon information and belief, the Note has been paid in full by an undisclosed third party who prior or contemporaneously with the closing on the loan transaction paid the Lender in exchange for certain unrecorded rights to the revenues arising out of the loan document which was never a loan and MERS is RICO. Upon information and belief, the Plaintiff has no financial interest in the Note or Mortgage and has not incurred any financial damages concerning the note. Upon information and belief the missing assignments on the Note may have made it void and a legal nullity, thus they have exploited key and vital evidence or shipped same off-shore to a structured investment vehicle that also has no interest in the note or mortgage or the revenue thereof which may constitute fraud and RICO. "The Supreme Court found that a party in a civil action need establish only a criminal "violation" and not a criminal conviction. Further, the court held that a party need only have caused harm to the other party by the commission of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the party need not demonstrate that the other party is an organized crime figure, a mobster in the popular sense, or that the party in the civil action has suffered some type of special Racketeering injury, all that the party must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation are to be liberally construed to effect the congressional purpose as broadly formulated in the Statute. (Sedima, SPRL v. Imrex Co., 473 US 479 (1985).

16. Plaintiff's claim is barred by the statute of frauds, laches and or the statute of limitations.

17. Plaintiff's claim is barred and or limited for violation of the Federal Truth in Lending Act. Defendant states she was not told the original Promissory Note was legal tender and would be deposited in a Demand Deposit account. Defendant states these actions were done without the Defendant's knowledge or authorization and constitute willful intent. No deposit slip has been sent to the Defendant, and Defendant claims recoupment for the full amount of the promissory note plus damages for misrepresentation, deception, conversion and fraud.

18. Plaintiff's claim is barred and or limited for violation of RESPA. Upon information and belief, Plaintiff and or its predecessor(s) in interest violated various provisions of the Real Estates Settlement procedures Act ("RESPA"), which is codified at 12 U.S.C. section 2601, et seq. by, inter alia.

(a) failing to provide the Housing and Urban Development (HUD) special information booklet, and a Mortgage Servicing Disclosure Statement.

(b) failing to provide Defendants with an Escrow Disclosure Statement for each year of the mortgage since it's beginning.

(c) Giving or accepting fees, kickbacks and or other things of value in exchange for referrals of settlement service business, and splitting fees and receiving unearned fees for services not actually performed

(d) Charging a fee at the time of the loan closing (which was not a loan, but an exchange) for the preparation of truth-in-lending, uniform settlement and escrow account statements.

19. Defendant states that claim is barred and or limited for violation of the State and or Federal Fair Debt Collection Practices Act which mandates that changes in servicer and notices to borrower accurately describe when a debt is sold and to what entity a debt is due. Therefore, if the notes never transferred to the trust, there's no way to retroactively do that now, the trusts are governed by very specific Pooling and Servicing Agreements that for the most part give the trust 90 days to transfer all the required assets. you cannot transfer the loan after it's slipped into default, 3 or 4 years after setting up the trust. It violates the laws and contracts under which the investors purchased the securities. Defendant was not informed of when debt was sold or to what entity a debt was due prior to Plaintiff filing foreclosure complaint. CONSTRUCTIVE FRAUD is acts of concealment of material facts. Having obtained the Defendant's promissory note by constructive fraud, the Plaintiff is not justified to enforce the mortgage contract by any "implied consent" because true consent, expressed or implied, cannot be given under a cloud of non disclosure, concealment and suppression of the material facts, or a state of duress.

20. Plaintiff claim for attorney fees is barred for failure to perform or meet conditions precedent under the Promissory Note and or Mortgage upon which action is allegedly based. Alternatively, there is not valid contract or other written agreement between the parties permitting the award of attorney fees in connection with this action. Further Defendant denies any valid contract exists as original lender did not sign mortgage and is misrepresentation, deception and fraud and deems note and mortgage void and was rescinded prior to foreclosure.

21. Plaintiff comes to court with unclean hands and is prohibited by reason thereof from obtaining equitable relief of foreclosure from this Court. The Plaintiff's unclean hands result from the Plaintiff's improvident and predatory intentional failure to comply with material terms of the mortgage and note, failure to comply with the default loan servicing requirements that apply to the alleged loan as described herein above. As a matter of equity, this Court should refuse to foreclose this mortgage because acceleration of the note would be inequitable, unjust and the circumstances of this case render acceleration unconscionable. This Court should refuse acceleration or is estopped from doing so because of misleading conduct and unfulfilled contractual and equitable conditions precedent. The doctrine of unclean hands "precludes a Plaintiff from recovering in equity if he acted unfairly in a matter that is subject of the litigation to the prejudice of the Defendant". (Ingram v. Kasey's Assocs., 340 s.c. 98, 107 N. 2, 531 s. e. 2D 287, 292 N. 2, (2000)).

22. Defendant has made all payments required by law under the circumstances, however, Plaintiff and or its predecessor(s) in interest improperly applied such payments resulting in the fiction that Defendant was in default as no loan was ever made. Defendant is entitled to a full accounting through the master transaction histories and general ledgers for the account from the origination of the loan with the original lender through the Fannie Mae Trust since a dump or summary of said information cannot be relied upon to determine the rightful amounts owed. Defendant request FAS 104, etc. Further, the principal balance claimed as owed is not owed and is the wrong amount, the alleged loan has not been properly credited since there was no loan. Servicing requirements are conditions precedent to the acceleration of the alleged debt or foreclosure. (Pfeifer v. Countrywide Home Loans No. A133071. First dist., Div.Two, Dec.13, 20112 Cal.App 4th)

23. Plaintiff has charged and or collected payments from Defendant for attorney fees, legal fees, litigation attorney fees, foreclosure costs, late charges, property inspection fees, property valuation charges, and other charges and advances, and predatory fees, and other fees and or charges that are not authorized by or in conformity with the terms of the subject note an mortgage. Defendant claims a full refund of all payments, charges and fees.

24. Plaintiff failed to provide Defendant with legitimate and non predatory access to the debt management and relief that must be made available to borrowers, including this Defendant pursuant to and in accordance with the Pooling and Servicing Agreement or other Trust Agreements that controls and applies to the subject mortgage loan. Plaintiff's non-compliance with the conditions precedent to foreclosure imposed on the Plaintiff pursuant to the applicable Pooling and Servicing Agreement is an actionable event that makes the filing of this foreclosure premature based on a failure of a contractual and or equitable precedent to foreclose which denies Plaintiff's ability to carry out a foreclosure. Plaintiff cannot legally pursue foreclosure unless and until Plaintiff demonstrates compliance with the foreclosure prevention servicing imposed by the subject pooling and servicing or trust agreement under which the Plaintiff alleges owning the subject mortgage loan. In addition the assignment and note stamps are in conflict of legal names and dates.

25. Plaintiff intentionally failed to act in "Good Faith" or to deal fairly with the Defendant by failing to follow the applicable standards of residential single family mortgage servicing denying Defendant access to the residential mortgage servicing protocols applicable to the subject note and mortgage. Thus, Defendant states that the servicing requirements are conditions precedent to the acceleration of the alleged debt or foreclosure.

26. Defendant states that in light of all of the foregoing defenses, and on the face of the purported loan document, the terms and circumstances of the Note and Mortgage were unconscionable when made and were unconscionably exercised, it is therefore unconscionable to enforce the mortgage foreclosure.

27. Plaintiff cannot prove it's case against the Defendant and therefore this Court should enter judgment in Defendant's favor and quiet title in Defendant's favor, voiding the alleged promissory note held by the Plaintiff and mortgage upon which Plaintiff seeks to recover herein.

In addition, Plaintiff cannot enforce the note and has failed to prove otherwise in Plaintiff's complaint. Also, Plaintiff, as the servicer, acts only as the agent of the owner of the instrument and has no greater right to enforce the instrument. (see e.g., Greer v. O'Dell 305 F.3d at 1303) Fannie Mae Trust and or investors have no right to enforce the note, then Plaintiff, as it's agent cannot enforce the note. In addition, no agency relationship or rights of principal has been proven, therefore Plaintiff cannot enforce the instrument. Because, the claim filed by Plaintiff, servicer, cannot be enforced under applicable state law, the claim must be disallowed under U.S.C. 502 (1) (b). (Kemp v. Countrywide, Case, 08-02448-JHW p. 21 & 22.)

28. Plaintiff is liable for Defendant's cost and attorney fees pursuant to terms of the agreement between the parties and South Carolina Statutes, and or applicable provisions of the State and Federal Fair Debt Collection Practices Act and or the Federal Truth and Lending Act. Defendant states the Plaintiff, it's predecessors and successors, are not a creditor to whom any debt is owed. The promissory note was used as cash and legal tender and the debt was paid off at the closing.

29. Defendant states plaintiff is in violation of SC Title 29-3 320, Liability for failure to enter satisfaction as Defendant's originated Note was used by original lender, Quicken Loans, Inc. as legal tender and note was an exchange or swap, not a loan, and is binding on assignments or selling of Note to other banks. It is illegal under banking laws to sell credits. Defendant makes demand for RESTITUTION and DAMAGES for Plaintiff's fraud, misrepresentations, deception, unlawful conversion and conspiracy.

30. Defendant claims that without "consensus as idem", an agreement to the same thing, there is no binding contract. (Peerless), Raffles v. Wichelhaus, 2 H.&c.906 (1894). this principle has been adopted into the American common law tradition and has become a bedrock of our contract dispute jurisprudence. As aforementioned, the Utah Supreme Court has recently held that a lack of the meeting of the minds, a mistake as to fact, can justify a rescission of the contract. A single party may rescind a contract when, at the time the contract was made, the parties make a mutual mistake about a material fact, the existence of which is a basic assumption of the contract". (Deep Creek,LLC v. Utah State Armory BD., 2008 UT 3, 17(quoting Mooney v. GR & Assoc., 746P.29 1174 (Utah Ct. App.1978). Defendant states she was not told at any time

prior, during or after the promissory note was signed that is was legal tender and used for cash by the lender. Defendant deems non disclosure of vital information or hiding material facts as deceptive practices and fraud. In addition, there was no consideration on the alleged mortgage loan deeming it null and void. "it is not necessary for rescission of a contract that a party making the misrepresentations should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made the false representations, even innocently, to retain the fruits of a bargain induced by such representations." (Whipp v. Iverson, 43 Wis 2d 166). Defendant states a Statutory Defense.

In fact , the Defendant, borrower, entered an entirely new and different world of high finance where her relationship was bought and sold not between Lenders, but outside the lender relationship to a loan servicing company, but an investment contract and not disclosed to the Defendant.. Therefore, Defendant seeks to rescind and /or void the loan agreement which was not a loan agreement at all based on mistake and the missing of the minds by the parties at contract formation.

31. The Plaintiff did not allege it is both the owner and holder of the Note and Mortgage in the body of the original complaint. This is important because, this is a cause of action in equity to foreclose a mortgage and not an action of law for enforcement of the Note. The FAILURE of the Plaintiff to allege, in the body of its COMPLAINT, that in addition to holding the subject note and mortgage it also owns these instruments prohibits it from asserting the proper chain of ownership of the instruments from their inception. Also, Plaintiff has not shown elements of an agency relationship to the true owner of the Note in order to state a cause of action. This the Plaintiff has not done, therefore, Defendant requests the foreclosure be dismissed with all her requested remedies, etc as expressed below in her PRAYER FOR RELIEF, and further, Defendant request the Honorable Court deny the Plaintiff's Notice of Motion and Motion to Amend Summons and Complaint.

CONCLUSION

WITH ALL THE AFOREMENTIONED extensively stated due diligence answers, counterclaims/claims, defenses and remedies, it is clear the Plaintiff has caused Defendant extreme stress, elder financial abuse, mental anguish, health problems due to threats of continual foreclosure inducing fear of being homeless as a senior citizen during this national financial crisis and hardship which was engineered by the Plaintiff and Plaintiff's conspirators. Defendant has spent countless hours of research with no sleep perpetrated upon the Defendant by the Plaintiff. Plaintiff is knowingly seeking to maliciously harm the Defendant, remove Defendant from her home, and gain unjust compensation, therefore, Plaintiff should be held accountable for damages to the full extent of the law. Defendant deems Plaintiff's complaint filings for foreclosure on Defendant's home severe "Bad Faith" and willful intent by the Plaintiff to cause grave INJURY, and Defendant is entitled to and claims damages. (UCC 4-103).

WHEREFORE, DEFENDANT HAVING ANSWERED PLAINTIFF'S AMENDED COMPLAINT DOES REQUEST:

1. LEAVE TO AMEND THIS ANSWER TO PLAINTIFF'S AMENDED COMPLAINT TO PROPERLY PLEAD FACTS CONTAINED HEREIN WITH CONTINGENCY COUNSEL WHEN OBTAINED OR WITHOUT SHOULD DEFENDANT NOT BE ABLE TO OBTAIN COUNSEL ON A CONTINGENCY BASIS DUE TO A FINANCIAL HARDSHIP AT THIS TIME, AND TO REQUEST TRIAL BY JURY IF NECESSARY

AND, PRAYER FOR RELIEF

WHEREFORE, Defendant Deaner requests this Honorable Court dismiss "with prejudice" Plaintiff's complaint pursuant to rule 12 SCRCP and to enter judgment in her favor, quieting title, awarding costs, recoupment, punitive and other damages, restitution, rescission, court order for removal of lis pendens, removal of MERS false assignment, satisfaction of mortgage (Title 29 Chapter 3 Article 1, Section 29-3-370 & 430) and attorney fees for those reasons set forth herein in addition to other relief deemed proper and required by all applicable common law, public law commercial law, equitable law, banking law, securities law, federal and state law and any other laws including the False Claims Act pertinent and in favor of the Defendant in this matter with the Honorable Court.

Respectfully Submitted,

Date: July 3, 2013
North Augusta, SC

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U. S. Mail First class Delivery on July 3, 2013 upon H. Guyton Murrell at Korn Law Firm, 1300 Pickens Street, P. O. Box 12369, Columbia, SC 29211-2369.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

BANK OF AMERICA, N.A.
Plaintiff,
vs.
CAROLYN S. DEANER
Defendant.

IN THE COURT OF COMMON PLEAS
____ JUDICIAL CIRCUIT

CASE NO.: 2012 -CP- 02 - 00699

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

C.C.P.&G.S.

Deputy Clerk

Plaintiff's Attorney:	Defendant's Attorney:
H. GUYTON MURRELL, Bar No. 64134	CAROLYN S. DEANER, Bar No PRO SE
Address: 1300 PICKENS STREET COLUMBIA, SC 29211-2369	Address: 704 KERSHAW DRIVE NORTH AUGUSTA, SC 29841-2738
Phone: (803)252-5817 Fax (803)231-2060	Phone: (706)399-5496 Fax (706)736-3558
E-mail: Other:	E-mail: Other:

[X] **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
[ ] **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
[ ] **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ANSWER TO PLAINTIFF'S AMENDED SUMMONS & COMPLAINT

Estimated Time Needed: 1 Hour Court Reporter Needed: [X] YES/[ ] NO

SECTION II: Motion/Order Type

[X] Written motion attached
[ ] Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for [ ] Plaintiff / [X] Defendant Date submitted July 3, 20 13

SECTION III: Motion Fee

[ ] PAID – AMOUNT: $ _____
[ ] EXEMPT: (check reason)
- [ ] Rule to Show Cause in Child or Spousal Support
- [ ] Domestic Abuse or Abuse and Neglect
- [ ] Indigent Status [ ] State Agency v. Indigent Party
- [ ] Sexually Violent Predator Act [ ] Post-Conviction Relief
- [ ] Motion for Stay in Bankruptcy
- [ ] Motion for Publication [ ] Motion for Execution (Rule 69, SCRCP)
- [ ] Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- [ ] Other:

JUDGE'S SECTION	
[ ] Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
[ ] Other:	Date: _____, 20

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 20____

[ ] MOTION FEE COLLECTED: $ _____
[ ] CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

DESIGNATION: 12

12. Defendant's Amended Motion to Dismiss Foreclosure Action...filed 8/2/2013.

    (contains pages 1-50)

DEFENDANTS

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **DEFENDANT'S AMENDED MOTION TO DISMISS FORECLOSURE ACTION** **DOCKET NO. 2012-CP-02-00699**

Filed 8.2.13
C.C.P.&O.S.
Anita Knowlee 330 ash
Deputy Clerk

NOTICE IS HEREBY GIVEN THAT the Defendant will move before the presiding Judge for an Order on DEFENDANT'S AMENDED MOTION TO DISMISS FORECLOSURE ACTION. This motion is made upon the following grounds.

1. Defendant denies all allegations of Plaintiff's Complaint and demands strict proof thereof. Plaintiff failed to allege in the body of the Plaintiff's Complaint pleading that, in addition to holding the original wet ink subject note and mortgage, it also owns these instruments prohibits it from asserting the proper chain of ownership of the instrument from their inception.

2. Defendant denies all Plaintiff's allegation in Summons and Complaint concerning 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18 and 1 & 2 without full knowledge and therefore denied, and 3 & 5 neither admitted or denied without counsel. Defendant requests this case be DISMISSED in favor of Defendant with Prejudice.

3. Standing is a question of whether the Plaintiff has alleged such a personal stake in the outcome of a controversy as to warrant invocation of the court's jurisdiction and to justify the court exercising its remedial powers on the Plaintiff's behalf. A Plaintiff must have sufficient stake in the outcome of an otherwise justiciable controversy in order to obtain judicial resolution

of that controversy. An example, "here, Federal Home Loan concedes that there is no evidence that it had suffered any injury at the time it commenced this foreclosure action. Thus, because it failed to establish an interest in the note or mortgage at the time it filed suit, it had no standing. (Federal Home Loan Mtge.Corp. v. Schwartzwald, 134 Ohio St.3d 13, 979 N.E.2d 1214 (2012). Defendant demands the Pooling and Servicing Agreement, a key piece of documentation needed from the Plaintiff in order for the Judge to determine whether the Trust owns the loan being foreclosed and the Master Loan Schedule as the Master Loan Schedule establishes whether the subject mortgage was every transferred to the Trust. Therefore, while both are essential, if the alleged loan was never transferred to the trust, then the Trust, simple put, cannot sue to collect on something it does not own. "The party seeking to foreclosure must present evidence that it owns and holds the note and morgage in question in order to proceed with foreclosure action." Lizio v. McCullom, 36 So.3d 927,929 (Fla 4thDCA 2010. See also Verizzo v. New York, 28 So3d 976,978 (Fla 2dDCA 2010) "providing that "there is a genuine issue of material fact as to whether the Bank of New York owns and holds the Note and has standing to foreclose the mortgage". The Plaintiff failed to allege in the body of the original complaint pleading that, in addition, to holding the subject Note and mortgage, it also owns these instruments prohibits it from asserting the proper chain of ownership of the instruments from their inception.

4. Defendant specifically states Plaintiff does not have the capacity to sue or bring this action and this action is therefore barred. UCC 3-306, there cannot be a holder in due course on a promissory note after the bank deposits it. They do an off balance sheet entry and is called a off balance sheet bookkeeping.(FASB)(GAAP)(ISAB). The ORIGINATOR of the NOTE is the CREDITOR on the payables side of the LEDGER, not the Debtor. Defendant brings in a recoupment claim in behalf of the real party of interest which is the Defendant because she is the ultimate creditor raising the claim against the liability side of the account. THE PLAINTIFF'S COMPLAINT MUST BE DISMISSED BECAUSE OF ITS FAILURE TO PLEAD ITS CAPACITY TO SUE. Moreover, a complaint's facial defect can be attacked appropriately for lack of capacity to sue pursuant to Federal Rule of Civil Procedure 9(a) by a MOTION TO DISMISS WHICH CAN BE JUSTIFIED UNDER FEDERAL RULE OF CIVIL PROCEDURE 12 (b)(6), i.e., failure to state a claim upon which relief can be granted. (Klebanow v. New York Produce Exchange, 344 F.2d 294 (2d Cir.1965). See also 2A J. Moore &Lucas, Moore's Federal Practice 12.07-08 (2d ed.1982) and 5 C. Wright & A. Miller, Federal Practice and Procedure,

1292-1295, 1360 (1069 & Supp.1981). Furthermore, the Comment to the Rule (2004) Version), states that "if a party involved in a suit in other than his individual capacity, the capacity in which he is a party should be indicated in the caption of the pleading. The Plaintiff has given no agency relationship to Fannie Mae Trust and investors in the pleading. Although the capacity issue is new, it is important to note that Judges in circuit courts have routinely recognized the legitimacy of the capacity defense and are routinely granting Defendant's Motion to Dismiss based on these grounds, particularly in cases for mortgage foreclosures. See e.g. HSBC v. Montogomery, Pinellas Case 52-2009-CA-005696; Wachovia v. Matacchiero, Pinellas Case No. 52-2009-16936-CI-13; Boiln v. HSBC, Pinellas Case 08-005190-CI-19. Defendant in regard to Rule 1.120(a) specifically asserts that Plaintiff has failed to plead any facts which identify its entity-status.

The Defendant is the creditor and the Plaintiff is the debtor on the liability ledger. This proves a remedy. The G-7 endorsed it. The Defendant has a right to setoff. Auditors such as Price Waterhouse are aware of this. They are experts at auditing off balance sheet accounts. There is off balance sheet financing, payable and receivables. These auditors are the only ones that are aware of these issues. Chief accountants for the SEC are aware, and the SEC is also the enforcement agent for this practice. Defendant's loan has been securitized into a security. Everyone thinks a note is a liability, but it is not. Under UCC 4(a), 104(c), it says that the originator is the sender of the first fund transfer. The Defendant is the first funds transferor. UCC 3-105 (a)(c), subsection (a) talks about issue and (c) talks about issuer. It defines the issuer as the transferor of the first funds transfer , which is the drawer and maker, and in this case is the Defendant. UCC 8-102 (12), (15) AND (9) defines what an entitlement holder is and 8-201(3). UCC 8-501 says I am identified as the person with securities and entitlement rights on the books of a banking intermediary. They call them intermediaries under Article 8 because it involves securities. Under Article 8, the Defendant is the holder of entitlement and possessory rights to the proceeds of the transaction because the Defendant was the originator of the first funds transfer on the accounts payable side of the ledger and entitled to the funds. A promissory note is an asset to the Defendant. When the Defendant gave the note to the original Lender or beneficiary, and he deposits it, it becomes a cash item to the bank. In 1986, Justice Marshall, "We should assume, absent convincing evidence to the contrary, that congress intended for the term "promissory note" to derive its meaning from the ordinary sources of Commercial Law.

The note in this case, however, was the equivalent of "money". FDIC concedes, as it must, that Congress has determined that a promissory note generally constitutes money or its equivalent. Moreover, that statutory definition comports with economic reality. Promissory Notes typically are negotiable instruments, and therefore, readily convertible into cash...unconditional and equivalent to money, and especially if the note is negotiated. (U.S. Supreme Court, FDIC v Philadelphia Gear Corp.,476 U.S. 426 442 (1986). They issue a cash receipt to the depositor. The bank gets a cash receipt that is equivalent of money. It is what passes as money in the society. After it is deposited, then the Defendant deposited money in an account. This is a cash proceed under Title 12 of the USC. The Defendant is the creditor and is bringing this up as a defense. This is why the Plaintiff cannot be a holder in due course. UCC 3-302 defines a holder in due course and is subject to 3-106(d) which says that where an instrument is involved, there cannot be a holder in due course and would be subject to the defenses and claims that a drawer and maker as the originator of first funds transfer can bring against the payee, which is the Plaintiff, bank and predecessors and successors. The reason the Plaintiff cannot be a holder in due course is because the Defendant is the creditor who can trump any claim that a holder might have on that instrument. The Defendant as originator and maker is claiming setoff, because Plaintiff and predecessors sold an unregistered note AND IS NOT AN ENTITLEMENT HOLDER. They cannot be a holder in due course because they are taking it subject to administrative and commercial claims, every time there is a clause in the instrument. This whole process is not about mortgages at all, because they sold the note and received the funds and closed the account by assuming they have repaid the originator of the loan which was never done, thus Defendant has been misrepresented and deceived and claims a conspiracy to defraud. The real intent is to create derivatives to create a security and bond market to finance all commercial and corporate activity. The Note is not under a negotiable instrument anymore, it is a SECURITY. Under U.S. Law, securitization is illegal because it is fraudulent. Enron was involved in securitization. "Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud', and entitles party deceived to a void contract or recover damages." (Barnsdall Refining Com. v. Birnam Wood Oil Co., 92 F 26 817). Pursuant to S.C. Code Ann.35-1-1210 of the Prior Act, it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to: (a) employ any device, scheme or

artifice to defraud; (b) make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading: or (c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a person. By not producing these documents at time of the complaint, Plaintiff has acted in deceit as the following will show. The non negotiable Promissory Note is a security under South Carolina Law and Fannie Mae claims all their notes are non negotiable as explained in this document.

The banks have made as an estimate over 9 times the value of my originated Note without Defendant's knowledge and created an investment contract without my knowledge or authorization and has withheld owed monies to the Defendant. This is gross misrepresentation and deception on the part of Plaintiff, and Plaintiff's predecessors and successors. "If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." (Menominee River Co. v. Augustus Spies L & C Co., 147 Wis 559.572: 132 NW 1122).

Under Title 12 USC 1813 (L)(1), when you deposit a promissory note, it becomes a cash item. The Defendant is the creditor on the payables side of the ledger. The Plaintiff owes the Defendant the money and the Defendant is entitled to recoupment. Under Civil Rule 13, the Defendant is bringing a mandatory counterclaim for recoupment and applying the setoff. This is all equitable action in admiralty style instruments. The Defendant is the originator and the Note is an asset, and recoupment in practice is a counterclaim in a civil procedure, since the Defendant is the creditor on the liability side or accounts payable and the Plaintiff, bank or lending institution is the debtor on the liability side. The Defendant claims her accounts payable as an offset or counterclaim to the financial asset side. Under FAS 140 Defendant claims her setoff. When a deposit is made, it is a cash receipt, a cash proceed. Everything becomes cash proceed in commercial law under Article 9. The bank shows it as a cash proceed. If you give a bank a promissory note, they are required to give you a cash receipt which was not done and is deception, misrepresentation and fraud. The Plaintiff owes the Defendant that money under a recoupment or asset. The Defendant claims a defense in RECOUPMENT under UCC 3-305, and a claim under 3-306 as a possessory and property claim against the cash proceeds under the

liability side of the ledger. In UCC 3-306, there cannot be a holder in due course on a promissory note after they deposit it. They do an off balance sheet entry and is called off balance sheet bookkeeping. The Defendant as the real party of interest brings a claim of recoupment as the ultimate creditor and is raising the claim against the liability side of the account. Walker Todd previously one of the heads of the Cleveland FRB, has been a government witness in court cases and states we are the creditor on the payables side of the ledger. The Plaintiff owes the Defendant the money. The Defendant claims defense and counterclaim because I have an asset the Plaintiff is holding of mine, that they failed to give me credit for, and they are likely carrying my asset on a liability ledger of balance from their accounts receivable. Statute says Defendant has the right to restitution and rescission if they sell an unregistered security and UCC Article 8 and 9 is applicable remedy. The Defendant also has a right to rescind and restitution which is part of recoupment, and Defendant is entitled to setoff to settle the claim. The Defendant is raising the claim and not waiving it. Again, the defendant is the creditor and the Plaintiff is debtor on the liability ledger. That provides a remedy.

DAMAGES exist in that the bank refuses to loan their money. The Plaintiff bank denies the alleged borrower equal protection under the law of contract, by merely exchanging one currency for another and refusing repayment in the same type of currency deposited. The bank refused to fulfill the contract by not loaning the money, and by the bank refusing to be repaid in the same currency, which they deposited as an exchange for another currency. The Plaintiff and Plaintiff's predecessors and successors had no authorization from the Defendant to alter the alleged contract and to refuse to perform by not loaning money, by changing the currency or by refusing repayment in what the bank has written policy to deposit. In the transaction the bank was to loan legal tender to the borrower, in order for the bank to secure a lien. The bank never made the loan, but kept the mortgage note the alleged borrower signed. This allowed the bank to obtain equity in the property (by a lien) and transfer the wealth of the property to the bank without the bank's investment, loan or risk of money. Then the bank receives the alleged borrower's labor to pay principal and interest. What the Defendant owned or should have owned debt free, the bank obtained ownership in, and for free, in exchange for the Defendant receiving a debt, paying interest to the bank, all because the bank refused to loan money and merely exchanged one currency for another. The lien forces payment by threat of foreclosure. The mail is used to extort payment on a contract the bank never fulfilled.

If the bank refuses to perform, then they must return the mortgage note. If the bank wishes to perform, then they must make the loan. The past payments must be returned because the bank had no right to lien the property and extort interest payments. The bank has no right to sell a mortgage note for two reasons. The mortgage note was deposited and the money withdrawn without authorization by using a forged signature, and two, the contract was never fulfilled. The Plaintiff acted without authorization and is involved in a fraud, thereby, damaging the Defendant. PROOF banks deposit notes and issue bank checks...the checks are only as good as the promissory note. Nearly all bank checks are created from private notes. Federal Reserve Bank Notes are Private corporate Notes (chapter 48, 48 Stat 112) Notes are used to discharge notes. (excerpt from Your Money, page 7) The Plaintiff and Plaintiff's predecessors and successors have made the Defendant the depositor and not a borrower. This is fraudulent conversion of the mortgage note. A fraud is a felony. Defendant is holding registered NOTE.

The Fannie Mae Trust had no right to a Mortgage/Deed of Trust to a purchased Note that was not evidence of a debt or obligation--it can't be a Secured Transaction covered under UCC 9, when it's an Investment Security covered under UCC 8. The Plaintiff should not be able to foreclose on an asset in an Investment Security with an invalid Mortgage, fraudulently procured under the guise of a "Loan", when it wasn't a Loan, but rather the "Purchase of a Note" into an Asset-Backed Investment Security, and the Plaintiff was paid in full, plus a commission for something it did not fund. The Plaintiff and predecessors and successors tricked the Defendant into signing a Mortgage to secure an Investment Security, assign a Beneficial Right it never had to another Beneficiary. Fraud is alleged that the Defendant was tricked into believing it was a loan to procure a Mortgage and the true nature of the Transaction was not disclosed, nor was true nature of the Note being legal tender disclosed to the Defendant or the Note being an asset to the Defendant. Fraud can be alleged that the Pool Insurance paid the Investors after multiple defaults and Foreclosures. If paid, why the foreclosures? Further, fraud can be alleged that the Mortgage (UCC 9) is invalid for an Investment Security/Commercial Paper (UCC 8) (you can't have both). A foreclosure is improper and should be voidable. The direct purchase of the Note by the Trustee for the Trust or SPV appears to violate the procedures specified in the FAS 140 - "Statement of Financial Accounting Standards 140" by the Financial Accounting Standards Board (FASB). The Plaintiff signs a Mortgage Loan Purchase Agreement with a Representative of the Trust, yet the Plaintiff doesn't fund the purchase of the Note, and can't sell what it hasn't

bought. The Pooling and Servicing Agreement clarifies all the fine points the Plaintiff doesn't want the Defendant to know. The Assignment and Assumption Agreement clarifies further. Also, the insurance pays off the investors. The Plaintiff servicer continues to foreclose, even though the investors are paid off which is fraud. And, the Plaintiff has not disclosed the payoff according to South Carolina Rules of entering and recording the fact which is a VIOLATION of South Carolina law and voids the foreclosure. This bring us to BONY V. FAULK. In this CASE, the note lacked endorsements connecting the originator to BONY as trustee for the foreclosing securitization trust. This set up a MOTION TO DISMISS on the grounds that BONY didn't have any right to do anything—it had no connection with the NOTE. In other words, if the endorsement were created later, then the Plaintiff, Bank of America, had no standing at the time the action was filed because the Trust did not own the note at that time as there is no endorsement to the Fannie Mae Trust. How do we know the Plaintiff attorney isn't engaged in fraud on the court (and a host of other violations of state and federal law)? Critically, the PSA requires a complete chain of endorsement with all intervening endorsements. Anything less is documentation fraud. There are no endorsements to Bank of America or Fannie Mae Trust. Furthermore, Countrywide denies ever sending Notes to the Fannie Mae Trusts as discussed later in this answer.

The Plaintiff is using Defendant's NOTE to expand the money supply without disclosure or authorization from the Defendant, nor was Defendant told the PROMISSORY NOTE had cash value or was legal tender and the loan was not a loan, but indeed, an exchange or swap at the time of the closing. This is conversion fraud and conspiracy as multiple banks are involved. UNDER TITLE 12 USC 1813(L)(1) when you deposit a promissory note, it becomes a cash item. Under Civil Rule 13 Defendant brings a mandatory counterclaim for recoupment. These reports are filed on OMB FORMS, in which the public has a right to disclosure under the privacy act. The FR 2046 balance sheet, OMB #'s 2046, 2049, and 2099 are subject to disclosure under the privacy act, Title 5 USC 552(b)(4). At closing and settlement, the reason they actually call it closing is because they pay off the loan in its entirety. The DEBT is actually EXTINGUISHED. If banks shift the assets off the books, they have to report to the FRB where it went, so we can follow it, and the banks are mandated to give a cash receipt on any deposit, which was not done. It is a Demand Deposit Account and the deposit slip has been withheld from Defendant by Plaintiff or Plaintiff's predecessors. Defendant gave original Lender a

promissory Note, they have to record a debt to the Defendant on their liability ledger. Further, banking law forbids selling credits, therefore, DEFENDANT requests Judge to do the set off under HJR 192 as defense and remedy and Defendant claims recoupment and PUBLIC LAW 10 Chap. 48, 48 Stat.112 as defense, remedy, and recoupment.

The Plaintiff at the time of filing a complaint must show the full accounting of the alleged obligation that that are attempting to collect such as, a) FR 29046 balance sheet (OMB #'s 2046, 2049, 2099, b) 1099 OID report, c) S-3/A registration statement, d) 424-B5 prospectus and e) RC-S & RC- B call schedules. The Plaintiff must show they are a creditor following Generally Accepted Accounting Principles (GAAP) whereby true double entry book accounting was performed in issuing my alleged loan showing a debit against the bank's assets as a result of my alleged loan. Without proof of a claim, the Plaintiff has no standing, and Defendant demands up to 3 times the amount of the claim in recoupment pursuant to UCC 3-305 and UCC 3-306.

IN ADDITION, "It has been settled beyond controversy that a national bank, under Federal Law being limited in its powers and capacity, cannot lend its credits by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires" (Howard & Foster Co. v. Citizens Nat'l Bank of Union, 133 SC 202, 130 SE 759 (1926). "THE DOCTRINE OF ULTRA VIRES IS A MOST POWERFUL WEAPON TO KEEP PRIVATE CORPORATIONS WITHIN THEIR LEGITIMATE SPHERES AND TO PUNISH THEM FOR VIOLATIONS OF THEIR CORPORATE CHARTERS, AND IT PROBABLY IS NOT INVOKED TOO OFTEN". (Zinc Carbonate Co. v. First National Bank 103 Wis 125, 79 NW 229). (American Express Co. v. Citizens State bank, 194 NW 430). Ralph M. Hautrey, Secretary of the British treasury states, "banks lend by creating credit (ledger-entry credit, monetized debt). They create the means of payment out of nothing".

Because the note maker, the Defendant, owns the Note and securitizing the Note without the maker's permission constitutes conversion, then the Defendant demands compensation for the conversion and tort. Again, the Defendant holds the registered Note and is the creditor, not the debtor, so the Plaintiff has no claim and Plaintiff's attorney firm states they are a debt collector. This all appears to be a RICO enterprise from inception.

5. Defendant specifically denies that Plaintiff is the real party of interest and or duly authorized agent of same upon which Plaintiff's alleged claim is based and therefore has no standing to bring this action. (SC Title 32 Section 32-3-10). The Plaintiff, Bank of America, is not the current owner or has possession of the original wet ink subject Note or is the assignee of the security instrument, to the contrary, nor does the instrument constitute a first lien priority mortgage in any way. The Defendant holds title to the property and the registered NOTE.

6. Defendant specifically denies Plaintiff was the owner of the Note and Mortgage at the time of filing of the foreclosure or hence. Defendant denies Plaintiff held the Defendant's ORIGINAL WET INK SIGNATURE PROMISSORY NOTE or Mortgage as Defendant was denied seeing the Note until January 11, 2013 at which time the Note appeared to be a fraudulent reproduction or computerized eNote. A photocopy or imaged copy of the instrument is not sufficient proof of Holder in due course. PURSUANT of UCC Article 3-3-501(b) 2(1), Defendant is entitled to verify through visual inspection of the original wet inked signature promissory note, allonge and all assignments, together with the original wet inked Deed of Trust/Mortgage in Aiken County upon demand. The Plaintiff only produced a photo copy of the instrument without proper dates on stamps or assignments and no mortgage. Further, Defendant denies Plaintiff is holder of the original Note or is entitled to enforce the Note and is claiming damages according to USC TITLE 18 2071 (a)(b) concerning concealment, removal or mutilation generally. SC Code 16-13-10(A)(1)(2)(4)(B)(1)(230)(240)(320). CONSEQUENTLY, Defendant denies Plaintiff's right to enforce the note has been established or proven at all in any way or otherwise. The note is a non negotiable note and must follows the Pooling and Servicing Agreement with endorsements from origination all the way to the Fannie Mae Trust which the Plaintiff has not accomplished or proven. Further, the Defendant denies the note claimed by the Plaintiff is the original "wet ink" original note. Therefore, the Plaintiff has failed to state facts sufficient to state a cause of action, and a mere reference to Plaintiff holding the note is insufficient for a demand for relief and is NOT GROUNDS to deny Defendant's Motion to Dismiss. The Plaintiff has already sold the Promissory Note and can not fulfill the requirement of presentment under UCC Article 3- 305 (b) 2 (1). And in Section 3-203(b), "but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

In addition, in the deposition of Michele Sjolander, Executive/Senior Vice President of Bank of America, admits she did not place the endorsement on the note and in fact is not allowed in the area where endorsing is supposedly done (at Recontrust, by Recontrust employees) without an escort. She also stated that she does not know the name of the person who supposedly did place the endorsement on the note. She stated that the endorsement is placed on the notes with a rubber stamp onto which her name, Laurie Meder's name and all the other information that appears on the endorsement. In other words, the Countrywide Bank, FSB endorsement to Countrywide Home Loans, Inc (using Laurie Meder's name) and the Countrywide Home Loans, Inc. to "blank" endorsement (using Michele Sjolander's name) is a single stamp that is purportedly placed on notes by employees of Recontrust. And, is why the two endorsements line up perfectly. Mrs. Sjolander also admitted the notes were images and copied on their AS-400, servicing system and imaging system. (Page 30-31) Also, she states the file is scanned and imaged to an electronic file (Page 37)

Mrs. Sjolander even admitted that there is no way to know for sure when the endorsement on the note was placed there, obviously a crucial issue. Long story short, it appears that Mrs. Sojander's only connection to the note in the case, and presumably in other cases such as the Defendant's, is that her stamped name appears on the purported endorsements. She has no personal knowledge of when or if the notes are actually stamped at the Recontrust vaults. The notes are Robo-stamped. You can't just do foreclosures with a rubber stamp on a conveyor belt. (Foreclosure Fraud). (Kirby v. Bank of America, Case No. 2:09-CV-00182-DCB-JMR, Jan 25, 2012, US District Court, S. Dist of MS, Hattiesburg Div.)

Further, Countrywide admits to not conveying Notes to Mortgage Securitization Trusts in the deposition of Ms. DeMartini . (Kemp v. Countrywide, Case 08-02448-JHW p.7). Defendant's alleged loan was a Fannie Mae securitized loan and Plaintiff's Note does not contain the chain of title assignments as required by the Pooling and Servicing Agreement or is the NOTE legally assigned due to no assignments in systematic order to the trust nor any proof of required timing to the Trust thereof. The Fact that Fannie Mae and/or Trust never had possession of the note is FATAL TO THE ENFORCEMENT AND UPON THE SALE OF THE NOTE AND MORTGAGE TO FANNIE MAE an/or TRUST, THE FACT THAT IT WAS NOT PROPERLY ENDORSED TO FANNIE MAE and/or TRUST ALSO DEFEATS THE

ENFORCEBILITY OF THE NOTE. (Kemp v. Countrywide, Case 08-02448-JHW p.11). It is believed the Notes may have been shredded due to their origination of the MERS data recording and tracking system, and the Note was never transferred as legally required. Defendant does know her originated Note was purchased by Fannie Mae Trust and since Fannie Mae never had possession of the Note, they cannot qualify as a "holder" under UCC nor is the Plaintiff a holder or a bearer thereof". (See Dolin v. Damall). In addition, endorsement of the instrument by Fannie Mae is missing which is required to negotiate an instrument. The significance of endorsement and affixation requirements to achieve holder status, and thereby qualify to enforce a note against the maker, the Defendant, was explained in a Third Circuit in Adams v. Madison Realty & Dev.Inc., supra. The Court explained that the maker of the note must have certainty regarding the party who is entitled to enforce the note. Otherwise, the Defendant is exposed to the risk of double payment, or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument. These risks provide makers with a recognizable interest in demanding proof of the chain of title. Consequently, the Defendant here, as maker of the Note, may properly press Plaintiff to establish its holder status. In the Defendant's case, we have neither a proper endorsement on the note itself, nor an allonge that was executed at the time the proof of claim was filed to Fannie Mae Trust. Under these circumstances, neither the Plaintiff or Fannie Mae qualifies as a holder, because Fannie Mae or the Fannie Mae Trust ever came into possession of the Note. Nor does the Plaintiff qualify as a non-holder in possession who has rights of a holder . "A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument" UCC Section 3-301. The Official comment to Section 3-301 adds that this definition: includes a person in possession of an instrument who is not a holder. A non holder in possession of an instrument includes a person that acquired rights as a holder by subrogation or under Section 2-203 (a). The Plaintiff does not have possession of the original Note of a properly indorsed Note, and therefore, may not enforce the note as a non holder in possession.

The Defendant's Note has been securitized and Fannie Mae states all their Notes are non negotiable Notes, therefore PLAINTIFF IS NOT A HOLDER IN DUE COURSE, as described by Matthew D. Weidner, Esq on July 10, 2012 in Foreclosure News and confirmed by Fannie Mae official letter by Lisa O'Donald, Associate General Counsel for Fannie Mae as she states,

"The choice of law provision in the Security Deed was inserted with the expectation that enforcement of the mortgage loan would occur through foreclosure action in which the NOTE reflecting the indebtedness and the Security Deed reflecting the security for repayment of that indebtedness would be considered together as an integrated contract and the choice of law provision in the Security Deed would govern the enforcement of the NOTE. We intended that if a suit to enforce the NOTE were maintained separately from an action to foreclose on the property under the terms of the Security Deed, the applicable law would be determined by the choice of law provisions of the forum jurisdiction". Fannie Mae intended that the Note and Mortgage be read together as an integrated document. The point is clear, the provisions included between both the Note and the mortgage are all bound together in one, integrated, unified document. Therefore , the Note is non negotiable and must comply with all regulations of the Pooling and Servicing Agreement, otherwise, Plaintiff violates the laws and contract under which the investors purchased the securities and constitutes securities fraud. Banks securitize mortgages by selling them to a SPV (a Special Purpose Vehicle, a Trust). Then they create bonds of trust assets to sell to DTC. The bank cannot foreclose on the note, because they are not a holder and lack standing. The Plaintiff claims to be holder in due course, but that is not possible for there to be a holder in due course of a non negotiable instrument. Non-negotiable instruments are governed by Common Law, not the UCC. One, the note is non negotiable, and two, it is never registered in the public. These instruments cannot appear in court, and if brought into court then there is no subject matter jurisdiction over the claim. The note is non negotiable, so it does not come under the UCC negotiable instruments act, but comes under the contract obligations. It also shows the bank is liable and the originator is the creditor. The note is an asset to the Defendant, which is an asset and a counterclaim for recoupment. Before closing, the note goes into a SPV which now has legal title to these issues, and it creates a new instrument in the place of the note. They create securities and bonds. The Plaintiff is representing the registered security and bond at closing. The statute says Defendant has a right to restitution and rescission if they sell an unregistered security. It is a non negotiable instrument. It could be under UCC article 4 because it was deposited in a bank, but eventually is moved to Article 8 and 9 and is applicable for remedy. Defendant has right to rescission because it is unregistered. Defendant claims all applicable rights to restitution and to rescind alleged loan and mortgage and all applicable claims under the Securities Laws. As soon as the original lender and the Plaintiff

sell the unregistered security, the Defendant is entitled to setoff to settle the claim. The Defendant is raising the claim and is not waiving it. Foreclosure is a damage and Defendant is claiming damages.

IN ADDITION, there is no "Holder in due course" if the note is non-negotiable". (Sirius LC v. Erickson, 156 P. 3d 539-Idoaho:Supreme court 2007). The promissory note is governed by contract law. Further, Defendant denies Plaintiff is a lien holder which is a probable cause charge with no evidence and is an unsupported charge. Defendant rebuts the assumption and presumption under Rules of Evidence.

WHEREFORE, MERS cannot assign the Note and Mortgage as they never held either which may constitute fraud on the court, therefore, Defendant, denies the instrument constitutes a first lien priority mortgage as well as the following:

In June of 2007, Defendant took out a mortgage loan with Quicken Loan, Inc. which involved misrepresentations, non-disclosure of vital facts, theft by taking, conversion fraud, and origination fraud concerning contract law by not disclosing to the Defendant the Note was legal tender treated like cash and deposited without Defendant's knowledge or authorization, and additionally, the exchange or swap, and not a loan, was being processed with the truth being hidden from the Defendant and the deposit slip never sent to the Defendant. Defendant claims no meeting of the minds, contract law violations and rescinds the loan which was previously rescinded prior to Plaintiff filing their complaint. Then on March 19, 2012, this action was filed by Bank of America, N.A. seeking to foreclose on this previously alleged loan with no meeting of the minds as aforementioned. The Utah Supreme Court has recently held that a lack of the meeting of the minds, a mistake as to the fact, can justify rescission of the contract. A single party may rescind a contract when, at the time the contract is made, the parties make a mutual mistake about a material fact, the existence of which is a basic assumption of the contract" (Deep Creek, LLC v. Utah State Armory BD., 2008 UT 3, 17 (quoting Mooney v. GR & Assocs., 746. 2d 1174 (Utah Ct.app.1978. Also, a recent Federal Circuit Court Judge has found Countrywide and Bank of America guilty of robo signers, fraudulent assignments and foreclosure fraud and has levied a $25 Billion dollar restitution. Defendant previously notified Plaintiff the alleged loan is rescinded via certified mail.

For reasons that follow, Defendant disputes Plaintiff's right to foreclose on this loan and requests that this case be dismissed pursuant to Rule 12(b)SCRCP. The Plaintiff has not sufficiently alleged that it has standing to bring this action. Defendant contends that Plaintiff's allegation that Mortgage Electronic Registration systems, Inc. (hereinafter "MERS") assigned Defendant's Mortgage to Plaintiff is insufficient as a matter of law because MERS does not have any interest in the Promissory Note (hereafter "Note") and therefore cannot assign any interest in said Note to Plaintiff. Because Plaintiff has not alleged that it is entitled to enforce the Note, Plaintiff lacks standing to bring this action and has failed to state a claim upon which relief can be granted. The court may dismiss a claim where the defendant shows that a Plaintiff has failed to state facts sufficient to constitute a cause of action. (Hambrick v. GMAC Mortg.Corp, 370S.C.118:634S.E.2d 5(Ct.App.,2006. The Court must base its decision solely on the allegations in the complain and all property please factual allegations are deemed admitted for the purpose of the motion. However, a motion under Rule 12(b)(6) or 12(c) does not admit conclusion of law. (Carolina Winds v. Joe Harden Builder, 297 S.C.74;374 S.E.2d897(Ct.App.,1988) (rev'd on other grounds)

Plaintiff has alleged, among other things, that MERS assigned Defendant's Mortgage to Plaintiff by an Assignment of Mortgage (hereinafter "AOM") dated April 29, 2011 and that BAC Home Loans Servicing, LP f.k.a Countrywide Home Loan Servicing, L.P have merged with the Plaintiff making Plaintiff successor by merger to these companies. Compl. 7 and 8. The complaint contains no other allegations regarding assignments, negotiation, transfer of the Note or any succession in interest between Plaintiff and Quicken Loans, Inc. As a result, Plaintiff has failed to allege how it is that Plaintiff is entitled to enforce Defendant's Note by foreclosing on her home.

Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt". (United States Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 375,; 684 S.E.2d 199, 205 (Ct.App.2009). This would include proving by a preponderance of the evidence that Plaintiff is the owner of the Note and Mortgage and that Defendant had defaulted on the Note. See 385 S.C. at 375; 684 S./E.2d at 199 (citing Franklin Credit Mgmt. Corp. v. Nicholas, 73 Conn. App. 830, 812 A.2d 51, 57-58 (Conn. App. Ct. 2002). Plaintiff is required to plead and prove that it has received rights in both the Note and the

Mortgage because "the assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee absent some indication that the parties also intended to transfer the debt". (S.C. Nat'l Bank v. Halter, 293 S. C. 121, 128, 359 S.E.2d 74,77 (Ct.App.1987).

Because Plaintiff was not the original lender and not the original payee on the Note, Plaintiff will need to show that it became entitled to enforce the Note. The important point is that Plaintiff has not alleged any right to enforce Defendant's Note either through Article 3 or otherwise. The only relevant allegation Plaintiff has made, that MERS assigned Defendant's mortgage to the Plaintiff., is insufficient to transfer any interest in the Note for reasons that follow. In addition Defendant claims the Assignment by MERS is ROBO SIGNED by Dominque Johnson, Malik Basurto and Cynthia Santos as they are named by fraud documents and Basurto in case Echeverria et al v. BAC Home Loans Servicing, LP et al: 6:2010 cv 01933 (Middle District of Florida Orlando Division. Also, Lender's Services, Inc. aka Lender Processing Services, Linda Green, an employee, signed several hundred thousand Mortgage Assignments. Green frequently signed assignments to Trusts several years after the closing dates of the Trusts. Lorraine Brown of Alpharetta, Georgia was sentenced to 5 years in prison for her role in Mortgage-Related Document Fraud Scheme by the U.S. Department of Justice. In a six year scheme, Lorraine Brown prepared and filed more than 1 million fraudulently signed and notarized mortgage related documents with property recorders' offices throughout the United States. Lender Services, Inc. (LSI) was involved in Defendant's loan as closing agent and Title Company, and now possible fraudulent Assignment by MERS. It is a federal crime to sign someone else's name to a legal document and is also illegal to sign your name to an affidavit if you have not verified the information you're swearing to. Both are punishable by prison. The signature of a qualified bank or mortgage official on these legal documents is supposed to guarantee that this information is accurate. The paper trail ensures a legal chain of title on a property and has been the backbone of U.S. property ownership for more than 300 years. The "Robo signing" of affidavits and Assignments of Mortgage and all other mortgage foreclosure documents served to cover up the fact that loan servicers cannot demonstrate the facts required to conduct lawful foreclosure. If indeed Robo Signers signed off on loans without review, they committed fraud by claiming knowledge of a financial matter of which they had no personal knowledge. Briefly, Robo Signers are illegal because fraud cannot be the basis of CLEAR

TITLE, and TRUSTEE'S DEEDS following Robo Signed sales are void as a matter of law, notarization is a recording requirement for many of the documents which was also know to be botched. CLEAR TITLE may not derive from a fraud. Numerous authorities have established the rule that an instrument wholly void, such as an undelivered deed, a forged instrument, or a deed in blank, cannot be made the foundation of a GOOD TITLE. It is the general rule that Courts have the power to vacate a foreclosure where there has been fraud or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be INEQUITABLE to a purchaser or parties. Hence, if forged Robo signed signatures are used to obtain the foreclosure, it certainly makes a difference in judicial states as any apparent sale based on Robo signed documents is void...without any legal effect. Robo signing is illegal in all 50 state, hence all 50 Attorney General's become involved in this scheme. These documents are not recordable without good notarization. The reason these documents are notarized in the first place is because otherwise they will not be accepted by the County recorder. Moreover, a notary who helps commit real estate fraud is liable. The notary is in California where Countrywide is located. Defendant claims fraud in the MERS ASSIGNMENT and civil damages and request this Honorable Court turn this case over to the Attorney General of South Carolina to further investigate the Robo Signing of the MERS Assignment and any violations of the False Claims Act inasmuch as the alleged loan is securitized if allowable by law, or grant the Defendant's MOTION TO DISMISS or a 90 Day Stay concerning this case in order for the Defendant to seek the South Carolina Attorney General. Further, Defendant claims declaratory relief and damages, an injunction and attorney fees for Unfair Business practices, as well as claims for slander of title; abuse of process, civil theft and any other civil remedies under the law..

The role of MERS has been much debated recently, but one thing that is clear is that MERS has no ownership interest in promissory notes and thus no ability to assign these notes. In MERS v. NEBRASKA Dept. of Banking and Finance, MERS brought an action contesting the Nebraska Department of Finance's finding that MERS was a "mortgage banker" under Nebraska law and subject to license and registration requirements as a result. (270 Neb. 529; 704 N.W.2d 784 (Neb.2005). In that case, MERS argued that "it does not own the promissory notes secured by the mortgage and has no right to payments made on those notes. MERS explains that it merely "immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur" (270 Neb. at 533, 704 N.W. 2 d at 786. Since MERS argued and

prevailed on this position, it would be estopped to deny that it has ownership of Defendant's Note now and could transfer that ownership to Plaintiff. "When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him" (Hayne Fed. Credit Union v Baily, 327 S.C. 242, 252, 489 S.E. 2d 472, 477 (1997). Because MERS admits that it has no ownership interest in promissory notes, it is impossible for MERS to have assigned Plaintiff any interest in Defendant's Note by virtue of the Assignment of Mortgage, AOM. By information and belief, Defendant claims restitution against the Plaintiff as MERS is an shell data system clouding the titles of homeowners and fraudulently placing assignment recordings including robo signing of the assignment in Aiken County on my home records. It is important to note multiple lawsuits have been filed against MERS and the Plaintiff across the nation and have prevailed with multi millions in settlements by the Plaintiff for fraud and wrongful foreclosures which are too many to list in this document.

While a challenge to a Plaintiff's right to foreclosure based on their failure to plead proper assignment of a promissory note may appear to be a "technical" defense that bears no relation to any rights of the Defendant, this is only appearance. The Defendant has an overriding interest in making sure that, if her home is foreclosed and sold to pay a debt, the party that brings the action and conducts the sale is a party that is actually entitled to enforce the Note. Article 3 of the UCC provides that payment of a promissory note is only effective to discharge the obligation on that promissory note if payment is made to a person that is entitled to enforce the note. (S.C. Code Ann.36-3-601(a). If the Defendant's home were foreclosed and sold and the proceeds paid to a party who was not entitled to enforce the note under the UCC, the Defendant's obligation under the note would be discharged and she would remain liable to pay the note to whoever was entitled to enforce. Requiring the Plaintiff to plead and prove that it is entitled to enforce the note PROTECTS the Defendant from the risk of DOUBLE LIABILITY. Defendant is claiming recoupment, restitution and setoff. Under UCC Article 1 the sale of promissory notes is subject to the statute of frauds.

OF MAJOR CONCERN, is the OFFICE OF THE COMPTROLLER OF THE CURRENCY (hereafter, OCC) signed a CEASE AND DESISTS settlement agreement with MERS on April 13, 2011. Among other things, the CEASE AND DESIST ORDER finds, "We have identified certain deficiencies and unsafe and unsound practices by MERS and MERSCORP that present financial, operational, compliance, legal and reputational risks to MERSCORP and MERS, and to the participating MEMBERS. (OCC No.AA-EC-11-20, Board of Governors; Docket Nos.110051-B-SC-1, 11-051-B-SC-2; FDIC-11-194Bots no.11-040; FHFA No. EAP-11-01). The unlawful assignment of Defendant's mortgage and note by MERS was dated Aril 29, 2011 in flagrant disregard of the OCC CEASE AND DESISTS agreement. Defendant will order an OCC investigation into this deception by the Plaintiff and requests damages as foreclosure is a damage. Noted attorney Philip Kramer, a senior partner at the law firm of Kramer & Kaslow provides insight, MERS Corp is the owner of the Mortgage Electronic Registration Systems (MERS), one of the cornerstones of the current banking crisis.

In order to cut up loans and move the pieces around the world at the speed of electronics again and again and again, until no one is sure who owns what, financial institutions have been using MERS as the "beneficiary", a legal term which in practical terms means they are entitled to foreclose on behalf of the lender, except MERS is nothing more than an electronic data base. They are often named as beneficiary.

However, in order to legally be named as beneficiary they would have had to put up funds on the loan. Not to mention the fact that the recordation itself is not even official. BUT, most importantly, MERS is never a Holder in Due Course. Philip Kramer goes on to observe that, "We are a nation of laws". Everyone knew that MERS didn't have the right to appear as beneficiary, but it would have been inconvenient to act on this because MERS was in widespread use throughout the banking industry. It was wrong, wrong, wrong, but everyone was doing it. ALL FORECLOSURES ASSOCIATED WITH MERS must CEASE AND DESISTS, NOW!!! This is in accordance to the OCC's CONSENT ORDER. Defendant claims a conspiracy to defraud by the Plaintiff by filing a foreclosure on the Defendant and claims civil damages.

In addition, "Merscorp, Inc. and other conspirators were all involved in a fraudulent scheme and RICO enterprise herein complained of. The employees of the MERS, including

many licensed attorneys, have become skilled in using the artifice of MERS to sabotage the judicial process to the detriment of borrowers, and over the past several years, have relied upon MERS to do just that". (Figuero v. MERSCORP, Inc. Case 0:10-cv61296-CMA Page 2).

"Similarly beyond the imagination of most persons is and was the scope of the DISHONSTY of the lenders and those acting in furtherance if the scheme including the present Plaintiff. Through the present time, persons acting within the ambit of this conspiracy, most particularly including the Plaintiff herein, have continued to operate consistent with the core principles of dishonesty and obscurantism engendered by the original conspirators. These dark influences have spread throughout the financial services, lending and banking industries into the national economy and beyond, threatening the economic stability of the United States and the world as a whole. This Court is urged in the strongest possible way to apply a presumption of FALSITY when reviewing any documentary evidence in this court by one or more of the Plaintiffs. Such a presumption is not just warranted, it is indeed compelled by the extent to which the Plaintiffs and those with which they are associated have long acted in a malicious and wanton manner evincing complete contempt for the judicial process and the rights of persons having interests contrary to their own. This is particularly true because the Plaintiffs' contempt for due process is compounded by their specific intention to obviate the requirement that documents prepared for legal use be truthful, authentic, and legitimate."(Figuero v.MERSCORP, Inc. Page 5 &5)

"There is one sort of lie that, when later discovered, constitutes the strongest possible proof of a person's malicious intentions. What is it" A lie about one's name or identity. Many such lies are present in this instance. The whole purpose of the MERS is to allow "servicers" to pretend as if they are someone else: The "owners" of the mortgage here, or the real party of interest. IN FACT THEY ARE NOT". (Figuero v. MERSCOPRP, Inc. Page 5)

In Plaintiff's original complaint #7, Plaintiff claims by virtue of an assignment dated April 29, 2011, Mortgage Electronic Systems, Inc. assigned said mortgage unto BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, the present lien holder and Plaintiff herein. Defendant denies #7 as MERS cannot assign a note or mortgage as they never hold the notes or mortgages and no interest in either. Nor does the mortgage give MERS any

rights to the note. A case to note in February 2012 is United States Bankruptcy Judge Robert Grossman (NY) who ruled that MER'S business practices are unlawful. At each transfer, the note and mortgage are supposed to be "assigned" to the new owner. The Judge rejected every aspect of MERS argument. The Court rejected the claim that MERS could be both holder of the mortgage as well as nominee of the "true" owner. It also found that "mortgage of record" is a vague term that does not give one legal standing as mortgagee. Hence, at best, MERS is only a nominee. It rejected MERS claim that as nominee, it can assign mortgages—a nominee has limited rights and those most certainly DO NOT include the right to transfer ownership unless there is specific written instruction to do so. In scarcely veiled anger, the Judge wrote, "According to MERS , the principle/agent relationship among itself and its members is created by the MERS rules of membership and terms and conditions, as well as the Mortgage itself. However, none of the documents expressly creates an agency relationship or even mentions the word, "agency". MERS would have this Court cobble together the documents and draw inferences from the words contained in those documents." Judge Grossman rejected MERS arguments, saying that mere membership in MERS DOES NOT provide "agency" rights to MERS, and agreeing with the SUPREME COURT of KANSAS that ruled, "The parties appear to have defined the word (nominee) in much the same way that the blind men of Indian legend described an elephant—their description depended on which part they were touching at any given time". He went on to disparage MER'S claim that since in legal theory the "MORTGAGE FOLLOWS THE NOTE', the Court should overlook that MERS separated them. Therefore, the note would be unsecured and the Defendant's bankruptcy was discharged in December 2012. Defendant claims that MERS has irretrievably destroyed the clear chain of title and claims damages due to being forced to quiet title expenses.

In making further assertions, concerning MERS, these facts follow,

a) Assignments were made by "officers" of MERS using delegations of authority of no longer existing MERS predecessors corporations.

b) The Officers of MERS who are allegedly authorized to sign documents on behalf of MERS are not "officers" of the corporation as the term officer of a corporation is legally defined.

c) The MERS assignment is deficient because it omits an assertion that the assignor is the holder under the MERS registry for the MIN number of the mortgage being assigned and the transfer is being recorded on the MERS registry.

d) An interest in a mortgage cannot be conveyed by an endorsement of the mortgage note in blank.

e) Because MERS is a mere nominee/custodian with no legal or beneficial interest in the mortgage note, MERS cannot assign a mortgage note to an assignee. (MERS as a corporation is not a custodian of the promissory notes secured by deeds of trust or other mortgage security instruments for which it serves as nominee)

f) Because MERS is a mere nominee/custodian with no legal or beneficial interests in the mortgage note, the mortgage has been divided from the note rendering the mortgage unenforceable.

g) MERS DISCLAIMS ever holding notes, however, MERS holding of the note endorsed in blank as nominee of a mortgage sold to a mortgage backed securities Trust is a violation of REMIC requirements.

h) Also, MERS holding of the note endorsed in blank as nominee of a mortgage sold to a mortgage backed securities Trust is a violation of warranties and representations contained in the master pooling and servicing agreement and prospectus.

i) MERS was created to perform a service with an ILLEGAL purpose, namely to circumvent the recordation of assignments and payment of recording fees. The issuance of assignments in furtherance of such an ILLEGAL purpose is unenforceable.

j) An assignment of the mortgage note from MERS to the servicer of the note is of either no legal effect or an illegal conversion of the note.

k) Since no evidence of MERS' "ownership" of the underlying note has been offered, and other courts have concluded that MERS does not own the underlying notes, then MERS did not own the underlying note, and it could not transfer the beneficial interest to another. Any attempt to transfer the beneficial interest without ownership of the underlying note is VOID LAW.

And finally, in the case of "The Bank of New York, as Trustee v. Sameeh Alderazi, the Court denied the Motion and stated in denial the following:

a) The court denied the application because the Plaintiff, could not demonstrate that the original mortgagee, Countrywide Home Loans, Inc., had authorized the assignment of the mortgage to the Plaintiff.

b) The assignment to Plaintiff was executed by Mortgage Electronic Reporting System (MERS) a nominee for American Wholesale Lenders. Black's Law Dictionary defines a nominee as "a person designated to act in place of another, usually in a very limited way".

c) An assignment by an agent without authority from the principal is a nullity. Plaintiff failed to provide evidence that Countrywide had authorized MERS to assign its mortgage to Plaintiff.

d) Plaintiff submitted in addition to the MERS assignment, what it purports to be an endorsed note and a corporate resolution of MERS showing that MERS had appointed all officers of Countrywide Financial Corporation as assistant secretaries and vice presidents of MERS. This present motion must fail for the same reason as the prior motion as Plaintiff has failed to provide documentation from the Lender that it authorized the assignment.

e) Affidavits are insufficient to establish ownership of the note on fact that purported endorsement is undated. And, the affidavits are based on books and records, not on personal knowledge. Yet the affiants did not produce any of the records on which they based their assertion that Plaintiff possessed an endorsed note at the time the action was commenced.

f) Even putting aside the fact that there is no evidence that Countrywide Financial Corporation and Countrywide Home Loans, Inc. are the same entity, the fact that MERS

authorized Countrywide officers to act on its behalf, is not evidence of the converse. It is no evidence that Countrywide authorized MERS officers to act as officers of Countrywide. Further, the fact that Selman (the person who signed the assignment) may have been an officer of both Countrywide and MERS does not alter the fact that she executed the assignment on behalf of MERS.

The face of the assignment indicates that MERS is assigning the mortgage as nominee of America's Wholesale Lender (a trade name for Countrywide), and more importantly, that Selman executed the assignment as assistant vice president of MERS. The assertion that the assignment incorrectly lists Selman's title as assistant vice president of MERS, instead of assistant secretary and vice president of MERS, is of no relevance other than to demonstrate the CASUAL AND CAVALIER manner in which these transactions have been conducted. They provide no evidence that Countrywide in fact approved or authorized the assignment. Similarly, William C. Hultman, Secretary and Treasury of MERS, states in a conclusory fashion in paragraph 8 of his affidavit that Countrywide "instructed MERS to assign the Mortgage to Bank of New York" without offering the basis for that assertion, other than it's role as nominee.

Then Plaintiff claims that by terms of the mortgage MERS as nominee was granted the right and then quotes the right, however, this language is found on page two of the mortgage under section "Borrower's Transfer to Lender of Rights in the Property" and therefore is facially an acknowledgment by the borrower. The fact that the borrower acknowledged and consented to MERS acting as nominee of the Lender has no bearing on what specific powers and authority the Lender granted MERS as nominee. The PROBLEM is not whether the borrower can object to the assignees' standing, but whether the original Lender, who is not before the Court, actually transferred rights to the Plaintiff. Furthermore, while the mortgage grants some rights to MERS, it does not grant MERS the specific right to assign the mortgage. The only specific rights enumerated in the mortgage are the right to foreclose and sell the property. The general language "to take any action required of the Lender including but not limited to, releasing and canceling this "Security Instrument" is not sufficient to give the nominee authority to alienate or assign a mortgage without getting the mortgagee's explicit authority for the particular assignment.

g) Plaintiff also argues that the agreement between MERS and its members grants MERS the authority to assign the mortgages of it's members and also as mortgagee, however, in this case MERS was named in paragraph (c) of the mortgage as Mortgagee of record for the purpose of recording the mortgage. Being the mortgagee of record for the purpose of recording the mortgage does not confer the right to assign the mortgage absent an instruction to do so from the Lender. Paragraph 2 of the MERS terms and conditions provide that "MERS shall serve as Mortgagee of record with respect to all such mortgage loans solely as a nominee in an administrative capacity", and that "MERS agrees not to assert any rights (other than rights specified in the governing documents) with respect to such mortgage loans or mortgaged properties.". Assigning or alienating a mortgage without an explicit instruction from a Lender to do so, is not acting in an administrative capacity.

Further, paragraph 6 of the terms and conditions provides that, MERS system is not a vehicle for creating or transferring beneficial interests in mortgage loans." Plaintiff has failed to meet the very basic requirement that proof of an agent's authority must be shown from the mouth of the principal not the agent. (Lexow & Jenkins, P.C. v. Hertz Commercial Leasing Corp., 122 AD2d 25, 504 N.Y. S. 2d 192 (2nd Dept 1986), Siegel v. Kentucky Fried Chicken of Long Island, Inc., 108 AD2d 218, 488 N.Y.S.2d 744 (2nd Dept 1985)

As Plaintiff has not shown that it owned the note and mortgage, it has no standing to maintain this foreclosure action. Therefore, the renewed motion for an order of reference must be denied and the action dismissed.

The Court has raised the standing issue sua sponte because, in this case, it goes to the INTEGRITY OF THE ENTIRE PROCEEDING. For a Court to allow a purported assignee to foreclose, in the absence of some proof that the original lender authorized the assignment of the mortgage to them, would cast doubt upon the validity of the title of any subsequent purchasers, should the original lender or successor challenge the assignment at a future date. (Concluding , The Bank of New York, as Trustee v. Sameeh Alderazi)

The Defendant has brought this case to the attention of Honorable Court as the assignment by MERS is just the same and Quicken Loans has not given any authority to MERS to assign the Defendant's mortgage. Defendant's Motion to Dismiss is reasonable and with the

integrity of the Court. More cases, LLP Mortgage v. Sabine Properties: FINAL DISPOSITION. No Evidence 'MERS' Owned the Note, COULD NOT Assign it. NY SUPREME COURT FINAL DISPOSTION. Here, there are no allegations or evidence that MERS was the owner of the note such that it could assign it to LLP. THUS, the assignment from MERS was insufficient to confer ownership of the note to LLP, and it has NO STANDING TO BRING THIS ACTION. Kluge v. Fumoaz - 145 AD2d at 538 , "holding that the assignment of a mortgage without transfer of the debt is a nullity/the assignment of a mortgage without a valid transfer of the mortgage note is a nullity. (145, AD2 537) Also, NO EVIDENCE MERS PHYSICALLY DELIVERED MORTGAGE AND NOTE. (MERS V. Diana Esposito), MERS not holder owner of note. (HSBC v. Henry Feld)

Further, "in addressing the issue of standing, it is well settled that an action to foreclose on a mortgage may not be brought by one who has no title to it, and absent transfer of the debt, the assignment of the mortgage is a nullity". (GRO-WIT Capital, LTD v. 1080 UTICA, LLC, 2010)

And, FLORIDA APPELLATE COURT UPHOLDS THE CONCEPT OF DETERMINING THE STANDING OF THE FORECLOSING PARTY BEFORE ALLOWING SUMMARY JUDGEMENT. (BAC v. US Bank)

In RE: Walker, Case No.10-21656-E-11 Eastern District of CA Bankruptcy Court rules MERS has NO actionable interest in title. "any attempt to transfer the beneficial interest of a trust deed without ownership of the underlying note is void under California Law." "MERS could not, as a matter of LAW, have transferred the note to Citibank from the original lender, Bayrock Mortgage Corp." The Court's opinion is headlined stating that MERS and Citibank are not the real parties of interest.

Defendant states that MERS could not, as a matter of LAW have transferred the note to Plaintiff, BAC Home Loans Servicing, LP f.k.a. Countrywide Home Loans Servicing, LP from the original Lender as there is no proof of authority. Also, Defendant states that any Mortgage or Note the Plaintiff claims to be holding is without endorsement of a person with personal knowledge of the facts that the complete file concerning this mortgage was transferred to

Countrywide or to Fannie Mae Trust and that the copy of the mortgage submitted to the court is authentic and there is no evidence the note is an authentic original copy. (Mers v.Torr)

In addition the Oregon Supreme Court recently handed down opinions in two MERS cases, Brandrup v. ReconTrust Company and Niday v. GMAC Mortgage, LLC. The court agreed that the core question is one of statutory construction, in other words, the court must determine what meaning the legislature intended when it defined the term "beneficiary". The Lender is the true beneficiary because the Lender alone is, and is designated as, the person to whom the obligation is owed. Further, the meaning of "beneficiary" is not only determined by statute, "that meaning is incorporated into, and cannot be altered by, the party's agreement." Although the court need not have said more than that, the court takes a short detour near the end of this section of the opinion to explain that it is a "fundamental principle in mortgage law...that a foreclosing party must have the power to enforce the underlying note." This "functional unity" between the beneficiary and the person entitled to enforce the note (the PETE) "has longstanding roots in the COMMON LAW ITSELF". Mers is not and never has been a beneficiary. The original Lender is the true beneficiary, therefore MERS CANNOT assign a beneficial interest of which they do not have. Also, MERS has recorded an Unrecordable Assignment. (Barringer v. Loder). Lenders must provide "definitive documentation" that establishes the right to foreclose. The assignments by MERS are shams for 2 reasons. FIRST, at the time they are executed, neither MERS nor the original Lender has any interest to convey. SECOND, the assignment does not reflect the actual chain of transfers that took place before , so it is not a memorialization of an assignment that previously occurred by operation of law. Also, the Oregon Supreme Court answered the question whether MERS can assign legal title to the trust deed (mortgage), and the court had little difficulty answering "NO." MERS is neither the trustee nor the beneficiary so MERS holds neither legal title or equitable title. MERS is dressed like a beneficiary and not an actual beneficiary. MERS does not hold title to the trust deed, MERS cannot convey legal title, nor is MERS an agent as explained previously. The true beneficiary is not MERS. It is the person entitled to enforce the note which in this case is the investors of the securitized alleged loan. Since there is no loan, the Plaintiff must produce "definitive documentation" establishing its right to foreclose with the original complaint. And finally, in the Niday case, the Oregon Supreme Court made it crystal clear that Niday was entitled to proof MERS was acting as a duly authorized agent when it attempted to foreclose and that its principle is a person entitled to

enforce the note. The Defendant states that the Plaintiff has done neither in this case, and this should have been established at the inception of complaint. And, MERS is not the beneficiary of the Defendant's mortgage and neither MERS, nor the trustee, nor the loan servicer (Plaintiff) have demonstrated legal interest in the mortgage loan. There is no evidence offered to show how Bank of America (Plaintiff) acquired an interest in the note and mortgage. The Plaintiff was not the owner of the note at the time of the foreclosure. The Plaintiff has misrepresented the identity of the note owner and Defendant claims damages as foreclosure is a damage.

The Mortgage Compliance Investigators has done extensive research concerning MERS and Defendant will save the history and executive names who comprised the collusion for the court room, however, it is well known at the helm Angelo Mozilo of Countrywide took the lead. The National Registry was originally intended to satisfy the requirements of the Uniform Electronic Transactions Act (UETA) and Electronic Signatures (ESIGN). (S.C. Code 26-6-10 et.seq.2004).(Defendant never consented or authorized ESIGN and the Federal e-Sign Act excludes from the statute Foreclosure under mortgage. Nevertheless, 15 U.S.C. 7003 (3) states that Article 3 and Article 9 does not apply to UETA and ESIGN as we are talking about real property, and not personal property. (Therefore, Article 3 would not apply to the e-Note Plaintiff previously showed Defendant on January 11, 2013). MERS operates in the intangible world of e-Notes and e-Mortgages, not paper Notes and paper security instruments. Attempting to provide functionality for paper note tracking would greatly complicate things for which MERS was designed to do. If one were to look and compare the basics, then you could discern the difference between Registration vs. Recording. MERS is not a system of LEGAL RECORD nor a replacement for the PUBLIC LAND RECORDS. MERS is solely a TRACKING SYSTEM. No loan interests are transferred using MERS, they are only TRACKED. MERS is not a party to the Tangible Promissory Note, has not funded any money and is conferred no rights. Upon BIFURCATION of the Tangible Promissory Note and the intangible payment obligation, the agency relationship of subsequent parties does not exist. The purpose of an assignment of Mortgage is to memorialize the sale of the Tangible Promissory Note. However, that is not what is actually happening. The Intangible Payment Obligation has been ripped out of the Tangible Promissory Note years prior to the purported Assignment of Mortgage. Usually it was done shortly after the signing of the closing documents with the homeowner within days or weeks. However, MERS is being used in an attempt to bring the parts of the entire instrument together

with fancy verbiage on the document. As MERS operates in the realm of INTANGIBLE RECORDS and not in the earthly world of Tangible written documents, records appear and disappear as if they never existed. Everything that we have been discussing leads back to TITLE. Which is the union of all elements constituting the "LEGAL RIGHT" to control and dispose of REAL PROPERTY. It is about RIGHTS acquired. It is the "LEGAL EVIDENCE' of a person's ownership (interest) in the real property. The Plaintiff has NO LEGAL RIGHTS to the Defendant's real property.

Lastly, SUMTER COUNTY SOUTH CAROLINA COURT OF COMMON PLEAS, Mers,Inc.v.Girdvainis CaseNo. 2005-CP-43-0278 (Order dated January 19, 2006, citing to the representations of MERS and court findings in Mortgage Electronic Registration Systems, Inc. v. Nebraska Dept. of Banking and Finance, 270 Neb.529, 704 NW 2d.784). As such, ALL MERS assignments are suspect at best, and may in fact, be fraudulent. The COURT OF COMMON PLEAS OF SUMTER COUNTY, SOUTH CAROLINA also found MERS' rights were not as they were represented to be; the MERS had no rights to collect on any debt because it did not extend any credit: none of the borrowers owe MERS any money; THAT MERS DOES NOT OWN THE PROMISORY NOTES SECURED BY THE MORTGAGES; AND THAT MERS DOES NOT ACQUIRE ANY LOAN OR EXTENSION OF CREDIT SECURED BY A LIEN ON REAL PROPERTY. DEFENDANT denies MERS has any rights to assign anything.

7. Defendant states Plaintiff lacks standing to bring an action. (Wells Fargo Bank v. Jordon Cuyahoga App. No. 91675, 2009, Ohio-1092 (holding that Civil Rule 7 (A) does not apply unless a Plaintiff has standing in the first place to invoke the jurisdiction of the court. Accordingly, a bank that is not a mortgagee when suit is filed is not the real party in interest on the date the complaint is filed, and cannot cure it's lack of standing by subsequently obtaining an interest in the mortgage). Accord, Bank of New York v. Gindele, Hamilton App. No.C-090251, 2010-Ohio-542. In addition, Plaintiff has failed to provide evidence that it was in possession of the original note prior to filing the complaint and foreclosure lawsuit. STANDING, however, includes not just the notion that the party has a "sufficient stake" in the outcome of the litigation, but also, that the party is in fact the "real party of interest." This is the "at least equally - important requirement that the claim be brought by or on behalf of one..."in whom rests, by

substantive law, the claim sought to be enforced." (Kumar Corp. v. Nopal Lines, Ltd. 462 So. 2d 1178, 1183 (Fla.3d DCA 1985)

8. Plaintiff's complaint fails to state cause of action upon which relief requested may be granted and therefore this action is barred. "IN ORDER TO STATE A CAUSE OF ACTION, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief". (Med. & Benefits Plan v. Lago, 867 So. 2d 1184 (Fla. 5th DCA 2004).

9. Defendant asserts all terms and condition and rights of the promissory note and mortgage upon which Plaintiff's alleged claim is based. The Defendant is the originator of the Note and owner of the Note. The Note is legal tender and was deposited by the original lender and successors as such, therefore, no loan was made only an exchange or swap. Banking law states credits on bank ledgers cannot be sold. Plaintiff is in violation and claims that a mortgage transaction is a so-called loan, but it is a quid pro quo exchange deceptively called a loan. The evidence of this quid pro quo exchange is in the bookkeeping entries according to GAAP (Generally Accepted Accounting Principles). Title to the promissory Note still belongs to the Defendant. In addition, when a bank grants a loan all they are doing is transferring cash value from the Defendant's promissory note to themselves without knowledge or disclosure to Defendant which is theft. The Plaintiff or predecessors did not loan one cent of the bank's money or its depositors funds to obtain the Defendant's promissory note, but posted the alleged Defendant's promissory note on its books as a deposit from the Defendant to the bank and uses the credit the bank obtains from the alleged borrower via her promissory note to create the check book money they give to her as the so-called loan, and vastly increases the assets of the bank through fractional reserve techniques. Therefore, the debt is discharged upon tender of a promissory Note whether accepted or rejected. Commercial redemption is a legal administrative remedy provided by Congress via Public Policy. There was no exchange of valuable consideration and Plaintiff has failed to show proof. Defendant states these actions of the Plaintiff are false, deceptive and misleading practices in collecting a debt in violation of Section 1692, Title 15 U.S. Code(the Fair Debt Collection Practices Act, or FDCPA). In addition, "FIRST NATIONAL BANK OF MONTGOMERY v. Jerome Daly 1969, jury decided that the mortgagee didn't owe the bank any money, since it failed to give consideration, because it didn't lend the bank's money, but created the funds out of thin air, in collusion with the Federal

Reserve. There's also the 1968 Minnisota Trial Court's decision holding the Federal Reserve Act unconstitutional. Simply, the bank had not fulfilled, maintained or upheld it's part of the requirement for real consideration and the Mortgage contract in whole, for the reason that the "MONEY" was not the "real" property of the bank, as it was created "out of nothing" as soon as the loan agreement was signed, by ledger entry. "Mr. Daly explained that the money was in fact not the property of the bank, for it was created out of nothing as soon as the loan agreement was signed". What the banks do when they make loans is to accept PROMISSORY NOTES in exchange for credits. Reserves are unchanged by the loan transactions, but deposit credits constitute new additions to the total deposits of the banking system. In other words: The money doesn't come out of their existing assets, the bank is simply inventing it, putting up nothing of it's own, except for a theoretical liability on paper. The banks President, Mr. Morgan, took the stand and affirmed that, in collusion with, the Federal Reserve Bank, Inc. did create the money out of nothing. Justice Martin V. Mahoney personal memorandum, "in the Judge's personal memorandum he recalled that "the Plaintiff (bank president) admitted that in combination with the Federal Reserve Bank did create the money and credits upon its books by bookkeeping entry.. The money and credit first came into existence when they created it. Mr. Morgan admitted that no US Law or Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the Note. The jury found that there was no lawful consideration, and I agree." He also poetically added, "Only God can create something of value out of nothing." And upon this revelation, the court rejected the bank's claim for foreclosure.

10. Defendant asserts all requirements of applicable mortgage foreclosure statutes.

11. Plaintiff is not the lawful assignee of the Promissory Note and Mortgage upon which Plaintiff's alleged claim is based. The Fannie Mae Trust naming the individual investors as the lawful assignees of the Note is demanded. Plaintiff must prove entitlement to promissory notes was authorized in the Countywide merger with Plaintiff, Bank of America. From information and belief, Countrywide did not sell entitlement rights of promissory notes in the merger with the Plaintiff, Bank of America. Plaintiff has not acquired any financial losses or harm in this matter. And furthermore, for example, on March 1, 2008, a Bank of America spokesperson said that Countrywide's liabilities were factored into the purchase of Countrywide: We bought the company and all of its assets and liabilities...We are aware of the claims and potential claims

against the company and have factored those into the purchase." In an interview with the New York times for an article discussing the impact of mortgage-related loss exposure on banks, Bank of America's former CEO confirmed that Bank of America was aware of Countrywide Financial's legal liabilities and accepted them as part of the cost of the acquisition. (United States of America, ex rel. Edward O'Donnell v. Bank of America Corporation, successor to Countrywide Financial Corporation, Countrywide Home Loans, Inc., and full Spectrum Lending, Page 40 of Complaint in intervention of the United States of America). This is proof the PLAINTIFF HAS NOT BEEN HARMED or SUFFERED ANY LOSSES concerning Defendant's case.

12. Plaintiff cannot produce the original "wet ink" Promissory Note and Mortgage upon which this action is based, and therefore, relief requested is barred.

13. Plaintiff is not the holder of the original "wet ink" Promissory Note and Mortgage upon which this action is based, and therefore, relief requested is barred. Bank of America was not given any entitlement to promissory notes from Countrywide in the merger with Countrywide. (Kemp v. Countywide)

14. Plaintiff is not in possession of the original "wet ink" promissory note and Mortgage upon which this action is based and therefore relief requested is barred. Defendant demands strict proof of authenticity by Plaintiff with Court Panel and forensic expert of any Note produced by Plaintiff in Court. The original promissory note belongs to the Defendant as ORIGINATOR and MAKER. Indeed, where the Defendant denies that the Plaintiff seeking foreclosure has an ownership interest in the mortgage, the issue of ownership becomes an issue the Plaintiff must prove. (Carapezza v. Pate, 143 So.2d 346, 347 (Fla.3d DCA 1962). Each time a Promissory Note is assigned, i.e. sold to another party, the Note itself must be endorsed with the name of the note's new owner. Each time a Mortgage is assigned to another entity, that transaction must be recorded in the County Records Office. In order for a Mortgage or Promissory Note to be valid, it must have what is known as "perfection" of the chain of title. In other words, there must be a clear, unambiguous record of ownership from the time the Defendant signed papers at the closing, to the present moment. ANY LAPSE IN THE CHAIN OF TITLE CAUSES A "DEFECT" IN THE INSTRUMENT, MAKING IT INVALID. Courts

have rejected the notion that MERS has the legal authority to assign Title to a particular party in the first place. Again MERS does not have any financial interest in either the property or the Promissory Note. Therefore, since the perfection of the CHAIN OF TITLE cannot be independently verified, the Defendant claims MERS HAS NO LEGAL AUTHORITY TO ASSIGN TITLE OR ASSIGN THE PROMISSORY NOTE as Defendant's alleged loan has been sold to different entities and securitized and sold to an UNKNOWN NUMBER OF ENTITIES . In the U. S. SUPREME COURT case Carpenter v. Logan , it was ruled that where a Promissory Note goes, a deed of trust must follow. In other words, the deed and the Note cannot be separated . If your note has been securitized, it now belongs to someone other than the holder of your mortgage. This is known as BIFURCATION-THE deed of trusts points to one party, while the Promissory Note points to another. this the Defendant's defense claims that since the relationship between the deed/mortgage and the note has become DEFECTIVE, it renders the deed of trust/mortgage unenforceable, and the Defendant bankrupted the unsecured Note in 2011. In addition, the promissory note must also have a clear chain of title, according to the UCC. Defendant claims there is not clear chain of title on the note. In the case, US Bank NA v. Ibenez, the court ruled that blank assignment is not sufficient to claim perfection, an assignment in blank does not constitute a lawful assignment of a mortgage. Defendant claims there is not a sufficient financial interest in the mortgage to permit Plaintiff to foreclose. Since, the Defendant's loan has been securitized, the original lender has been paid. At that point the debt was written off and the debt should be considered settled. THE CONSTITUTIONAL and JUDICIAL requirement of standing derives from "case and controversy" requirements in Article III of the U.S. Constitution. (Oppenheim law) In general, the securitization process and resulting trust are governed by what is known as the Pooling and Servicing Agreement (PSA) which sets forth the exact steps necessary for a trust to be created, for the bundled mortgages to be transferred into the trust, for issuance of the securities by the trust to the depositor or on the open market, generally, to institutional investors and for the maintenance of the trust once created in order to maintain favorable tax status. The PSA is a key piece of documentation from the bank in order for the Judge to determine whether the trust owns the loan being foreclosed. However, the true essential component of the PSA is not a public record but rather a document aattached to the PSA known as the Master Loan Schedule. While the PSA is essential because it sets forth the rules for each bundle of mortgage loans (which have been violated as note was not

transferred by Countrywide to Fannie Mae as noted in this document) and violations of these rules, makes the transfer defective. The Master Loan Schedule establishes whether the subject mortgage was ever transferred to that particular trust. Therefore, while both are essential, if the loan was never transferred to the trust, this is the home run of all foreclosure defense strategies, because the trust, simply put cannot sue to collect on something it does not own. (Oppenheimer Law). Increasingly, there are concerns that in many cases the loan documents have not been properly transferred to the trust which raises questions about whether the trust has title to the loans and hence STANDING to bring foreclosure actions on defaulted loans. These violations create clouded titles. it is also crucial to note that under the PSA, the trustee and the servicer bear liability if they transfer mortgages in violation of the PSA requirements, causing the trust to lose REMIC tax status.

Standing, is one of the five traditional legal requirements the Plaintiff must meet in order to bring suit in a court of law. Of the five requirements, standing is perhaps the most crucial requirement because it requires the aggrieved party to prove that they have the right to seek redress. Under Article III of the United States Constitution, standing is often characterized by the statement that a Plaintiff must show there is "a case and controversy," and there are 3 requirements one must prove. FIRST, they must prove a legally cognizable injury. (The Plaintiff has not been injured and not suffered and financial losses). SECOND, that the injury is concrete and particularized; and THIRD, a causal relationship between the injury and the conduct of the defending party. The Plaintiff has not been injured, but the Defendant has been injured by the Plaintiff's conduct, robo signing, misrepresentations, predatory lending, non-disclosures and blatant disregard of the Defendant's constitutional protections. STANDING is the substantive due process notion of what a party must do in order to have the legal right to bring a legal action through our judicial system. Without the protective concept of standing, anyone could sue anyone at any time, ultimately causing legal anarchy. To fabricate standing, the banks used fraudulent assignments, bad notaries and allowed for perjured documents to be presented to Judges. The banks were forced to engage in such conduct because...the bank broke the mortgage into different parts, splitting the Note form the Mortgage by assigning the Mortgages to a third party (MERS) and selling the Notes to another entity. the Notes were then further sold off in tranches. Questions will be asked for a generation how BANKS literally HIJACKED the JUDICIAL SYSTEM turning it into their own collection system while

dispensing with the Rules of Law that have protected property right owners from the day our great nation was founded. Ironically, the robo signing crisis was an attempt to placate the recording system requirements in light of the fact that there was significant question as to whether the assignment form MERS would provide an effective Chain of Title. By creating new bogus assignments DATED YEARS after the trusts were created and closed, the banking industry created a smoking gun and literally got their hands caught in a larger and messier cokkie jar than the one they were trying to avoid, PROVIDING UNDENIABLE EVIDENCE that the transfers into the trust were INVALID or had never occurred. (Oppenheimer Law)

In defendant's case, the Plaintiff even file an illegal assignment during the CEASE AND DISIST ORDER FOR MERS from the OCC, not to mention, the Countrywide's testimony of Linda DeMartini stating on the record that the trustee at the time foreclosure, and in fact since the origination of the loan, had never had possession of the note for a particular mortgage. The Judge threw out THE CASE ON GROUNDS THE TRUSTEE DID NO HAVE PROPER STANDING TO FORECLOSE. During an investigation by Abigail Field with FORTUNE, MAGAZINE they examined 130 cases where Bank of America's was foreclosing on Countrywide mortgage backed securities allegedly held by securitized trusts. 104 were blatant failures to properly securitize with lack of proper endorsements and then magically appearing endorsements. Another interesting point to note is that the PSA was specifically designed to govern a securitized trust because CONTRACT COMMON LAW combined with TRUST LAW is virtually indestructible when it comes to the intent of the parties to the contract, which in this case intended very specific rules of transfer. Combined TRUST LAW and CONTRACT LAW set forth extremely rigid principals for the transfer of interests. Besides the general understanding that both types of law apply, PSAs contain very specific language called a recital of the transfer which outlines step-by-step the process of transferring the mortgage to the trustee of a trust. Judge Boyko sets forth the traditional legal principle of standing and explains its relationship to the federal court jurisdiction concept of diversity jurisdiction. Because the bank could not prove who owned the mortgage and note, they could not establish the DIVERSIFTY JURISDICTION of the Court. In his opinion, Judge Boyko made clear that FAILURE TO PROVE STANDING was simply elemental to invoking the jurisdiction of the Court, stating, " In the above captioned cases, NONE of the Assignments show the named Plaintiff to be the owner of the rights, title and interest under the Mortgage at issue as of the date of the foreclosure

Complaint. The Assignments, in every instance, express a present intent to convey all rights, title and interest in the Mortgage and the accompanying Note to the Plaintiff named in the caption of the Foreclosure Complaint upon receipt of sufficient consideration on the date the Assignment was signed and notarized. further, the assignment documents belie Plaintiff's assertion they own the Note and Mortgage by means of a purchase which pre-dated the Complaint by days, months and years. He stated, this Court possesses the independent obligations to preserve the judicial integrity of the federal court and to jealously guard federal jurisdiction...neither the fluidity of the secondary mortgage market, nor monetary or economic consideration of the parties, nor the convenience of the litigants supersede those obligations...unlike stat law and procedure, as Plaintiffs perceive it, the federal judicial system need not, and will not, be forgiving in this regard." On that note 14 actions were property DISMISSED. (Oppenheimer Law) Defendant request this Honorable Court do the same and DISMISS with prejudice. The Defendant's note was never endorsed in blank and delivered to Fannie Mae Trust as required by the PSA as no endorsement is even to Plaintiff. Applying state law, because the trustee never had possession of the note, the Plaintiff cannot sue to enforce its obligations as the owner and holder in due course. Further, because the note was not properly endorsed by the Plaintiff under the guidelines set forth in the PSA, all requirements for a proper transfer have failed. Also, the Plaintiff has failed to show that it is entitled to relief . And, in Gee v. U. S. National Association as trustee, the court found the bank lacked the documentation to properly establish standing. In reversing summary judgment, the Fifth District established that the traditional argument made by banks that "the borrower defaulted so who cares if we have the right documents" will no longer prevail in foreclosure actions. Moreover, the issue of STANDING, particularly in SECURITIZED TRUSTS, will now be front and center in foreclosure defense.(Oppenheimer Law, attorneys and counselors 2011 Article and quoted in pages 33-36 of this document)

IN ADDITION, Defendant claims that once a loan has been securitized, or converted to stock, it is no longer a loan and cannot be converted back into a loan which means that the Defendant's Promissory Note no longer exists as such and the mortgage is no longer securing anything. Defendant further claims the Plaintiff, and predecessors and successors have actually destroyed the agreements themselves. and it an agreement no longer exist, how can it be enforced. the alleged loan is no longer enforceable because it is now owned by many

shareholders and a promissory note is only enforceable in its whole entirety. How can thousands of people foreclosure on Defendants home? And now, there is a defect in the Chain of Title. Defendant claims damages as the Plaintiff has damaged the Defendant's Chain of Title and Defendant claims unlawful and unethical behavior. Plaintiff has HARMED the Defendant by making it appear likely with adverse impact that Defendant would suffer the loss of her home.

In the MBS Litigation with Bank of America and why BOA will loose the Loss Causation argument, Philippe Selendy, MBIA's lead attorney said it as well as anyone before Judge Branstein, "The housing crisis does not give Countrywide a defense to its Day One misconduct leading into these transactions. there would be no insurance policies and no losses but for that fraud...when you think about it, what Countrywide is trying to do here, having first caused the housing crisis, together with other reckless loan originators and underwriters, THEY WANT TO TURN AROUND AND PROFIT FROM IT AGAIN. They want you to rule that the crisis is in effect a Get Out of Jail Free card that allows them to ESCAPE LIABILITY for their FRAUD and SHIFT THE COSTS TO INNOCENT PARTIES. Well, luckily we're in a Country governed by the Rule of Law, and the law doesn't work that way. (October 5, 2011 Transcript at 35:4-25)

15. Defendant states that upon information and belief, the Note has been paid in full by an undisclosed third party who prior or contemporaneously with the closing on the loan transaction paid the Lender in exchange for certain unrecorded rights to the revenues arising out of the loan document which was never a loan and MERS is RICO. Upon information and belief, the Plaintiff has no financial interest in the Note or Mortgage and has not incurred any financial damages concerning the note. Upon information and belief the missing assignments on the Note may have made it void and a legal nullity, thus they have exploited key and vital evidence or shipped same off-shore to a structured investment vehicle that also has no interest in the note or mortgage or the revenue thereof which may constitute fraud and RICO. "The Supreme Court found that a party in a civil action need establish only a criminal "violation" and not a criminal conviction. Further, the court held that a party need only have caused harm to the other party by the commission of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the party need not demonstrate that the other party is an organized crime figure, a mobster in the popular sense, or that the party in the civil action has suffered some type

of special Racketeering injury, all that the party must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation are to be liberally construed to effect the congressional purpose as broadly formulated in the Statute. (Sedima, SPRL v. Imrex Co., 473 US 479 (1985).

16. Plaintiff's claim is barred by the statute of frauds, laches and or the statute of limitations. Estoppel of laches precludes the Plaintiff from bringing an action when the Plaintiff knowingly failed to claim or enforce a legal right at the proper time. Plaintiff failed to show and prove it was the owner of the note or had any LEGAL RIGHTS at the time of Plaintiff's filing the foreclosure complaint.

17. Plaintiff's claim is barred and or limited for violation of the Federal Truth in Lending Act. Defendant states she was not told the original Promissory Note was legal tender and would be deposited in a Demand Deposit account. Defendant states these actions were done without the Defendant's knowledge or authorization and constitute willful intent. No deposit slip has been sent to the Defendant, and Defendant claims recoupment for the full amount of the promissory note plus damages for misrepresentation, deception, conversion and fraud.

18. Plaintiff's claim is barred and or limited for violation of RESPA. Upon information and belief, Plaintiff and or its predecessor(s) in interest violated various provisions of the Real Estates Settlement procedures Act ("RESPA"), which is codified at 12 U.S.C. section 2601, et seq. by, inter alia.

(a) failing to provide the Housing and Urban Development (HUD) special information booklet, and a Mortgage Servicing Disclosure Statement.

(b) failing to provide Defendants with an Escrow Disclosure Statement for each year of the mortgage since it's beginning.

(c) Giving or accepting fees, kickbacks and or other things of value in exchange for referrals of settlement service business, and splitting fees and receiving unearned fees for services not actually performed.

(d) Charging a fee at the time of the loan closing (which was not a loan, but an exchange) for the preparation of truth-in-lending, uniform settlement and escrow account statements.

19. Defendant states that claim is barred and or limited for violation of the State and or Federal Fair Debt Collection Practices Act which mandates that changes in servicer and notices to borrower accurately describe when a debt is sold and to what entity a debt is due. Therefore, if the notes never transferred to the trust, there's no way to retroactively do that now, the trusts are governed by very specific Pooling and Servicing Agreements that for the most part give the trust 90 days to transfer all the required assets. you cannot transfer the loan after it's slipped into default, 3 or 4 years after setting up the trust. It violates the laws and contracts under which the investors purchased the securities. Defendant was not informed of when debt was sold or to what entity a debt was due prior to Plaintiff filing foreclosure complaint. CONSTRUCTIVE FRAUD is acts of concealment of material facts. Having obtained the Defendant's promissory note by constructive fraud, the Plaintiff is not justified to enforce the mortgage contract by any "implied consent" because true consent, expressed or implied, cannot be given under a cloud of non disclosure, concealment and suppression of the material facts, or a state of duress.

20. Plaintiff claim for attorney fees is barred for failure to perform or meet conditions precedent under the Promissory Note and or Mortgage upon which action is allegedly based. Alternatively, there is not valid contract or other written agreement between the parties permitting the award of attorney fees in connection with this action. Further Defendant denies any valid contract exists as original lender did not sign mortgage and is misrepresentation, deception and fraud and deems note and mortgage void and was rescinded prior to foreclosure.

21. Plaintiff comes to court with unclean hands and is prohibited by reason thereof from obtaining equitable relief of foreclosure from this Court. The Plaintiff's UNCLEAN HANDS result from the Plaintiff's improvident and predatory intentional failure to comply with material terms of the mortgage and note, failure to comply with the default loan servicing requirements that apply to the alleged loan as described herein above. As a matter of equity, this Court should refuse to foreclose this mortgage because acceleration of the note would be inequitable, unjust and the circumstances of this case render acceleration UNCONSIONABLE. This Court should

refuse acceleration or is estopped from doing so because of misleading conduct and unfulfilled CONTRACTUAL and EQUITABLE conditions precedent. The doctrine of unclean hands "precludes a Plaintiff from recovering in equity if he acted unfairly in a matter that is subject of the litigation to the prejudice of the Defendant". (Ingram v. Kasey's Assocs., 340 s.c. 98, 107 N. 2, 531 s. e. 2D 287, 292 N. 2, (2000)).

22. Defendant has made all payments required by law under the circumstances, however, Plaintiff and or its predecessor(s) in interest improperly applied such payments resulting in the fiction that Defendant was in default as no loan was ever made. Defendant is entitled to a full accounting through the master transaction histories and general ledgers for the account from the origination of the loan with the original lender through the Fannie Mae Trust since a dump or summary of said information cannot be relied upon to determine the rightful amounts owed. Defendant request FAS 104, etc. Further, the principal balance claimed as owed is not owed and is the wrong amount, the alleged loan has not been properly credited since there was no loan. Servicing requirements are conditions precedent to the acceleration of the alleged debt or foreclosure. (Pfeifer v. Countrywide Home Loans No. A133071. First dist., Div.Two, Dec.13, 20112 Cal.App 4th)

23. Plaintiff has charged and or collected payments from Defendant for attorney fees, legal fees, litigation attorney fees, foreclosure costs, late charges, property inspection fees, property valuation charges, and other charges and advances, and predatory fees, and other fees and or charges that are not authorized by or in conformity with the terms of the subject note an mortgage. Defendant CLAIMS a full refund of all payments, charges and fees.

24. Plaintiff failed to provide Defendant with legitimate and non predatory access to the debt management and relief that must be made available to borrowers, including this Defendant pursuant to and in accordance with the Pooling and Servicing Agreement or other Trust Agreements that controls and applies to the subject mortgage loan. Plaintiff's non-compliance with the conditions precedent to foreclosure imposed on the Plaintiff pursuant to the applicable Pooling and Servicing Agreement is an actionable event that makes the filing of this foreclosure premature based on a failure of a contractual and or equitable precedent to foreclose which denies Plaintiff's ability to carry out a foreclosure. Plaintiff cannot legally pursue foreclosure

unless and until Plaintiff demonstrates compliance with the foreclosure prevention servicing imposed by the subject pooling and servicing or trust agreement under which the Plaintiff alleges owning the subject mortgage loan. In addition the assignment and note stamps are in conflict of legal names and dates. DEFENDANT was shown a copied NOTE with no assignment dates.

25. Plaintiff intentionally failed to act in "Good Faith" or to deal fairly with the Defendant by failing to follow the applicable standards of residential single family mortgage servicing denying Defendant access to the residential mortgage servicing protocols applicable to the subject note and mortgage. Thus, Defendant states that the servicing requirements are conditions precedent to the acceleration of the alleged debt or foreclosure. In addition, Defendant claims PREDATORY LENDING as described by the Office of the Comptroller of the Currency, U.S. Department of the Treasury, FAIR LENDING. Fair Lending Laws contain provisions to address predatory lending practices such as COLLATERAL OR EQUITY STRIPPING, the practice of making loans that rely on the liquidation value of the borrower's home or other collateral rather than the borrower's ability to repay. This was being intentionally done by Quicken Loans in collusion with Countrywide as has been verified previously in this documentation. Also, inadequate disclosure, the practice of failing to fully disclose or explain the true costs and risks of loan transactions. Defendant states none of the disclosures as brought to the attention of this Honorable Court in this Amended Motion to Dismiss were disclosed, and the most dishonest and unconscionable act being not disclosing to the Defendant the Promissory Note is actual legal tender and used as cash making the loan not a loan, but an exchange and swap with the Lender continuing to refuse to disclose upon written request to the Defendant . This alone and other non disclosures makes the alleged loan UNCONSCIONABLE.

26. Defendant states that in light of all of the foregoing defenses, and on the face of the purported loan document, the terms and circumstances of the Note and Mortgage were UNCONSCIONABLE when made and were UNCONSCIONABLELY exercised, it is therefore UNCONSCIONABLE to enforce the mortgage foreclosure.

27. Plaintiff cannot prove it's case against the Defendant and therefore this Court should enter judgment in Defendant's favor and quiet title in Defendant's favor, voiding the alleged promissory note held by the Plaintiff and mortgage upon which Plaintiff seeks to recover herein.

In addition, Plaintiff cannot enforce the note and has failed to prove otherwise in Plaintiff's complaint. Also, Plaintiff, as the servicer, acts only as the agent of the owner of the instrument and has no greater right to enforce the instrument. (see e.g., Greer v. O'Dell 305 F.3d at 1303) Fannie Mae Trust and or investors have no right to enforce the note, then Plaintiff, as it's agent cannot enforce the note. In addition, no agency relationship or rights of principal has been proven, therefore Plaintiff cannot enforce the instrument. Because, the claim filed by Plaintiff, servicer, cannot be enforced under applicable state law, the claim must be disallowed under U.S.C. 502 (1) (b). (Kemp v. Countrywide, Case, 08-02448-JHW p. 21 & 22.)

28. Plaintiff is liable for Defendant's cost and attorney fees pursuant to terms of the agreement between the parties and South Carolina Statutes, and or applicable provisions of the State and Federal Fair Debt Collection Practices Act and or the Federal Truth and Lending Act. Defendant states the Plaintiff, it's predecessors and successors, are not a creditor to whom any debt is owed. The promissory note was used as cash and legal tender and the debt was paid off at the closing. In addition, Plaintiff must prove no violations in the SOUTH CAROLINA MORTGAGE AND LENDING ACT, Chapter 22, Section 37-22-110, (25) (29) (30) (39), and Section 37-22-120 (A) (1) (B) (D) and Section 37-22-190(A) (1) misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise. Defendant claims original lender did not disclose the promissory note was legal tender and used as a cash deposit. Defendant claims predatory lending as loan was a no doc loan during economic crisis and Countrywide hustle of loans not following required underwriting procedures. (2) refuse improperly or fail to issue a satisfaction or a mortgage pursuant to Section 29-3-310. (4) (8) engage in a transaction, practice, or course of business in connection with the making or servicing of, or purchase or sale of, a mortgage loan that is not in good faith or fair dealing, that is unconscionable, as set forth in Section 37-5-108, or that constitutes a fraud upon a person. (11) RESPA (14) fail to provide disclosures as required by state or Federal law or collect any fee before providing required disclosures. Defendant claims original lender failed to provide disclosure on the promissory note being legal tender and a cash deposit. In addition, original Lender has refused to supply Defendant a copy of the cash deposit slip and any information requested in the Defendant's recent written letter of request as required by Federal Law. Defendant has Letters of evidence. As in the Supreme Court of the

State of New York, County of New York case, AMBAC ASSURANCE CORPORATION v. EMC MORTGAGE, LLC, Index No, 651013/2012,page38-40BCOUNTRYWIDE HOME LOANS, INC. Representations about the quality of Countrywide's loans and underwriting practices have proven false. Countrywide and its management are currently subject to myriad investigations and actions, some of which have already settled for billions of dollars, for having engaged in systematic fraud in connection with the origination of residential mortgage loans. Among these actions is a lawsuit by Ambac, for fraud and breach of contract, in this Court. Ambac's complaint sets forth in detail the facts establishing what one Federal Judge has referred to as "a Company-wide culture that, at every level, emphasized increased loan origination volume in derogation of underwriting standards," which was "rampantly disregarded." Countrywide's practice was not only unlawful, but a flagrant disregard for its own stated underwriting guidelines. Ambac discovered almost 91% breached one or more of Countrywide's representations and warranties about the quality of the loans and Countrywide's practices in underwriting them. A civil fraud action brought by the SEC against Countrywide confirms Countrywide's duplicity vis-a-vis the public, alleging that from "2005 through 2007" - i.e., when the Transactions at issue in this complaint (Ambac v. EMC) were effectuated, Countrywide's "senior executives misled the market by falsely assuring investors that Countrywide was primarily a prime quality mortgage lender which had avoided the excesses of its competitors." The duplicity was internal to Countrywide as well. In particular, as the SEC's complaint against former Countrywide CEO Angelo Mozilo reveals, Countrywide abused the exceptions process, which was, as its name suggests, intended to be the exception, but became the rule. The allegations in these complaints regarding Countrywide's systematic abandonment of its underwriting guidelines are confirmed by the statements of confidential witnesses. For example, Countrywide confidential witness 1 ("CW-1") who worked at Countrywide as an underwriter form March 2006 to December 2007 has confirmed the allegations that Countrywide systematically abandoned its underwriting guidelines, CLUES, by (a) not assessing whether the income stated on stated-loan applications was reasonable (b) not allowing red fags of fraud to be evaluated. In addition, CW-1 revealed that loan officers at Countrywide would regularly input incorrect data metrics into CLUES, such as inflating borrower's income beyond what the documents in the loan file supported. In short, CW-1 confirmed that Countrywide's actual practices differed from its stated protocols and policies, all in furtherance of Countrywide's goal

to fund as many loans as possible, by any means necessary. Also, countrywide was the largest originator of securitized loans in the industry and Bear Sterns securitized nearly $15 Billion of loans originated by Countrywide between 2005 and 2007. Defendant claims Quicken Loans was working with Countrywide in this scheme to defraud the public as Countrywide immediately bought the Defendant's loan and Defendant's loan was securitized. Defendant claims predatory lending as quicken and countrywide caused loans to be originated without regard to the ability of the borrower to repay the loan.

29. Defendant states plaintiff is in violation of SC Title 29-3 320, Liability for failure to enter satisfaction as Defendant's originated Note was used by original lender, Quicken Loans, Inc. as legal tender and note was an exchange or swap, not a loan, and is binding on assignments or selling of Note to other banks. It is illegal under banking laws to sell credits. Defendant makes demand for RESTITUTION and DAMAGES for Plaintiff's fraud, misrepresentations, deception, unlawful conversion, conspiracy and RICO. A RICO enterprise must have a "common purpose of engaging in a course of conduct" and its existence is proven by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. First Capital Asset Mgmt., Inc. v. Satinwood, Inc., 385 F.3d 159,173 (2d Cir.2004) Also, "An association-in-fact enterprise...need not have a hierarchical structure or a "chain of command. (quoting Boyle v. United states, 129 S.Ct at 2245) Quicken, MERS, and Countrywide and Plaintiff sufficiently describes a collective enterprise formed prior to and during the economic crisis to damage all homeowners,chain of titles, facilitate loans without proper underwriting OR ANY UNDERWRITING AT ALL, sell off the loans to unknowing investors, have no financial interest in the loans and then foreclose on homeowners. This is RICO as a MATTER OF LAW and a substantive RICO claim and shows pattern, enterprise, conduct and racketeering activity. Defalco v. Bernas, 244 F.3d 286,306 (2d Cir.2001. RICO violations are a cause of Defendant's injury as foreclosure is a damage and injury and would establish the substantive RICO liability. The Plaintiff's attempt to enforce a foreclosure proximately causes Defendant injury. (see Baisch v. Gallina, 346 F. 3d 366, 373-74 (2ndCir.2003), which include incurring of legal costs. The Plaintiff is involved in a RICO conspiracy as "he knows the general nature of the conspiracy and that the conspiracy extends beyond his individual role" (see United States v. Zichettello, 208 F. 3d 72,99 (2d Cir.2000)(quoting United States v. Rastelli, 870 f.2d 822,828 (2d Cir.1989) (see also Salinas v.

United States, 522 U.S. 52,64 (1997) ("a person...may be liable for (1962 d) conspiracy even though he was incapable of committing the substantive offense). Under General Business Law, (GBL) 349, the Defendant must show that: (1) the Plaintiff's conduct is "consumer oriented", (2) the Plaintiff is engaged in a "deceptive act or practice", (3) the defendant was injured by this practice; and (4) the acts or practices have a broader impact on consumers at large." (see Wilson v. Nw.Mut.Ins. Co., 625 F.3d 54, 64 (2d Cir.2010) (citing Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank,N.A., 85 N.Y. 2d 20,24-27 (1995). Thus, even though the default judgments against Plaintiffs have been vacated by the state courts or by agreement with defendants, plaintiff's claim for damages cannot be moot. Therefore, in this case, Defendant has alleged facts sufficient to be granted a MOTION TO DISMISS and claims damages. SC JUDICIARY LAW may hold any attorney engaged in "any deceit or collusion, or consents to any deceit or collusion with intent to deceive the court or any party" accountable to the full extent of the law. The filing of as foreclosure action knowing MERS never held the NOTE and the other foregoing facts provide adequate support for this claim and Defendant claims damages. Defendant seeks, inter alia, declaratory relief that Plaintiffs violated the law and injunctive relief. This court has subject matter jurisdiction based on Defendants facts.

30. Defendant claims that without "consensus as idem", an agreement to the same thing, there is no binding contract. (Peerless), Raffles v. Wichelhaus, 2 H.&c.906 (1894). this principle has been adopted into the American common law tradition and has become a bedrock of our contract dispute jurisprudence. As aforementioned, the Utah Supreme Court has recently held that a lack of the meeting of the minds, a mistake as to fact, can justify a rescission of the contract. A single party may rescind a contract when, at the time the contract was made, the parties make a mutual mistake about a material fact, the existence of which is a basic assumption of the contract". (Deep Creek,LLC v. Utah State Armory BD., 2008 UT 3, 17(quoting Mooney v. GR & Assoc., 746P.29 1174 (Utah Ct. App.1978). Defendant states she was not told at any time prior, during or after the promissory note was signed that is was legal tender and used for cash by the lender. Defendant deems non disclosure of vital information or hiding material facts as deceptive practices and fraud. In addition, there was no consideration on the alleged mortgage loan deeming it null and void. "it is not necessary for rescission of a contract that a party making the misrepresentations should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made the

false representations, even innocently, to retain the fruits of a bargain induced by such representations." (Whipp v. Iverson, 43 Wis 2d 166). Defendant states a Statutory Defense.

In fact , the Defendant, borrower, entered an entirely new and different world of high finance where her relationship was bought and sold not between Lenders, but outside the lender relationship to a loan servicing company, but an investment contract and not disclosed to the Defendant.. Therefore, Defendant seeks to rescind and /or void the loan agreement which was not a loan agreement at all based on mistake and the missing of the minds by the parties at contract formation.

31. The Plaintiff did not allege it is both the owner and holder of the Note and Mortgage in the body of the original complaint. This is important because, this is a cause of action in EQUITY to foreclose a mortgage and not an action of LAW for enforcement of the Note. The FAILURE of the Plaintiff to allege, in the body of its COMPLAINT, that in addition to holding the subject note and mortgage it also owns these instruments prohibits it from asserting the proper chain of ownership of the instruments from their inception. Also, Plaintiff has not shown elements of an agency relationship to the true owner of the Note in order to state a cause of action. This the Plaintiff has not done, therefore, Defendant requests the foreclosure be DISMISSED with all her requested remedies, etc as expressed below in her PRAYER FOR RELIEF, and further, Defendant request the Honorable Court DISMISS WITH PREJUDICE.

32. The Fair Debt Collection Practices Act (FDCPA) forbids debt collectors from, inter alia: (1) engaging in "any conduct the natural consequence of which is to harass, OPPRESS or ABUSE any person, 15 U.S.C. 1692d, (2) making a "false, deceptive, or misleading representation, 15 U.S.C. 1692 e, or using "unfair or unconscionable means "to attempt to collect a debt, 15 U.S.C.1692 f. Section 1692 specifically prohibits false representation of "the character, amount, or legal status of any debt and the use of deceptive means "to collect or attempt to collect any debt." 15 U.S.C. 1692 e (2) (A), (10). Plaintiff's attorney's state they are collecting a debt. Based on all the Defendant's claims, the filing of the foreclosure action is "unfair and unconscionable" in violation of 15 U.S.C. 1692. Kuria v. Palisades Acquisition XVI, LLC, No. 09 Civ. 3321 (JOF)(RGV),F.Supp.2d,2010 WI 4780769, at 7. Defendant claim is plausible and defendant claims injury and damages.

33. Lastly, Federal Civ. Rule 12 (b)(6), in order for the Plaintiff to survive the Defendants MOTION TO DISMISS, "a complaint must contain sufficient factual matter, as accepted as true, to state a claim to relief that is plausible on its face" (see. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) DC. The Plaintiffs complaint fails to allege facts that give rise to a plausible claim for relief. The Plaintiff did not produce a wet ink original Note at time of filing complaint and MERS cannot assign the Note to the Plaintiff as MERS never held the NOTE. Also, the Defendant is the originator and maker of the NOTE, registered the NOTE and claims all rights to the NOTE as CREDITOR. And, Federal Rule of Civil Procedure (17) (a) Bank of America (Plaintiff) has the burden of establishing it is the "real party of interest." Defendant claims Plaintiff did not fulfill their obligation at time of the filing of the foreclosure complaint and Defendant claims civil damages.

Defendant request the Honorable Court to NOT ALLOW the Plaintiff to request summary judgment until the Plaintiff strikes all 33 defenses and other claims within the 33 areas of this AMENDED MOTION TO DISMISS. Defendant claims Plaintiff's documents provided to this Honorable Court are fake documents and not provided to the court upon inception of the foreclosure proceeding.

CONCLUSION

WITH ALL THE AFOREMENTIONED extensively stated due diligence answers, counterclaims/claims, defenses and remedies, it is clear the Plaintiff has caused Defendant extreme STRESS, elder financial ABUSE, mental ANGUISH, health problems due to THREATS of continual foreclosure inducing FEAR of being homeless as a senior citizen during this national financial crisis and hardship which was engineered by the Plaintiff and Plaintiff's conspirators. Defendant has spent countless hours of research with no sleep perpetrated upon the Defendant by the Plaintiff. Plaintiff is knowingly seeking to maliciously HARM the Defendant, remove Defendant from her home, and gain unjust compensation, therefore, Plaintiff should be held accountable for damages to the full extent of the law. Defendant deems Plaintiff's complaint filings for foreclosure on Defendant's home severe "Bad Faith" and willful intent by the Plaintiff to cause grave INJURY, intense OPPRESSION and further FINANCIAL HARM, and Defendant is entitled to and claims damages to the full extent of the law. (UCC 4-103).

WHEREFORE, DEFENDANT REQUEST THE HONORABLE COURT FOR:

1. LEAVE TO AMEND THIS DEFENDANT'S MOTION TO DISMISS PROPERLY PLEAD FACTS CONTAINED HEREIN WITH CONTINGENCY COUNSEL WHEN OBTAINED OR WITHOUT SHOULD DEFENDANT NOT BE ABLE TO OBTAIN COUNSEL ON A CONTINGENCY BASIS DUE TO A FINANCIAL HARDSHIP AT THIS TIME, AND TO REQUEST TRIAL BY JURY IF NECESSARY

AND, PRAYER FOR RELIEF

WHEREFORE, Defendant Deaner requests this Honorable Court dismiss "with prejudice" Plaintiff's complaint pursuant to rule 12 SCRCP and to enter judgment in her favor, quieting title, awarding costs, recoupment, punitive and other damages, restitution, rescission, court order for removal of lis pendens, removal of MERS false assignment, satisfaction of mortgage (Title 29 Chapter 3 Article 1, Section 29-3-370 & 430) and attorney fees for those reasons set forth herein in addition to other relief deemed proper and required by all applicable common law, public law commercial law, equitable law, banking law, securities law, federal and state law, judiciary law and any other laws including the False Claims Act and fraud pertinent and in favor of the Defendant in this matter with the Honorable Court.

Respectfully Submitted,

Date: August 2, 2013
North Augusta, SC
Aiken County

Carolyn S. Deaner

704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U. S. Mail First class Delivery on AUGUST 2, 2013 upon H. Guyton Murrell at Korn Law Firm, 1300 Pickens Street, P. O. Box 12369, Columbia, SC 29211-2369.

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
BANK OF AMERICA, N.A.)
Plaintiff,)
vs.)
)
CAROLYN S. DEANER)
Defendant.)

IN THE COURT OF COMMON PLEAS
____ JUDICIAL CIRCUIT

CASE NO.: 2012 -CP- 02 - 00699

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
H. GUYTON MURRELL, Bar No. 64134	CAROLYN S. DEANER, Bar No PRO SE
Address: 1300 PICKENS STREET COLUMBIA, SC 29211-2369	Address: 704 KERSHAW DRIVE NORTH AIKEN, SC 29841-2738
Phone: (803)252-5817 Fax (803)231-2060	Phone: (706)399-5496 Fax (706)736-3558
E-mail: Other:	E-mail: Other:

[X] **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
[ ] **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
[ ] **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Defendant's Amended Motion to Dismiss Foreclosure Action
Estimated Time Needed: 1 to 2 hours Court Reporter Needed: [X] YES / [ ] NO

SECTION II: Motion/Order Type

[X] Written motion attached
[ ] Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Carolyn S. Deaner Pro Se August 2, 20 13
Signature of Attorney for [ ] Plaintiff / [X] Defendant Date Submitted

SECTION III: Motion Fee

[ ] PAID – AMOUNT: $ ____
[ ] EXEMPT: (check reason)
- [ ] Rule to Show Cause in Child or Spousal Support
- [ ] Domestic Abuse or Abuse and Neglect
- [ ] Indigent Status [ ] State Agency v. Indigent Party
- [ ] Sexually Violent Predator Act [ ] Post-Conviction Relief
- [ ] Motion for Stay in Bankruptcy
- [ ] Motion for Publication [ ] Motion for Execution (Rule 69, SCRCP)
- [ ] Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- [X] Other: fee already pd

JUDGE'S SECTION

[ ] Motion Fee to be paid upon filing of the attached order.
[ ] Other:

JUDGE CODE ____
Date: ____, 20

CLERK'S VERIFICATION

Collected by: ____ Date Filed: 8-2-13, 20 ____

[X] MOTION FEE COLLECTED: $ ____
[ ] CONTESTED – AMOUNT DUE: $

Anita Knowles 30 Aik
Deputy Clerk

SCCA 233 (11/2003)

DESIGNATION: 13

13. Objection To And Request For Dismissal Of Plaintiff's AMENDED SUMMONS and COMPLAINT...filed 8/5/2013.

(contains pages 1-50)

DEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP

Plaintiff,

vs.

Carolyn S. Deaner

Defendant(s).

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

OBJECTION TO AND REQUEST FOR DISMISSAL OF PLAINTIFF'S AMENDED SUMMONS AND COMPLAINT

DOCKET NO. 2012-CP-02-00699

FILED 8.5.13
C.C.P. & G.S.
Deputy Clerk

NOTICE IS HEREBY GIVEN THAT the Defendant will move before the presiding Judge for an Order on Defendant's OBJECTION TO AND REQUEST FOR DISMISSAL OF PLAINTIFF'S AMENDED SUMMONS AND COMPLAINT. This motion is made upon the following grounds.

1. Defendant denies all Plaintiff Complaint allegations and demands strict proof thereof.

2. Plaintiff failed to allege in the body of the Plaintiff's Complaint pleading that, in addition to holding the original wet ink subject note and mortgage, it also owns these instruments prohibits it from asserting the proper chain of ownership of the instrument from their inception.

3. Plaintiff's Return to Defendant's Motion to Dismiss was improperly filed on June 7, 2013 during Judge Early's STAY on this case. Plaintiff did not withdraw in "Good Faith" on Defendant's filed Objection. Defendant objects to Plaintiff's improper filing.

4. Standing is a question of whether the Plaintiff has alleged such a personal stake in the outcome of a controversy as to warrant invocation of the court's jurisdiction and to justify the court exercising its remedial powers on the Plaintiff's behalf. A Plaintiff must have sufficient stake in the outcome of an otherwise justiciable controversy in order to obtain judicial resolution

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP

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vs.

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Defendant(s).

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

OBJECTION TO AND REQUEST FOR DISMISSAL OF PLAINTIFF'S AMENDED SUMMONS AND COMPLAINT

DOCKET NO. 2012-CP-02-00699

COPY
ORIGINAL FILED
AUG 05 2013 3:30 pm
AIKEN COUNTY
CLERK OF COURT

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DEFENDANTS

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **OBJECTION TO AND REQUEST FOR DISMISSAL OF PLAINTIFF'S AMENDED SUMMONS AND COMPLAINT** **DOCKET NO. 2012-CP-02-00699**

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of that controversy. An example, "here, Federal Home Loan concedes that there is evidence that it had suffered any injury at the time it commenced this foreclosure action. Thus, because it failed to establish an interest in the note or mortgage at the time it filed suit, it had no standing. (Federal Home Loan Mtge.Corp. v. Schwartzwald, 134 Ohio St.3d 13, 979 N.E.2d 1214 (2012). Defendant demands the Pooling and Servicing Agreement, a key piece of documentation needed from the Plaintiff in order for the Judge to determine whether the Trust owns the loan being foreclosed and the Master Loan Schedule as the Master Loan Schedule establishes whether the subject mortgage was every transferred to the Trust. Therefore, while both are essential, if the alleged loan was never transferred to the trust, then the Trust, simple put, cannot sue to collect on something it does not own. "The party seeking to foreclosure must present evidence that it owns and holds the note and morgage in question in order to proceed with foreclosure action." Lizio v. McCullom, 36 So.3d 927,929 (Fla 4thDCA 2010. See also Verizzo v. New York, 28 So3d 976,978 (Fla 2dDCA 2010) "providing that "there is a genuine issue of material fact as to whether the Bank of New York owns and holds the Note and has standing to foreclose the mortgage". The Plaintiff failed to allege in the body of the original complaint pleading that, in addition, to holding the subject Note and mortgage, it also owns these instruments prohibits it from asserting the proper chain of ownership of the instruments from their inception.

4. Defendant specifically states Plaintiff does not have the capacity to sue or bring this action and this action is therefore barred. UCC 3-306, there cannot be a holder in due course on a promissory note after the bank deposits it. They do an off balance sheet entry and is called a off balance sheet bookkeeping.(FASB)(GAAP)(ISAB). The ORIGINATOR of the NOTE is the CREDITOR on the payables side of the LEDGER, not the Debtor. Defendant brings in a recoupment claim in behalf of the real party of interest which is the Defendant because she is the ultimate creditor raising the claim against the liability side of the account. THE PLAINTIFF"S COMPLAINT MUST BE DISMISSED BECAUSE OF ITS FAILURE TO PLEAD ITS CAPACITY TO SUE. Moreover, a complaint's facial defect can be attacked appropriately for lack of capacity to sue pursuant to Federal Rule of Civil Procedure 9(a) by a MOTION TO DISMISS WHICH CAN BE JUSTIFIED UNDER FEDERAL RULE OF CIVIL PROCEDURE 12 (b)(6), i.e., failure to state a claim upon which relief can be granted. (Klebanow v. New York Produce Exchange, 344 F.2d 294 (2d Cir.1965). See also 2A J. Moore &Lucas, Moore's Federal Practice 12.07-08 (2d ed.1982) and 5 C. Wright & A. Miller, Federal Practice and Procedure,

1292-1295, 1360 (1069 & Supp.1981). Furthermore, the Comment to the Rule (2004) Version), states that "if a party involved in a suit in other than his individual capacity, the capacity in which he is a party should be indicated in the caption of the pleading. The Plaintiff has given no agency relationship to Fannie Mae Trust and investors in the pleading. Although the capacity issue is new, it is important to note that Judges in circuit courts have routinely recognized the legitimacy of the capacity defense and are routinely granting Defendant's Motion to Dismiss based on these grounds, particularly in cases for mortgage foreclosures. See e.g. HSBC v. Montogomery, Pinellas Case 52-2009-CA-005696; Wachovia v. Matacchiero, Pinellas Case No. 52-2009-16936-CI-13; Boiln v. HSBC, Pinellas Case 08-005190-CI-19. Defendant in regard to Rule 1.120(a) specifically asserts that Plaintiff has failed to plead any facts which identify its entity-status.

The Defendant is the creditor and the Plaintiff is the debtor on the liability ledger. This proves a remedy. The G-7 endorsed it. The Defendant has a right to setoff. Auditors such as Price Waterhouse are aware of this. They are experts at auditing off balance sheet accounts. There is off balance sheet financing, payable and receivables. These auditors are the only ones that are aware of these issues. Chief accountants for the SEC are aware, and the SEC is also the enforcement agent for this practice. Defendant's loan has been securitized into a security. Everyone thinks a note is a liability, but it is not. Under UCC 4(a), 104(c), it says that the originator is the sender of the first fund transfer. The Defendant is the first funds transferor. UCC 3-105 (a)(c), subsection (a) talks about issue and (c) talks about issuer. It defines the issuer as the transferor of the first funds transfer , which is the drawer and maker, and in this case is the Defendant. UCC 8-102 (12), (15) AND (9) defines what an entitlement holder is and 8-201(3). UCC 8-501 says I am identified as the person with securities and entitlement rights on the books of a banking intermediary. They call them intermediaries under Article 8 because it involves securities. Under Article 8, the Defendant is the holder of entitlement and possessory rights to the proceeds of the transaction because the Defendant was the originator of the first funds transfer on the accounts payable side of the ledger and entitled to the funds. A promissory note is an asset to the Defendant. When the Defendant gave the note to the original Lender or beneficiary, and he deposits it, it becomes a cash item to the bank. In 1986, Justice Marshall, "We should assume, absent convincing evidence to the contrary, that congress intended for the term "promissory note" to derive its meaning from the ordinary sources of Commercial Law.

The note in this case, however, was the equivalent of "money". FDIC concedes, as it must, that Congress has determined that a promissory note generally constitutes money or its equivalent. Moreover, that statutory definition comports with economic reality. Promissory Notes typically are negotiable instruments, and therefore, readily convertible into cash...unconditional and equivalent to money, and especially if the note is negotiated. (U.S. Supreme Court, FDIC v Philadelphia Gear Corp.,476 U.S. 426 442 (1986). They issue a cash receipt to the depositor. The bank gets a cash receipt that is equivalent of money. It is what passes as money in the society. After it is deposited, then the Defendant deposited money in an account. This is a cash proceed under Title 12 of the USC. The Defendant is the creditor and is bringing this up as a defense. This is why the Plaintiff cannot be a holder in due course. UCC 3-302 defines a holder in due course and is subject to 3-106(d) which says that where an instrument is involved, there cannot be a holder in due course and would be subject to the defenses and claims that a drawer and maker as the originator of first funds transfer can bring against the payee, which is the Plaintiff, bank and predecessors and successors. The reason the Plaintiff cannot be a holder in due course is because the Defendant is the creditor who can trump any claim that a holder might have on that instrument. The Defendant as originator and maker is claiming setoff, because Plaintiff and predecessors sold an unregistered note AND IS NOT AN ENTITLEMENT HOLDER. They cannot be a holder in due course because they are taking it subject to administrative and commercial claims, every time there is a clause in the instrument. This whole process is not about mortgages at all, because they sold the note and received the funds and closed the account by assuming they have repaid the originator of the loan which was never done, thus Defendant has been misrepresented and deceived and claims a conspiracy to defraud. The real intent is to create derivatives to create a security and bond market to finance all commercial and corporate activity. The Note is not under a negotiable instrument anymore, it is a SECURITY. Under U.S. Law, securitization is illegal because it is fraudulent. Enron was involved in securitization. "Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud', and entitles party deceived to a void contract or recover damages." (Barnsdall Refining Corn. v. Birnam Wood Oil Co., 92 F 26 817). Pursuant to S.C. Code Ann.35-1-1210 of the Prior Act, it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to: (a) employ any device, scheme or

artifice to defraud; (b) make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading: or (c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a person. By not producing these documents at time of the complaint, Plaintiff has acted in deceit as the following will show. The non negotiable Promissory Note is a security under South Carolina Law and Fannie Mae claims all their notes are non negotiable as explained in this document.

The banks have made as an estimate over 9 times the value of my originated Note without Defendant's knowledge and created an investment contract without my knowledge or authorization and has withheld owed monies to the Defendant. This is gross misrepresentation and deception on the part of Plaintiff, and Plaintiff's predecessors and successors. "If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." (Menominee River Co. v. Augustus Spies L & C Co., 147 Wis 559.572: 132 NW 1122).

Under Title 12 USC 1813 (L)(1), when you deposit a promissory note, it becomes a cash item. The Defendant is the creditor on the payables side of the ledger. The Plaintiff owes the Defendant the money and the Defendant is entitled to recoupment. Under Civil Rule 13, the Defendant is bringing a mandatory counterclaim for recoupment and applying the setoff. This is all equitable action in admiralty style instruments. The Defendant is the originator and the Note is an asset, and recoupment in practice is a counterclaim in a civil procedure, since the Defendant is the creditor on the liability side or accounts payable and the Plaintiff, bank or lending institution is the debtor on the liability side. The Defendant claims her accounts payable as an offset or counterclaim to the financial asset side. Under FAS 140 Defendant claims her setoff. When a deposit is made, it is a cash receipt, a cash proceed. Everything becomes cash proceed in commercial law under Article 9. The bank shows it as a cash proceed. If you give a bank a promissory note, they are required to give you a cash receipt which was not done and is deception, misrepresentation and fraud. The Plaintiff owes the Defendant that money under a recoupment or asset. The Defendant claims a defense in RECOUPMENT under UCC 3-305, and a claim under 3-306 as a possessory and property claim against the cash proceeds under the

liability side of the ledger. In UCC 3-306, there cannot be a holder in due course on a promissory note after they deposit it. They do an off balance sheet entry and is called off balance sheet bookkeeping. The Defendant as the real party of interest brings a claim of recoupment as the ultimate creditor and is raising the claim against the liability side of the account. Walker Todd previously one of the heads of the Cleveland FRB, has been a government witness in court cases and states we are the creditor on the payables side of the ledger. The Plaintiff owes the Defendant the money. The Defendant claims defense and counterclaim because I have an asset the Plaintiff is holding of mine, that they failed to give me credit for, and they are likely carrying my asset on a liability ledger of balance from their accounts receivable. Statute says Defendant has the right to restitution and rescission if they sell an unregistered security and UCC Article 8 and 9 is applicable remedy. The Defendant also has a right to rescind and restitution which is part of recoupment, and Defendant is entitled to setoff to settle the claim. The Defendant is raising the claim and not waiving it. Again, the defendant is the creditor and the Plaintiff is debtor on the liability ledger. That provides a remedy.

DAMAGES exist in that the bank refuses to loan their money. The Plaintiff bank denies the alleged borrower equal protection under the law of contract, by merely exchanging one currency for another and refusing repayment in the same type of currency deposited. The bank refused to fulfill the contract by not loaning the money, and by the bank refusing to be repaid in the same currency, which they deposited as an exchange for another currency. The Plaintiff and Plaintiff's predecessors and successors had no authorization from the Defendant to alter the alleged contract and to refuse to perform by not loaning money, by changing the currency or by refusing repayment in what the bank has written policy to deposit. In the transaction the bank was to loan legal tender to the borrower, in order for the bank to secure a lien. The bank never made the loan, but kept the mortgage note the alleged borrower signed. This allowed the bank to obtain equity in the property (by a lien) and transfer the wealth of the property to the bank without the bank's investment, loan or risk of money. Then the bank receives the alleged borrower's labor to pay principal and interest. What the Defendant owned or should have owned debt free, the bank obtained ownership in, and for free, in exchange for the Defendant receiving a debt, paying interest to the bank, all because the bank refused to loan money and merely exchanged one currency for another. The lien forces payment by threat of foreclosure. The mail is used to extort payment on a contract the bank never fulfilled.

If the bank refuses to perform, then they must return the mortgage note. If the bank wishes to perform, then they must make the loan. The past payments must be returned because the bank had no right to lien the property and extort interest payments. The bank has no right to sell a mortgage note for two reasons. The mortgage note was deposited and the money withdrawn without authorization by using a forged signature, and two, the contract was never fulfilled. The Plaintiff acted without authorization and is involved in a fraud, thereby, damaging the Defendant. PROOF banks deposit notes and issue bank checks...the checks are only as good as the promissory note. Nearly all bank checks are created from private notes. Federal Reserve Bank Notes are Private corporate Notes (chapter 48, 48 Stat 112) Notes are used to discharge notes. (excerpt from Your Money, page 7) The Plaintiff and Plaintiff's predecessors and successors have made the Defendant the depositor and not a borrower. This is fraudulent conversion of the mortgage note. A fraud is a felony. Defendant is holding registered NOTE.

The Fannie Mae Trust had no right to a Mortgage/Deed of Trust to a purchased Note that was not evidence of a debt or obligation--it can't be a Secured Transaction covered under UCC 9, when it's an Investment Security covered under UCC 8. The Plaintiff should not be able to foreclose on an asset in an Investment Security with an invalid Mortgage, fraudulently procured under the guise of a "Loan", when it wasn't a Loan, but rather the "Purchase of a Note" into an Asset-Backed Investment Security, and the Plaintiff was paid in full, plus a commission for something it did not fund. The Plaintiff and predecessors and successors tricked the Defendant into signing a Mortgage to secure an Investment Security, assign a Beneficial Right it never had to another Beneficiary. Fraud is alleged that the Defendant was tricked into believing it was a loan to procure a Mortgage and the true nature of the Transaction was not disclosed, nor was true nature of the Note being legal tender disclosed to the Defendant or the Note being an asset to the Defendant. Fraud can be alleged that the Pool Insurance paid the Investors after multiple defaults and Foreclosures. If paid, why the foreclosures? Further, fraud can be alleged that the Mortgage (UCC 9) is invalid for an Investment Security/Commercial Paper (UCC 8) (you can't have both). A foreclosure is improper and should be voidable. The direct purchase of the Note by the Trustee for the Trust or SPV appears to violate the procedures specified in the FAS 140 - "Statement of Financial Accounting Standards 140" by the Financial Accounting Standards Board (FASB). The Plaintiff signs a Mortgage Loan Purchase Agreement with a Representative of the Trust, yet the Plaintiff doesn't fund the purchase of the Note, and can't sell what it hasn't

bought. The Pooling and Servicing Agreement clarifies all the fine points the Plaintiff doesn't want the Defendant to know. The Assignment and Assumption Agreement clarifies further. Also, the insurance pays off the investors. The Plaintiff servicer continues to foreclose, even though the investors are paid off which is fraud. And, the Plaintiff has not disclosed the payoff according to South Carolina Rules of entering and recording the fact which is a VIOLATION of South Carolina law and voids the foreclosure. This bring us to BONY V. FAULK. In this CASE, the note lacked endorsements connecting the originator to BONY as trustee for the foreclosing securitization trust. This set up a MOTION TO DISMISS on the grounds that BONY didn't have any right to do anything---it had no connection with the NOTE. In other words, if the endorsement were created later, then the Plaintiff, Bank of America, had no standing at the time the action was filed because the Trust did not own the note at that time as there is no endorsement to the Fannie Mae Trust. How do we know the Plaintiff attorney isn't engaged in fraud on the court (and a host of other violations of state and federal law)? Critically, the PSA requires a complete chain of endorsement with all intervening endorsements. Anything less is documentation fraud. There are no endorsements to Bank of America or Fannie Mae Trust. Furthermore, Countrywide denies ever sending Notes to the Fannie Mae Trusts as discussed later in this answer and all claims.

The Plaintiff is using Defendant's NOTE to expand the money supply without disclosure or authorization from the Defendant, nor was Defendant told the PROMISSORY NOTE had cash value or was legal tender and the loan was not a loan, but indeed, an exchange or swap at the time of the closing. This is conversion fraud and conspiracy as multiple banks are involved. UNDER TITLE 12 USC 1813(L)(1) when you deposit a promissory note, it becomes a cash item. Under Civil Rule 13 Defendant brings a mandatory counterclaim for recoupment. These reports are filed on OMB FORMS, in which the public has a right to disclosure under the privacy act. The FR 2046 balance sheet, OMB #'s 2046, 2049, and 2099 are subject to disclosure under the privacy act, Title 5 USC 552(b)(4). At closing and settlement, the reason they actually call it closing is because they pay off the loan in its entirety. The DEBT is actually EXTINGUISHED. If banks shift the assets off the books, they have to report to the FRB where it went, so we can follow it, and the banks are mandated to give a cash receipt on any deposit, which was not done. It is a Demand Deposit Account and the deposit slip has been withheld from Defendant by Plaintiff or Plaintiff's predecessors. Defendant gave original Lender a

promissory Note, they have to record a debt to the Defendant on their liability ledger. Further, banking law forbids selling credits, therefore, DEFENDANT requests Judge to do the set off under HJR 192 as defense and remedy and Defendant claims recoupment and PUBLIC LAW 10 Chap. 48, 48 Stat.112 as defense, remedy, and recoupment.

The Plaintiff at the time of filing a complaint must show the full accounting of the alleged obligation that that are attempting to collect such as, a) FR 29046 balance sheet (OMB #'s 2046, 2049, 2099, b) 1099 OID report, c) S-3/A registration statement, d) 424-B5 prospectus and e) RC-S & RC- B call schedules. The Plaintiff must show they are a creditor following Generally Accepted Accounting Principles (GAAP) whereby true double entry book accounting was performed in issuing my alleged loan showing a debit against the bank's assets as a result of my alleged loan. Without proof of a claim, the Plaintiff has no standing, and Defendant demands up to 3 times the amount of the claim in recoupment pursuant to UCC 3-305 and UCC 3-306.

IN ADDITION, "It has been settled beyond controversy that a national bank, under Federal Law being limited in its powers and capacity, cannot lend its credits by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires" (Howard & Foster Co. v. Citizens Nat'l Bank of Union, 133 SC 202, 130 SE 759 (1926). "THE DOCTRINE OF ULTRA VIRES IS A MOST POWERFUL WEAPON TO KEEP PRIVATE CORPORATIONS WITHIN THEIR LEGITIMATE SPHERES AND TO PUNISH THEM FOR VIOLATIONS OF THEIR CORPORATE CHARTERS, AND IT PROBABLY IS NOT INVOKED TOO OFTEN". (Zinc Carbonate Co. v. First National Bank 103 Wis 125, 79 NW 229). (American Express Co. v. Citizens State bank, 194 NW 430). Ralph M. Hautrey, Secretary of the British treasury states, "banks lend by creating credit (ledger-entry credit, monetized debt). They create the means of payment out of nothing".

Because the note maker, the Defendant, owns the Note and securitizing the Note without the maker's permission constitutes conversion, then the Defendant demands compensation for the conversion and tort. Again, the Defendant holds the registered Note and is the creditor, not the debtor, so the Plaintiff has no claim and Plaintiff's attorney firm states they are a debt collector. This all appears to be a RICO enterprise from inception.

5. Defendant specifically denies that Plaintiff is the real party of interest and or duly authorized agent of same upon which Plaintiff's alleged claim is based and therefore has no standing to bring this action. (SC Title 32 Section 32-3-10). The Plaintiff, Bank of America, is not the current owner or has possession of the original wet ink subject Note or is the assignee of the security instrument, to the contrary, nor does the instrument constitute a first lien priority mortgage in any way. The Defendant holds title to the property and the Registered NOTE.

6. Defendant specifically denies Plaintiff was the owner of the Note and Mortgage at the time of filing of the foreclosure or hence. Defendant denies Plaintiff held the Defendant's ORIGINAL WET INK SIGNATURE PROMISSORY NOTE or Mortgage as Defendant was denied seeing the Note until January 11, 2013 at which time the Note appeared to be a fraudulent reproduction or computerized eNote. A photocopy or imaged copy of the instrument is not sufficient proof of Holder in due course. PURSUANT of UCC Article 3-3-501(b) 2(1), Defendant is entitled to verify through visual inspection of the original wet inked signature promissory note, allonge and all assignments, together with the original wet inked Deed of Trust/Mortgage in Aiken County upon demand. The Plaintiff only produced a photo copy of the instrument without proper dates on stamps or assignments and no mortgage. Further, Defendant denies Plaintiff is holder of the original Note or is entitled to enforce the Note and is claiming damages according to USC TITLE 18 2071 (a)(b) concerning concealment, removal or mutilation generally. SC Code 16-13-10(A)(1)(2)(4)(B)(1)(230)(240)(320). CONSEQUENTLY, Defendant denies Plaintiff's right to enforce the note has been established or proven at all in any way or otherwise. The note is a non negotiable note and must follows the Pooling and Servicing Agreement with endorsements from origination all the way to the Fannie Mae Trust which the Plaintiff has not accomplished or proven. Further, the Defendant denies the note claimed by the Plaintiff is the original "wet ink" original note. Therefore, the Plaintiff has failed to state facts sufficient to state a cause of action, and a mere reference to Plaintiff holding the note is insufficient for a demand for relief and is NOT GROUNDS to deny Defendant's Motion to Dismiss. The Plaintiff has already sold the Promissory Note and can not fulfill the requirement of presentment under UCC Article 3- 305 (b) 2 (1). And in Section 3-203(b), "but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

In addition, in the deposition of Michele Sjolander, Executive/Senior Vice President of Bank of America, admits she did not place the endorsement on the note and in fact is not allowed in the area where endorsing is supposedly done (at Recontrust, by Recontrust employees) without an escort. She also stated that she does not know the name of the person who supposedly did place the endorsement on the note. She stated that the endorsement is placed on the notes with a rubber stamp onto which her name, Laurie Meder's name and all the other information that appears on the endorsement. In other words, the Countrywide Bank, FSB endorsement to Countrywide Home Loans, Inc (using Laurie Meder's name) and the Countrywide Home Loans, Inc. to "blank" endorsement (using Michele Sjolander's name) is a single stamp that is purportedly placed on notes by employees of Recontrust. And, is why the two endorsements line up perfectly. Mrs. Sjolander also admitted the notes were images and copied on their AS-400, servicing system and imaging system. (Page 30-31) Also, she states the file is scanned and imaged to an electronic file (Page 37)

Mrs. Sjolander even admitted that there is no way to know for sure when the endorsement on the note was placed there, obviously a crucial issue. Long story short, it appears that Mrs. Sojander's only connection to the note in the case, and presumably in other cases such as the Defendant's, is that her stamped name appears on the purported endorsements. She has no personal knowledge of when or if the notes are actually stamped at the Recontrust vaults. The notes are Robo-stamped. You can't just do foreclosures with a rubber stamp on a conveyor belt. (Foreclosure Fraud). (Kirby v. Bank of America, Case No. 2:09-CV-00182-DCB-JMR, Jan 25, 2012, US District Court, S. Dist of MS, Hattiesburg Div.)

Further, Countrywide admits to not conveying Notes to Mortgage Securitization Trusts in the deposition of Ms. DeMartini . (Kemp v. Countrywide, Case 08-02448-JHW p.7). Defendant's alleged loan was a Fannie Mae securitized loan and Plaintiff's Note does not contain the chain of title assignments as required by the Pooling and Servicing Agreement or is the NOTE legally assigned due to no assignments in systematic order to the trust nor any proof of required timing to the Trust thereof. The Fact that Fannie Mae and/or Trust never had possession of the note is FATAL TO THE ENFORCEMENT AND UPON THE SALE OF THE NOTE AND MORTGAGE TO FANNIE MAE an/or TRUST, THE FACT THAT IT WAS NOT PROPERLY ENDORSED TO FANNIE MAE and/or TRUST ALSO DEFEATS THE

ENFORCEBILITY OF THE NOTE. (Kemp v. Countrywide, Case 08-02448-JHW p.11). It is believed the Notes may have been shredded due to their origination of the MERS data recording and tracking system, and the Note was never transferred as legally required. Defendant does know her originated Note was purchased by Fannie Mae Trust and since Fannie Mae never had possession of the Note, they cannot qualify as a "holder" under UCC nor is the Plaintiff a holder or a bearer thereof". (See Dolin v. Damall). In addition, endorsement of the instrument by Fannie Mae is missing which is required to negotiate an instrument. The significance of endorsement and affixation requirements to achieve holder status, and thereby qualify to enforce a note against the maker, the Defendant, was explained in a Third Circuit in Adams v. Madison Realty & Dev.Inc., supra. The Court explained that the maker of the note must have certainty regarding the party who is entitled to enforce the note. Otherwise, the Defendant is exposed to the risk of double payment, or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument. These risks provide makers with a recognizable interest in demanding proof of the chain of title. Consequently, the Defendant here, as maker of the Note, may properly press Plaintiff to establish its holder status. In the Defendant's case, we have neither a proper endorsement on the note itself, nor an allonge that was executed at the time the proof of claim was filed to Fannie Mae Trust. Under these circumstances, neither the Plaintiff or Fannie Mae qualifies as a holder, because Fannie Mae or the Fannie Mae Trust ever came into possession of the Note. Nor does the Plaintiff qualify as a non-holder in possession who has rights of a holder . "A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument" UCC Section 3-301. The Official comment to Section 3-301 adds that this definition: includes a person in possession of an instrument who is not a holder. A non holder in possession of an instrument includes a person that acquired rights as a holder by subrogation or under Section 2-203 (a). The Plaintiff does not have possession of the original Note of a properly indorsed Note, and therefore, may not enforce the note as a non holder in possession.

The Defendant's Note has been securitized and Fannie Mae states all their Notes are non negotiable Notes, therefore PLAINTIFF IS NOT A HOLDER IN DUE COURSE, as described by Matthew D. Weidner, Esq on July 10, 2012 in Foreclosure News and confirmed by Fannie Mae official letter by Lisa O'Donald, Associate General Counsel for Fannie Mae as she states,

"The choice of law provision in the Security Deed was inserted with the expectation that enforcement of the mortgage loan would occur through foreclosure action in which the NOTE reflecting the indebtedness and the Security Deed reflecting the security for repayment of that indebtedness would be considered together as an integrated contract and the choice of law provision in the Security Deed would govern the enforcement of the NOTE. We intended that if a suit to enforce the NOTE were maintained separately from an action to foreclose on the property under the terms of the Security Deed, the applicable law would be determined by the choice of law provisions of the forum jurisdiction". Fannie Mae intended that the Note and Mortgage be read together as an integrated document. The point is clear, the provisions included between both the Note and the mortgage are all bound together in one, integrated, unified document. Therefore , the Note is non negotiable and must comply with all regulations of the Pooling and Servicing Agreement, otherwise, Plaintiff violates the laws and contract under which the investors purchased the securities and constitutes SECURITIES FRAUD. Banks securitize mortgages by selling them to a SPV (a Special Purpose Vehicle, a Trust). Then they create bonds of trust assets to sell to DTC. The bank cannot foreclose on the note, because they are not a holder and lack standing. The Plaintiff claims to be holder in due course, but that is not possible for there to be a holder in due course of a non negotiable instrument. Non-negotiable instruments are governed by Common Law, not the UCC. One, the note is non negotiable, and two, it is never registered in the public. These instruments cannot appear in court, and if brought into court then there is no subject matter jurisdiction over the claim. The note is non negotiable, so it does not come under the UCC negotiable instruments act, but comes under the contract obligations. It also shows the bank is liable and the originator is the creditor. The note is an asset to the Defendant, which is an asset and a counterclaim for recoupment. Before closing, the note goes into a SPV which now has legal title to these issues, and it creates a new instrument in the place of the note. They create securities and bonds. The Plaintiff is representing the registered security and bond at closing. The statute says Defendant has a right to restitution and rescission if they sell an unregistered security. It is a non negotiable instrument. It could be under UCC article 4 because it was deposited in a bank, but eventually is moved to Article 8 and 9 and is applicable for remedy. Defendant has right to rescission because it is unregistered. Defendant claims all applicable rights to restitution and to rescind alleged loan and mortgage and all applicable claims under the Securities Laws. As soon as the original lender and the Plaintiff

sell the unregistered security, the Defendant is entitled to setoff to settle the claim. The Defendant is raising the claim and is not waiving it. Foreclosure is a damage and Defendant is claiming damages.

IN ADDITION, there is no "Holder in due course" if the note is non-negotiable". (Sirius LC v. Erickson, 156 P. 3d 539-Idoaho:Supreme court 2007). The promissory note is governed by contract law. Further, Defendant denies Plaintiff is a lien holder which is a probable cause charge with no evidence and is an unsupported charge. Defendant rebuts the assumption and presumption under Rules of Evidence. The Plaintiff is not the "holder in due course" of the note and not an agent or nominee for the true beneficial owners and have exploited key and vital evidence. There is no proof that the Plaintiff ever held the original note or took possession of the original note and thus has no claim or right to foreclosure, and also, there is no proof that a proper chain of assignments took place and that the lien positions were properly perfected.

WHEREFORE, MERS cannot assign the Note and Mortgage as they never held either which may constitute fraud on the court, therefore, Defendant, denies the instrument constitutes a first lien priority mortgage as well as the following:

In June of 2007, Defendant took out a mortgage loan with Quicken Loan, Inc. which involved misrepresentations, non-disclosure of vital facts, theft by taking, conversion fraud, and origination fraud concerning contract law by not disclosing to the Defendant the Note was legal tender treated like cash and deposited without Defendant's knowledge or authorization, and additionally, the exchange or swap, and not a loan, was being processed with the truth being hidden from the Defendant and the deposit slip never sent to the Defendant. Defendant claims no meeting of the minds, contract law violations and rescinds the loan which was previously rescinded prior to Plaintiff filing their complaint. Then on March 19, 2012, this action was filed by Bank of America, N.A. seeking to foreclose on this previously alleged loan with no meeting of the minds as aforementioned. The Utah Supreme Court has recently held that a lack of the meeting of the minds, a mistake as to the fact, can justify rescission of the contract. A single party may rescind a contract when, at the time the contract is made, the parties make a mutual mistake about a material fact, the existence of which is a basic assumption of the contract" (Deep Creek, LLC v. Utah State Armory BD., 2008 UT 3, 17 (quoting Mooney v. GR & Assocs., 746.

2d 1174 (Utah Ct.app.1978. Also, a recent Federal Circuit Court Judge has found Countrywide and Bank of America guilty of robo signers, fraudulent assignments and foreclosure fraud and has levied a $25 Billion dollar restitution. Defendant previously notified Plaintiff the alleged loan is rescinded via certified mail.

For reasons that follow, Defendant disputes Plaintiff's right to foreclose on this loan and requests that this case be dismissed pursuant to Rule 12(b)SCRCP. The Plaintiff has not sufficiently alleged that it has standing to bring this action. Defendant contends that Plaintiff's allegation that Mortgage Electronic Registration systems, Inc. (hereinafter "MERS") assigned Defendant's Mortgage to Plaintiff is insufficient as a matter of law because MERS does not have any interest in the Promissory Note (hereafter "Note") and therefore cannot assign any interest in said Note to Plaintiff. Because Plaintiff has not alleged that it is entitled to enforce the Note, Plaintiff lacks standing to bring this action and has failed to state a claim upon which relief can be granted. The court may dismiss a claim where the defendant shows that a Plaintiff has failed to state facts sufficient to constitute a cause of action. (Hambrick v. GMAC Mortg.Corp, 370S.C.118:634S.E.2d 5(Ct.App.,2006. The Court must base its decision solely on the allegations in the complain and all property please factual allegations are deemed admitted for the purpose of the motion. However, a motion under Rule 12(b)(6) or 12(c) does not admit conclusion of law. (Carolina Winds v. Joe Harden Builder, 297 S.C.74;374 S.E.2d897(Ct.App.,1988) (rev'd on other grounds)

Plaintiff has alleged, among other things, that MERS assigned Defendant's Mortgage to Plaintiff by an Assignment of Mortgage (hereinafter "AOM") dated April 29, 2011 and that BAC Home Loans Servicing, LP f.k.a Countrywide Home Loan Servicing, L.P have merged with the Plaintiff making Plaintiff successor by merger to these companies. Compl. 7 and 8. The complaint contains no other allegations regarding assignments, negotiation, transfer of the Note or any succession in interest between Plaintiff and Quicken Loans, Inc. As a result, Plaintiff has failed to allege how it is that Plaintiff is entitled to enforce Defendant's Note by foreclosing on her home.

Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt". (United States Bank Trust Nat'l Ass'n v. Bell,

385 S.C. 364, 375,; 684 S.E.2d 199, 205 (Ct.App.2009). This would include proving by a preponderance of the evidence that Plaintiff is the owner of the Note and Mortgage and that Defendant had defaulted on the Note. See 385 S.C. at 375; 684 S./E.2d at 199 (citing Franklin Credit Mgmt. Corp. v. Nicholas, 73 Conn. App. 830, 812 A.2d 51, 57-58 (Conn. App. Ct. 2002). Plaintiff is required to plead and prove that it has received rights in both the Note and the Mortgage because "the assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee absent some indication that the parties also intended to transfer the debt". (S.C. Nat'l Bank v. Halter, 293 S. C. 121, 128, 359 S.E.2d 74,77 (Ct.App.1987).

Because Plaintiff was not the original lender and not the original payee on the Note, Plaintiff will need to show that it became entitled to enforce the Note. The important point is that Plaintiff has not alleged any right to enforce Defendant's Note either through Article 3 or otherwise. The only relevant allegation Plaintiff has made, that MERS assigned Defendant's mortgage to the Plaintiff., is insufficient to transfer any interest in the Note for reasons that follow. In addition Defendant claims the Assignment by MERS is ROBO SIGNED by Dominque Johnson, Malik Basurto and Cynthia Santos as they are named by Fraud Documents and Basurto in case Echeverria et al v. BAC Home Loans Servicing, LP et al: 6:2010 CV 01933 (Middle District of Florida Orlando Division. Also, Lender's Services, Inc. aka Lender Processing Services, Linda Green, an employee, signed several hundred thousand Mortgage Assignments. Green frequently signed assignments to Trusts several years after the closing dates of the Trusts. Lorraine Brown of Alpharetta, Georgia was sentenced to 5 years in prison for her role in Mortgage-Related Document Fraud Scheme by the U.S. Department of Justice. In a six year scheme, Lorraine Brown prepared and filed more than 1 million fraudulently signed and notarized mortgage related documents with property recorders' offices throughout the United States. Lender Services, Inc. (LSI) was involved in Defendant's loan as closing agent and Title Company, and now possible fraudulent Assignment by MERS. It is a federal crime to sign someone else's name to a legal document and is also illegal to sign your name to an affidavit if you have not verified the information you're swearing to. Both are punishable by prison. The signature of a qualified bank or mortgage official on these legal documents is supposed to guarantee that this information is accurate. The paper trail ensures a legal chain of title on a property and has been the backbone of U.S. property ownership for more than 300 years. The

"Robo signing" of affidavits and Assignments of Mortgage and all other mortgage foreclosure documents served to cover up the fact that loan servicers cannot demonstrate the facts required to conduct lawful foreclosure. If indeed Robo Signers signed off on loans without review, they committed fraud by claiming knowledge of a financial matter of which they had no personal knowledge. Briefly, Robo Signers are illegal because fraud cannot be the basis of CLEAR TITLE, and TRUSTEE'S DEEDS following Robo Signed sales are void as a matter of law, notarization is a recording requirement for many of the documents which was also know to be botched. CLEAR TITLE may not derive from a fraud. Numerous authorities have established the rule that an instrument wholly void, such as an undelivered deed, a forged instrument, or a deed in blank, cannot be made the foundation of a GOOD TITLE. It is the general rule that Courts have the power to vacate a foreclosure where there has been fraud or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be INEQUITABLE to a purchaser or parties. Hence, if forged Robo signed signatures are used to obtain the foreclosure, it certainly makes a difference in judicial states as any apparent sale based on Robo signed documents is void...without any legal effect. Robo signing is illegal in all 50 state, hence all 50 Attorney General's become involved in this scheme. These documents are not recordable without good notarization. The reason these documents are notarized in the first place is because otherwise they will not be accepted by the County recorder. Moreover, a notary who helps commit real estate fraud is liable. The notary is in California where Countrywide is located. Defendant claims fraud in the MERS ASSIGNMENT and civil damages and request this Honorable Court turn this case over to the Attorney General of South Carolina to further investigate the Robo Signing of the MERS Assignment and any violations of the False Claims Act inasmuch as the alleged loan is securitized if allowable by law, or grant the Defendant's MOTION TO DISMISS or a 90 Day Stay concerning this case in order for the Defendant to seek the South Carolina Attorney General. Further, Defendant claims declaratory relief and damages, an injunction and attorney fees for Unfair Business practices, as well as claims for slander of title; abuse of process, civil theft and any other civil remedies under the law..

The role of MERS has been much debated recently, but one thing that is clear is that MERS has no ownership interest in promissory notes and thus no ability to assign these notes. In MERS v. NEBRASKA Dept. of Banking and Finance, MERS brought an action contesting the Nebraska Department of Finance's finding that MERS was a "mortgage banker" under Nebraska

law and subject to license and registration requirements as a result. (270 Neb. 529; 704 N.W.2d 784 (Neb.2005). In that case, MERS argued that "it does not own the promissory notes secured by the mortgage and has no right to payments made on those notes. MERS explains that it merely "immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur" (270 Neb. at 533, 704 N.W. 2 d at 786. Since MERS argued and prevailed on this position, it would be estopped to deny that it has ownership of Defendant's Note now and could transfer that ownership to Plaintiff. "When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him" (Hayne Fed. Credit Union v Baily, 327 S.C. 242, 252, 489 S.E. 2d 472, 477 (1997). Because MERS admits that it has no ownership interest in promissory notes, it is impossible for MERS to have assigned Plaintiff any interest in Defendant's Note by virtue of the Assignment of Mortgage, AOM. By information and belief, Defendant claims restitution against the Plaintiff as MERS is an shell data system clouding the titles of homeowners and fraudulently placing assignment recordings including robo signing of the assignment in Aiken County on my home records. It is important to note multiple lawsuits have been filed against MERS and the Plaintiff across the nation and have prevailed with multi millions in settlements by the Plaintiff for fraud and wrongful foreclosures which are too many to list in this document.

While a challenge to a Plaintiff's right to foreclosure based on their failure to plead proper assignment of a promissory note may appear to be a "technical" defense that bears no relation to any rights of the Defendant, this is only appearance. The Defendant has an overriding interest in making sure that, if her home is foreclosed and sold to pay a debt, the party that brings the action and conducts the sale is a party that is actually entitled to enforce the Note. Article 3 of the UCC provides that payment of a promissory note is only effective to discharge the obligation on that promissory note if payment is made to a person that is entitled to enforce the note. (S.C. Code Ann.36-3-601(a). If the Defendant's home were foreclosed and sold and the proceeds paid to a party who was not entitled to enforce the note under the UCC, the Defendant's obligation under the note would be discharged and she would remain liable to pay the note to whoever was entitled to enforce. Requiring the Plaintiff to plead and prove that it is entitled to enforce the note PROTECTS the Defendant from the risk of DOUBLE LIABILITY. Defendant is claiming recoupment, restitution and setoff. Under UCC Article 1 the sale of promissory notes is subject to the statute of frauds.

OF MAJOR CONCERN, is the OFFICE OF THE COMPTROLLER OF THE CURRENCY (hereafter, OCC) signed a CEASE AND DESISTS settlement agreement with MERS on April 13, 2011. Among other things, the CEASE AND DESIST ORDER finds, "We have identified certain deficiencies and unsafe and unsound practices by MERS and MERSCORP that present financial, operational, compliance, legal and reputational risks to MERSCORP and MERS, and to the participating MEMBERS. (OCC No.AA-EC-11-20, Board of Governors; Docket Nos.110051-B-SC-1, 11-051-B-SC-2; FDIC-11-194Bots no.11-040; FHFA No. EAP-11-01). The unlawful assignment of Defendant's mortgage and note by MERS was dated Aril 29, 2011 in flagrant disregard of the OCC CEASE AND DESISTS agreement. Defendant will order an OCC investigation into this deception by the Plaintiff and requests damages as foreclosure is a damage. Noted attorney Philip Kramer, a senior partner at the law firm of Kramer & Kaslow provides insight, MERS Corp is the owner of the Mortgage Electronic Registration Systems (MERS), one of the cornerstones of the current banking crisis.

In order to cut up loans and move the pieces around the world at the speed of electronics again and again and again, until no one is sure who owns what, financial institutions have been using MERS as the "beneficiary", a legal term which in practical terms means they are entitled to foreclose on behalf of the lender, except MERS is nothing more than an electronic data base. They are often named as beneficiary.

However, in order to legally be named as beneficiary they would have had to put up funds on the loan. Not to mention the fact that the recordation itself is not even official. BUT, most importantly, MERS is never a Holder in Due Course. Philip Kramer goes on to observe that, "We are a nation of laws". Everyone knew that MERS didn't have the right to appear as beneficiary, but it would have been inconvenient to act on this because MERS was in widespread use throughout the banking industry. It was wrong, wrong, wrong, but everyone was doing it. ALL FORECLOSURES ASSOCIATED WITH MERS must CEASE AND DESISTS, NOW!!! This is in accordance to the OCC's CONSENT ORDER. Defendant claims a conspiracy to defraud by the Plaintiff by filing a foreclosure on the Defendant and claims civil damages.

In addition, "Merscorp, Inc. and other conspirators were all involved in a fraudulent scheme and RICO enterprise herein complained of. The employees of the MERS, including

many licensed attorneys, have become skilled in using the artifice of MERS to sabotage the judicial process to the detriment of borrowers, and over the past several years, have relied upon MERS to do just that". (Figuero v. MERSCORP, Inc. Case 0:10-cv61296-CMA Page 2).

"Similarly beyond the imagination of most persons is and was the scope of the DISHONSTY of the lenders and those acting in furtherance if the scheme including the present Plaintiff. Through the present time, persons acting within the ambit of this conspiracy, most particularly including the Plaintiff herein, have continued to operate consistent with the core principles of dishonesty and obscurantism engendered by the original conspirators. These dark influences have spread throughout the financial services, lending and banking industries into the national economy and beyond, threatening the economic stability of the United States and the world as a whole. This Court is urged in the strongest possible way to apply a presumption of FALSITY when reviewing any documentary evidence in this court by one or more of the Plaintiffs. Such a presumption is not just warranted, it is indeed compelled by the extent to which the Plaintiffs and those with which they are associated have long acted in a malicious and wanton manner evincing complete contempt for the judicial process and the rights of persons having interests contrary to their own. This is particularly true because the Plaintiffs' contempt for due process is compounded by their specific intention to obviate the requirement that documents prepared for legal use be truthful, authentic, and legitimate."(Figuero v.MERSCORP, Inc. Page 5 &5)

"There is one sort of lie that, when later discovered, constitutes the strongest possible proof of a person's malicious intentions. What is it" A lie about one's name or identity. Many such lies are present in this instance. The whole purpose of the MERS is to allow "servicers" to pretend as if they are someone else: The "owners" of the mortgage here, or the real party of interest. IN FACT THEY ARE NOT". (Figuero v. MERSCOPRP, Inc. Page 5)

In Plaintiff's original complaint #7, Plaintiff claims by virtue of an assignment dated April 29, 2011, Mortgage Electronic Systems, Inc. assigned said mortgage unto BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, the present lien holder and Plaintiff herein. Defendant denies #7 as MERS cannot assign a note or mortgage as they never hold the notes or mortgages and no interest in either. Nor does the mortgage give MERS any

rights to the note. A case to note in February 2012 is United States Bankruptcy Judge Robert Grossman (NY) who ruled that MER'S business practices are unlawful. At each transfer, the note and mortgage are supposed to be "assigned" to the new owner. The Judge rejected every aspect of MERS argument. The Court rejected the claim that MERS could be both holder of the mortgage as well as nominee of the "true" owner. It also found that "mortgage of record" is a vague term that does not give one legal standing as mortgagee. Hence, at best, MERS is only a nominee. It rejected MERS claim that as nominee, it can assign mortgages---a nominee has limited rights and those most certainly DO NOT include the right to transfer ownership unless there is specific written instruction to do so. In scarcely veiled anger, the Judge wrote, "According to MERS , the principle/agent relationship among itself and its members is created by the MERS rules of membership and terms and conditions, as well as the Mortgage itself. However, none of the documents expressly creates an agency relationship or even mentions the word, "agency". MERS would have this Court cobble together the documents and draw inferences from the words contained in those documents." Judge Grossman rejected MERS arguments, saying that mere membership in MERS DOES NOT provide "agency" rights to MERS, and agreeing with the SUPREME COURT of KANSAS that ruled, "The parties appear to have defined the word (nominee) in much the same way that the blind men of Indian legend described an elephant---their description depended on which part they were touching at any given time". He went on to disparage MER'S claim that since in legal theory the "MORTGAGE FOLLOWS THE NOTE', the Court should overlook that MERS separated them. Therefore, the note would be unsecured and the Defendant's bankruptcy was discharged in December 2012. Defendant claims that MERS has irretrievably destroyed the clear chain of title and claims damages due to being forced to quiet title expenses.

In making further assertions, concerning MERS, these facts follow,

a) Assignments were made by "officers" of MERS using delegations of authority of no longer existing MERS predecessors corporations.

b) The Officers of MERS who are allegedly authorized to sign documents on behalf of MERS are not "officers" of the corporation as the term officer of a corporation is legally defined.

c) The MERS assignment is deficient because it omits an assertion that the assignor is the holder under the MERS registry for the MIN number of the mortgage being assigned and the transfer is being recorded on the MERS registry.

d) An interest in a mortgage cannot be conveyed by an endorsement of the mortgage note in blank.

e) Because MERS is a mere nominee/custodian with no legal or beneficial interest in the mortgage note, MERS cannot assign a mortgage note to an assignee. (MERS as a corporation is not a custodian of the promissory notes secured by deeds of trust or other mortgage security instruments for which it serves as nominee)

f) Because MERS is a mere nominee/custodian with no legal or beneficial interests in the mortgage note, the mortgage has been divided from the note rendering the mortgage unenforceable.

g) MERS DISCLAIMS ever holding notes, however, MERS holding of the note endorsed in blank as nominee of a mortgage sold to a mortgage backed securities Trust is a violation of REMIC requirements.

h) Also, MERS holding of the note endorsed in blank as nominee of a mortgage sold to a mortgage backed securities Trust is a violation of warranties and representations contained in the master pooling and servicing agreement and prospectus.

i) MERS was created to perform a service with an ILLEGAL purpose, namely to circumvent the recordation of assignments and payment of recording fees. The issuance of assignments in furtherance of such an ILLEGAL purpose is unenforceable.

j) An assignment of the mortgage note from MERS to the servicer of the note is of either no legal effect or an illegal conversion of the note.

k) Since no evidence of MERS' "ownership" of the underlying note has been offered, and other courts have concluded that MERS does not own the underlying notes, then MERS did not own the underlying note, and it could not transfer the beneficial interest to another. Any

attempt to transfer the beneficial interest without ownership of the underlying note is VOID LAW.

And finally, in the case of "The Bank of New York, as Trustee v. Sameeh Alderazi, the Court denied the Motion and stated in denial the following:

a) The court denied the application because the Plaintiff, could not demonstrate that the original mortgagee, Countrywide Home Loans, Inc., had authorized the assignment of the mortgage to the Plaintiff.

b) The assignment to Plaintiff was executed by Mortgage Electronic Reporting System (MERS) a nominee for American Wholesale Lenders. Black's Law Dictionary defines a nominee as "a person designated to act in place of another, usually in a very limited way".

c) An assignment by an agent without authority from the principal is a nullity. Plaintiff failed to provide evidence that Countrywide had authorized MERS to assign its mortgage to Plaintiff.

d) Plaintiff submitted in addition to the MERS assignment, what it purports to be an endorsed note and a corporate resolution of MERS showing that MERS had appointed all officers of Countrywide Financial Corporation as assistant secretaries and vice presidents of MERS. This present motion must fail for the same reason as the prior motion as Plaintiff has failed to provide documentation from the Lender that it authorized the assignment.

e) Affidavits are insufficient to establish ownership of the note on fact that purported endorsement is undated. And, the affidavits are based on books and records, not on personal knowledge. Yet the affiants did not produce any of the records on which they based their assertion that Plaintiff possessed an endorsed note at the time the action was commenced.

f) Even putting aside the fact that there is no evidence that Countrywide Financial Corporation and Countrywide Home Loans, Inc. are the same entity, the fact that MERS authorized Countrywide officers to act on its behalf, is not evidence of the converse. It is no evidence that Countrywide authorized MERS officers to act as officers of Countrywide. Further, the fact that Selman (the person who signed the assignment) may have been an officer of both

Countrywide and MERS does not alter the fact that she executed the assignment on behalf of MERS.

The face of the assignment indicates that MERS is assigning the mortgage as nominee of America's Wholesale Lender (a trade name for Countrywide), and more importantly, that Selman executed the assignment as assistant vice president of MERS. The assertion that the assignment incorrectly lists Selman's title as assistant vice president of MERS, instead of assistant secretary and vice president of MERS, is of no relevance other than to demonstrate the CASUAL AND CAVALIER manner in which these transactions have been conducted. They provide no evidence that Countrywide in fact approved or authorized the assignment. Similarly, William C. Hultman, Secretary and Treasury of MERS, states in a conclusory fashion in paragraph 8 of his affidavit that Countrywide "instructed MERS to assign the Mortgage to Bank of New York" without offering the basis for that assertion, other than it's role as nominee.

Then Plaintiff claims that by terms of the mortgage MERS as nominee was granted the right and then quotes the right, however, this language is found on page two of the mortgage under section "Borrower's Transfer to Lender of Rights in the Property" and therefore is facially an acknowledgment by the borrower. The fact that the borrower acknowledged and consented to MERS acting as nominee of the Lender has no bearing on what specific powers and authority the Lender granted MERS as nominee. The PROBLEM is not whether the borrower can object to the assignees' standing, but whether the original Lender, who is not before the Court, actually transferred rights to the Plaintiff. Furthermore, while the mortgage grants some rights to MERS, it does not grant MERS the specific right to assign the mortgage. The only specific rights enumerated in the mortgage are the right to foreclose and sell the property. The general language "to take any action required of the Lender including but not limited to, releasing and canceling this "Security Instrument" is not sufficient to give the nominee authority to alienate or assign a mortgage without getting the mortgagee's explicit authority for the particular assignment.

g) Plaintiff also argues that the agreement between MERS and its members grants MERS the authority to assign the mortgages of it's members and also as mortgagee, however, in this case MERS was named in paragraph (c) of the mortgage as Mortgagee of record for the purpose

of recording the mortgage. Being the mortgagee of record for the purpose of recording the mortgage does not confer the right to assign the mortgage absent an instruction to do so from the Lender. Paragraph 2 of the MERS terms and conditions provide that "MERS shall serve as Mortgagee of record with respect to all such mortgage loans solely as a nominee in an administrative capacity", and that "MERS agrees not to assert any rights (other than rights specified in the governing documents) with respect to such mortgage loans or mortgaged properties.". Assigning or alienating a mortgage without an explicit instruction from a Lender to do so, is not acting in an administrative capacity.

Further, paragraph 6 of the terms and conditions provides that, MERS system is not a vehicle for creating or transferring beneficial interests in mortgage loans." Plaintiff has failed to meet the very basic requirement that proof of an agent's authority must be shown from the mouth of the principal not the agent. (Lexow & Jenkins, P.C. v. Hertz Commercial Leasing Corp., 122 AD2d 25, 504 N.Y. S. 2d 192 (2nd Dept 1986), Siegel v. Kentucky Fried Chicken of Long Island, Inc., 108 AD2d 218, 488 N.Y.S.2d 744 (2nd Dept 1985)

As Plaintiff has not shown that it owned the note and mortgage, it has no standing to maintain this foreclosure action. Therefore, the renewed motion for an order of reference must be denied and the action dismissed.

The Court has raised the standing issue sua sponte because, in this case, it goes to the INTEGRITY OF THE ENTIRE PROCEEDING. For a Court to allow a purported assignee to foreclose, in the absence of some proof that the original lender authorized the assignment of the mortgage to them, would cast doubt upon the validity of the title of any subsequent purchasers, should the original lender or successor challenge the assignment at a future date. (Concluding , The Bank of New York, as Trustee v. Sameeh Alderazi)

The Defendant has brought this case to the attention of Honorable Court as the assignment by MERS is just the same and Quicken Loans has not given any authority to MERS to assign the Defendant's mortgage. Defendant's Motion to Dismiss is reasonable and with the integrity of the Court. More cases, LLP Mortgage v. Sabine Properties: FINAL DISPOSITION. No Evidence 'MERS' Owned the Note, COULD NOT Assign it. NY SUPREME COURT FINAL DISPOSTION. Here, there are no allegations or evidence that MERS was the owner of

the note such that it could assign it to LLP. THUS, the assignment from MERS was insufficient to confer ownership of the note to LLP, and it has NO STANDING TO BRING THIS ACTION. Kluge v. Fumoaz - 145 AD2d at 538 , "holding that the assignment of a mortgage without transfer of the debt is a nullity/the assignment of a mortgage without a valid transfer of the mortgage note is a nullity. (145, AD2 537) Also, NO EVIDENCE MERS PHYSICALLY DELIVERED MORTGAGE AND NOTE. (MERS V. Diana Esposito), MERS not holder owner of note. (HSBC v. Henry Feld)

Further, "in addressing the issue of standing, it is well settled that an action to foreclose on a mortgage may not be brought by one who has no title to it, and absent transfer of the debt, the assignment of the mortgage is a nullity". (GRO-WIT Capital, LTD v. 1080 UTICA, LLC, 2010)

And, FLORIDA APPELLATE COURT UPHOLDS THE CONCEPT OF DETERMINING THE STANDING OF THE FORECLOSING PARTY BEFORE ALLOWING SUMMARY JUDGEMENT. (BAC v. US Bank)

In RE: Walker, Case No.10-21656-E-11 Eastern District of CA Bankruptcy Court rules MERS has NO actionable interest in title. "any attempt to transfer the beneficial interest of a trust deed without ownership of the underlying note is void under California Law." "MERS could not, as a matter of LAW, have transferred the note to Citibank from the original lender, Bayrock Mortgage Corp." The Court's opinion is headlined stating that MERS and Citibank are not the real parties of interest.

Defendant states that MERS could not, as a matter of LAW have transferred the note to Plaintiff, BAC Home Loans Servicing, LP f.k.a. Countrywide Home Loans Servicing, LP from the original Lender as there is no proof of authority. Also, Defendant states that any Mortgage or Note the Plaintiff claims to be holding is without endorsement of a person with personal knowledge of the facts that the complete file concerning this mortgage was transferred to Countrywide or to Fannie Mae Trust and that the copy of the mortgage submitted to the court is authentic and there is no evidence the note is an authentic original copy. (Mers v.Torr)

In addition the Oregon Supreme Court recently handed down opinions in two MERS cases, Brandrup v. ReconTrust Company and Niday v. GMAC Mortgage, LLC. The court agreed that the core question is one of statutory construction, in other words, the court must determine what meaning the legislature intended when it defined the term "beneficiary". The Lender is the true beneficiary because the Lender alone is, and is designated as, the person to whom the obligation is owed. Further, the meaning of "beneficiary" is not only determined by statute, "that meaning is incorporated into, and cannot be altered by, the party's agreement." Although the court need not have said more than that, the court takes a short detour near the end of this section of the opinion to explain that it is a "fundamental principle in mortgage law...that a foreclosing party must have the power to enforce the underlying note." This "functional unity" between the beneficiary and the person entitled to enforce the note (the PETE) "has longstanding roots in the COMMON LAW ITSELF". Mers is not and never has been a beneficiary. The original Lender is the true beneficiary, therefore MERS CANNOT assign a beneficial interest of which they do not have. Also, MERS has recorded an Unrecordable Assignment. (Barringer v. Loder). Lenders must provide "definitive documentation" that establishes the right to foreclose. The assignments by MERS are shams for 2 reasons. FIRST, at the time they are executed, neither MERS nor the original Lender has any interest to convey. SECOND, the assignment does not reflect the actual chain of transfers that took place before , so it is not a memorialization of an assignment that previously occurred by operation of law. Also, the Oregon Supreme Court answered the question whether MERS can assign legal title to the trust deed (mortgage), and the court had little difficulty answering "NO." MERS is neither the trustee nor the beneficiary so MERS holds neither legal title or equitable title. MERS is dressed like a beneficiary and not an actual beneficiary. MERS does not hold title to the trust deed, MERS cannot convey legal title, nor is MERS an agent as explained previously. The true beneficiary is not MERS. It is the person entitled to enforce the note which in this case is the investors of the securitized alleged loan. Since there is no loan, the Plaintiff must produce "definitive documentation" establishing its right to foreclose with the original complaint. And finally, in the Niday case, the Oregon Supreme Court made it crystal clear that Niday was entitled to proof MERS was acting as a duly authorized agent when it attempted to foreclose and that its principle is a person entitled to enforce the note. The Defendant states that the Plaintiff has done neither in this case, and this should have been established at the inception of complaint. And, MERS is not the beneficiary

of the Defendant's mortgage and neither MERS, nor the trustee, nor the loan servicer (Plaintiff) have demonstrated legal interest in the mortgage loan. There is no evidence offered to show how Bank of America (Plaintiff) acquired an interest in the note and mortgage. The Plaintiff was not the owner of the note at the time of the foreclosure. The Plaintiff has misrepresented the identity of the note owner and Defendant claims damages as foreclosure is a damage.

The Mortgage Compliance Investigators has done extensive research concerning MERS and Defendant will save the history and executive names who comprised the collusion for the court room, however, it is well known at the helm Angelo Mozilo of Countrywide took the lead. The National Registry was originally intended to satisfy the requirements of the Uniform Electronic Transactions Act (UETA) and Electronic Signatures (ESIGN). (S.C. Code 26-6-10 et.seq.2004).(Defendant never consented or authorized ESIGN and the Federal e-Sign Act excludes from the statute Foreclosure under mortgage. Nevertheless, 15 U.S.C. 7003 (3) states that Article 3 and Article 9 does not apply to UETA and ESIGN as we are talking about real property, and not personal property. (Therefore, Article 3 would not apply to the e-Note Plaintiff previously showed Defendant on January 11, 2013). MERS operates in the intangible world of e-Notes and e-Mortgages, not paper Notes and paper security instruments. Attempting to provide functionality for paper note tracking would greatly complicate things for which MERS was designed to do. If one were to look and compare the basics, then you could discern the difference between Registration vs. Recording. MERS is not a system of LEGAL RECORD nor a replacement for the PUBLIC LAND RECORDS. MERS is solely a TRACKING SYSTEM. No loan interests are transferred using MERS, they are only TRACKED. MERS is not a party to the Tangible Promissory Note, has not funded any money and is conferred no rights. Upon BIFURCATION of the Tangible Promissory Note and the intangible payment obligation, the agency relationship of subsequent parties does not exist. The purpose of an assignment of Mortgage is to memorialize the sale of the Tangible Promissory Note. However, that is not what is actually happening. The Intangible Payment Obligation has been ripped out of the Tangible Promissory Note years prior to the purported Assignment of Mortgage. Usually it was done shortly after the signing of the closing documents with the homeowner within days or weeks. However, MERS is being used in an attempt to bring the parts of the entire instrument together with fancy verbiage on the document. As MERS operates in the realm of INTANGIBLE RECORDS and not in the earthly world of Tangible written documents, records appear and

disappear as if they never existed. Everything that we have been discussing leads back to TITLE. Which is the union of all elements constituting the "LEGAL RIGHT" to control and dispose of REAL PROPERTY. It is about RIGHTS acquired. It is the "LEGAL EVIDENCE' of a person's ownership (interest) in the real property. The Plaintiff has NO LEGAL RIGHTS to the Defendant's real property.

Lastly, SUMTER COUNTY SOUTH CAROLINA COURT OF COMMON PLEAS, Mers,Inc.v.Girdvainis CaseNo. 2005-CP-43-0278 (Order dated January 19, 2006, citing to the representations of MERS and court findings in Mortgage Electronic Registration Systems, Inc. v. Nebraska Dept. of Banking and Finance, 270 Neb.529, 704 NW 2d.784). As such, ALL MERS assignments are suspect at best, and may in fact, be fraudulent. The COURT OF COMMON PLEAS OF SUMTER COUNTY, SOUTH CAROLINA also found MERS' rights were not as they were represented to be; the MERS had no rights to collect on any debt because it did not extend any credit: none of the borrowers owe MERS any money; THAT MERS DOES NOT OWN THE PROMISORY NOTES SECURED BY THE MORTGAGES; AND THAT MERS DOES NOT ACQUIRE ANY LOAN OR EXTENSION OF CREDIT SECURED BY A LIEN ON REAL PROPERTY. DEFENDANT denies MERS has any rights to assign anything.

7. Defendant states Plaintiff lacks standing to bring an action. (Wells Fargo Bank v. Jordon Cuyahoga App. No. 91675, 2009, Ohio-1092 (holding that Civil Rule 7 (A) does not apply unless a Plaintiff has standing in the first place to invoke the jurisdiction of the court. Accordingly, a bank that is not a mortgagee when suit is filed is not the real party in interest on the date the complaint is filed, and cannot cure it's lack of standing by subsequently obtaining an interest in the mortgage). Accord, Bank of New York v. Gindele, Hamilton App. No.C-090251, 2010-Ohio-542. In addition, Plaintiff has failed to provide evidence that it was in possession of the original note prior to filing the complaint and foreclosure lawsuit. STANDING, however, includes not just the notion that the party has a "sufficient stake" in the outcome of the litigation, but also, that the party is in fact the "real party of interest." This is the "at least equally - important requirement that the claim be brought by or on behalf of one..."in whom rests, by substantive law, the claim sought to be enforced." (Kumar Corp. v. Nopal Lines, Ltd. 462 So. 2d 1178, 1183 (Fla.3d DCA 1985)

8. Plaintiff's complaint fails to state cause of action upon which relief requested may be granted and therefore this action is barred. "IN ORDER TO STATE A CAUSE OF ACTION, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief". (Med. & Benefits Plan v. Lago, 867 So. 2d 1184 (Fla. 5th DCA 2004).

9. Defendant asserts all terms and condition and rights of the promissory note and mortgage upon which Plaintiff's alleged claim is based. The Defendant is the originator of the Note and owner of the Note. The Note is legal tender and was deposited by the original lender and successors as such, therefore, no loan was made only an exchange or swap. Banking law states credits on bank ledgers cannot be sold. Plaintiff is in violation and claims that a mortgage transaction is a so-called loan, but it is a quid pro quo exchange deceptively called a loan. The evidence of this quid pro quo exchange is in the bookkeeping entries according to GAAP (Generally Accepted Accounting Principles). Title to the promissory Note still belongs to the Defendant. In addition, when a bank grants a loan all they are doing is transferring cash value from the Defendant's promissory note to themselves without knowledge or disclosure to Defendant which is theft. The Plaintiff or predecessors did not loan one cent of the bank's money or its depositors funds to obtain the Defendant's promissory note, but posted the alleged Defendant's promissory note on its books as a deposit from the Defendant to the bank and uses the credit the bank obtains from the alleged borrower via her promissory note to create the check book money they give to her as the so-called loan, and vastly increases the assets of the bank through fractional reserve techniques. Therefore, the debt is discharged upon tender of a promissory Note whether accepted or rejected. Commercial redemption is a legal administrative remedy provided by Congress via Public Policy. There was no exchange of valuable consideration and Plaintiff has failed to show proof. Defendant states these actions of the Plaintiff are false, deceptive and misleading practices in collecting a debt in violation of Section 1692, Title 15 U.S. Code(the Fair Debt Collection Practices Act, or FDCPA). In addition, "FIRST NATIONAL BANK OF MONTGOMERY v. Jerome Daly 1969, jury decided that the mortgagee didn't owe the bank any money, since it failed to give consideration, because it didn't lend the bank's money, but created the funds out of thin air, in collusion with the Federal Reserve. There's also the 1968 Minnisota Trial Court's decision holding the Federal Reserve Act unconstitutional. Simply, the bank had not fulfilled, maintained or upheld it's part of the requirement for real consideration and the Mortgage contract in whole, for the reason that the

"MONEY" was not the "real" property of the bank, as it was created "out of nothing" as soon as the loan agreement was signed, by ledger entry. "Mr. Daly explained that the money was in fact not the property of the bank, for it was created out of nothing as soon as the loan agreement was signed". What the banks do when they make loans is to accept PROMISSORY NOTES in exchange for credits. Reserves are unchanged by the loan transactions, but deposit credits constitute new additions to the total deposits of the banking system. In other words: The money doesn't come out of their existing assets, the bank is simply inventing it, putting up nothing of it's own, except for a theoretical liability on paper. The banks President, Mr. Morgan, took the stand and affirmed that, in collusion with, the Federal Reserve Bank, Inc. did create the money out of nothing. Justice Martin V. Mahoney personal memorandum, "in the Judge's personal memorandum he recalled that "the Plaintiff (bank president) admitted that in combination with the Federal Reserve Bank did create the money and credits upon its books by bookkeeping entry. The money and credit first came into existence when they created it. Mr. Morgan admitted that no US Law or Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the Note. The jury found that there was no lawful consideration, and I agree." He also poetically added, "Only God can create something of value out of nothing." And upon this revelation, the court rejected the bank's claim for foreclosure.

10. Defendant asserts all requirements of applicable mortgage foreclosure statutes.

11. Plaintiff is not the lawful assignee of the Promissory Note and Mortgage upon which Plaintiff's alleged claim is based. The Fannie Mae Trust naming the individual investors as the lawful assignees of the Note is demanded. Plaintiff must prove entitlement to promissory notes was authorized in the Countywide merger with Plaintiff, Bank of America. From information and belief, Countrywide did not sell entitlement rights of promissory notes in the merger with the Plaintiff, Bank of America. Plaintiff has not acquired any financial losses or harm in this matter. And furthermore, for example, on March 1, 2008, a Bank of America spokesperson said that Countrywide's liabilities were factored into the purchase of Countrywide: We bought the company and all of its assets and liabilities...We are aware of the claims and potential claims against the company and have factored those into the purchase." In an interview with the New York times for an article discussing the impact of mortgage-related loss exposure on banks, Bank of America's former CEO confirmed that Bank of America was aware of Countrywide

Financial's legal liabilities and accepted them as part of the cost of the acquisition. (United States of America, ex rel. Edward O'Donnell v. Bank of America Corporation, successor to Countrywide Financial Corporation, Countrywide Home Loans, Inc., and full Spectrum Lending, Page 40 of Complaint in intervention of the United States of America). This is proof the PLAINTIFF HAS NOT BEEN HARMED or SUFFERED ANY LOSSES concerning Defendant's case.

12. Plaintiff cannot produce the original "wet ink" Promissory Note and Mortgage upon which this action is based, and therefore, relief requested is barred. The Note in question is not the Note the Defendant signed and executed in ink and only the one signed in ink that presumably contains the Defendant's fingerprints can be relied upon by a hand writing analysis expert. Further, if there are missing assignments of the original note, then the Note is void and a nullity and the Plaintiff, being a servicer, has no beneficial ownership in the Note. A "NOMINEE" such as MERS who has no legal authority to do business in South Carolina to Defendant's knowledge, and who according to their own written documents and verbal assurances never hold the Note or own "any beneficial interest in the Note, therefore, cannot assign any beneficial interest to the Plaintiff. The MERS assignment then is illegal.

13. Plaintiff is not the holder of the original "wet ink" Promissory Note and Mortgage upon which this action is based, and therefore, relief requested is barred. Bank of America was not given any entitlement to promissory notes from Countrywide in the merger with Countrywide. (Kemp v. Countywide) Also, Federal Circuit Courts have ruled that the only way to prove the perfection of any security (including promissory notes) is by actual possession of the security. Current of prior possession must be proved up. A notice in an instrument to pre-pay the debt makes it a non-negotiable instrument under UCC. Defendant's promissory note #4 states, BORROWER'S RIGHT TO PRE-PAY. If not a negotiable instrument under the UCC, the instrument can only be transferred under ASSIGNMENT LAW by operation of law. Assignment will provide standing to the holder so long as the transferor had the right to foreclose, however, the PSA terms trumps Article 3 Rules as an otherwise agreed provision under 1-302 of the UCC, and therefore the notes in a securitized Trust are transferred by Assignment and not by Negotiation. The PSA takes the transfer of the instrument totally out of the UCC and relegates the form of transfer to applicable assignment law, thus PSA trumps UCC.

14. Plaintiff is not in possession of the original "wet ink" promissory note and Mortgage upon which this action is based and therefore relief requested is barred. Defendant demands strict proof of authenticity by Plaintiff with Court Panel and forensic expert of any Note produced by Plaintiff in Court. The original promissory note belongs to the Defendant as ORIGINATOR and MAKER. Indeed, where the Defendant denies that the Plaintiff seeking foreclosure has an ownership interest in the mortgage, the issue of ownership becomes an issue the Plaintiff must prove. (Carapezza v. Pate, 143 So.2d 346, 347 (Fla.3d DCA 1962). Each time a Promissory Note is assigned, i.e. sold to another party, the Note itself must be endorsed with the name of the note's new owner. Each time a Mortgage is assigned to another entity, that transaction must be recorded in the County Records Office. In order for a Mortgage or Promissory Note to be valid, it must have what is known as "perfection" of the chain of title. In other words, there must be a clear, unambiguous record of ownership from the time the Defendant signed papers at the closing, to the present moment. ANY LAPSE IN THE CHAIN OF TITLE CAUSES A "DEFECT" IN THE INSTRUMENT, MAKING IT INVALID. Courts have rejected the notion that MERS has the legal authority to assign Title to a particular party in the first place. Again MERS does not have any financial interest in either the property or the Promissory Note. Therefore, since the perfection of the CHAIN OF TITLE cannot be independently verified, the Defendant claims MERS HAS NO LEGAL AUTHORITY TO ASSIGN TITLE OR ASSIGN THE PROMISSORY NOTE as Defendant's alleged loan has been sold to different entities and securitized and sold to an UNKNOWN NUMBER OF ENTITIES . In the U. S. SUPREME COURT case Carpenter v. Logan , it was ruled that where a Promissory Note goes, a deed of trust must follow. In other words, the deed and the Note cannot be separated . If your note has been securitized, it now belongs to someone other than the holder of your mortgage. This is known as BIFURCATION-THE deed of trusts points to one party, while the Promissory Note points to another. this the Defendant's defense claims that since the relationship between the deed/mortgage and the note has become DEFECTIVE, it renders the deed of trust/mortgage unenforceable, and the Defendant bankrupted the unsecured Note in 2011. In addition, the promissory note must also have a clear chain of title, according to the UCC. Defendant claims there is not clear chain of title on the note. In the case, US Bank NA v. Ibenez, the court ruled that blank assignment is not sufficient to claim perfection, an assignment in blank does not constitute a lawful assignment of a mortgage. Defendant claims there is not a

sufficient financial interest in the mortgage to permit Plaintiff to foreclose. Since, the Defendant's loan has been securitized, the original lender has been paid. At that point the debt was written off and the debt should be considered settled. THE CONSTITUTIONAL and JUDICIAL requirement of standing derives from "case and controversy" requirements in Article III of the U.S. Constitution. (Oppenheim law) In general, the securitization process and resulting trust are governed by what is known as the Pooling and Servicing Agreement (PSA) which sets forth the exact steps necessary for a trust to be created, for the bundled mortgages to be transferred into the trust, for issuance of the securities by the trust to the depositor or on the open market, generally, to institutional investors and for the maintenance of the trust once created in order to maintain favorable tax status. The PSA is a key piece of documentation from the bank in order for the Judge to determine whether the trust owns the loan being foreclosed. However, the true essential component of the PSA is not a public record but rather a document attached to the PSA known as the Master Loan Schedule. While the PSA is essential because it sets forth the rules for each bundle of mortgage loans (which have been violated as note was not transferred by Countrywide to Fannie Mae as noted in this document) and violations of these rules, makes the transfer defective. The Master Loan Schedule establishes whether the subject mortgage was ever transferred to that particular trust. Therefore, while both are essential, if the loan was never transferred to the trust, this is the home run of all foreclosure defense strategies, because the trust, simply put cannot sue to collect on something it does not own. (Oppenheimer Law). Increasingly, there are concerns that in many cases the loan documents have not been properly transferred to the trust which raises questions about whether the trust has title to the loans and hence STANDING to bring foreclosure actions on defaulted loans. These VIOLATIONS create CLOUDED TITLES. It is also crucial to note that under the PSA, the trustee and the servicer bear liability if they transfer mortgages in violation of the PSA requirements, causing the trust to lose REMIC tax status.

Standing, is one of the five traditional legal requirements the Plaintiff must meet in order to bring suit in a court of law. Of the five requirements, standing is perhaps the most crucial requirement because it requires the aggrieved party to prove that they have the right to seek redress. Under Article III of the United States Constitution, standing is often characterized by the statement that a Plaintiff must show there is "a case and controversy," and there are 3 requirements one must prove. FIRST, they must prove a legally cognizable injury. (The

Plaintiff has not been injured and not suffered and financial losses). SECOND, that the injury is concrete and particularized; and THIRD, a causal relationship between the injury and the conduct of the defending party. The Plaintiff has not been injured, but the Defendant has been injured by the Plaintiff's conduct, robo signing, misrepresentations, predatory lending, non-disclosures and blatant disregard of the Defendant's constitutional protections. STANDING is the substantive due process notion of what a party must do in order to have the legal right to bring a legal action through our judicial system. Without the protective concept of standing, anyone could sue anyone at any time, ultimately causing legal anarchy. To fabricate standing, the banks used fraudulent assignments, bad notaries and allowed for perjured documents to be presented to Judges. The banks were forced to engage in such conduct because...the bank broke the mortgage into different parts, splitting the Note form the Mortgage by assigning the Mortgages to a third party (MERS) and selling the Notes to another entity. the Notes were then further sold off in tranches. Questions will be asked for a generation how BANKS literally HIJACKED the JUDICIAL SYSTEM turning it into their own collection system while dispensing with the Rules of Law that have protected property right owners from the day our great nation was founded. Ironically, the robo signing crisis was an attempt to placate the recording system requirements in light of the fact that there was significant question as to whether the assignment form MERS would provide an effective Chain of Title. By creating new bogus assignments DATED YEARS after the trusts were created and closed, the banking industry created a smoking gun and literally got their hands caught in a larger and messier cokkie jar than the one they were trying to avoid, PROVIDING UNDENIABLE EVIDENCE that the transfers into the trust were INVALID or had never occurred. (Oppenheimer Law)

In defendant's case, the Plaintiff even file an illegal assignment during the CEASE AND DISIST ORDER FOR MERS from the OCC, not to mention, the Countrywide's testimony of Linda DeMartini stating on the record that the trustee at the time foreclosure, and in fact since the origination of the loan, had never had possession of the note for a particular mortgage. The Judge threw out THE CASE ON GROUNDS THE TRUSTEE DID NO HAVE PROPER STANDING TO FORECLOSE. During an investigation by Abigail Field with FORTUNE, MAGAZINE they examined 130 cases where Bank of America's was foreclosing on Countrywide mortgage backed securities allegedly held by securitized trusts. 104 were blatant failures to properly securitize with lack of proper endorsements and then magically appearing

endorsements. Another interesting point to note is that the PSA was specifically designed to govern a securitized trust because CONTRACT COMMON LAW combined with TRUST LAW is virtually indestructible when it comes to the intent of the parties to the contract, which in this case intended very specific rules of transfer. Combined TRUST LAW and CONTRACT LAW set forth extremely rigid principals for the transfer of interests. Besides the general understanding that both types of law apply, PSAs contain very specific language called a recital of the transfer which outlines step-by-step the process of transferring the mortgage to the trustee of a trust. Judge Boyko sets forth the traditional legal principle of standing and explains its relationship to the federal court jurisdiction concept of diversity jurisdiction. Because the bank could not prove who owned the mortgage and note, they could not establish the DIVERSIFTY JURISDICTION of the Court. In his opinion, Judge Boyko made clear that FAILURE TO PROVE STANDING was simply elemental to invoking the jurisdiction of the Court, stating, " In the above captioned cases, NONE of the Assignments show the named Plaintiff to be the owner of the rights, title and interest under the Mortgage at issue as of the date of the foreclosure Complaint. The Assignments, in every instance, express a present intent to convey all rights, title and interest in the Mortgage and the accompanying Note to the Plaintiff named in the caption of the Foreclosure Complaint upon receipt of sufficient consideration on the date the Assignment was signed and notarized. further, the assignment documents belie Plaintiff's assertion they own the Note and Mortgage by means of a purchase which pre-dated the Complaint by days, months and years. He stated, this Court possesses the independent obligations to preserve the judicial integrity of the federal court and to jealously guard federal jurisdiction...neither the fluidity of the secondary mortgage market, nor monetary or economic consideration of the parties, nor the convenience of the litigants supersede those obligations...unlike stat law and procedure, as Plaintiffs perceive it, the federal judicial system need not, and will not, be forgiving in this regard." On that note 14 actions were property DISMISSED. (Oppenheimer Law) Defendant request this Honorable Court do the same and DISMISS with prejudice. The Defendant's note was never endorsed in blank and delivered to Fannie Mae Trust as required by the PSA as no endorsement is even to Plaintiff. Applying state law, because the trustee never had possession of the note, the Plaintiff cannot sue to enforce its obligations as the owner and holder in due course. Further, because the note was not properly endorsed by the Plaintiff under the guidelines set forth in the PSA, all requirements for a proper

transfer have failed. Also, the Plaintiff has failed to show that it is entitled to relief . And, in Gee v. U. S. National Association as trustee, the court found the bank lacked the documentation to properly establish standing. In reversing summary judgment, the Fifth District established that the traditional argument made by banks that "the borrower defaulted so who cares if we have the right documents" will no longer prevail in foreclosure actions. Moreover, the issue of STANDING, particularly in SECURITIZED TRUSTS, will now be front and center in foreclosure defense.(Oppenheimer Law, attorneys and counselors 2011 Article and quoted in pages 33-36 of this document). Even outside a foreclosure scenario, in order for a possessor of an iterent in real property to be able to lawfully affect title, that person or entity must have an interest under color of law...must be able to prove that they are in fact the possessor of those rights. This is the threshold requirement that is codified and expanded by common law in all 50 states. The Plaintiff has not proved at inception they are possessor of those rights.

IN ADDITION, Defendant claims that once a loan has been securitized, or converted to stock, it is no longer a loan and cannot be converted back into a loan which means that the Defendant's Promissory Note no longer exists as such and the mortgage is no longer securing anything. Defendant further claims the Plaintiff, and predecessors and successors have actually destroyed the agreements themselves. And if an agreement no longer exist, how can it be enforced?. The alleged loan is no longer enforceable because it is now owned by many shareholders and a promissory note is only enforceable in its whole entirety. How can thousands of people foreclosure on Defendants home? And now, there is a defect in the Chain of Title. Defendant claims damages as the Plaintiff has damaged the Defendant's Chain of Title and Defendant claims unlawful and unethical behavior. Plaintiff has HARMED the Defendant by making it appear likely with adverse impact that Defendant would suffer the loss of her home.

In the MBS Litigation with Bank of America and why BOA will loose the Loss Causation argument, Philippe Selendy, MBIA's lead attorney said it as well as anyone before Judge Branstein, "The housing crisis does not give Countrywide a defense to its Day One misconduct leading into these transactions. there would be no insurance policies and no losses but for that fraud...when you think about it, what Countrywide is trying to do here, having first caused the housing crisis, together with other reckless loan originators and underwriters, THEY WANT TO TURN AROUND AND PROFIT FROM IT AGAIN. They want you to rule that

the crisis is in effect a Get Out of Jail Free card that allows them to ESCAPE LIABILITY for their FRAUD and SHIFT THE COSTS TO INNOCENT PARTIES. Well, luckily we're in a Country governed by the Rule of Law, and the law doesn't work that way. (October 5, 2011 Transcript at 35:4-25)

15. Defendant states that upon information and belief, the Note has been paid in full by an undisclosed third party who prior or contemporaneously with the closing on the loan transaction paid the Lender in exchange for certain unrecorded rights to the revenues arising out of the loan document which was never a loan and MERS is RICO. Upon information and belief, the Plaintiff has no financial interest in the Note or Mortgage and has not incurred any financial damages concerning the note. Upon information and belief the missing assignments on the Note may have made it void and a legal nullity, thus they have exploited key and vital evidence or shipped same off-shore to a structured investment vehicle that also has no interest in the note or mortgage or the revenue thereof which may constitute fraud and RICO. "The Supreme Court found that a party in a civil action need establish only a criminal "violation" and not a criminal conviction. Further, the court held that a party need only have caused harm to the other party by the commission of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the party need not demonstrate that the other party is an organized crime figure, a mobster in the popular sense, or that the party in the civil action has suffered some type of special Racketeering injury, all that the party must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation are to be liberally construed to effect the congressional purpose as broadly formulated in the Statute. (Sedima, SPRL v. Imrex Co., 473 US 479 (1985).

16. Plaintiff's claim is barred by the statute of frauds, laches and or the statute of limitations. Estoppel of laches precludes the Plaintiff from bringing an action when the Plaintiff knowingly failed to claim or enforce a legal right at the proper time. Plaintiff failed to show and prove it was the owner of the note or had any LEGAL RIGHTS at the time of Plaintiff's filing the foreclosure complaint.

17. Plaintiff's claim is barred and or limited for violation of the Federal Truth in Lending Act. Defendant states she was not told the original Promissory Note was legal tender and would

be deposited in a Demand Deposit account. Defendant states these actions were done without the Defendant's knowledge or authorization and constitute willful intent. No deposit slip has been sent to the Defendant, and Defendant claims recoupment for the full amount of the promissory note plus damages for misrepresentation, deception, conversion and fraud.

18. Plaintiff's claim is barred and or limited for violation of RESPA. Upon information and belief, Plaintiff and or its predecessor(s) in interest violated various provisions of the Real Estates Settlement procedures Act ("RESPA"), which is codified at 12 U.S.C. section 2601, et seq. by, inter alia.

(a) failing to provide the Housing and Urban Development (HUD) special information booklet, and a Mortgage Servicing Disclosure Statement.

(b) failing to provide Defendants with an Escrow Disclosure Statement for each year of the mortgage since it's beginning.

(c) Giving or accepting fees, kickbacks and or other things of value in exchange for referrals of settlement service business, and splitting fees and receiving unearned fees for services not actually performed.

(d) Charging a fee at the time of the loan closing (which was not a loan, but an exchange) for the preparation of truth-in-lending, uniform settlement and escrow account statements.

19. Defendant states that claim is barred and or limited for violation of the State and or Federal Fair Debt Collection Practices Act which mandates that changes in servicer and notices to borrower accurately describe when a debt is sold and to what entity a debt is due. Therefore, if the notes never transferred to the trust, there's no way to retroactively do that now, the trusts are governed by very specific Pooling and Servicing Agreements that for the most part give the trust 90 days to transfer all the required assets. you cannot transfer the loan after it's slipped into default, 3 or 4 years after setting up the trust. It violates the laws and contracts under which the investors purchased the securities. Defendant was not informed of when debt was sold or to what entity a debt was due prior to Plaintiff filing foreclosure complaint. CONSTRUCTIVE FRAUD is acts of concealment of material facts. Having obtained the Defendant's promissory

note by constructive fraud, the Plaintiff is not justified to enforce the mortgage contract by any "implied consent" because true consent, expressed or implied, cannot be given under a cloud of non disclosure, concealment and suppression of the material facts, or a state of duress.

20. Plaintiff claim for attorney fees is barred for failure to perform or meet conditions precedent under the Promissory Note and or Mortgage upon which action is allegedly based. Alternatively, there is not valid contract or other written agreement between the parties permitting the award of attorney fees in connection with this action. Further Defendant denies any valid contract exists as original lender did not sign mortgage and is misrepresentation, deception and fraud and deems note and mortgage void and was rescinded prior to foreclosure.

21. Plaintiff comes to court with unclean hands and is prohibited by reason thereof from obtaining equitable relief of foreclosure from this Court. The Plaintiff's UNCLEAN HANDS result from the Plaintiff's improvident and predatory intentional failure to comply with material terms of the mortgage and note, failure to comply with the default loan servicing requirements that apply to the alleged loan as described herein above. As a matter of equity, this Court should refuse to foreclose this mortgage because acceleration of the note would be inequitable, unjust and the circumstances of this case render acceleration UNCONSIONABLE. This Court should refuse acceleration or is estopped from doing so because of misleading conduct and unfulfilled CONTRACTUAL and EQUITABLE conditions precedent. The doctrine of unclean hands "precludes a Plaintiff from recovering in equity if he acted unfairly in a matter that is subject of the litigation to the prejudice of the Defendant". (Ingram v. Kasey's Assocs., 340 s.c. 98, 107 N. 2, 531 s. e. 2D 287, 292 N. 2, (2000)).

22. Defendant has made all payments required by law under the circumstances, however, Plaintiff and or its predecessor(s) in interest improperly applied such payments resulting in the fiction that Defendant was in default as no loan was ever made. Defendant is entitled to a full accounting through the master transaction histories and general ledgers for the account from the origination of the loan with the original lender through the Fannie Mae Trust since a dump or summary of said information cannot be relied upon to determine the rightful amounts owed. Defendant request FAS 104, etc. Further, the principal balance claimed as owed is not owed and is the wrong amount, the alleged loan has not been properly credited since there was no loan.

Servicing requirements are conditions precedent to the acceleration of the alleged debt or foreclosure. (Pfeifer v. Countrywide Home Loans No. A133071. First dist., Div.Two, Dec.13, 20112 Cal.App 4th)

23. Plaintiff has charged and or collected payments from Defendant for attorney fees, legal fees, litigation attorney fees, foreclosure costs, late charges, property inspection fees, property valuation charges, and other charges and advances, and predatory fees, and other fees and or charges that are not authorized by or in conformity with the terms of the subject note an mortgage. Defendant CLAIMS a full refund of all payments, charges and fees.

24. Plaintiff failed to provide Defendant with legitimate and non predatory access to the debt management and relief that must be made available to borrowers, including this Defendant pursuant to and in accordance with the Pooling and Servicing Agreement or other Trust Agreements that controls and applies to the subject mortgage loan. Plaintiff's non-compliance with the conditions precedent to foreclosure imposed on the Plaintiff pursuant to the applicable Pooling and Servicing Agreement is an actionable event that makes the filing of this foreclosure premature based on a failure of a contractual and or equitable precedent to foreclose which denies Plaintiff's ability to carry out a foreclosure. Plaintiff cannot legally pursue foreclosure unless and until Plaintiff demonstrates compliance with the foreclosure prevention servicing imposed by the subject pooling and servicing or trust agreement under which the Plaintiff alleges owning the subject mortgage loan. In addition the assignment and note stamps are in conflict of legal names and dates. DEFENDANT was shown a copied NOTE with no assignment dates.

25. Plaintiff intentionally failed to act in "Good Faith" or to deal fairly with the Defendant by failing to follow the applicable standards of residential single family mortgage servicing denying Defendant access to the residential mortgage servicing protocols applicable to the subject note and mortgage. Thus, Defendant states that the servicing requirements are conditions precedent to the acceleration of the alleged debt or foreclosure. In addition, Defendant claims PREDATORY LENDING as described by the Office of the Comptroller of the Currency, U.S. Department of the Treasury, FAIR LENDING. Fair Lending Laws contain provisions to address predatory lending practices such as COLLATERAL OR EQUITY STRIPPING, the practice of making loans that rely on the liquidation value of the borrower's

home or other collateral rather than the borrower's ability to repay. This was being intentionally done by Quicken Loans in collusion with Countrywide as has been verified previously in this documentation. Also, inadequate disclosure, the practice of failing to fully disclose or explain the true costs and risks of loan transactions. Defendant states none of the disclosures as brought to the attention of this Honorable Court in this Amended Motion to Dismiss were disclosed, and the most dishonest and unconscionable act being not disclosing to the Defendant the Promissory Note is actual legal tender and used as cash making the loan not a loan, but an exchange and swap with the Lender continuing to refuse to disclose upon written request to the Defendant . This alone and other non disclosures makes the alleged loan UNCONSCIONABLE.

26. Defendant states that in light of all of the foregoing defenses, and on the face of the purported loan document, the terms and circumstances of the Note and Mortgage were UNCONSCIONABLE when made and were UNCONSCIONABLELY exercised, it is therefore UNCONSCIONABLE to enforce the mortgage foreclosure.

27. Plaintiff cannot prove it's case against the Defendant and therefore this Court should enter judgment in Defendant's favor and quiet title in Defendant's favor, voiding the alleged promissory note held by the Plaintiff and mortgage upon which Plaintiff seeks to recover herein. In addition, Plaintiff cannot enforce the note and has failed to prove otherwise in Plaintiff's complaint. Also, Plaintiff, as the servicer, acts only as the agent of the owner of the instrument and has no greater right to enforce the instrument. (see e.g., Greer v. O'Dell 305 F.3d at 1303) Fannie Mae Trust and or investors have no right to enforce the note, then Plaintiff, as it's agent cannot enforce the note. In addition, no agency relationship or rights of principal has been proven, therefore Plaintiff cannot enforce the instrument. Because, the claim filed by Plaintiff, servicer, cannot be enforced under applicable state law, the claim must be disallowed under U.S.C. 502 (1) (b). (Kemp v. Countrywide, Case, 08-02448-JHW p. 21 & 22.)

28. Plaintiff is liable for Defendant's cost and attorney fees pursuant to terms of the agreement between the parties and South Carolina Statutes, and or applicable provisions of the State and Federal Fair Debt Collection Practices Act and or the Federal Truth and Lending Act. Defendant states the Plaintiff, it's predecessors and successors, are not a creditor to whom any debt is owed. The promissory note was used as cash and legal tender and the debt was paid off

at the closing. In addition, Plaintiff must prove no violations in the SOUTH CAROLINA MORTGAGE AND LENDING ACT, Chapter 22, Section 37-22-110, (25) (29) (30) (39), and Section 37-22-120 (A) (1) (B) (D) and Section 37-22-190(A) (1) misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise. Defendant claims original lender did not disclose the promissory note was legal tender and used as a cash deposit. Defendant claims predatory lending as loan was a no doc loan during economic crisis and Countrywide hustle of loans not following required underwriting procedures. (2) refuse improperly or fail to issue a satisfaction or a mortgage pursuant to Section 29-3-310. (4) (8) engage in a transaction, practice, or course of business in connection with the making or servicing of, or purchase or sale of, a mortgage loan that is not in good faith or fair dealing, that is unconscionable, as set forth in Section 37-5-108, or that constitutes a fraud upon a person. (11) RESPA (14) fail to provide disclosures as required by state or Federal law or collect any fee before providing required disclosures. Defendant claims original lender failed to provide disclosure on the promissory note being legal tender and a cash deposit. In addition, original Lender has refused to supply Defendant a copy of the cash deposit slip and any information requested in the Defendant's recent written letter of request as required by Federal Law. Defendant has Letters of evidence. As in the Supreme Court of the State of New York, County of New York case, AMBAC ASSURANCE CORPORATION v. EMC MORTGAGE, LLC, Index No, 651013/2012,page38-40BCOUNTRYWIDE HOME LOANS, INC. Representations about the quality of Countrywide's loans and underwriting practices have proven false. Countrywide and its management are currently subject to myriad investigations and actions, some of which have already settled for billions of dollars, for having engaged in systematic fraud in connection with the origination of residential mortgage loans. Among these actions is a lawsuit by Ambac, for fraud and breach of contract, in this Court. Ambac's complaint sets forth in detail the facts establishing what one Federal Judge has referred to as "a Company-wide culture that, at every level, emphasized increased loan origination volume in derogation of underwriting standards," which was "rampantly disregarded." Countrywide's practice was not only unlawful, but a flagrant disregard for its own stated underwriting guidelines. Ambac discovered almost 91% breached one or more of Countrywide's representations and warranties about the quality of the loans and Countrywide's practices in

underwriting them. A civil fraud action brought by the SEC against Countrywide confirms Countrywide's duplicity vis-a-vis the public, alleging that from "2005 through 2007" - i.e., when the Transactions at issue in this complaint (Ambac v. EMC) were effectuated, Countrywide's "senior executives misled the market by falsely assuring investors that Countrywide was primarily a prime quality mortgage lender which had avoided the excesses of its competitors." The duplicity was internal to Countrywide as well. In particular, as the SEC's complaint against former Countrywide CEO Angelo Mozilo reveals, Countrywide abused the exceptions process, which was, as its name suggests, intended to be the exception, but became the rule. The allegations in these complaints regarding Countrywide's systematic abandonment of its underwriting guidelines are confirmed by the statements of confidential witnesses. For example, Countrywide confidential witness 1 ("CW-1") who worked at Countrywide as an underwriter form March 2006 to December 2007 has confirmed the allegations that Countrywide systematically abandoned its underwriting guidelines, CLUES, by (a) not assessing whether the income stated on stated-loan applications was reasonable (b) not allowing red fags of fraud to be evaluated. In addition, CW-l revealed that loan officers at Countrywide would regularly input incorrect data metrics into CLUES, such as inflating borrower's income beyond what the documents in the loan file supported. In short, CW-1 confirmed that Countrywide's actual practices differed from its stated protocols and policies, all in furtherance of Countrywide's goal to fund as many loans as possible, by any means necessary. Also, Countrywide was the largest originator of securitized loans in the industry and Bear Sterns securitized nearly $15 Billion of loans originated by Countrywide between 2005 and 2007. Defendant claims Quicken Loans was working with Countrywide in this scheme to defraud the public as Countrywide immediately bought the Defendant's loan and Defendant's loan was securitized. Defendant claims predatory lending as Quicken and Countrywide caused loans to be originated without regard to the ability of the borrower to repay the loan.

29. Defendant states plaintiff is in violation of SC Title 29-3 320, Liability for failure to enter satisfaction as Defendant's originated Note was used by original lender, Quicken Loans, Inc. as legal tender and note was an exchange or swap, not a loan, and is binding on assignments or selling of Note to other banks. It is illegal under banking laws to sell credits. Defendant makes demand for RESTITUTION and DAMAGES for Plaintiff's fraud, misrepresentations, deception, unlawful conversion, conspiracy and RICO. A RICO enterprise must have a

"common purpose of engaging in a course of conduct" and its existence is proven by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. First Capital Asset Mgmt., Inc. v. Satinwood, Inc., 385 F.3d 159,173 (2d Cir.2004) Also, "An association-in-fact enterprise...need not have a hierarchical structure or a "chain of command. (quoting Boyle v. United states, 129 S.Ct at 2245) Quicken, MERS, and Countrywide and Plaintiff sufficiently describes a collective enterprise formed prior to and during the economic crisis to damage all homeowners chain of titles, facilitate loans without proper underwriting OR ANY UNDERWRITING AT ALL, sell off the loans to unknowing investors, have no financial interest in the loans and then foreclose on homeowners. This is RICO as a MATTER OF LAW and a substantive RICO claim and shows pattern, enterprise, conduct and racketeering activity. Defalco v. Bernas, 244 F.3d 286,306 (2d Cir.2001. RICO violations are a cause of Defendant's injury as foreclosure is a damage and injury and would establish the substantive RICO liability. The Plaintiff's attempt to enforce a foreclosure proximately causes Defendant injury. (see Baisch v. Gallina, 346 F. 3d 366, 373-74 (2ndCir.2003), which include incurring of legal costs. The Plaintiff is involved in a RICO conspiracy as "he knows the general nature of the conspiracy and that the conspiracy extends beyond his individual role" (see United States v. Zichettello, 208 F. 3d 72,99 (2d Cir.2000)(quoting United States v. Rastelli, 870 f.2d 822,828 (2d Cir.1989) (see also Salinas v. United States, 522 U.S. 52,64 (1997) ("a person...may be liable for (1962 d) conspiracy even though he was incapable of committing the substantive offense). Under General Business Law, (GBL) 349, the Defendant must show that: (1) the Plaintiff's conduct is "consumer oriented", (2) the Plaintiff is engaged in a "deceptive act or practice", (3) the defendant was injured by this practice; and (4) the acts or practices have a broader impact on consumers at large." (see Wilson v. Nw.Mut.Ins. Co., 625 F.3d 54, 64 (2d Cir.2010) (citing Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank,N.A., 85 N.Y. 2d 20,24-27 (1995). Thus, even though the default judgments against Plaintiffs have been vacated by the state courts or by agreement with defendants, plaintiff's claim for damages cannot be moot. Therefore, in this case, Defendant has alleged facts sufficient to be granted a MOTION TO DISMISS and claims damages. SC JUDICIARY LAW may hold any attorney engaged in "any deceit or collusion, or consents to any deceit or collusion with intent to deceive the court or any party" accountable to the full extent of the law. The filing of as foreclosure action knowing MERS never held the NOTE and

the other foregoing facts provide adequate support for this claim and Defendant claims damages. Defendant seeks, inter alia, declaratory relief that Plaintiffs violated the law and injunctive relief. This court has subject matter jurisdiction based on Defendants facts.

30. Defendant claims that without "consensus as idem", an agreement to the same thing, there is no binding contract. (Peerless), Raffles v. Wichelhaus, 2 H.&c.906 (1894). this principle has been adopted into the American common law tradition and has become a bedrock of our contract dispute jurisprudence. As aforementioned, the Utah Supreme Court has recently held that a lack of the meeting of the minds, a mistake as to fact, can justify a rescission of the contract. A single party may rescind a contract when, at the time the contract was made, the parties make a mutual mistake about a material fact, the existence of which is a basic assumption of the contract". (Deep Creek,LLC v. Utah State Armory BD., 2008 UT 3, 17(quoting Mooney v. GR & Assoc., 746P.29 1174 (Utah Ct. App.1978). Defendant states she was not told at any time prior, during or after the promissory note was signed that is was legal tender and used for cash by the lender. Defendant deems non disclosure of vital information or hiding material facts as deceptive practices and fraud. In addition, there was no consideration on the alleged mortgage loan deeming it null and void. "it is not necessary for rescission of a contract that a party making the misrepresentations should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made the false representations, even innocently, to retain the fruits of a bargain induced by such representations." (Whipp v. Iverson, 43 Wis 2d 166). Defendant states a Statutory Defense.

In fact , the Defendant, borrower, entered an entirely new and different world of high finance where her relationship was bought and sold not between Lenders, but outside the lender relationship to a loan servicing company, but an investment contract and not disclosed to the Defendant.. Therefore, Defendant seeks to rescind and /or void the loan agreement which was not a loan agreement at all based on mistake and the missing of the minds by the parties at contract formation.

31. The Plaintiff did not allege it is both the owner and holder of the Note and Mortgage in the body of the original complaint. This is important because, this is a cause of action in EQUITY to foreclose a mortgage and not an action of LAW for enforcement of the Note. The

FAILURE of the Plaintiff to allege, in the body of its COMPLAINT, that in addition to holding the subject note and mortgage, it also owns these instruments prohibits it from asserting the proper chain of ownership of the instruments from their inception. CARPENTER V. LONGAN 83 U.S. 16 Wall271 (1872). Carpenter established the rule that the security interest necessarily follows the promissory Note, and a security interest is a NULLITY without the underlying promise to pay. Also, Plaintiff has not shown elements of an agency relationship to the true owner of the Note in order to state a cause of action. This the Plaintiff has not done, therefore, Defendant requests the foreclosure be DISMISSED with all her requested remedies, etc as expressed below in her PRAYER FOR RELIEF, and further, Defendant request the Honorable Court DISMISS WITH PREJUDICE.

32. The Fair Debt Collection Practices Act (FDCPA) forbids debt collectors from, inter alia: (1) engaging in "any conduct the natural consequence of which is to harass, OPPRESS or ABUSE any person, 15 U.S.C. 1692d, (2) making a "false, deceptive, or misleading representation, 15 U.S.C. 1692 e, or using "unfair or unconscionable means "to attempt to collect a debt, 15 U.S.C.1692 f. Section 1692 specifically prohibits false representation of "the character, amount, or legal status of any debt and the use of deceptive means "to collect or attempt to collect any debt." 15 U.S.C. 1692 e (2) (A), (10). Plaintiff's attorney's state they are collecting a debt. Based on all the Defendant's claims, the filing of the foreclosure action is "unfair and unconscionable" in violation of 15 U.S.C. 1692. Kuria v. Palisades Acquisition XVI, LLC, No. 09 Civ. 3321 (JOF)(RGV),F.Supp.2d,2010 WI 4780769, at 7. Defendant claim is plausible and defendant claims injury and damages.

33. Lastly, Federal Civ. Rule 12 (b)(6), in order for the Plaintiff to survive the Defendants MOTION TO DISMISS, "a complaint must contain sufficient factual matter, as accepted as true, to state a claim to relief that is plausible on its face" (see. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) DC. The Plaintiffs complaint fails to allege facts that give rise to a plausible claim for relief. The Plaintiff did not produce a wet ink original Note at time of filing complaint and MERS cannot assign the Note to the Plaintiff as MERS never held the NOTE. Also, the Defendant is the originator and maker of the NOTE, registered the NOTE and claims all rights to the NOTE as CREDITOR. And, Federal Rule of Civil Procedure (17) (a) Bank of America (Plaintiff) has the burden of establishing it is the "real party of interest." Defendant

claims Plaintiff did not fulfill their obligation at time of the filing of the foreclosure complaint and Defendant claims civil damages.

Defendant request the Honorable Court to NOT ALLOW the Plaintiff to request summary judgment until the Plaintiff strikes all 33 defenses and all other claims within the 33 areas of this OBJECTION TO AND REQUEST FOR DISMISSAL OF THE PLAINTIFF'S AMENDED SUMMONS AND COMPLAINT. Defendant claims Plaintiff's documents provided to this Honorable Court are fake documents and not provided to the court upon inception of the foreclosure proceeding.

CONCLUSION

WITH ALL THE AFOREMENTIONED extensively stated due diligence answers, counterclaims/claims, defenses and remedies, it is clear the Plaintiff has caused Defendant extreme STRESS, elder financial ABUSE, mental ANGUISH, health problems due to THREATS of continual foreclosure inducing FEAR of being homeless as a senior citizen during this national financial crisis and hardship which was engineered by the Plaintiff and Plaintiff's conspirators. Defendant has spent countless hours of research with no sleep perpetrated upon the Defendant by the Plaintiff. Plaintiff is knowingly seeking to maliciously HARM the Defendant, remove Defendant from her home, and gain unjust compensation, therefore, Plaintiff should be held accountable for damages to the full extent of the law. Defendant deems Plaintiff's complaint filings for foreclosure on Defendant's home severe "Bad Faith" and willful intent by the Plaintiff to cause grave INJURY, intense OPPRESSION and further FINANCIAL HARM, and Defendant is entitled to and claims DAMAGES to the full extent of the law. (UCC 4-103). AND, Defendant has alleged facts that constitute "strong circumstantial evidence of conscious misbehavior or recklessness. Lerner v. Fleet Bank,N.A., 459 F3d 273,290-91(2nd Cir2006).

WHEREFORE, DEFENDANT REQUEST THE HONORABLE COURT FOR:

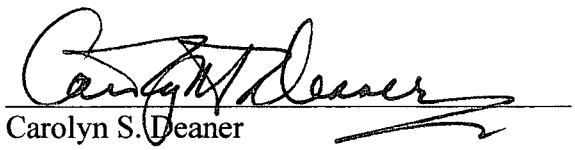
1. LEAVE TO AMEND THIS OBJECTION TO AND REQUEST FOR DISMISSAL OF PLAINTIFF'S AMENDED SUMMONS AND COMPLAINT TO PROPERLY PLEAD FACTS CONTAINED HEREIN WITH CONTINGENCY COUNSEL WHEN OBTAINED OR WITHOUT SHOULD DEFENDANT NOT BE ABLE TO OBTAIN COUNSEL ON A CONTINGENCY BASIS DUE TO A FINANCIAL HARDSHIP AT THIS TIME, AND TO REQUEST TRIAL BY JURY IF NECESSARY

AND, PRAYER FOR RELIEF

WHEREFORE, Defendant Deaner requests this Honorable Court dismiss "WITH PREJUDICE" Plaintiff's Amended Summons and Complaint pursuant to rule 12 SCRCP and to enter judgment in her favor, quieting title, awarding costs, recoupment, punitive and other damages, restitution, rescission, court order for removal of lis pendens, removal of MERS false assignment, satisfaction of mortgage (Title 29 Chapter 3 Article 1, Section 29-3-370 & 430) and attorney fees for those reasons set forth herein in addition to other relief deemed proper and required by all applicable common law, public law commercial law, equitable law, banking law, securities law, federal and state law, judiciary law, constitutional law and any other laws including the False Claims Act and fraud pertinent and in favor of the Defendant in this matter with the Honorable Court.

Respectfully Submitted,

Date: August 5, 2013
North Augusta, SC
Aiken County



Carolyn S. Deaner

704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U. S. Mail First class Delivery on AUGUST 5, 2013 upon H. Guyton Murrell at Korn Law Firm, 1300 Pickens Street, P. O. Box 12369, Columbia, SC 29211-2369.

DESIGNATION: 14

14. Plaintiff's Notice of Motion and Motion to Strike Answer or in the Alternative For Summary Judgment...filed 8/26/2013.
(contains 7 pages, affidavit of Vanessa Hartley, pages 1-2 and Bankruptcy, 22 various pages)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, PLAINTIFF, vs. Carolyn S. Deaner, Defendant.	IN THE COURT OF COMMON PLEAS C/A NO: 2012-CP-02-699 **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO STRIKE ANSWER OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT**

TO: DEFENDANT CAROLYN DEANER:

YOU WILL PLEASE TAKE NOTICE that the attorney for the plaintiff will, on the tenth (10TH) day after service of this motion, or as soon thereafter as counsel may be heard, move before the Court for an Order pursuant to Rule 12(f) of the SCRCP striking the answer filed by Defendant Carolyn Deaner or in the alternative granting the plaintiff Summary Judgment as to any defenses or counterclaims alleged in the responsive pleadings and related motions pursuant to Rule 56, SCRCP.

This Motion is made on the grounds that Defendant Carolyn Deaner previously filed a Chapter 7 case in the United States Bankruptcy Court for the Southern District of Georgia. Plaintiff would show that Defendant Carolyn Deaner is barred from disputing the mortgage debt in this matter under the doctrine of judicial estoppel due to the sworn statements the Defendant made in her bankruptcy case. In the alternative, Plaintiff seeks and order granting summary judgment in this case as the sworn statements and filings in the prior bankruptcy case are determinative and res judicata as to the issues in this case and there is no genuine issue as to any material fact and that the plaintiff is entitled to a judgment as a matter of law. This Motion is based on the pleadings in this case,

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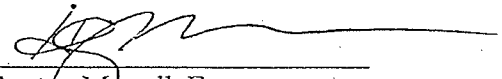
discovery, affidavits, loan documents, filings and statements in the Defendant's prior bankruptcy case and the applicable statutory and case law.

Korn Law Firm, P.A.
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817



H. Guyton Murrell, Esq.
Attorney for Plaintiff

August 23, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, PLAINTIFF, vs. Carolyn S. Deaner, Defendants.	IN THE COURT OF COMMON PLEAS C/A NO: 2012-CP-02-699 **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.**

FACTUAL/PROCEDURAL BACKGROUND

This is an action for foreclosure as to certain real property located in Aiken County. On June 26, 2007, Carolyn S. Deaner signed a Promissory Note to obtain a loan for Ninety-Seven Thousand Six Hundred and 00/100ths ($97,600.00) Dollars. On the same date, Carolyn S. Deaner signed a mortgage that designated her property located at 704 Kershaw Drive, Aiken, SC 29641 to act as collateral for the debt. By Assignment filed May 9, 2011 in Book 4356 at Page 932, the mortgage and note were assigned to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP. Plaintiff Bank of America, N.A. is the successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP. The account fell into arrears with the last payment being made on June 11, 2010, which paid the installment for May 2010.

The Defendant Carolyn S. Deaner filed a Chapter 7 Bankruptcy on May 24, 2011. In her bankruptcy petition and schedules, the Defendant Carolyn S. Deaner confirmed the validity of the first mortgage lien encumbering the property. Defendant also stated under oath that she had no claims, counterclaims or setoffs to declare as assets. Carolyn Deaner was granted an Order of Discharge on December 23, 2011.

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AIKEN COUNTY
CLERK OF COURT

The present foreclosure action was commenced on March 19, 2012. The Defendant Carolyn Deaner filed a motion to dismiss on April 12, 2012 as well as several answers and related motions and objections contesting the validity of the mortgage lien.

ISSUES

A. ARE THE DEFENSES AND COUNTERCLAIMS ALLEGED BY DEFENDANT BARRED BY JUDICIAL ESTOPPEL?

LAW/ANALYSIS

A motion to strike under Rule 12(f), SCRCP, which challenges a theory of recovery in the complaint, is in the nature of a motion to dismiss under Rule 12(b)(6), SCRCP. McCormick v. England, 328 S.C. 627, 632, 494 S.E.2d 431, 433 (Ct.App. 1997). In reviewing a ruling on a motion to dismiss a claim, this court must base its decision solely on the allegations set forth on the face of the complaint. Id. At 632-33, 494 S.E.2d at 433. "The motion cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Id. At 633, 494 S.E.2d at 433 (citing Dye v. Gainey, 320 S.C. 65, 463 S.E.2d 97 (Ct.App 1995))." The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief. The cause of action should not be struck merely because the court doubts the plaintiff will prevail on the action." Id. At 633, 494 S.E.2d at 433-34.

Summary Judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 602 S.E.2d 389 (2004); McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004); Rule 56(c), SCRCP; see also Higgins v. Medical Univ. of South Carolina, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (noting that when ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including pleadings, depositions, answers to interrogatories, admissions on file, and affidavits).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 1997). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall, 359 S.C. at 376, 597 S.E.2d at 183. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRCP.

IV. DISCUSSION

A. ARE THE DEFENSES AND COUNTERCLAIMS ALLEGED BY DEFENDANT BARRED BY JUDICIAL ESTOPPEL?

Plaintiff would show that the claims and defenses alleged by Defendant Deaner in her motions and various pleadings are wholly barred due to her sworn statements in her prior bankruptcy case. Subsequent to obtaining the mortgage loan in this case, the Defendant Carolyn S. Deaner filed a voluntary Chapter 7 case in Georgia. Based upon the sworn statements submitted by the defendant in her bankruptcy case, Carolyn Deaner was granted an order of discharge. Although the bankruptcy allowed the defendant to discharge over $300,000.00 in unsecured debt, she is also bound by her filings in the bankruptcy case. The bankruptcy court records show that Defendant confirmed BAC Home Loans Servicing, LP as the holder of a first mortgage lien encumbering the subject real property. Furthermore, the Defendant Carolyn S. Deaner specifically and expressly stated that she had no claims, counterclaims or rights to setoff claims to declare as assets.

The statements under oath in the Defendant's Bankruptcy cases maintaining that no setoffs or counterclaims existed to declare as assets and acknowledging that Plaintiff had a secured first mortgage lien on the subject real property act as a bar to her now assuming a contrary position in this litigation.

Judicial Estoppel precludes a party from adopting a position in conflict with one taken in the same or related litigation. See Colleton Reg. Hosp. V. MRS Med. Rev. Syst., 866 F. Supp 896 (D.S.C. 1994). The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of the courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. 31 C.J.S. *Estoppel & Waiver* Section 139, at 593 (1996). See also Zimmerman v. Central Union Bank, 194 S.C. 518, 532, 8 S.E.2d 359, 365 (1940)("Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interest have changed, assume a contrary position.").

Plaintiff in this action is entitled to either an order striking the pleadings or an order granting summary judgment due to her statements made under oath in her bankruptcy case. The Defendant Carolyn S. Deaner filed a Chapter 7 Bankruptcy petition in the United States Bankruptcy Court for the Southern District of Georgia as case no. 11-10874-SDB (Affidavit of Vanessa Hartley, PACER Statement marked as Attachment A). As part of the sworn statements submitted in the bankruptcy, Defendant Carolyn Deaner confirmed the validity of the mortgage debt to Plaintiff (Affidavit of Vanessa Hartley, Chapter 7 Statement of Intention & Schedule D). Defendant Carolyn Deaner also stated under oath in her bankruptcy filings that she had no counterclaims or rights to setoff to declare as assets (Affidavit of Vanessa Hartley, Schedule B, paragraph 21 marked as Attachment D). Based upon the sworn statements in her bankruptcy petition, the United States Bankruptcy Court granted Carolyn Deaner an Order of Discharge on December 23, 2011 (Affidavit of Vanessa Hartley, PACER Statement marked as Attachment A).

The defenses and counterclaims alleged by Defendant Deaner are wholly barred due to her sworn statements in the prior bankruptcy case under the doctrine of judicial estoppel. As set forth above, the Defendant filed a voluntary bankruptcy petition. In the bankruptcy case, defendant confirmed Plaintiff held a valid first mortgage lien

encumbering the subject real property. The defendant also confirmed that she had no claim, counterclaims or rights to setoff to declare as assets. The Defendant Carolyn Deaner received an order of discharge from the United States Bankruptcy Court, which not only relieved her of substantial unsecured debts well in excess of a quarter million dollars but also relieved her of any personal liability for the subject mortgage debt. Pursuant to the order of discharge, Plaintiff's right to request a deficiency judgment has been waived in the current foreclosure action.

Having accepted the full benefit of her bankruptcy filing, Defendant cannot now disavow her sworn statements made in the bankruptcy case. The sworn statements made by Defendant in her bankruptcy case include confirming that Plaintiff was the holder of a valid first mortgage lien on the subject real property and that no defenses or counterclaims existed.

IV. CONCLUSION

The Defendant Carolyn Deaner is bound by her sworn statements made in the prior bankruptcy case. Defendant cannot accept the benefit of the bankruptcy discharging her substantial credit card debt and now seek to disavow the impact of the sworn statements in the current litigation. When no issues of material fact exist, the appropriate action is Summary Judgment. *Spencer v. Miller*, 192 S.E.2d 863 (1972). Accordingly, the Plaintiff prays that the Court strike the defenses and counterclaims or in the alternative award it Summary Judgment.

Korn Law Firm, P.A.
1300 Pickens Street
Post Office Box 11264
Columbia, SC 29211-1264
(803) 252-5817

By: _____
H. Guyton Murrell
Attorney for Plaintiff

Dated this 23rd day of August, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

PLAINTIFF,

vs.

Carolyn S. Deaner,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-02-699

AFFIDAVIT OF VANESSA HARTLEY

PERSONALLY APPEARED BEFORE ME Vanessa Hartley, who being duly sworn, deposes and says that:

I am a bankruptcy paralegal with Korn Law Firm. I have reviewed the public records of the United States Bankruptcy Court for the Southern District of Georgia as reflected in the online PACER service. The records reflect that the Defendant Carolyn S. Deaner filed a Chapter 7 Bankruptcy petition on May 4, 2011 as Case No.11-010874-SDB (PACER Statement marked as Attachment A). The subject mortgage debt held by BAC Home Loans Servicing, LP was acknowledged as a valid first mortgage lien by Defendant Carolyn S. Deaner as reflected on Schedule D of her bankruptcy petition (Schedule D marked as Attachment B) and in her Statement of Intention (Statement of Intention marked as Attachment C). The Defendant Carolyn S. Deaner made a sworn statement under oath in Schedule B of her bankruptcy petition that she had no claims or right to setoff to declare as assets (Schedule B, paragraph 21 marked as Attachment D).

COPY
ORIGINAL FILED
AUG 26 2013
AIKEN COUNTY
CLERK OF COURT

Based upon the sworn statements in her bankruptcy petition, the United States Bankruptcy Court granted Carolyn Deaner an Order of Discharge on December 23, 2011. Pursuant to the discharge, the Defendant Carolyn S. Deaner discharged Three Hundred Twenty None Thousand Five Hundred Sixty Eight and 00/100ths ($329,568.00) Dollars in unsecured debts (Schedule E & Summary of Schedules marked as Attachment E). Further pursuant to the discharge, the pending foreclosure action has waived any request for a deficiency judgment.

Vanessa Hartley
Vanessa Hartley
Bankruptcy paralegal

SWORN TO BEFORE me this
22 day of August, 2013

Jodes Brew
Notary Public for South Carolina
My Commission Expires: 11/2/14

U.S. Bankruptcy Court
Southern District of Georgia (Augusta)
Bankruptcy Petition #: 11-10874-SDB

Assigned to: Susan D. Barrett
Chapter 7
Voluntary
No asset

Date filed: 05/04/2011
Date terminated: 01/17/2012
Debtor discharged: 12/23/2011

Debtor disposition: Standard Discharge

Debtor
Carolyn S. Deaner
Post Office Box 485
Augusta, GA 30903-0485
RICHMOND-GA
SSN / ITIN: redacted
aka **Carolyn Sue Deaner**
dba **Deaner Diversified Technologies**
dba **Logie Deaner Diversified Techno**
dba **Deaner Diversified**

represented by **Lee Ringler**
808 Greene Street, Ste 200
Augusta, GA 30901
706-724-4000
Fax : 706-724-1644
Email: court@leeringler.com

Trustee
Edward J. Coleman, III
Surrett & Coleman PA
Post Office Box 204720
Augusta, Ga 30917-4720
706-722-3301

U. S. Trustee
Office of the U. S. Trustee, 7
Johnson Square Business Center
2 East Bryan Street, Ste 725
Savannah, GA 31401
912-652-4112

Filing Date	#	Docket Text
05/04/2011	1	Chapter 7 Voluntary Petition . Fee Amount $0. Filed by Carolyn S. Deaner (Ringler, Lee) (Entered: 05/04/2011)
05/04/2011	2	Bankruptcy Form 21 SSN. DOCUMENT IMAGE AVAILABLE ONLY TO COURT USERS. Filed by Lee Ringler on behalf of Carolyn S. Deaner (Ringler, Lee) (Entered: 05/04/2011)
05/04/2011	3	Application to Pay Filing Fee in Installments Filed by Lee Ringler on behalf of Carolyn S. Deaner (Ringler, Lee) (Entered: 05/04/2011)

05/04/2011	4	Certificate of Credit Counseling Filed by Lee Ringler on behalf of Carolyn S. Deaner (Ringler, Lee) (Entered: 05/04/2011)
05/04/2011	5	Employee Income Records Filed by Lee Ringler on behalf of Carolyn S. Deaner (Ringler, Lee) (Entered: 05/04/2011)
05/05/2011	6	Meeting of Creditors 341(a) meeting to be held on 6/1/2011 at 10:30 AM at Augusta Meetings - New.Financial Management Course due: 8/1/2011. Last day to oppose discharge or dischargeability is 8/1/2011. (Toole, Christina) (Entered: 05/05/2011)
05/05/2011	7	Notice of Requirement to Complete Course in Financial Management . (Toole, Christina) (Entered: 05/05/2011)
05/05/2011	8	Order Granting Application To Pay Filing Fees In Installments. (Related Doc # 3). Filed on 5/5/2011. (Toole, Christina) (Entered: 05/05/2011)
05/07/2011	9	BNC Certificate of Mailing. (RE: related document(s)7) No. of Notices: 1. Service Date 05/07/2011. (Admin.) (Entered: 05/08/2011)
05/07/2011	10	BNC Certificate of Mailing. (RE: related document(s)8) No. of Notices: 1. Service Date 05/07/2011. (Admin.) (Entered: 05/08/2011)
05/07/2011	11	BNC Certificate of Mailing - Meeting of Creditors. No. of Notices: 27. Service Date 05/07/2011. (Admin.) (Entered: 05/08/2011)
05/12/2011	12	Returned Mail for First Equity Card Group. The attached mail was returned by the U.S. Post Office as undeliverable. Debtor's attorney should supply a correct address. (RE: related document(s)6) (Rivera, Jackie) (Entered: 05/12/2011)
06/06/2011	13	Meeting of Creditors Held on June 1, 2011. (Coleman, Edward) (Entered: 06/06/2011)
06/06/2011	14	Continuance of Meeting of Creditors on 6/15/2011 at 10:30 AM at Augusta Meetings - New (Coleman, Edward) (Entered: 06/06/2011)
06/14/2011	15	Statement of Financial Affairs *Amended* Filed by Lee Ringler on behalf of Carolyn S. Deaner (Ringler, Lee) (Entered: 06/14/2011)
06/20/2011	16	Notice of Time to Object to a Finding of Debtor's Compliance with the Requirements of 11 U.S.C. 521(i). Objections due on or before 7/11/2011 (Rivera, Jackie) (Entered: 06/20/2011)
06/20/2011	17	Meeting of Creditors Held on June 15, 2011. (Coleman, Edward) (Entered: 06/20/2011)
06/20/2011	18	Continuance of Meeting of Creditors on 7/27/2011 at 04:00 PM at Augusta Meetings - New (Coleman, Edward) (Entered: 06/20/2011)

06/22/2011	19	BNC Certificate of Mailing. (RE: related document(s)16) No. of Notices: 48. Service Date 06/22/2011. (Admin.) (Entered: 06/23/2011)
07/07/2011	20	Financial Management Course Certificate Filed by Lee Ringler on behalf of Carolyn S. Deaner (Related documents 6) (Ringler, Lee) (Entered: 07/07/2011)
07/18/2011	21	Order Pursuant to 11 U.S.C. 521(i) Filed on 7/18/2011 (RE: related document(s) 16). (Jones, Betty) (Entered: 07/18/2011)
07/20/2011	22	BNC Certificate of Mailing. (RE: related document(s)21) No. of Notices: 47. Service Date 07/20/2011. (Admin.) (Entered: 07/21/2011)
07/21/2011	23	Amended Schedule F Fee Amount $26 Filed by Lee Ringler on behalf of Carolyn S. Deaner (Ringler, Lee) (Entered: 07/21/2011)
07/21/2011		Receipt of Schedule F(11-10874-SDB) [misc,schf] (26.00) Filing Fee. Receipt number 7305918. Fee amount $ 26.00. (U.S. Treasury) (Entered: 07/21/2011)
07/29/2011	24	Meeting of Creditors Held on July 27, 2011. (Coleman, Edward) (Entered: 07/29/2011)
07/29/2011	25	Chapter 7 Trustee's Report of No Distribution: I, Edward J. Coleman, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 3 months. Assets Abandoned (without deducting any secured claims): $ 0.00, Assets Exempt: Not Available, Claims Scheduled: $ 330168.00, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): $ 330168.00. (Coleman, Edward) (Entered: 07/29/2011)
09/09/2011	26	Order and Notice to Show Cause Why Debtor Should Not Be Dismissed Filed on 9/9/2011. Responses Due on or Before: 10/3/2011. (Neibel, Courtney) (Entered: 09/09/2011)
09/11/2011	27	BNC Certificate of Mailing. (RE: related document(s)26) No. of Notices: 49. Service Date 09/11/2011. (Admin.) (Entered: 09/12/2011)
09/12/2011		Installment Fee Paid, Filing Fee:$ 299.00 Filed by Lee Ringler on behalf of Carolyn S. Deaner (Ringler, Lee) (Entered: 09/12/2011)
09/12/2011		Receipt of Chapter 7 Installment Fee Paid(11-10874-SDB) [misc,inst7] (299.00) Filing Fee. Receipt number 7489290. Fee amount $ 299.00. (U.S. Treasury) (Entered: 09/12/2011)

09/19/2011	28	Returned Mail for Joseph E. Smith. The attached mail was returned by the U.S. Post Office as undeliverable. Debtor's attorney should supply a correct address. (RE: related document(s)26) (Gary, Betty) (Entered: 09/19/2011)
09/19/2011	29	Notice of Time to Object to Discharge based upon 11 U.S.C. 522(q) . Objections due by 10/19/2011. (Gary, Betty) (Entered: 09/19/2011)
09/21/2011	30	BNC Certificate of Mailing. (RE: related document(s)29) No. of Notices: 47. Service Date 09/21/2011. (Admin.) (Entered: 09/22/2011)
10/06/2011	31	Motion to Dismiss Case Pursuant to 11 USC 707(a), in addition to Motion to Dismiss Case Pursuant to 11 USC 707(b) Filed by James C. Overstreet Jr. on behalf of Hubert Bailey (Attachments: 1 Proposed Order) (Overstreet, James) (Entered: 10/06/2011)
10/07/2011	32	Notice of Hearing (RE: related document(s)31). Hearing to be held on 11/17/2011 at 09:00 AM AUG Hearings - Plaza Bldg for 31, (Martin, Sue) (Entered: 10/07/2011)
10/09/2011	33	BNC Certificate of Mailing. (RE: related document(s)32) No. of Notices: 47. Service Date 10/09/2011. (Admin.) (Entered: 10/10/2011)
11/15/2011	34	Response to (related document(s): 31 filed by Creditor Hubert Bailey) Filed by Debtor Carolyn S. Deaner (Attachments: # 1 Proposed Order) (Ringler, Lee) (Entered: 11/15/2011)
11/17/2011	35	Hearing Held on 11/17/2011 on Motion to Dismiss Case Pursuant to 11 USC 707 (a) & 707(b)filed by James C. Overstreet on behalf of Hubert Bailey, Response by Debtor - DOCUMENT IMAGE AVAILABLE ONLY TO COURT USERS. (RE: related document(s)31, 34) (Gary, Betty) (Entered: 11/17/2011)
11/17/2011	36	Consent Order Filed on 11/17/2011 (RE: related document(s)31). (Gary, Betty) (Entered: 11/17/2011)
11/19/2011	37	BNC Certificate of Mailing - PDF Document. (RE: related document(s)36) No. of Notices: 2. Notice Date 11/19/2011. (Admin.) (Entered: 11/20/2011)
12/23/2011	38	Order Discharging Debtor Filed on 12/23/2011 (RE: related document(s)6). (Gary, Betty) (Entered: 12/23/2011)
12/25/2011	39	BNC Certificate of Mailing - Order of Discharge. (RE: related document(s)38) No. of Notices: 24. Notice Date 12/25/2011. (Admin.) (Entered: 12/26/2011)
01/17/2012	40	Final Decree Filed on 1/17/2012. (Gary, Betty) (Entered: 01/17/2012)
01/17/2012		Bankruptcy Case Closed (Gary, Betty) (Entered: 01/17/2012)

B1 (Official Form 1)(4/10)

United States Bankruptcy Court
Southern District of Georgia

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle): Deaner, Carolyn S.	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): AKA Carolyn Sue Deaner; DBA Deaner Diversified Technologies; DBA Logie Deaner Diversified Techno; DBA Deaner Diversified	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all) xxx-xx-0646	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all)
Street Address of Debtor (No. and Street, City, and State): 831 Crawford Avenue Augusta, GA ZIP Code 30904-3772	Street Address of Joint Debtor (No. and Street, City, and State): ZIP Code
County of Residence or of the Principal Place of Business: Richmond	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): Post Office Box 485 Augusta, GA ZIP Code 30903-0485	Mailing Address of Joint Debtor (if different from street address): ZIP Code
Location of Principal Assets of Business Debtor (if different from street address above):	

Type of Debtor (Form of Organization) (Check one box)

- ☒ Individual (includes Joint Debtors) *See Exhibit D on page 2 of this form.*
- ☐ Corporation (includes LLC and LLP)
- ☐ Partnership
- ☐ Other (If debtor is not one of the above entities, check this box and state type of entity below.)

Nature of Business (Check one box)

- ☐ Health Care Business
- ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B)
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank
- ☒ Other

Tax-Exempt Entity (Check box, if applicable)

- ☐ Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).

Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- ☒ Chapter 7
- ☐ Chapter 9
- ☐ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding
- ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

Nature of Debts (Check one box)

- ☐ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
- ☒ Debts are primarily business debts.

Filing Fee (Check one box)

- ☐ Full Filing Fee attached
- ☒ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.
- ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.

Chapter 11 Debtors

Check one box:
- ☐ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).
- ☐ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).

Check if:
- ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,343,300 *(amount subject to adjustment on 4/01/13 and every three years thereafter).*

Check all applicable boxes:
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

Statistical/Administrative Information

- ☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☒ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors

☒ 1-49	☐ 50-99	☐ 100-199	☐ 200-999	☐ 1,000-5,000	☐ 5,001-10,000	☐ 10,001-25,000	☐ 25,001-50,000	☐ 50,001-100,000	☐ OVER 100,000

Estimated Assets

☐ $0 to $50,000	☒ $50,001 to $100,000	☐ $100,001 to $500,000	☐ $500,001 to $1 million	☐ $1,000,001 to $10 million	☐ $10,000,001 to $50 million	☐ $50,000,001 to $100 million	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion

Estimated Liabilities

☐ $0 to $50,000	☐ $50,001 to $100,000	☒ $100,001 to $500,000	☐ $500,001 to $1 million	☐ $1,000,001 to $10 million	☐ $10,000,001 to $50 million	☐ $50,000,001 to $100 million	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion

B6A (Official Form 6A) (12/07)

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
Real property located at 704 Kershaw Dr., Belvedere, SC (residence)(valuation is co. tax appr. am't)	Fee simple	-	80,390.00	96,000.00

Sub-Total > 80,390.00 (Total of this page)

Total > 80,390.00

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

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B6D (Official Form 6D) (12/07)

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community (H W J C)	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No. 17223xxxx BAC Home Lns LP/Countrywide 7105 Corporate Drive Plano, TX 75024		-	6/07 First Mortgage Real property located at 704 Kershaw Dr., Belvedere, SC (residence)(valuation is co. tax appr. am't) Value $ 80,390.00				96,000.00	15,610.00
Account No. Value $								
Account No. Value $								
Account No. Value $								
0 continuation sheets attached			Subtotal (Total of this page)				96,000.00	15,610.00
			Total (Report on Summary of Schedules)				96,000.00	15,610.00

B8 (Form 8) (12/08)

United States Bankruptcy Court
Southern District of Georgia

In re Carolyn S. Deaner
Debtor(s)

Case No.
Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

PART A - Debts secured by property of the estate. (Part A must be fully completed for EACH debt which is secured by property of the estate. Attach additional pages if necessary.)

Property No. 1	
Creditor's Name: BAC Home Lns LP/Countrywide	Describe Property Securing Debt: Real property located at 704 Kershaw Dr., Belvedere, SC (residence)(valuation is co. tax appr. am't)

Property will be (check one):
☐ Surrendered ☒ Retained

If retaining the property, I intend to (check at least one):
☐ Redeem the property
☐ Reaffirm the debt
☒ Other. Explain Maintain Regular Installment Payments (for example, avoid lien using 11 U.S.C. § 522(f)).

Property is (check one):
☒ Claimed as Exempt ☐ Not claimed as exempt

PART B - Personal property subject to unexpired leases. (All three columns of Part B must be completed for each unexpired lease. Attach additional pages if necessary.)

Property No. 1		
Lessor's Name: -NONE-	Describe Leased Property:	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): ☐ YES ☐ NO

I declare under penalty of perjury that the above indicates my intention as to any property of my estate securing a debt and/or personal property subject to an unexpired lease.

Date May 3, 2011

Signature /s/ Carolyn S. Deaner
Carolyn S. Deaner
Debtor

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B6B (Official Form 6B) (12/07)

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Checking account at SRP FCU, N. Augusta, SC	-	460.00
		Savings account at SRP FCU, N. Augusta, SC	-	225.00
		Checking account at Georgia Bank & Trust, Augusta, GA	-	51.00
		On-line Citibank checking account	-	5.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		Washer, dryer, refrig., TV, stereo, computer, mower, chain saw, weedeater, blower, microwave, vac. clr.	-	500.00
		2 bedrooms of furniture, dinette set, liv. room set	-	500.00
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		Clothing	-	50.00
7. Furs and jewelry.		Watch & ring	-	45.00
8. Firearms and sports, photographic, and other hobby equipment.		machine gun	-	300.00
		Exercise machine	-	100.00
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			

Sub-Total > 2,236.00
(Total of this page)

2 continuation sheets attached to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)		Whole life policy with Prudential (but I already borrowed against it, wiped out)	-	0.00
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
			Sub-Total > (Total of this page)	0.00

Sheet 1 of 2 continuation sheets attached to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		99 Buick Century (122K mi.)	-	1,000.00
		90 Chrysler Fifth Avenue (not driveable)	-	600.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.		just some office furniture, 2 printers, 6 desks, file cabinets	-	300.00
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

Sub-Total > (Total of this page) 1,900.00

Total > 4,136.00

(Report also on Summary of Schedules)

Sheet 2 of 2 continuation sheets attached to the Schedule of Personal Property

Software Copyright (c) 1996-2011 - CCH INCORPORATED

B6F (Official Form 6F) (12/07)

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community (H W J C)	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. Advanta Bank Corp. Post Office Box 30715 Salt Lake City, UT 84130-0715		-	Credit card purchases				17,369.00
Account No. 8-21005 American Express Post Office Box 297879 Fort Lauderdale, FL 33329-7879		-	Credit card purchases				6,975.00
Account No. ARCO Business Solutions POB 923928 Norcross, GA 30010		-	Open account				2,244.00
Account No. AT&T Post Office Box 8212 Aurora, IL 60572-8212		-	Services				250.00

8 continuation sheets attached

Subtotal (Total of this page) 26,838.00

B6F (Official Form 6F) (12/07) - Cont.

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community (H W J C)	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 6292 AT&T Universal Card/Citibank POB 6241 Sioux Falls, SD 57117		-	Credit card purchases				1,114.00
Account No. 7799 Bank of America 1000 Samoset Drive Wilmington, DE 19884-2211		-	Credit card purchases				9,921.00
Account No. 4648 Bank of America 1000 Samoset Drive Wilmington, DE 19884-2211		-	Credit card purchases				30,122.00
Account No. 4002 Bank of America 1000 Samoset Drive Wilmington, DE 19884-2211		-	Credit card purchases				19,838.00
Account No. 1694 Bank of America 1000 Samoset Drive Wilmington, DE 19884-2211		-	Credit card purchases				6,210.00

Sheet no. 1 of 8 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 67,205.00

B6F (Official Form 6F) (12/07) - Cont.

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community (H W J C)	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 9234 Bank of America 1000 Samoset Drive Wilmington, DE 19884-2211		-	Credit card purchases				9,168.00
Account No. 8471 Capital One Post Office Box 30281 Salt Lake City, UT 84130		-	Credit card purchases				7,253.00
Account No. 4266 Capital One Post Office Box 30281 Salt Lake City, UT 84130		-	Credit card purchases				4,175.00
Account No. 4536 Chase 800 Brooksedge Blvd. Westerville, OH 43081		-	Credit card purchases				10,136.00
Account No. 4536 Chase 800 Brooksedge Blvd. Westerville, OH 43081		-	Credit card purchases				16,684.00

Sheet no. 2 of 8 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 47,416.00

B6F (Official Form 6F) (12/07) - Cont.

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community (H W J C)	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 0452 Chase 800 Brooksedge Blvd. Westerville, OH 43081		-	Credit card purchases				5,818.00
Account No. 4799 Chase POB 15298 Wilmington, DE 19850-5298	-	-	Credit card purchases				28,014.00
Account No. 3359 Citi Business POB 6235 Sioux Falls, SD 57117-6235		-	Open account				18,741.00
Account No. 8046 Citi Business POB 1503 Saint Peters, MO 63376-0027		-	Open account				6,975.00
Account No. 5517 Citibank Post Office Box 6241 Sioux Falls, SD 57117-6241		-	Promissory note				14,322.00

Sheet no. 3 of 8 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 73,870.00

B6F (Official Form 6F) (12/07) - Cont.

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community (H W J C)	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 3956 Citibank/Sears POB 6189 Sioux Falls, SD 57117		-	Credit card purchases				5,294.00
Account No. 0806 Citiflex/Citibank SD, NA POB 6497 Sioux Falls, SD 57117		-	Credit card purchases				10,025.00
Account No. 6891 Discover Financial Services Post Office Box 8003 Hilliard, OH 43026		-	Credit card purchases				10,486.00
Account No. 2859 Discover Financial Services Post Office Box 8003 Hilliard, OH 43026		-	Credit card purchases				9,632.00
Account No. 0844 DSNB American Express/Macy's 9111 Duke Blvd. Mason, OH 45040		-	Credit card purchases				2,127.00

Sheet no. 4 of 8 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 37,564.00

B6F (Official Form 6F) (12/07) - Cont.

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community (H W J C)	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 6761 Elan Financial Services/Key Bank POB 108 Saint Louis, MO 63166-9801		-	Credit card purchases				9,007.00
Account No. Equable Ascent Financial/Chase 1120 W Lake Cook Road, Ste. A Buffalo Grove, IL 60089		-	Open account				5,818.00
Account No. 3354 Fifth Third Bank 38 Fountain Square Mail Drop 1COM65 Cincinnati, OH 45263		-	Open account				5,708.00
Account No. 0313 First Equity POB 23029 Columbus, GA 31902-3029		-	Credit card purchases				13,214.00
Account No. 0001 Gemb/Lowe's Post Office Box 981400 El Paso, TX 79998		-	Credit card purchases				2,208.00

Sheet no. 5 of 8 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 35,955.00

B6F (Official Form 6F) (12/07) - Cont.

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community (H W J C)	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 9707 Gemb/Paypal POB 981400 El Paso, TX 79998		-	Credit card purchases				3,273.00
Account No. 5610 Gemb/Walmart Post Office Box 981400 El Paso, TX 79998		-	Credit card purchases				2,951.00
Account No. Georgia Natural Gas 2015 Vaughn Road NW, Ste. 150 Kennesaw, GA 30144-7803		-	Utility bills				300.00
Account No. HSBC Attn: Bankruptcy Dept. Post Office Box 5213 Carol Stream, IL 60197		-	Credit card purchases				279.00
Account No. HSBC Attn: Bankruptcy Dept. Post Office Box 5213 Carol Stream, IL 60197		-	Credit card purchases				1,222.00

Sheet no. 6 of 8 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 8,025.00

B6F (Official Form 6F) (12/07) - Cont.

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community (H W J C)	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 3573 HSBC/Orchard Attn: Bankruptcy Dept. Post Office Box 5213 Carol Stream, IL 60197		-	Credit card purchases				3,349.00
Account No. 966-0 Macy's Store POB 183083 Columbus, OH 43218-3083		-	Credit card purchases				1,665.00
Account No. 0373 Merrick Post Office Box 5000 Draper, UT 84020-5000		-	Credit card purchases				3,689.00
Account No. Office Depot Office Dept. Tech Card Post Office Box 105981, Dept60 Atlanta, GA 30353-5981		-	Credit card purchases				1,500.00
Account No. 7494 RBS Citizens NA 1000 Lafayette Blvd. Bridgeport, CT 06604		-	Open account				5,754.00
Sheet no. 7 of 8 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)	15,957.00

B6F (Official Form 6F) (12/07) - Cont.

In re Carolyn S. Deaner, Debtor

Case No.

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community (H W J C)	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. Sylvia Whitfield		-	Personal loan				5,800.00
Account No. 4716 Wachovia Bank Central Bankruptcy Dept. VA7359 Post Office Box 13765 Roanoke, VA 24037-3765		-	Overdrawn account				1,240.00
Account No. 1056 Wachovia Bank Central Bankruptcy Dept. VA7359 Post Office Box 13765 Roanoke, VA 24037-3765		-	Credit card purchases				1,086.00
Account No. 9059 Wachovia Bank Central Bankruptcy Dept. VA7359 Post Office Box 13765 Roanoke, VA 24037-3765		-	Open account				1,122.00
Account No. 8835 Wells Fargo POB 29704 Phoenix, AZ 85038		-	Open account				7,490.00

Sheet no. 8 of 8 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 16,738.00

Total (Report on Summary of Schedules) 329,568.00

B6 Summary (Official Form 6 - Summary) (12/07)

United States Bankruptcy Court
Southern District of Georgia

In re Carolyn S. Deaner, Debtor

Case No.

Chapter 7

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	80,390.00		
B - Personal Property	Yes	3	4,136.00		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	1		96,000.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	9		329,568.00	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			752.75
J - Current Expenditures of Individual Debtor(s)	Yes	2			1,250.12
Total Number of Sheets of ALL Schedules		21			
		Total Assets	84,526.00		
			Total Liabilities	425,568.00	

25. Pension Funds.

None ☒ If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within six years immediately preceding the commencement of the case.

NAME OF PENSION FUND

TAXPAYER IDENTIFICATION NUMBER (EIN)

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date May 3, 2011

Signature /s/ Carolyn S. Deaner
Carolyn S. Deaner
Debtor

Penalty for making a false statement: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	C/A NO: 2012-CP-02-699
Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, PLAINTIFF, vs. Carolyn S. Deaner, DEFENDANT(S).	(NON-JURY MORTGAGE FORECLOSURE)

F25-02718

CERTIFICATE OF MAILING

The undersigned hereby certifies that on August 23, 2013, he served one copy of Plaintiff's Motion to Strike Answer or in the alternative for Summary Judgment, Memorandum of Law and Affidavit of Vanessa upon the following by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Carolyn Deaner
704 Kershaw Drive
North Augusta, SC 29841

Dustin Brasington, Paralegal

SWORN to before me this
23rd day of August, 2013

,(SEAL)
Notary Public for
My Commission Expires July 14, 2019

DESIGNATION: 15

15. Memorandum of Law To Support Defendant's Amended Motion To Dismiss...filed 9/20/2013.

    (contains pages 1-67)

    (Exhibit "A" Securitization, pages 1-23 and

    Affidavit Pages 1-3)

DEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP

Plaintiff,

vs.

Carolyn S. Deaner

Defendant(s).

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

TO: PRESIDING JUDGE AND/OR MASTER IN EQUITY JUDGE

DEFENDANT'S MEMORANDUM OF LAW TO SUPPORT DEFENDANT'S AMENDED MOTION TO DISMISS WITH PREJUDICE AND TO BE ATTACHED TO AMENDED MOTION TO DISMISS

DOCKET NO. 2012-CP-02-00699

FILED 9/20 2013
C.C.C.P.&G.S.
3:15

MEMORANDUM OF LAW

NOTICE IS HEREBY GIVEN THAT the Defendant will move before the presiding JUDGE for an Order on Defendant's AMENDED MOTION TO DISMISS WITH PREJUDICE AND STRIKE OF PLAINTIFF'S FILINGS AS THE PLAINTIFF IS NOT THE TRUE PLAINTIFF IN THIS CASE AS FOLLOWS and is made upon the following grounds IN THIS "MEMORANDUM OF LAW" WITH SUPPORTING LEGAL EVIDENTIARY CASES:

1. Plaintiff is not the true plaintiff in this case. (PSA AGREEMENTS). The Pooling and Servicing Agreements (PSA) GOVERN THE SALE OF THE INTEREST in the MORTGAGE LOANS from the DEPOSITOR TO THE SECURITIZATION TRUST. The Plaintiff IS NOT THE TRUE PLAINTIFF as explained later in this Memorandum of Law. In addition, the Plaintiff did not allege it is both the owner and holder of the Note and Mortgage in the body of the Original Complaint. This is important because, this is a cause of action in EQUITY to foreclose a mortgage and not an action of LAW for enforcement of the NOTE. The FAILURE of the Plaintiff to allege, in the body of its Complaint, that in addition to holding the subject note and mortgage, it also owns these instruments prohibits it from

asserting the proper chain of ownership of the instruments from their inception. (See Carpenter v. Longan 83 U. S. 16 Wall 271 (1872). Carpenter established the RULE that the security interest necessarily follows the promissory Note, and a security interest is a nullity without the underlying promise to pay. Nor did the Plaintiff show any elements of an agency relationship to the true owner of the Note and true Plaintiff in order to state a CAUSE OF ACTION. Also, the Plaintiff has not alleged facts that "raise a right to relief above the speculative level." Twombly, 550 U.S. at 555. In addition, "a Plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions." Twombly, 550 U.S. at 555(internal brackets and quotations marks omitted). "Courts are not bound to accept as true a legal conclusion couched as a factual allegation." Id. The Plaintiff has failed to provide grounds of entitlement as explained in this Memorandum of Law. In Defendant's MORTGAGE #16, Governing Law, it states, "This security instrument shall be governed by FEDERAL LAW and the law of jurisdiction in which the property is located."

2. Promissory note was used as legal tender and banks cannot legally sell credits AS EXPLAINED IN THIS MEMORANDUM OF LAW.

3. Countrywide's bankruptcy did not disclose the mortgages already sold to the trusts as assets because the transfers occurred months and years prior to the bankruptcy filings, and further, the notes were not transferred to the trusts at all AS COUNTRYWIDE ADMITS later in this Memorandum of Law.

4. Mortgage assignments as EVIDENCE OF FRAUD, BY LYNN SZYMONIAK, Esq. as she stated in her excerpt," The Defendant's assignment was prepared to conceal the actual date that the property was acquired by the Trust. IF A MORTGAGE ASSIGNMENT IS DATED NOTARIZED AND FILED IN A YEAR AFTER THE YEAR SET FORTH IN THE NAME OF THE GRANTEE TRUST ON THE ASSIGNMENT, IT IS ACTUALLY AN ASSIGNMENT SPECIFICALLY, and in MANY CASES FRAUDULENTLY, MADE TO FACILITATE FORECLOSURES. In addition, NO TRUSTEE HAS EVER

COME FORTH AND EXPLAINED THAT THE TRUST ACTUALLY ACQUIRED THE LOAN YEARS BEFORE THE ASSIGNMENT. (See Judge Schack in HSBC Bank v. Valentin, 21 Misc.3d 1124(A). The Defendant's Trust had to be completed 90 days from June 28, 2007 and the FALSE MERS Assignment was in April 2011 indicating fraud AND CONCEALMENT.

5. MERS DOES NOT hold beneficial rights, therefore cannot assign beneficial rights, never held the NOTE and cannot legally assign a NOTE as explained later in this Memorandum of Law. The Plaintiff's conclusory allegations are insufficient to state a claim, See ASHCROFT V. IQBAL, 556 U.S. 662, 678-79 (2009). Therefore, the Plaintiff's Complaint FAILED to provide a proper basis for jurisdiction against the Defendant and failure to state a claim, Fed. R. Civ. P.12 (b) (6).

MEMORANDUM OF LAW with supporting Evidentiary CASES

1. Defendant DENIES, OBJECTS TO, MOVES TO STRIKE AND MOVES FOR

DISMISSAL of ALL PLAINTIFF'S PREVIOUS FILINGS AND LAST NOTICE OF MOTION AND MOTION TO STRIKE ANSWER OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT AND ✓ALL ALLEGED FACTS ON THE PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT on the grounds of ESTOPPEL BY LACHES which precludes a party from bringing an action when a party knowingly failed to claim or enforce a LEGAL RIGHT at the proper time. The Plaintiff did not show up at Defendant's bankruptcy to establish any claim upon the Defendant, OR ESTABLISH A CLAIM OR ESTABLISH THEIR IDENTITY AS A LIEN HOLDER, and therefore no litigation was engaged by the Plaintiff to establish a claim or LEGAL RIGHT during the bankruptcy case. Plaintiff has waived any rights to now claim a judicial estoppel as Defendant claims ESTOPPEL OF SILENCE. The characteristics of estoppel is that it CANNOT CIRCUMVENT THE LAW, i.e. TO EVADE STATUTORY AND LEGAL PROVISIONS. The Plaintiff's judicial estoppel is an attempt to circumvent the law and

to evade statutory and legal provisions in all of Defendant's MATERIAL FACTS in Defendant's AMENDED MOTION TO DISMISS AND ANSWER TO AND REQUEST FOR DISMISSAL OF PLAINTIFF'S AMENDED SUMMONS AND COMPLAINT, and also, in the material facts and TRIABLE ISSUES in the other filings and Answers to the Plaintiff's filings. GENERALLY, merely taking a position in prior LITIGATION should not be sufficient to invoke judicial estoppel. This should eliminate the application of the doctrine in this case as there was NO LITIGATION IN THE DEFENDANT'S BANKRUPTCY CASE. The Plaintiff, Bank of America, did not show up at the bankruptcy hearing to LITIGATE A CLAIM. Furthermore, this applies to bankruptcy cases of failure to make disclosures, not disclosures made. In addition, the Plaintiff's claim has accrued after the initial bankruptcy filing. (See, Johnson v. Si-Cor, Inc.) Because the Defendant in this Memorandum of Law did not fail to list an asset that belonged to the bankruptcy, there is no evidence that the Defendant's Bankruptcy Court "accepted a position" that was inconsistent with the Defendant's error of not knowing the "real party of interest" due to concealment, nor any evidence that the Defendant benefited due to this case being a wrongful foreclosure perpetrated with willful intent upon the Defendant. (SEE Johnston v. HSBC (COMPLAINT) (EXTRINSIC FRAUD, REAL PARTY) 3/11, EXTRINSIC FRAUD: Because the fraud is extrinsic in nature, HSBC is precluded from raising the doctrine of res judicata as a defense against this Courts obligation to verify first and foremost that the claimant has FEDERAL jurisdiction "real party of interest" status. HSBC does not qualify as a "real party of interest" pursuant to Rule 17 of the Federal Rules of Civil Procedure, which provides: "an action must be prosecuted in the name of the real party of interest." The purpose of this rule is to require that an action be brought "in the name of the party who possesses the SUBSTANTIVE RIGHT being asserted under the applicable law". 6A WRIGHT, MILLER 7 KANE, FEDERAL PRACTIVE AND PROCEDURE; CIVIL 2D 1541 (1990) (Wright)). Defendant's mortgage #16 is governed by Federal Law.

Defendant claims ESTOPPEL OF SILENCE against Plaintiff's judicial estoppel. Estoppel by silence arises when a party is under duty to speak but fails to do so. ESTOPPEL BY SILENCE is also known as estoppel by standing or estoppel by inaction. ESTOPPEL BY SILENCE arises from an obligation. The doctrine of ESTOPPEL BY SILENCE also requires an intention to mislead or at least a willingness that others should be deceived, (Wiser v. Lawler, 189 U.S. 260 (U.S. 1903)

Also, Defendant has shown and demonstrated Plaintiff's Inaction, Misrepresentation, or Silence prejudiced the Defendant or induced the Defendant to believe a misrepresentation by the Plaintiff The Plaintiff is not the true Plaintiff with legal rights to foreclose on the Defendant. The Plaintiff knows well the Federal courts will demand Bank of America abide by the Pooling and Servicing Agreement to establish legal rights of entitlement to initiate a foreclosure. The Plaintiff did not show up at Defendant's bankruptcy case to prove they were a lien holder OR HAD ANY LEGAL RIGHTS as a lien holder because they cannot and are not, nor is Bank of America the true Plaintiff in this foreclosure. Bank of America's inaction proves misrepresentation. Further, Defendant has every legal right as a United States citizen to DUE PROCESS of law under Constitution Law and is allowed to reopen her bankruptcy case and file an EX PARTE MOTION and engage in litigation to find the truth of who is the true lien holder, if any, and who has entitlement to enforce a foreclosure against the Defendant, if any. As explained in Defendant's AMENDED MOTION TO DISMISS and other ANSWERS to Plaintiff and in this following document, Defendant DENIES Plaintiff, successors and assigns, have the entitlement or legal rights to foreclose or bring a foreclosure action against the Defendant due to the explanations in the foregoing. The Bankruptcy document states BAC HOME LNS LP/COUNTRYWIDE AS CREDITOR, and an address in Texas, however the Plaintiff on the illegal assignment from MERS is BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP WHICH CREATES A VOID OR NULLITY AS THE NAMES are incorrect and two different entities and do not legally match, and their address is in California. In addition, Bank of America, N.A. is not the creditor as Bank of America does not own the note or mortgage. Bank of America is only the Server and has misrepresented their LEGAL status to the Defendant prior to Defendant's bankruptcy. In addition, Bank of America had an obligation to make the proper corrections at the bankruptcy and identify who is the real owner of the mortgage and note and who is legally entitled to be a lien holder, therefore, Defendant claims ESTOPPEL OF SILENCE AND Estoppel by Laches on Plaintiff's Motion to Strike Answer or in the Alternative for Summary Judgment and Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment. At no time has the Plaintiff ever informed the Defendant of the Trust or the true investors of the note and mortgage or has the Plaintiff ever informed the Defendant of the assignments to the Trust in COMPLAINT AT INCEPTION. Defendant has been GROSSLY

MISPREPRESENTED by the Plaintiff. The Plaintiff has a fiduciary responsibility to the Defendant to exercise Good Faith in representations, DISCLOSURES and practices.

In addition, Defendant claims ESTOPPEL BY MISREPRESENTATION and ESTOPPEL OF FRAUD as the Plaintiff from inception FAILS to allege a valid assignment, and there are no averments as to the nature of the purported assignments or evidence of valuable consideration, FAILS to allege whether or not the purported assignment was partial or complete and there is no evidence that the purported assignment was bona fide, FAILS to allege that the assignor even has knowledge of this action or that the Assignor has conveyed all rights, legal entitlement and control to the Plaintiff. The record does not disclose this information and it cannot be assumed without creating an unfair prejudice against the Defendant. Plaintiff is not an assignee for the purported agreement and no evidence appears in the record to support any related assumptions. Plaintiff FAILS to name all necessary parties. ESTOPPEL by fraudulent concealment or FRAUD, and estopped in pais, See Beadle v. Daniels 362 P.2d 128, 131, (Wyo. 1961). Defendant is suffering INJURY, mental anguish, physical injury of high blood pressure from the continued threats of the foreclosure, PREJUDICE and DISADVANTAGE of not being able to afford an attorney is necessary under the DOCTRINE OF LACHES to estop a Plaintiff from maintaining a suit. (Logahry V. Unicover Corp., 927 P.2d 706, 710 (wyo.1996). Defendant claims mental emotional and physical DAMAGES.

Therefore, Defendant claims ACCORD AND SATISFACTION as Defendant alleges that the original creditor accepted payment from a third party for the alleged debt, or a portion of the alleged debt, or that the original creditor received other compensation in the form of monies and/or credits such as using the original promissory note as legal tender. Plaintiff further claims this as the original lender is refusing to supply Defendant vital information concerning this requested information which is deceptive and seeks to conceal THE DEPOSIT OF THE PROMISSORY NOTE used as legal tender and not disclosed to the Defendant at time of contract. Defendant claims Plaintiff's complaint and all filings by the Plaintiff are barred by the DOCTRINE OF ESTOPPEL, especially ESTOPPEL IN PAIS which defines that a party is prevented by his/her own conduct from obtaining the enforcement of a right which would operate to the detriment of another who justifiably relied on such conduct. Plaintiff comes to this Court with UNCLEAN HANDS if the Plaintiff is giving falsified evidence or concealing

disclosures. The basis of EQUITY is contained in the Maxim, "EQUITY WILL NOT SUFFER AN INJUSTICE". ESTOPPEL, as Judge Lindley once defined it, "arises only when one has so acted as to mislead another and the one misled has relied upon the action of the inducing party to his prejudice. (Liebold v. Inland Steel co., 125 F. 2d 369, 375 (7th Cir.1941). Plaintiff has no legal rights or entitlement to foreclose on Defendant's property and has misled the Defendant to her prejudice. Defendant claims TORT OF INTIMIDATION concerning Plaintiff's judicial estoppel. To use the Defendant's bankruptcy against her WHICH WAS ENTERED INTO UNDER SEVERE DURESS OF FINANCIAL RUIN IS AN UNCONSCIONABLE ACT. The Defendant invokes the Doctrine of Scienti et volenti non fit injuria, a person who knowledgeably consents to legal wrong has no legal right. The Plaintiff knows they do not have any legal rights, entitlements or ownership rights to Defendant's property. Since a Court will not grant a judgment or other legal relief to a party who has not acted fairly by having made false representations or concealing material facts from the other party, the Defendant maintains that EQUITABLE ESTOPPEL BARS all the Plaintiff's claims.

2. Defendant's bankruptcy attorney filled out all the necessary paper work for the bankruptcy and at the time of the bankruptcy Defendant did not know Bank of America was just the SERVER and did not know or have understanding concerning the selling of loans and/or securitization of loans. Plaintiff mislead and misrepresented themselves when collecting payments as authority to do so, however, as diligently explained in Defendant's AMENDED MOTION TO DISMISS AND ANSWERS FILED BY DEFENDANT, Plaintiff has no legal authority to file a foreclosure on Defendant or claim a judicial estoppel. What the Defendant did during her bankruptcy was upon advice and counsel of her bankruptcy attorney as Defendant was under EXTREME ECONOMIC DURESS DUE TO CONSTANT THREATS OF CREDITORS AND PLAINTIFF of FINANCIAL RUIN prior to the bankruptcy. SEE, Universe Tankships v. ITWF 1982, 2 ALL ER 67, Lord Scarman said that: "duress, if proved, not only renders voidable a transaction into which a person has entered under its compulsion but is actionable as a TORT, if it causes damage or loss". Black Letter Law, CONSENT IS INVALID IF INDUCED BY FRAUD OR DURESS. Had Defendant's bankruptcy attorney known at the time the loan was a loan sold to Fannie Mae and securitized, and maybe held by a TRUST AND/OR INVESTORS, of the REMIC/MORTGAGE BACKED BSECURITIES the entity would have been in the

UNKNOWN INVESTOR'S NAMES or whoever held the original note which is still to be revealed by the true Plaintiff. IT WAS DEFENDANT'S UNDERSTANDING DURING HER BANKRUPTCY THAT WHOEVER COLLECTED PAYMENTS ON A MORTGAGE WAS AUTHORIZED TO DO SO UNDER A FIRST MORTGAGE AND LEGALLY HAD THE RIGHT TO DO SO, AND HAD NO UNDERSTANDING OF SERVERS BEING ALLOWED TO LEGALLY COLLECT ON NOTES/MORTGAGES THEY DO NOT OWN OR HAVE ANY ENTITLEMENT TO DO SO. The Defendant denies the Plaintiff has any legal rights to collect on a non-existing debt. The Plaintiff, who is not the true Plaintiff, has no legal right to COLLECT the FIRST MORTGAGE PAYMENTS AND IS NOT THE MORTGAGE HOLDER, THEREFORE DEFENDANT DENIES PLAINTIFF'S CLAIM AND DEFENDANT CLAIMS ESTOPPEL OF LACHES and MISREPRESENTATION against the PLAINTIFF'S MOTION TO STRIKE ANSWER OR IN THE ALTERNATIVE SUMMARY JUDGMENT AND DEFENDANT DENIES AND OBJECTS TO ALL ALLEDGED FACTS in the MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and demands strict proof thereof.

On the contrary, the Plaintiff must strike down all claims and defenses in Defendant's AMENDED MOTION TO DISMISS AND ANSWERS prior to a Summary Judgment REQUEST OR MOTION, and Defendant requests this HONORABLE COURT HONOR DEFENDANT'S AMENDED MOTION TO DISMISS WITH PREJUDICE OR APPEAL TO SUPREME COURT OF SOUTH CAROLINA. The Plaintiff's motion is a ploy to deceive this Honorable Court from knowing the truth of who has the entitlement to foreclose on the Defendant AND TO AVERT JUSTICE IN THIS MATTER. The multitude of misrepresentations by the Plaintiff and the Plaintiff's successors and assigns are attempts to deny the Defendant legal rights, claims, counterclaims, defenses and procedures in these matters.

DEFENDANT IN HONOR OF THIS COURT REQUESTS A STAY ON THIS FORECLOSURE OF AT LEAST SIX MONTHS TO REOPEN HER BANKRUPTCY CASE AND GO BEFORE THE FEDERAL COURTS TO ESTABLISH THE TRUTH OF WHO HAS THE LEGAL RIGHTS TO BRING A FORECLOSURE AGAINST THE DEFENDANT, IF ANY, and make any corrections to errors made by her bankruptcy attorney due to Defendant's SEVERE DURESS DURING THE BANKRUPTCY TIME PERIOD, to a lack of knowledge

and misrepresentations by the Plaintiff if HONORABLE COURT DEEMS necessary to VOID a judicial estoppel. However, Defendant requests this Honorable Court DISMISS WITH PREJUDICE Defendant's AMENDED MOTION TO DISMISS due to the claims, counterclaims, defenses and remedies as explained in this document and previous Answers to Plaintiff's false and illegal Complaint and AMENDED SUMMONS AND COMPLAINT.

Moreover, Defendant claims the Doctrine of Duress in the original contractual agreements. In the McGill Law Journal, ECONOMIC DURESS, INEQUALITY OF BARGAINING POWER AND THREATENED BREACH OF CONTRACT, P.318 UNCONSCIONABILITY as Lord Denning M.R. stated in Lloyds Bank v. Bundy, "through all these instances (duress, undue influence, breach of fiduciary duty, etc.) there runs a single thread. They rest on the "inequality of bargaining power". By virtue of it, the English law gives relief to one who, without independent advice, enters into a contract upon terms which are unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influence or pressures brought to bear on him by or for the benefits of others." There was no consideration from the original Lender and refusal of disclosures requested by the Defendant is a breach of contract of the mortgage and promissory note. In addition Oblique Torts are NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AND NEGLIGENT INFLICTION OF ECONOMIC LOSS by the Plaintiff. FRAUD is the intention or reckless misrepresentation causing economic damage. A material misrepresentation is failure to disclose a FACT. The Plaintiff acted with requisite scienter as they know MERS cannot assign a NOTE THEY NEVER HELD. (SEE, LaSalle Bank National Association v. Lamy, the court denied relief to LaSalle in the foreclosure proceedings. The court reasoned that MERS did not have authority to assign the mortgage as nominee for the Lender. "It is axiomatic that to be effective, an assignment of the NOTE and a MORTGAGE given as security therefore must be made by the owner of such note and mortgage and that an assignment made by entities having NO OWNERSHIP INTEREST in the NOTE and MORTGAGE, PASS NO TITLE therein to the assignee. A nominee of the owner of a note and mortgage MAY NOT EFFECTIVELY ASSIGN the NOTE AND MORTGAGE to another for want of an ownership interest in said NOTE and MOTGAGE by the nominee. The Courts are noting that WITHOUT A PROPERTY INTEREST AT STAKE, (Plaintiffs) (BANK OF AMERICA) WAS NOT ENTITLED TO DUE PROCESS.

In a recent case decided on July 5, 2013, JP MORGAN CHASE BANK, NATL. ASSN. V. BUTLER, et. al, Supreme Court, Kings County New York, Judge Schack destroys Chase and Fannie—Chase—instant action, committed a FRAUD UPON THE COURT by claiming to be the Plaintiff. Plaintiff, Chase, never owned the subject Butler mortgage and note. Therefore, Chase had no right to foreclose on the subject mortgage and note. Moreover, the continued subterfuge by CHASE and its COUNSEL to the court that it owned the subject mortgage and note demonstrated "bad faith" in violation of CPLR RULE 3408 (f) which requires both the Plaintiff and Defendant shall negotiate in Good Faith to reach a mutually agreeable resolution, including a loan modification, if possible. Plaintiff has negotiated in "bad faith" as they never owned the note or mortgage of Defendant and the assignment from MERS IS fraudulent as they never held the note, and doubtfully, the mortgage, and in addition, the assignment was Robo signed. THEREFORE, the Defendant claims all the claims and defenses in this document and continues to seek ALL CLAIMS AND DEFENSES IN HER AMENDED MOTION TO DISMISS with prejudice pursuant to SC Law under the SC Mortgage and Lending Act, equitable law, and any other laws applicable to Defendant and declaring the subject Deaner note to be fully satisfied. The Plaintiff has only the servicing rights to Defendant's note and mortgage and is only the servicer of the loan of which Defendant denies exists. In the above mentioned case, Chase v. Butler, a Mr. De Castro makes the ludicrous claim, in violation of New York law, that "as Fannie Mae's servicer, Chase has authority to commence a foreclosure action on the loan and to receive and/or collect the proceeds from the sale of the property." The COURT'S EQUITABLE POWERS DECLARES THAT THE SUBJECT Butler Note is fully satisfied. "To establish a prima facie case in an action to foreclose a mortgage, the Plaintiff must establish the existence of the mortgage and mortgage note, ownership of the mortgage, and default in payment, Campaign v. Barba 23 AD3d327(2d Dept 2005). Further, "foreclosure of a mortgage may not be brought by one who has no title to it, (Kluge v. Fugazy, 145 AD2d 537, 538 (2d Dept 1988). Moreover, "PLAINTIFF'S attempt to foreclose upon a mortgage in which he had no LEGAL or EQUITABLE INTEREST was without foundation in LAW OR FACT", (Katz v. East-Vilel Realty Co., 249 AD2D 243 (1d Dept 1998) It is clear, as in the Chase v. Butler case, that after almost 2 years of bad faith assertions to the contrary, Plaintiff, Bank of America, has never owned the Defendant's mortgage and note, or has Bank of America produced any evidence from the inception of owning the mortgage and note or any entitlement or equitable interest to

justify filing a foreclosure on the Defendant, AND, Defendant claims damages. THEREFORE, BANK OF AMERICA LACKS AUTHORITY TO BE THE PLAINTIFF IN DEFENDANT'S CASE. "The foreclosure of a mortgage cannot be pursued by one who has no demonstrated right to the debt". (Bank of New York v. Silverberg, 86 AD3d 274,280 (2d Dept 2011). In addition, in the Chase v. Butler case, Ms. Brooks, in 13 of her affidavit, alleges that the Fannie Mae 2006 Servicing Guide, VIII, 102, "Initiation of Foreclosure Proceedings (exhibit H of cross-motion), allows Chase to be the Plaintiff in the instant action. A reading of this Fannie Mae regulation demonstrates the lengths to which FANNIE MAE evaded its responsibility to be the Plaintiff in interest in the instant action or other foreclosure proceedings. It demonstrates the 'UNCLEAN HANDS" OF Fannie Mae and its Servicer, Chase. It is FANNIE MAE'S roadmap of how to INVEIGLE AND DECEIVE A COURT. The Court cannot countenance the deceptive behavior of CHASE, the alleged owner of the subject BUTLER mortgage and note, its counsel, and FANNIE MAE. Fannie Mae's Servicing Guide, with its deceptive practices to fool Courts, does not supersede New York Law.

A foreclosure action is equitable in nature and triggers the equitable powers of the court (see Notey v. Darien Constr. Corp, 41 Ny2d 1055, 1055-1056 (1977. "Once equity is invoked, the court's power is as broad as equity and JUSTICE require" (Northstar Bank v. Morabito, 201 AD 2d 545 (2d Dept 1994)" (Mortgage Elec. Registration Sys. Inc. v. Horkan (68 AD 3d 948 (2d Dept 2009). (See Jamaica Sav. Bank v. M. S. Inv. Co., 274 NY 215 (1937). "since it is the Plaintiff lender who seeks equitable relief form this COURT, the onus is upon the lender to satisfy the requisites of equity and come to this court with clean hands" (Junkerfeld v. Bank of Manhattan Co., 250 App Div. 646 (1 d Dept 1937)."(M&(*8)T Mtge. Corp v. Foy, 20 Misc 3 d 274, fin 1 (Sup Ct, Kings county 2008). (See Wells Fargo Bank, N.A. v. Hughes, 27 Misc 3 d 628, 634 (SUP CT. Erie County 2010). A principal of equity is that " a wrongdoer should not be permitted to profit from his or her wrong (See Kirschner v. KMPG LLP, 15 NY3d 446, 464 (2010): Campbell v. Thomas, 73 AD3d 103, 116-117 (2d Dept 2010). As in Chase v. Butler case, Chase, in the instant action, COMMITTED FRAUD upon the COURT by claiming to be the Plaintiff. Fannie Mae or the Trust should have been the Plaintiff when the foreclosure action commenced, thus Chase went to settlement conferences with UNCLEAN HANDS, falsely alleging that it was the Plaintiff owner of the Butler mortgage and note. Defendant states Plaintiff negotiated in "Bad Faith" a loan modification as they are not the Plaintiff in the

foreclosure action and negotiated with UNCLEAN HANDS. Good Faith, "it encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage." (Doyle v. Gordon, 158 NYS 2d at 259-160: see also UCC. 1-201 (19) The Plaintiff, BANK OF AMERICA, and COUNSEL is dealing with malice by claiming a judicial estoppel to hide the fact they are not the Plaintiff or have any rights to a foreclosure and to further deceive the court from knowing the truth in Defendant's case. It is an action designed to defraud the Defendant and to seek an unconscionable advantage." (Doyle v. Gordon) The Plaintiff has the burden to prove it is entitled from inception and have not done so. "Conduct such as providing conflicting information, refusal to honor agreements, unexcused delays, unexplained charges and misrepresentations have been held to constitute "bad faith, with its failure to deal honestly, fairly and openly." The Plaintiff has yet to show evidence of ownership of the mortgage and note or having the original wet ink note, or that it is the legal plaintiff, and therefore, is BARRED from the foreclosure complaint. It is clear that Bank of America's representations that it is the Plaintiff is completely without merit in law and asserts material factual statements that are false. The conduct by the Plaintiff is frivolous concerning the judicial estoppel and is undertaken to harass or maliciously injure and avoid and disallow Defendant's claims and Defenses. Further, Bank of America, the improper Plaintiff, engaging in bad faith is "a waste of judicial resources." The Plaintiff continues when its lack of legal or factual basis is apparent or should have been apparent from Defendants AMENDED MOTION TO DISMISS AND ANSWERS TO PLAINTIFF'S COMPLAINT AND CLAIMS, DEFENSES AND REMEDIES IN THESE DOCUMENT WHICH ALL CONTAIN MATERIAL FACTS.

Plaintiff is intentionally perpetrating fraud on the Court as they know they do not have entitlement or any legal rights to foreclose on the Defendant's home and are not the legal Plaintiff. Defendant claims all damages, recoupment and restitution justified by all aspects of the law in this case. SUPREME COURT authority in Saxon Mortgage Services, Inc. v. Hillery , Restatement (3d) of Property Mortgages: "A MORTGAGE MAY BE ENFORCED ONLY BY, OR IN BEHALF OF A PERSON WHO IS ENTITLED TO ENFORCE THE OBLIGATION THAT THE MORTGAGE SECURES." Also, the Court held for the assignment to be valid, the assignment had to be of the NOTE and not just the deed of trust, quoting early Supreme Court authority, "the note and mortgage are inseparable, the former as essential, the latter as an incident", "an assignment of the note carries the mortgage with it, while an assignment of the

latter alone is a nullity." The SUPREME COURT found that MERS did not assign the NOTE as there was no evidence that it either held the NOTE or was given the authority by the Lender to assign the NOTE. The SUPREME COURT concluded Plaintiffs thus had no standing and DISMISSAL WAS WARRANTED. Also, Bellistri V. Ocwen Loan Servicing, LLC, Missouri Court of Appeals, held that a note and MERS mortgage had been separated and the ASSIGNEE HAD NO STANDING TO FORECLOSE.

The Plaintiff has violated the HUD servicing agreement requirements and is barred from foreclosure on CONDITIONS PRECEDENT. In addition any foreclosure notices sent to the Defendant were by the Plaintiff who has NO STANDING to foreclose, therefore Plaintiff is barred by UNCLEAN HANDS. HUD is federal law as stated Plaintiff must follow in mortgage.

"The burden is upon the party moving for summary judgment to show CONCLUSIVELY the COMPLETE ABSENSE of any genuine issue of material fact", Allenby & Assocs., Inc. v. Crown St V Ltd., 8So 3d at 1213. "Before a plaintiff is entitled to a summary judgment of foreclosure, the plaintiff must either factually refute the alleged affirmative defenses or establish that they are legally insufficient to defeat summary judgment." Knight Energy Services, Inc. v. Amoco Oil co., 660 So 2d 786, 788 (Fla 4th DCA 1995. There is nothing in the Plaintiff's

Complaint, Motion for Summary Judgment or affidavit indicating the bank gave the Defendant the notice which the mortgage required. The Plaintiff LACKS STANDING to give a notice of foreclosure to the Defendant. Also, the Plaintiff bank did not meet its burden to refute the Defendants lack of notice and opportunity to cure defense was legally insufficient (Frost v. Regions Bank 15 So 3d 905 (2009) FLA District Court of Appeals, 4TH DISTRICT no 4D08-3168. When a party raises affirmative defenses , a summary judgment should not be granted where there are issues of fact raised by the affirmative defenses which have not been effectively factually challenged and refuted." See Cufferi v. Royal Palm Dev. Co., 516 So. 2d 983, 984 (Fla.4th DCA 1987). THUS, "in order for a Plaintiff ...to obtain a summary judgment when the Defendant asserts affirmative defenses, the Plaintiff must either disprove those defenses by EVIDENCE or ESTABLISH the legal insufficiency of the defenses." (QUOTING Bunner v. Fla. Coast Bank of Coral Springs, N.A., 390 So 2d 126, 127 (Fla.4thDCA 1980). In such instances, "the burden is on the Plaintiff, as the moving party, to demonstrate that the Defendant could not

prevail." Id. The Plaintiff bank has FAILED to refute Defendants claims and defenses and is not entitled to final summary judgment. Because Plaintiff bank FAILED to address Defendants affirmative defenses, IT DID NOT CARRY ITS BURDEN ON SUMMARY JUDGMENT. (See Alejandre & Terron v. Deutsche Bank Trust Company Americas f/k/a/ Banker's Trust Company, Fla. 4th DCA No 4D09-2280 Oct 13, 2010).

The Plaintiff has only given general allegations that all conditions precedent had been met, and there is no record evidence that Plaintiff had given pre-suit notice of default in accordance with the mortgage.(TILA VIOLATIONS, ETC.) (See Eugene J. Dominko v. Wells Fargo Bank, N.A. Appellee 4th District Case No 4D11-1854 Dec 5, 29012) The Plaintiff LACKS STANDING to give a pre-suit notice to the Defendant as they have no entitlement interests. The Plaintiff, Bank of America is falsely alleging it is the holder of the mortgage and note, and that the defendant is in default under the alleged loan, and that all conditions precedent to the acceleration of the note had occurred. The Defendant CLAIMS that a summary judgment would be improper and CLAIMS all the genuine issues of material fact CLAIMS AND DEFENSES in the Defendant's case are issues of material fact to the Defendant's case. THERE IS NO EVIDENCE IN THE RECORD THAT the Plaintiff has complied with CONDITIONS PRECEDENT to Defendant's claims and defenses in Defendant's Amended Motion to Dismiss and Answer to Plaintiff's Amended Summons and Complaint. The Defendant claims there is a genuine issue of material fact in all of Defendants' claims and defenses. Therefore, the Plaintiff has failed in addressing them, especially the requirement of notifying the Defendant of all the assignments on the Note all the way to the Trust. In addition, the Plaintiff has not complied with the HUD Servicing Regulation which would fall under Federal Law, State SC law, SC Mortgage and Lending Act, RESPA, failing to disclose required disclosures as required by Federal and State Law, Fair Debt Collections Act and TILA of which none have been addressed for summary judgment to be granted. The Plaintiff has failed in the burden of addressing Defendant's defenses and violated #16 of the mortgage agreement voiding the agreement in "bad faith". Defendant CONTINUES TO CLAIM THE FOLLOWING DEFENSES AND CLAIMS:

3. Standing is a question of whether the Plaintiff has alleged such a personal stake in the outcome of a controversy as to warrant invocation of the court's jurisdiction and to justify the court exercising its remedial powers on the Plaintiff's behalf. A Plaintiff must have

sufficient stake in the outcome of an otherwise justiciable controversy in order to obtain judicial resolution of that controversy. An example, "here, Federal Home Loan concedes that there is evidence that it had suffered any injury at the time it commenced this foreclosure action. Thus, because it failed to establish an interest in the note or mortgage at the time it filed suit, it had no standing. (Federal Home Loan Mtge. Corp. v. Schwartzwald, 134 Ohio St. 3d 13, 979 N.E.2d 1214 (2012). Defendant demands the Pooling and Servicing Agreement, a key piece of documentation needed from the Plaintiff in order for the Judge to determine whether the Trust owns the loan being foreclosed and the Master Loan Schedule as the Master Loan Schedule establishes whether the subject mortgage was every transferred to the Trust. Therefore, while both are essential, if the alleged loan was never transferred to the trust, then the Trust, simple put, cannot sue to collect on something it does not own. "The party seeking to foreclosure must present evidence that it owns and holds the note and mortgage in question in order to proceed with foreclosure action." Lizio v. McCullom, 36 So.3d 927,929 (Fla 4thDCA 2010. See also Verizzo v. New York, 28 So3d 976,978 (Fla. 2dDCA 2010) "providing that "there is a genuine issue of material fact as to whether the Bank of New York owns and holds the Note and has standing to foreclose the mortgage". The Plaintiff FAILED to allege in the body of the original complaint pleading that, in addition, to holding the subject Note and mortgage, it also owns these instruments prohibits it from asserting the proper chain of ownership of the instruments from their inception.

4. Defendant specifically states Plaintiff does not have the capacity to sue or bring this action and this action is therefore barred. UCC 3-306, there cannot be a holder in due course on a promissory note after the bank deposits it. They do an off balance sheet entry and is called a off balance sheet bookkeeping. (FASB)(GAAP)(ISAB). The ORIGINATOR of the NOTE is the CREDITOR on the payables side of the LEDGER, not the Debtor. Defendant brings in a recoupment claim in behalf of the real party of interest which is the Defendant because she is the ultimate creditor raising the claim against the liability side of the account. THE PLAINTIFF"S COMPLAINT MUST BE DISMISSED BECAUSE OF ITS FAILURE TO PLEAD ITS CAPACITY TO SUE. Moreover, a complaint's facial defect can be attacked appropriately for lack of capacity to sue pursuant to Federal Rule of Civil Procedure 9(a) by a MOTION TO DISMISS WHICH CAN BE JUSTIFIED UNDER FEDERAL RULE OF CIVIL PROCEDURE 12 (b)(6), i.e., failure to state a claim upon which relief can be granted. (Klebanow v. New York

Produce Exchange, 344 F.2d 294 (2d Cir.1965). See also 2A J. Moore &Lucas, Moore's Federal Practice 12.07-08 (2d ed.1982) and 5 C. Wright & A. Miller, Federal Practice and Procedure, 1292-1295, 1360 (1069 & Supp.1981). Furthermore, the Comment to the Rule (2004) Version), states that "if a party involved in a suit in other than his individual capacity, the capacity in which he is a party should be indicated in the caption of the pleading. The Plaintiff has given no agency relationship to Fannie Mae Trust and investors in the pleading. Although the capacity issue is new, it is important to note that Judges in circuit courts have routinely recognized the legitimacy of the capacity defense and are routinely granting Defendant's Motion to Dismiss based on these grounds, particularly in cases for mortgage foreclosures. See e.g. HSBC v. Montgomery, Pinellas Case 52-2009-CA-005696; Wachovia v. Matacchiero, Pinellas Case No. 52-2009-16936-CI-13, Boiln v. HSBC, Pinellas Case 08-005190-CI-19. Defendant in regard to Rule 1.120(a) specifically asserts that Plaintiff has failed to plead any facts which identify its entity-status.

The Defendant is the creditor and the Plaintiff is the debtor on the liability ledger. This proves a remedy. The G-7 endorsed it. The Defendant has a right to setoff. Auditors such as Price Waterhouse are aware of this. They are experts at auditing off balance sheet accounts. There is off balance sheet financing, payable and receivables. These auditors are the only ones that are aware of these issues. Chief accountants for the SEC are aware, and the SEC is also the enforcement agent for this practice. Defendant's loan has been securitized into a security. Everyone thinks a note is a liability, but it is not. Under UCC 4(a), 104(c), it says that the originator is the sender of the first fund transfer. The Defendant is the first funds transferor. UCC 3-105 (a)(c), subsection (a) talks about issue and (c) talks about issuer. It defines the issuer as the transferor of the first funds transfer , which is the drawer and maker, and in this case is the Defendant. UCC 8-102 (12), (15) AND (9) defines what an entitlement holder is and 8-201(3). UCC 8-501 says I am identified as the person with securities and entitlement rights on the books of a banking intermediary. They call them intermediaries under Article 8 because it involves securities. Under Article 8, the Defendant is the holder of entitlement and possessory rights to the proceeds of the transaction because the Defendant was the originator of the first funds transfer on the accounts payable side of the ledger and entitled to the funds. A promissory note is an asset to the Defendant. When the Defendant gave the note to the original Lender or beneficiary, and he deposits it, it becomes a cash item to the bank. In 1986, Justice Marshall,

"We should assume, absent convincing evidence to the contrary, that congress intended for the term "promissory note" to derive its meaning from the ordinary sources of Commercial Law. The note in this case, however, was the equivalent of "money". FDIC concedes, as it must, that Congress has determined that a promissory note generally constitutes money or its equivalent. Moreover, that statutory definition comports with economic reality. Promissory Notes typically are negotiable instruments, and therefore, readily convertible into cash...unconditional and equivalent to money, and especially if the note is negotiated. (U.S. Supreme Court, FDIC v Philadelphia Gear Corp.,476 U.S. 426 442 (1986). They issue a cash receipt to the depositor. The bank gets a cash receipt that is equivalent of money. It is what passes as money in the society. After it is deposited, then the Defendant deposited money in an account. This is a cash proceed under Title 12 of the USC. The Defendant is the creditor and is bringing this up as a defense. This is why the Plaintiff cannot be a holder in due course. UCC 3-302 defines a holder in due course and is subject to 3-106(d) which says that where an instrument is involved, there cannot be a holder in due course and would be subject to the defenses and claims that a drawer and maker as the originator of first funds transfer can bring against the payee, which is the Plaintiff, bank and predecessors and successors. The reason the Plaintiff cannot be a holder in due course is because the Defendant is the creditor who can trump any claim that a holder might have on that instrument. The Defendant as originator and maker is claiming setoff, because Plaintiff and predecessors sold an unregistered note AND IS NOT AN ENTITLEMENT HOLDER. They cannot be a holder in due course because they are taking it subject to administrative and commercial claims, every time there is a clause in the instrument. This whole process is not about mortgages at all, because they sold the note and received the funds and closed the account by assuming they have repaid the originator of the loan which was never done, thus Defendant has been misrepresented and deceived and claims a conspiracy to defraud. The real intent is to create derivatives to create a security and bond market to finance all commercial and corporate activity. The Note is not under a negotiable instrument anymore, it is a SECURITY. Under U.S. Law, securitization is illegal because it is fraudulent. Enron was involved in securitization. "Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud', and entitles party deceived to a void contract or recover damages." (Barnsdall Refining Corp. v. Birnam Wood Oil Co., 92 F 26 817). Pursuant to S.C.

Code Ann.35-1-1210 of the Prior Act, it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to: (a) employ any device, scheme or artifice to defraud; (b) make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading: or (c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a person. By not producing these documents at time of the complaint, Plaintiff has acted in deceit as the following will show. The non-negotiable Promissory Note is a security under South Carolina Law and Fannie Mae claims all their notes are non-negotiable as explained in this document.

The banks have made as an estimate over 9 times the value of my originated Note without Defendant's knowledge and created an investment contract without my knowledge or authorization and has withheld owed monies to the Defendant. This is gross misrepresentation and deception on the part of Plaintiff, and Plaintiff's predecessors and successors. "If any part of the consideration for a promise be illegal, or if there are several considerations for an un-severable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." (Menominee River Co. v. Augustus Spies L & C Co., 147 Wis. 559.572: 132 NW 1122).

Under Title 12 USC 1813 (L)(1), when you deposit a promissory note, it becomes a cash item. The Defendant is the creditor on the payables side of the ledger. The Plaintiff owes the Defendant the money and the Defendant is entitled to recoupment. Under Civil Rule 13, the Defendant is bringing a mandatory counterclaim for recoupment and applying the setoff. This is all equitable action in admiralty style instruments. The Defendant is the originator and the Note is an asset, and recoupment in practice is a counterclaim in a civil procedure, since the Defendant is the creditor on the liability side or accounts payable and the Plaintiff, bank or lending institution is the debtor on the liability side. The Defendant claims her accounts payable as an offset or counterclaim to the financial asset side. Under FAS 140 Defendant claims her setoff. When a deposit is made, it is a cash receipt, a cash proceed. Everything becomes cash proceed in commercial law under Article 9. The bank shows it as a cash proceed. If you give a bank a promissory note, they are required to give you a cash receipt which was not done and is deception, misrepresentation and fraud. The Plaintiff owes the Defendant that money under a

recoupment or asset. The Defendant claims a defense in RECOUPMENT under UCC 3-305, and a claim under 3-306 as a possessory and property claim against the cash proceeds under the liability side of the ledger. In UCC 3-306, there cannot be a holder in due course on a promissory note after they deposit it. They do an off balance sheet entry and is called off balance sheet bookkeeping. The Defendant as the real party of interest brings a claim of recoupment as the ultimate creditor and is raising the claim against the liability side of the account. Walker Todd previously one of the heads of the Cleveland FRB, has been a government witness in court cases and states we are the creditor on the payables side of the ledger. The Plaintiff owes the Defendant the money. The Defendant claims defense and counterclaim because I have an asset the Plaintiff is holding of mine, that they failed to give me credit for, and they are likely carrying my asset on a liability ledger of balance from their accounts receivable. Statute says Defendant has the right to restitution and rescission if they sell an unregistered security and UCC Article 8 and 9 is applicable remedy. The Defendant also has a right to rescind and restitution which is part of recoupment, and Defendant is entitled to setoff to settle the claim. The Defendant is raising the claim and not waiving it. Again, the defendant is the creditor and the Plaintiff is debtor on the liability ledger. That provides a remedy.

DAMAGES exist in that the bank refuses to loan their money. The Plaintiff bank denies the alleged borrower equal protection under the law of contract, by merely exchanging one currency for another and refusing repayment in the same type of currency deposited. The bank refused to fulfill the contract by not loaning the money, and by the bank refusing to be repaid in the same currency, which they deposited as an exchange for another currency. The Plaintiff and Plaintiff's predecessors and successors had no authorization from the Defendant to alter the alleged contract and to refuse to perform by not loaning money, by changing the currency or by refusing repayment in what the bank has written policy to deposit. In the transaction the bank was to loan legal tender to the borrower, in order for the bank to secure a lien. The bank never made the loan, but kept the mortgage note the alleged borrower signed. This allowed the bank to obtain equity in the property (by a lien) and transfer the wealth of the property to the bank without the bank's investment, loan or risk of money. Then the bank receives the alleged borrower's labor to pay principal and interest. What the Defendant owned or should have owned debt free, the bank obtained ownership in, and for free, in exchange for the Defendant receiving a debt, paying interest to the bank, all because the bank refused to loan

money and merely exchanged one currency for another. The lien forces payment by threat of foreclosure. The mail is used to extort payment on a contract the bank never fulfilled.

If the bank refuses to perform, then they must return the mortgage note. If the bank wishes to perform, then they must make the loan. The past payments must be returned because the bank had no right to lien the property and extort interest payments. The bank has no right to sell a mortgage note for two reasons. The mortgage note was deposited and the money withdrawn without authorization by using a forged signature, and two, the contract was never fulfilled. The Plaintiff acted without authorization and is involved in a fraud, thereby, damaging the Defendant. PROOF banks deposit notes and issue bank checks...the checks are only as good as the promissory note. Nearly all bank checks are created from private notes. Federal Reserve Bank Notes are Private corporate Notes (chapter 48, 48 Stat 112) Notes are used to discharge notes. (excerpt from Your Money, page 7) The Plaintiff and Plaintiff's predecessors and successors have made the Defendant the depositor and not a borrower. This is fraudulent conversion of the mortgage note. A fraud is a felony. Defendant is holding registered NOTE.

The Fannie Mae Trust had no right to a Mortgage/Deed of Trust to a purchased Note that was not evidence of a debt or obligation--it can't be a Secured Transaction covered under UCC 9, when it's an Investment Security covered under UCC 8. The Plaintiff should not be able to foreclose on an asset in an Investment Security with an invalid Mortgage, fraudulently procured under the guise of a "Loan", when it wasn't a Loan, but rather the "Purchase of a Note" into an Asset-Backed Investment Security, and the Plaintiff was paid in full, plus a commission for something it did not fund. The Plaintiff and predecessors and successors tricked the Defendant into signing a Mortgage to secure an Investment Security, assign a Beneficial Right it never had to another Beneficiary. Fraud is alleged that the Defendant was tricked into believing it was a loan to procure a Mortgage and the true nature of the Transaction was not disclosed, nor was true nature of the Note being legal tender disclosed to the Defendant or the Note being an asset to the Defendant. Fraud can be alleged that the Pool Insurance paid the Investors after multiple defaults and Foreclosures. If paid, why the foreclosures? Further, fraud can be alleged that the Mortgage (UCC 9) is invalid for an Investment Security/Commercial Paper (UCC 8) (you can't have both). A foreclosure is improper and should be voidable. The direct purchase of the Note by the Trustee for the Trust or SPV appears to violate the procedures specified in the FAS 140 -

"Statement of Financial Accounting Standards 140" by the Financial Accounting Standards Board (FASB). The Plaintiff signs a Mortgage Loan Purchase Agreement with a Representative of the Trust, yet the Plaintiff doesn't fund the purchase of the Note, and can't sell what it hasn't bought. The Pooling and Servicing Agreement clarifies all the fine points the Plaintiff doesn't want the Defendant to know. The Assignment and Assumption Agreement clarifies further. Also, the insurance pays off the investors. The Plaintiff servicer continues to foreclose, even though the investors are paid off which is fraud. And, the Plaintiff has not disclosed the payoff according to South Carolina Rules of entering and recording the fact which is a VIOLATION of South Carolina law and voids the foreclosure. This brings us to BONY V. FAULK. In this CASE, the note lacked endorsements connecting the originator to BONY as trustee for the foreclosing securitization trust. This set up a MOTION TO DISMISS on the grounds that BONY didn't have any right to do anything---it had no connection with the NOTE. In other words, if the endorsement were created later, then the Plaintiff, Bank of America, had no standing at the time the action was filed because the Trust did not own the note at that time as there is no endorsement to the Fannie Mae Trust. How do we know the Plaintiff attorney isn't engaged in fraud on the court (and a host of other violations of state and federal law)? Critically, the PSA requires a complete chain of endorsement with all intervening endorsements. Anything less is documentation fraud. There are no endorsements to Bank of America or Fannie Mae Trust. Furthermore, Countrywide denies ever sending Notes to the Fannie Mae Trusts as discussed later in this answer and all claims.

The Plaintiff is using Defendant's NOTE to expand the money supply without disclosure or authorization from the Defendant, nor was Defendant told the PROMISSORY NOTE had cash value or was legal tender and the loan was not a loan, but indeed, an exchange or swap at the time of the closing. This is conversion fraud and conspiracy as multiple banks are involved. UNDER TITLE 12 USC 1813(L)(1) when you deposit a promissory note, it becomes a cash item. Under Civil Rule 13 Defendant brings a mandatory counterclaim for recoupment. These reports are filed on OMB FORMS, in which the public has a right to disclosure under the privacy act. The FR 2046 balance sheet, OMB #'s 2046, 2049, and 2099 are subject to disclosure under the privacy act, Title 5 USC 552(b)(4). At closing and settlement, the reason they actually call it closing is because they pay off the loan in its entirety. The DEBT is actually EXTINGUISHED. If banks shift the assets off the books, they have to report to the FRB where

it went, so we can follow it, and the banks are mandated to give a cash receipt on any deposit, which was not done. It is a Demand Deposit Account and the deposit slip has been withheld from Defendant by Plaintiff or Plaintiff's predecessors. Defendant gave original Lender a promissory Note, they have to record a debt to the Defendant on their liability ledger. Further, banking law forbids selling credits, therefore, DEFENDANT requests Judge to do the set off under HJR 192 as defense and remedy and Defendant claims recoupment and PUBLIC LAW 10 Chap. 48, 48 Stat.112 as defense, remedy, and recoupment.

The Plaintiff at the time of filing a complaint must show the full accounting of the alleged obligation that that are attempting to collect such as, a) FR 29046 balance sheet (OMB #'s 2046, 2049, 2099, b) 1099 OID report, c) S-3/A registration statement, d) 424-B5 prospectus and e) RC-S & RC- B call schedules. The Plaintiff must show they are a creditor following Generally Accepted Accounting Principles (GAAP) whereby true double entry book accounting was performed in issuing my alleged loan showing a debit against the bank's assets as a result of my alleged loan. Without proof of a claim, the Plaintiff has no standing, and Defendant demands up to 3 times the amount of the claim in recoupment pursuant to UCC 3-305 and UCC 3-306.

IN ADDITION, "It has been settled beyond controversy that a national bank, under Federal Law being limited in its powers and capacity, cannot lend its credits by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires" (Howard & Foster Co. v. Citizens Nat'l Bank of Union, 133 SC 202, 130 SE 759 (1926). "THE DOCTRINE OF ULTRA VIRES IS A MOST POWERFUL WEAPON TO KEEP PRIVATE CORPORATIONS WITHIN THEIR LEGITIMATE SPHERES AND TO PUNISH THEM FOR VIOLATIONS OF THEIR CORPORATE CHARTERS, AND IT PROBABLY IS NOT INVOKED TOO OFTEN". (Zinc Carbonate Co. v. First National Bank 103 Wis 125, 79 NW 229). (American Express Co. v. Citizens State bank, 194 NW 430). Ralph M. Hautrey, Secretary of the British treasury states, "banks lend by creating credit (ledger-entry credit, monetized debt). They create the means of payment out of nothing".

Because the note maker, the Defendant, owns the Note and securitizing the Note without the maker's permission constitutes conversion, then the Defendant demands compensation for the conversion and tort. Again, the Defendant holds the registered Note and is the creditor, not the

debtor, so the Plaintiff has no claim and Plaintiff's attorney firm states they are a debt collector. This all appears to be a RICO enterprise from inception.

5. Defendant specifically denies that Plaintiff is the real party of interest and or duly authorized agent of same upon which Plaintiff's alleged claim is based and therefore has no standing to bring this action. (SC Title 32 Section 32-3-10). The Plaintiff, Bank of America, is not the current owner or has possession of the original wet ink subject Note or is the assignee of the security instrument, to the contrary, nor does the instrument constitute a first lien priority mortgage in any way. The Defendant holds title to the property and the Registered NOTE.

6. Defendant specifically denies Plaintiff was the owner of the Note and Mortgage at the time of filing of the foreclosure or hence. Defendant denies Plaintiff held the Defendant's ORIGINAL WET INK SIGNATURE PROMISSORY NOTE or Mortgage as Defendant was denied seeing the Note until January 11, 2013 at which time the Note appeared to be a fraudulent reproduction or computerized eNote. A photocopy or imaged copy of the instrument is not sufficient proof of Holder in due course. PURSUANT of UCC Article 3-3-501(b) 2(1), Defendant is entitled to verify through visual inspection of the original wet inked signature promissory note, allonge and all assignments, together with the original wet inked Deed of Trust/Mortgage in Aiken County upon demand. The Plaintiff only produced a photo copy of the instrument without proper dates on stamps or assignments and no mortgage. Further, Defendant denies Plaintiff is holder of the original Note or is entitled to enforce the Note and is claiming damages according to USC TITLE 18 2071 (a)(b) concerning concealment, removal or mutilation generally. SC Code 16-13-10(A)(1)(2)(4)(B)(1)(230)(240)(320). CONSEQUENTLY, Defendant denies Plaintiff's right to enforce the note has been established or proven at all in any way or otherwise. The note is a non-negotiable note and must follows the Pooling and Servicing Agreement with endorsements from origination all the way to the Fannie Mae Trust which the Plaintiff has not accomplished or proven. Further, the Defendant denies the note claimed by the Plaintiff is the original "wet ink" original note. Therefore, the Plaintiff has failed to state facts sufficient to state a cause of action, and a mere reference to Plaintiff holding the note is insufficient for a demand for relief and is NOT GROUNDS to deny Defendant's Amended Motion to Dismiss. The Plaintiff has already sold the Promissory Note and cannot fulfill the requirement of presentment under UCC Article 3- 305 (b) 2 (1). And in Section 3-203(b), "but

the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument."

In addition, in the deposition of Michele Sjolander, Executive/Senior Vice President of Bank of America, admits she did not place the endorsement on the note and in fact is not allowed in the area where endorsing is supposedly done (at Recontrust, by Recontrust employees) without an escort. She also stated that she does not know the name of the person who supposedly did place the endorsement on the note. She stated that the endorsement is placed on the notes with a rubber stamp onto which her name, Laurie Meder's name and all the other information that appears on the endorsement. In other words, the Countrywide Bank, FSB endorsement to Countrywide Home Loans, Inc (using Laurie Meder's name) and the Countrywide Home Loans, Inc. to "blank" endorsement (using Michele Sjolander's name) is a single stamp that is purportedly placed on notes by employees of Recontrust. And, is why the two endorsements line up perfectly. Mrs. Sjolander also admitted the notes were images and copied on their AS-400, servicing system and imaging system. (Page 30-31) Also, she states the file is scanned and imaged to an electronic file (Page 37)

Mrs. Sjolander even admitted that there is no way to know for sure when the endorsement on the note was placed there, obviously a crucial issue. Long story short, it appears that Mrs. Sojander's only connection to the note in the case, and presumably in other cases such as the Defendant's, is that her stamped name appears on the purported endorsements. She has no personal knowledge of when or if the notes are actually stamped at the Recontrust vaults. The notes are Robo-stamped. You can't just do foreclosures with a rubber stamp on a conveyor belt. (Foreclosure Fraud). (Kirby v. Bank of America, Case No. 2:09-CV-00182-DCB-JMR, Jan 25, 2012, US District Court, S. Dist of MS, Hattiesburg Div.)

Further, Countrywide admits to not conveying Notes to Mortgage Securitization Trusts in the deposition of Ms. DeMartini . (Kemp v. Countrywide, Case 08-02448-JHW p.7). Defendant's alleged loan was a Fannie Mae securitized loan and Plaintiff's Note does not contain the chain of title assignments as required by the Pooling and Servicing Agreement or is the NOTE legally assigned due to no assignments in systematic order to the trust nor any proof of

required timing to the Trust thereof. The Fact that Fannie Mae and/or Trust never had possession of the note is FATAL TO THE ENFORCEMENT AND UPON THE SALE OF THE NOTE AND MORTGAGE TO FANNIE MAE and/or TRUST, THE FACT THAT IT WAS NOT PROPERLY ENDORSED TO FANNIE MAE and/or TRUST ALSO DEFEATS THE ENFORCEBILITY OF THE NOTE. (Kemp v. Countrywide, Case 08-02448-JHW p.11). It is believed the Notes may have been shredded due to their origination of the MERS data recording and tracking system, and the Note was never transferred as legally required. Defendant does know her originated Note was purchased by Fannie Mae Trust and since Fannie Mae never had possession of the Note, they cannot qualify as a "holder" under UCC nor is the Plaintiff a holder or a bearer thereof". (See Dolin v. Damall). In addition, endorsement of the instrument by Fannie Mae is missing which is required to negotiate an instrument. The significance of endorsement and affixation requirements to achieve holder status, and thereby qualify to enforce a note against the maker, the Defendant, was explained in a Third Circuit in Adams v. Madison Realty & Dev. Inc., supra. The Court explained that the maker of the note must have certainty regarding the party who is entitled to enforce the note. Otherwise, the Defendant is exposed to the risk of double payment, or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument. These risks provide makers with a recognizable interest in demanding proof of the chain of title. Consequently, the Defendant here, as maker of the Note, may properly press Plaintiff to establish its holder status. In the Defendant's case, we have neither a proper endorsement on the note itself, nor an allonge that was executed at the time the proof of claim was filed to Fannie Mae Trust. Under these circumstances, neither the Plaintiff or Fannie Mae qualifies as a holder, because Fannie Mae or the Fannie Mae Trust ever came into possession of the Note. Nor does the Plaintiff qualify as a non-holder in possession who has rights of a holder. "A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument" UCC Section 3-301. The Official comment to Section 3-301 adds that this definition: includes a person in possession of an instrument who is not a holder. A non-holder in possession of an instrument includes a person that acquired rights as a holder by subrogation or under Section 2-203 (a). The Plaintiff does not have possession of the original Note of a properly indorsed Note, and therefore, may not enforce the note as a non-holder in possession.

The Defendant's Note has been securitized and Fannie Mae states all their Notes are non-negotiable Notes, therefore PLAINTIFF IS NOT A HOLDER IN DUE COURSE, as described by Matthew D. Weidner, Esq. on July 10, 2012 in Foreclosure News and confirmed by Fannie Mae official letter by Lisa O'Donald, Associate General Counsel for Fannie Mae as she states,

"The choice of law provision in the Security Deed was inserted with the expectation that enforcement of the mortgage loan would occur through foreclosure action in which the NOTE reflecting the indebtedness and the Security Deed reflecting the security for repayment of that indebtedness would be considered together as an integrated contract and the choice of law provision in the Security Deed would govern the enforcement of the NOTE. We intended that if a suit to enforce the NOTE were maintained separately from an action to foreclose on the property under the terms of the Security Deed, the applicable law would be determined by the choice of law provisions of the forum jurisdiction". Fannie Mae intended that the Note and Mortgage be read together as an integrated document. The point is clear, the provisions included between both the Note and the mortgage are all bound together in one, integrated, unified document. Therefore , the Note is non negotiable and must comply with all regulations of the Pooling and Servicing Agreement, otherwise, Plaintiff violates the laws and contract under which the investors purchased the securities and constitutes SECURITIES FRAUD. Banks securitize mortgages by selling them to a SPV (a Special Purpose Vehicle, a Trust). Then they create bonds of trust assets to sell to DTC. The bank cannot foreclose on the note, because they are not a holder and lack standing. The Plaintiff claims to be holder in due course, but that is not possible for there to be a holder in due course of a non-negotiable instrument. Non-negotiable instruments are governed by Common Law, not the UCC. One, the note is non-negotiable, and two, it is never registered in the public. These instruments cannot appear in court, and if brought into court then there is no subject matter jurisdiction over the claim. The note is non-negotiable, so it does not come under the UCC negotiable instruments act, but comes under the contract obligations. It also shows the bank is liable and the originator is the creditor. The note is an asset to the Defendant, which is an asset and a counterclaim for recoupment. Before closing, the note goes into a SPV which now has legal title to these issues, and it creates a new instrument in the place of the note. They create securities and bonds. The Plaintiff is representing the registered security and bond at closing. The statute says Defendant has a right to restitution and rescission if they sell an unregistered security. It is a non-negotiable instrument. It could be

under UCC article 4 because it was deposited in a bank, but eventually is moved to Article 8 and 9 and is applicable for remedy. Defendant has right to rescission because it is unregistered. Defendant claims all applicable rights to restitution and to rescind alleged loan and mortgage and all applicable claims under the Securities Laws. As soon as the original lender and the Plaintiff sell the unregistered security, the Defendant is entitled to setoff to settle the claim. The Defendant is raising the claim and is not waiving it. Foreclosure is a damage and Defendant is claiming damages.

IN ADDITION, there is no "Holder in due course" if the note is non-negotiable". (Sirius LC v. Erickson, 156 P. 3d 539-Idoaho:Supreme court 2007). The promissory note is governed by contract law. Further, Defendant denies Plaintiff is a lien holder which is a probable cause charge with no evidence and is an unsupported charge. Defendant rebuts the assumption and presumption under Rules of Evidence. The Plaintiff is not the "holder in due course" of the note and not an agent or nominee for the true beneficial owners and have exploited key and vital evidence. There is no proof that the Plaintiff ever held the original note or took possession of the original note and thus has no claim or right to foreclosure, and also, there is no proof that a proper chain of assignments took place and that the lien positions were properly perfected.

WHEREFORE, MERS cannot assign the Note and Mortgage as they never held either which may constitute fraud on the court, therefore, Defendant, denies the instrument constitutes a first lien priority mortgage as well as the following:

In June of 2007, Defendant took out a mortgage loan with Quicken Loan, Inc. which involved misrepresentations, non-disclosure of vital facts, theft by taking, conversion fraud, and origination fraud concerning contract law by not disclosing to the Defendant the Note was legal tender treated like cash and deposited without Defendant's knowledge or authorization, and additionally, the exchange or swap, and not a loan, was being processed with the truth being hidden from the Defendant and the deposit slip never sent to the Defendant. Defendant claims no meeting of the minds, contract law violations and rescinds the loan which was previously rescinded prior to Plaintiff filing their complaint. Then on March 19, 2012, this action was filed by Bank of America, N.A. seeking to foreclose on this previously alleged loan with no meeting of the minds as aforementioned. The Utah Supreme Court has recently held that a lack of the

meeting of the minds, a mistake as to the fact, can justify rescission of the contract. A single party may rescind a contract when, at the time the contract is made, the parties make a mutual mistake about a material fact, the existence of which is a basic assumption of the contract" (Deep Creek, LLC v. Utah State Armory BD., 2008 UT 3, 17 (quoting Mooney v. GR & Assocs., 746. 2d 1174 (Utah Ct.app.1978. Also, a recent Federal Circuit Court Judge has found Countrywide and Bank of America guilty of Robo signers, fraudulent assignments and foreclosure fraud and has levied a $25 Billion dollar restitution. Defendant previously notified Plaintiff the alleged loan is rescinded via certified mail.

For reasons that follow, Defendant disputes Plaintiff's right to foreclose on this loan and requests that this case be dismissed pursuant to Rule 12(b) SCRCP. The Plaintiff has not sufficiently alleged that it has standing to bring this action. Defendant contends that Plaintiff's allegation that Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS") assigned Defendant's Mortgage to Plaintiff is insufficient as a matter of law because MERS does not have any interest in the Promissory Note (hereafter "Note") and therefore cannot assign any interest in said Note to Plaintiff. Because Plaintiff has not alleged that it is entitled to enforce the Note, Plaintiff lacks standing to bring this action and has failed to state a claim upon which relief can be granted. The court may dismiss a claim where the defendant shows that a Plaintiff has failed to state facts sufficient to constitute a cause of action. (Hambrick v. GMAC Mortg.Corp, 370S.C.118:634S.E.2d 5(Ct.App.,2006. The Court must base its decision solely on the allegations in the complaint. However, a motion under Rule 12(b)(6) or 12(c) does not admit conclusion of law. (Carolina Winds v. Joe Harden Builder, 297 S.C.74;374 S.E.2d897(Ct.App.,1988) (rev'd on other grounds)

Plaintiff has alleged, among other things, that MERS assigned Defendant's Mortgage to Plaintiff by an Assignment of Mortgage (hereinafter "AOM") dated April 29, 2011 and that BAC Home Loans Servicing, LP f.k.a Countrywide Home Loan Servicing, L.P have merged with the Plaintiff making Plaintiff successor by merger to these companies. Compl. 7 and 8. The complaint contains no other allegations regarding assignments, negotiation, transfer of the Note or any succession in interest between Plaintiff and Quicken Loans, Inc. As a result, Plaintiff has failed to allege how it is that Plaintiff is entitled to enforce Defendant's Note by foreclosing on her home.

Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt". (United States Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 375,; 684 S.E.2d 199, 205 (Ct.App.2009). This would include proving by a preponderance of the evidence that Plaintiff is the owner of the Note and Mortgage and that Defendant had defaulted on the Note. See 385 S.C. at 375; 684 S./E.2d at 199 (citing Franklin Credit Mgmt. Corp. v. Nicholas, 73 Conn. App. 830, 812 A.2d 51, 57-58 (Conn. App. Ct. 2002). Plaintiff is required to plead and prove that it has received rights in both the Note and the Mortgage because "the assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee absent some indication that the parties also intended to transfer the debt". (S.C. Nat'l Bank v. Halter, 293 S. C. 121, 128, 359 S.E.2d 74,77 (Ct.App.1987).

Because Plaintiff was not the original lender and not the original payee on the Note, Plaintiff will need to show that it became entitled to enforce the Note. The important point is that Plaintiff has not alleged any right to enforce Defendant's Note either through Article 3 or otherwise. The only relevant allegation Plaintiff has made, that MERS assigned Defendant's mortgage to the Plaintiff., is insufficient to transfer any interest in the Note for reasons that follow. In addition Defendant claims the Assignment by MERS is ROBO SIGNED by Dominque Johnson, Malik Basurto and Cynthia Santos as they are named by Fraud Documents and Basurto in case Echeverria et al v. BAC Home Loans Servicing, LP et al: 6:2010 CV 01933 (Middle District of Florida Orlando Division). Also, Lender's Services, Inc. aka Lender Processing Services, Linda Green, an employee, signed several hundred thousand Mortgage Assignments. Green frequently signed assignments to Trusts several years after the closing dates of the Trusts. Lorraine Brown of Alpharetta, Georgia was sentenced to 5 years in prison for her role in Mortgage-Related Document Fraud Scheme by the U.S. Department of Justice. In a six year scheme, Lorraine Brown prepared and filed more than 1 million fraudulently signed and notarized mortgage related documents with property recorders' offices throughout the United States. Lender Services, Inc. (LSI) was involved in Defendant's loan as closing agent and Title Company, and now possible fraudulent Assignment by MERS. It is a federal crime to sign someone else's name to a legal document and is also illegal to sign your name to an affidavit if you have not verified the information you're swearing to. Both are punishable by prison. The signature of a qualified bank or mortgage official on these legal documents is supposed to

guarantee that this information is accurate. The paper trail ensures a legal chain of title on a property and has been the backbone of U.S. property ownership for more than 300 years. The "Robo signing" of affidavits and Assignments of Mortgage and all other mortgage foreclosure documents served to cover up the fact that loan servicers cannot demonstrate the facts required to conduct lawful foreclosure. If indeed Robo Signers signed off on loans without review, they committed fraud by claiming knowledge of a financial matter of which they had no personal knowledge. Briefly, Robo Signers are illegal because fraud cannot be the basis of CLEAR TITLE, and TRUSTEE'S DEEDS following Robo Signed sales are void as a matter of law, notarization is a recording requirement for many of the documents which was also know to be botched. CLEAR TITLE may not derive from a fraud. Numerous authorities have established the rule that an instrument wholly void, such as an undelivered deed, a forged instrument, or a deed in blank, cannot be made the foundation of a GOOD TITLE. It is the general rule that Courts have the power to vacate a foreclosure where there has been fraud or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be INEQUITABLE to a purchaser or parties. Hence, if forged Robo signed signatures are used to obtain the foreclosure, it certainly makes a difference in judicial states as any apparent sale based on Robo signed documents is void...without any legal effect. Robo signing is illegal in all 50 state, hence all 50 Attorney General's become involved in this scheme. These documents are not recordable without good notarization. The reason these documents are notarized in the first place is because otherwise they will not be accepted by the County recorder. Moreover, a notary who helps commit real estate fraud is liable. The notary is in California where Countrywide is located. Defendant claims fraud in the MERS ASSIGNMENT and civil damages and request this Honorable Court turn this case over to the Attorney General of South Carolina to further investigate the Robo Signing of the MERS Assignment and any violations of the False Claims Act inasmuch as the alleged loan is securitized if allowable by law, or grant the Defendant's MOTION TO DISMISS or a 90 Day Stay concerning this case in order for the Defendant to seek the South Carolina Attorney General. Further, Defendant claims declaratory relief and damages, an injunction and attorney fees for Unfair Business practices, as well as claims for slander of title; abuse of process, civil theft and any other civil remedies under the law..

The role of MERS has been much debated recently, but one thing that is clear is that MERS has no ownership interest in promissory notes and thus no ability to assign these notes. In

MERS v. NEBRASKA Dept. of Banking and Finance, MERS brought an action contesting the Nebraska Department of Finance's finding that MERS was a "mortgage banker" under Nebraska law and subject to license and registration requirements as a result. (270 Neb. 529; 704 N.W.2d 784 (Neb.2005). In that case, MERS argued that "it does not own the promissory notes secured by the mortgage and has no right to payments made on those notes. MERS explains that it merely "immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur" (270 Neb. at 533, 704 N.W. 2 d at 786. Since MERS argued and prevailed on this position, it would be estopped to deny that it has ownership of Defendant's Note now and could transfer that ownership to Plaintiff. "When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him" (Hayne Fed. Credit Union v Baily, 327 S.C. 242, 252, 489 S.E. 2d 472, 477 (1997). Because MERS admits that it has no ownership interest in promissory notes, it is impossible for MERS to have assigned Plaintiff any interest in Defendant's Note by virtue of the Assignment of Mortgage, AOM. By information and belief, Defendant claims restitution against the Plaintiff as MERS is an shell data system clouding the titles of homeowners and fraudulently placing assignment recordings including Robo signing of the assignment in Aiken County on my home records. It is important to note multiple lawsuits have been filed against MERS and the Plaintiff across the nation and have prevailed with multi millions in settlements by the Plaintiff for fraud and wrongful foreclosures which are too many to list in this document.

While a challenge to a Plaintiff's right to foreclosure based on their failure to plead proper assignment of a promissory note may appear to be a "technical" defense that bears no relation to any rights of the Defendant, this is only appearance. The Defendant has an overriding interest in making sure that, if her home is foreclosed and sold to pay a debt, the party that brings the action and conducts the sale is a party that is actually entitled to enforce the Note. Article 3 of the UCC provides that payment of a promissory note is only effective to discharge the obligation on that promissory note if payment is made to a person that is entitled to enforce the note. (S.C. Code Ann.36-3-601(a). If the Defendant's home were foreclosed and sold and the proceeds paid to a party who was not entitled to enforce the note under the UCC, the Defendant's obligation under the note would be discharged and she would remain liable to pay the note to whoever was entitled to enforce. Requiring the Plaintiff to plead and prove that it is entitled to enforce the note PROTECTS the Defendant from the risk of DOUBLE LIABILITY. Defendant is claiming

recoupment, restitution and setoff. Under UCC Article 1 the sale of promissory notes is subject to the statute of frauds.

OF MAJOR CONCERN, is the OFFICE OF THE COMPTROLLER OF THE CURRENCY (hereafter, OCC) signed a CEASE AND DESISTS settlement agreement with MERS on April 13, 2011. Among other things, the CEASE AND DESIST ORDER finds, "We have identified certain deficiencies and unsafe and unsound practices by MERS and MERSCORP that present financial, operational, compliance, legal and reputational risks to MERSCORP and MERS, and to the participating MEMBERS. (OCC No.AA-EC-11-20, Board of Governors; Docket Nos.110051-B-SC-1, 11-051-B-SC-2; FDIC-11-194Bots no.11-040; FHFA No. EAP-11-01). The unlawful assignment of Defendant's mortgage and note by MERS was dated Aril 29, 2011 in flagrant disregard of the OCC CEASE AND DESISTS agreement. Defendant will order an OCC investigation into this deception by the Plaintiff and requests damages as foreclosure is a damage. Noted attorney Philip Kramer, a senior partner at the law firm of Kramer & Kaslow provides insight, MERS Corp is the owner of the Mortgage Electronic Registration Systems (MERS), one of the cornerstones of the current banking crisis.

In order to cut up loans and move the pieces around the world at the speed of electronics again and again and again, until no one is sure who owns what, financial institutions have been using MERS as the "beneficiary", a legal term which in practical terms means they are entitled to foreclose on behalf of the lender, except MERS is nothing more than an electronic data base. They are often named as beneficiary.

However, in order to legally be named as beneficiary they would have had to put up funds on the loan. Not to mention the fact that the recordation itself is not even official. BUT, most importantly, MERS is never a Holder in Due Course. Philip Kramer goes on to observe that, "We are a nation of laws". Everyone knew that MERS didn't have the right to appear as beneficiary, but it would have been inconvenient to act on this because MERS was in widespread use throughout the banking industry. It was wrong, wrong, wrong, but everyone was doing it. ALL FORECLOSURES ASSOCIATED WITH MERS must CEASE AND DESISTS, NOW!!! This is in accordance to the OCC's CONSENT ORDER. Defendant claims a conspiracy to defraud by the Plaintiff by filing a foreclosure on the Defendant and claims civil damages.

In addition, "Merscorp, Inc. and other conspirators were all involved in a fraudulent scheme and RICO enterprise herein complained of. The employees of the MERS, including many licensed attorneys, have become skilled in using the artifice of MERS to sabotage the judicial process to the detriment of borrowers, and over the past several years, have relied upon MERS to do just that". (Figuero v. MERSCORP, Inc. Case 0:10-cv61296-CMA Page 2).

"Similarly beyond the imagination of most persons is and was the scope of the DISHONSTY of the lenders and those acting in furtherance if the scheme including the present Plaintiff. Through the present time, persons acting within the ambit of this conspiracy, most particularly including the Plaintiff herein, have continued to operate consistent with the core principles of dishonesty and obscurantism engendered by the original conspirators. These dark influences have spread throughout the financial services, lending and banking industries into the national economy and beyond, threatening the economic stability of the United States and the world as a whole. This Court is urged in the strongest possible way to apply a presumption of FALSITY when reviewing any documentary evidence in this court by one or more of the Plaintiffs. Such a presumption is not just warranted, it is indeed compelled by the extent to which the Plaintiffs and those with which they are associated have long acted in a malicious and wanton manner evincing complete contempt for the judicial process and the rights of persons having interests contrary to their own. This is particularly true because the Plaintiffs' contempt for due process is compounded by their specific intention to obviate the requirement that documents prepared for legal use be truthful, authentic, and legitimate."(Figuero v. MERSCORP, Inc. Page 5 &5)

"There is one sort of lie that, when later discovered, constitutes the strongest possible proof of a person's malicious intentions. What is it, "A lie about one's name or identity. Many such lies are present in this instance. The whole purpose of the MERS is to allow "servicers" to pretend as if they are someone else: The "owners" of the mortgage here, or the real party of interest. IN FACT THEY ARE NOT". (Figuero v. MERSCOPRP, Inc. Page 5)

In Plaintiff's original complaint #7, Plaintiff claims by virtue of an assignment dated April 29, 2011, Mortgage Electronic Systems, Inc. assigned said mortgage unto BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, the present lien holder and

Plaintiff herein. Defendant denies #7 as MERS cannot assign a note or mortgage as they never hold the notes or mortgages and no interest in either. Nor does the mortgage give MERS any rights to the note. A case to note in February 2012 is United States Bankruptcy Judge Robert Grossman (NY) who ruled that MER'S business practices are unlawful. At each transfer, the note and mortgage are supposed to be "assigned" to the new owner. The Judge rejected every aspect of MERS argument. The Court rejected the claim that MERS could be both holder of the mortgage as well as nominee of the "true" owner. It also found that "mortgage of record" is a vague term that does not give one legal standing as mortgagee. Hence, at best, MERS is only a nominee. It rejected MERS claim that as nominee, it can assign mortgages—a nominee has limited rights and those most certainly DO NOT include the right to transfer ownership unless there is specific written instruction to do so. In scarcely veiled anger, the Judge wrote, "According to MERS, the principle/agent relationship among itself and its members is created by the MERS rules of membership and terms and conditions, as well as the Mortgage itself. However, none of the documents expressly creates an agency relationship or even mentions the word, "agency". MERS would have this Court cobble together the documents and draw inferences from the words contained in those documents." Judge Grossman rejected MERS arguments, saying that mere membership in MERS DOES NOT provide "agency" rights to MERS, and agreeing with the SUPREME COURT of KANSAS that ruled, "The parties appear to have defined the word (nominee) in much the same way that the blind men of Indian legend described an elephant—their description depended on which part they were touching at any given time". He went on to disparage MER'S claim that since in legal theory the "MORTGAGE FOLLOWS THE NOTE', the Court should overlook that MERS separated them. Therefore, the note would be unsecured and the Defendant's bankruptcy was discharged in December 2012. Defendant claims that MERS has irretrievably destroyed the clear chain of title and claims damages due to being forced to quiet title expenses.

In making further assertions, concerning MERS, these facts follow,

a) Assignments were made by "officers" of MERS using delegations of authority of no longer existing MERS predecessors corporations.

b) The Officers of MERS who are allegedly authorized to sign documents on behalf of MERS are not "officers" of the corporation as the term officer of a corporation is legally defined.

c) The MERS assignment is deficient because it omits an assertion that the assignor is the holder under the MERS registry for the MIN number of the mortgage being assigned and the transfer is being recorded on the MERS registry.

d) An interest in a mortgage cannot be conveyed by an endorsement of the mortgage note in blank.

e) Because MERS is a mere nominee/custodian with no legal or beneficial interest in the mortgage note, MERS cannot assign a mortgage note to an assignee. (MERS as a corporation is not a custodian of the promissory notes secured by deeds of trust or other mortgage security instruments for which it serves as nominee)

f) Because MERS is a mere nominee/custodian with no legal or beneficial interests in the mortgage note, the mortgage has been divided from the note rendering the mortgage unenforceable.

g) MERS DISCLAIMS ever holding notes, however, MERS holding of the note endorsed in blank as nominee of a mortgage sold to a mortgage backed securities Trust is a violation of REMIC requirements.

h) Also, MERS holding of the note endorsed in blank as nominee of a mortgage sold to a mortgage backed securities Trust is a violation of warranties and representations contained in the master pooling and servicing agreement and prospectus.

i) MERS was created to perform a service with an ILLEGAL purpose, namely to circumvent the recordation of assignments and payment of recording fees. The issuance of assignments in furtherance of such an ILLEGAL purpose is unenforceable.

j) An assignment of the mortgage note from MERS to the servicer of the note is of either no legal effect or an illegal conversion of the note.

k) Since no evidence of MERS' "ownership" of the underlying note has been offered, and other courts have concluded that MERS does not own the underlying notes, then MERS did not own the underlying note, and it could not transfer the beneficial interest to another. Any attempt to transfer the beneficial interest without ownership of the underlying note is VOID LAW.

And finally, in the case of "The Bank of New York, as Trustee v. Sameeh Alderazi, the Court denied the Motion and stated in denial the following:

a) The court denied the application because the Plaintiff, could not demonstrate that the original mortgagee, Countrywide Home Loans, Inc., had authorized the assignment of the mortgage to the Plaintiff.

b) The assignment to Plaintiff was executed by Mortgage Electronic Reporting System (MERS) a nominee for American Wholesale Lenders. Black's Law Dictionary defines a nominee as "a person designated to act in place of another, usually in a very limited way".

c) An assignment by an agent without authority from the principal is a nullity. Plaintiff failed to provide evidence that Countrywide had authorized MERS to assign its mortgage to Plaintiff.

d) Plaintiff submitted in addition to the MERS assignment, what it purports to be an endorsed note and a corporate resolution of MERS showing that MERS had appointed all officers of Countrywide Financial Corporation as assistant secretaries and vice presidents of MERS. This present motion must fail for the same reason as the prior motion as Plaintiff has failed to provide documentation from the Lender that it authorized the assignment.

e) Affidavits are insufficient to establish ownership of the note on fact that purported endorsement is undated. And, the affidavits are based on books and records, not on personal knowledge. Yet the affiants did not produce any of the records on which they based their assertion that Plaintiff possessed an endorsed note at the time the action was commenced.

f) Even putting aside the fact that there is no evidence that Countrywide Financial Corporation and Countrywide Home Loans, Inc. are the same entity, the fact that MERS

authorized Countrywide officers to act on its behalf, is not evidence of the converse. It is no evidence that Countrywide authorized MERS officers to act as officers of Countrywide. Further, the fact that Selman (the person who signed the assignment) may have been an officer of both Countrywide and MERS does not alter the fact that she executed the assignment on behalf of MERS.

The face of the assignment indicates that MERS is assigning the mortgage as nominee of America's Wholesale Lender (a trade name for Countrywide), and more importantly, that Selman executed the assignment as assistant vice president of MERS. The assertion that the assignment incorrectly lists Selman's title as assistant vice president of MERS, instead of assistant secretary and vice president of MERS, is of no relevance other than to demonstrate the CASUAL AND CAVALIER manner in which these transactions have been conducted. They provide no evidence that Countrywide in fact approved or authorized the assignment. Similarly, William C. Hultman, Secretary and Treasury of MERS, states in a conclusory fashion in paragraph 8 of his affidavit that Countrywide "instructed MERS to assign the Mortgage to Bank of New York" without offering the basis for that assertion, other than it's role as nominee.

Then Plaintiff claims that by terms of the mortgage MERS as nominee was granted the right and then quotes the right, however, this language is found on page two of the mortgage under section "Borrower's Transfer to Lender of Rights in the Property" and therefore is facially an acknowledgment by the borrower. The fact that the borrower acknowledged and consented to MERS acting as nominee of the Lender has no bearing on what specific powers and authority the Lender granted MERS as nominee. The PROBLEM is not whether the borrower can object to the assignees' standing, but whether the original Lender, who is not before the Court, actually transferred rights to the Plaintiff. Furthermore, while the mortgage grants some rights to MERS, it does not grant MERS the specific right to assign the mortgage. The only specific rights enumerated in the mortgage are the right to foreclose and sell the property. The general language "to take any action required of the Lender including but not limited to, releasing and canceling this "Security Instrument" is not sufficient to give the nominee authority to alienate or assign a mortgage without getting the mortgagee's explicit authority for the particular assignment.

g) Plaintiff also argues that the agreement between MERS and its members grants MERS the authority to assign the mortgages of its members and also as mortgagee, however, in this case MERS was named in paragraph (c) of the mortgage as Mortgagee of record for the purpose of recording the mortgage. Being the mortgagee of record for the purpose of recording the mortgage does not confer the right to assign the mortgage absent an instruction to do so from the Lender. Paragraph 2 of the MERS terms and conditions provide that "MERS shall serve as Mortgagee of record with respect to all such mortgage loans solely as a nominee in an administrative capacity", and that "MERS agrees not to assert any rights (other than rights specified in the governing documents) with respect to such mortgage loans or mortgaged properties.". Assigning or alienating a mortgage without an explicit instruction from a Lender to do so, is not acting in an administrative capacity.

Further, paragraph 6 of the terms and conditions provides that, MERS system is not a vehicle for creating or transferring beneficial interests in mortgage loans.". Plaintiff has failed to meet the very basic requirement that proof of an agent's authority must be shown from the mouth of the principal not the agent. (Lexow & Jenkins, P.C. v. Hertz Commercial Leasing Corp., 122 AD2d 25, 504 N.Y. S. 2d 192 (2nd Dept 1986), Siegel v. Kentucky Fried Chicken of Long Island, Inc., 108 AD2d 218, 488 N.Y.S.2d 744 (2nd Dept. 1985)

As Plaintiff has not shown that it owned the note and mortgage, it has no standing to maintain this foreclosure action. Therefore, the RENEWED MOTION for an ORDER OF REFERENCE must BE DENIED and the ACTION DISMISSED.

The Court has raised the standing issue sua sponte because, in this case, it goes to the INTEGRITY OF THE ENTIRE PROCEEDING. For a Court to allow a purported assignee to foreclose, in the absence of some proof that the original lender authorized the assignment of the mortgage to them, would cast doubt upon the validity of the title of any subsequent purchasers, should the original lender or successor challenge the assignment at a future date. (Concluding , The Bank of New York, as Trustee v. Sameeh Alderazi)

The Defendant has brought this case to the attention of Honorable Court as the assignment by MERS is just the same and Quicken Loans has not given any authority to MERS to assign the Defendant's mortgage. Defendant's Motion to Dismiss is reasonable and with the

integrity of the Court. More cases, LLP Mortgage v. Sabine Properties: FINAL DISPOSITION. No Evidence 'MERS' Owned the Note, COULD NOT Assign it. NY SUPREME COURT FINAL DISPOSTION. Here, there are no allegations or evidence that MERS was the owner of the note such that it could assign it to LLP. THUS, the assignment from MERS was insufficient to confer ownership of the note to LLP, and it has NO STANDING TO BRING THIS ACTION. Kluge v. Fumoaz - 145 AD2d at 538 , "holding that the assignment of a mortgage without transfer of the debt is a nullity/the assignment of a mortgage without a valid transfer of the mortgage note is a nullity. (145, AD2 537) Also, NO EVIDENCE MERS PHYSICALLY DELIVERED MORTGAGE AND NOTE. (MERS V. Diana Esposito), MERS not holder owner of note. (HSBC v. Henry Feld)

Further, "in addressing the issue of standing, it is well settled that an action to foreclose on a mortgage may not be brought by one who has no title to it, and absent transfer of the debt, the assignment of the mortgage is a nullity". (GRO-WIT Capital, LTD v. 1080 UTICA, LLC, 2010)

And, FLORIDA APPELLATE COURT UPHOLDS THE CONCEPT OF DETERMINING THE STANDING OF THE FORECLOSING PARTY BEFORE ALLOWING SUMMARY JUDGEMENT. (BAC v. US Bank)

In RE: Walker, Case No.10-21656-E-11 Eastern District of CA Bankruptcy Court rules MERS has NO actionable interest in title. "any attempt to transfer the beneficial interest of a trust deed without ownership of the underlying note is void under California Law." "MERS could not, as a matter of LAW, have transferred the note to Citibank from the original lender, Bayrock Mortgage Corp." The Court's opinion is headlined stating that MERS and Citibank are not the real parties of interest.

Defendant states that MERS could not, as a matter of LAW have transferred the note to Plaintiff, BAC Home Loans Servicing, LP f.k.a. Countrywide Home Loans Servicing, LP from the original Lender as there is no proof of authority. Also, Defendant states that any Mortgage or Note the Plaintiff claims to be holding is without endorsement of a person with personal knowledge of the facts that the complete file concerning this mortgage was transferred to

Countrywide or to Fannie Mae Trust and that the copy of the mortgage submitted to the court is authentic and there is no evidence the note is an authentic original copy. (Mers v. Torr)

In addition the Oregon Supreme Court recently handed down opinions in two MERS cases, Brandrup v. ReconTrust Company and Niday v. GMAC Mortgage, LLC. The Court agreed that the core question is one of statutory construction, in other words, the court must determine what meaning the legislature intended when it defined the term "beneficiary". The Lender is the true beneficiary because the Lender alone is, and is designated as, the person to whom the obligation is owed. Further, the meaning of "beneficiary" is not only determined by statute, "that meaning is incorporated into, and cannot be altered by, the party's agreement." Although the court need not have said more than that, the court takes a short detour near the end of this section of the opinion to explain that it is a "fundamental principle in mortgage law...that a foreclosing party must have the power to enforce the underlying note." This "functional unity" between the beneficiary and the person entitled to enforce the note (the PETE) "has longstanding roots in the COMMON LAW ITSELF". MERS is not and never has been a beneficiary. The original Lender is the true beneficiary, therefore MERS CANNOT assign a beneficial interest of which they do not have. Also, MERS has recorded an non recordable Assignment. (Barringer v. Loder). Lenders must provide "definitive documentation" that establishes the right to foreclose. The assignments by MERS are shams for 2 reasons. FIRST, at the time they are executed, neither MERS nor the original Lender has any interest to convey. SECOND, the assignment does not reflect the actual chain of transfers that took place before , so it is not a memorialization of an assignment that previously occurred by operation of law. Also, the Oregon Supreme Court answered the question whether MERS can assign legal title to the trust deed (mortgage), and the court had little difficulty answering "NO." MERS is neither the trustee nor the beneficiary so MERS holds neither legal title or EQUITABLE title. MERS is dressed like a beneficiary and not an actual beneficiary. MERS does not hold title to the trust deed, MERS cannot convey legal title, nor is MERS an agent as explained previously. The true beneficiary is not MERS. It is the person entitled to enforce the note which in this case is the investors of the securitized alleged loan. Since there is no loan, the Plaintiff must produce "definitive documentation" establishing its right to foreclose with the original complaint. And finally, in the Niday case, the Oregon Supreme Court made it crystal clear that Niday was entitled to proof MERS was acting as a duly authorized agent when it attempted to foreclose and that its principle is a person entitled to

whom rests, by substantive law, the claim sought to be enforced." (Kumar Corp. v. Nopal Lines, Ltd. 462 So. 2d 1178, 1183 (Fla.3d DCA 1985)

8. Plaintiff's complaint fails to state cause of action upon which relief requested may be granted and therefore this action is barred. "IN ORDER TO STATE A CAUSE OF ACTION, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief". (Med. & Benefits Plan v. Lago, 867 So. 2d 1184 (Fla. 5th DCA 2004).

9. Defendant asserts all terms and condition and rights of the promissory note and mortgage upon which Plaintiff's claim is based. The Defendant is the originator of the Note and owner of the Note. The Note is legal tender and was deposited by the original lender and successors as such, therefore, no loan was made only an exchange or swap. Banking law states credits on bank ledgers cannot be sold. Plaintiff is in violation and claims that a mortgage transaction is a so-called loan, but it is a quid pro quo exchange deceptively called a loan. The evidence of this quid pro quo exchange is in the bookkeeping entries according to GAAP (Generally Accepted Accounting Principles). Title to the promissory Note still belongs to the Defendant. In addition, when a bank grants a loan all they are doing is transferring cash value from the Defendant's promissory note to themselves without knowledge or disclosure to Defendant which is theft. The Plaintiff or predecessors did not loan one cent of the bank's money or its depositors funds to obtain the Defendant's promissory note, but posted the alleged Defendant's promissory note on its books as a deposit from the Defendant to the bank and uses the credit the bank obtains from the alleged borrower via her promissory note to create the check book money they give to her as the so-called loan, and vastly increases the assets of the bank through fractional reserve techniques. Therefore, the debt is discharged upon tender of a promissory Note whether accepted or rejected. Commercial redemption is a legal administrative remedy provided by Congress via Public Policy. There was no exchange of valuable consideration and Plaintiff has failed to show proof. Defendant states these actions of the Plaintiff are false, deceptive and misleading practices in collecting a debt in violation of Section 1692, Title 15 U.S. Code (the Fair Debt Collection Practices Act, or FDCPA). In addition, "FIRST NATIONAL BANK OF MONTGOMERY v. Jerome Daly 1969, jury decided that the mortgagee didn't owe the bank any money, since it failed to give consideration, because it didn't lend the bank's money, but created the funds out of thin air, in collusion with the Federal

Reserve. There's also the 1968 Minnesota Trial Court's decision holding the Federal Reserve Act unconstitutional. Simply, the bank had not fulfilled, maintained or upheld it's part of the requirement for real consideration and the Mortgage contract in whole, for the reason that the "MONEY" was not the "real" property of the bank, as it was created "out of nothing" as soon as the loan agreement was signed, by ledger entry. "Mr. Daly explained that the money was in fact not the property of the bank, for it was created out of nothing as soon as the loan agreement was signed". What the banks do when they make loans is to accept PROMISSORY NOTES in exchange for credits. Reserves are unchanged by the loan transactions, but deposit credits constitute new additions to the total deposits of the banking system. In other words: The money doesn't come out of their existing assets, the bank is simply inventing it, putting up nothing of its own, except for a theoretical liability on paper. The banks President, Mr. Morgan, took the stand and affirmed that, in collusion with, the Federal Reserve Bank, Inc. did create the money out of nothing. Justice Martin V. Mahoney personal memorandum, "in the Judge's personal memorandum he recalled that "the Plaintiff (bank president) admitted that in combination with the Federal Reserve Bank did create the money and credits upon its books by bookkeeping entry. The money and credit first came into existence when they created it. Mr. Morgan admitted that no US Law or Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the Note. The jury found that there was no lawful consideration, and I agree." He also poetically added, "Only God can create something of value out of nothing." And upon this revelation, the court rejected the bank's claim for foreclosure.

10. Defendant asserts all requirements of applicable mortgage foreclosure statutes.

11. Plaintiff is not the lawful assignee of the Promissory Note and Mortgage upon which Plaintiff's alleged claim is based. The Fannie Mae Trust naming the individual investors as the lawful assignees of the Note is demanded. Plaintiff must also prove entitlement to promissory notes was authorized in the Countywide merger with Plaintiff, Bank of America. From information and belief, Countrywide did not sell entitlement rights of promissory notes in the merger with the Plaintiff, Bank of America. Plaintiff has not acquired any financial losses or harm in this matter. And furthermore, for example, on March 1, 2008, a Bank of America spokesperson said that Countrywide's liabilities were factored into the purchase of Countrywide: We bought the company and all of its assets and liabilities...We are aware of the claims and

Assignment will provide standing to the holder so long as the transferor had the right to foreclose, however, the PSA terms trumps Article 3 Rules as an otherwise agreed provision under 1-302 of the UCC, and therefore the notes in a securitized Trust are transferred by Assignment and not by Negotiation. The PSA takes the transfer of the instrument totally out of the UCC and relegates the form of transfer to applicable assignment law, thus PSA trumps UCC.

14. Plaintiff is not in possession of the original "wet ink" promissory note and Mortgage upon which this action is based and therefore relief requested is barred. Defendant demands strict proof of authenticity by Plaintiff with Court Panel and forensic expert of any Note produced by Plaintiff in Court. The original promissory note belongs to the Defendant as ORIGINATOR and MAKER. Indeed, where the Defendant denies that the Plaintiff seeking foreclosure has an ownership interest in the mortgage, the issue of ownership becomes an issue the Plaintiff must prove. (Carapezza v. Pate, 143 So.2d 346, 347 (Fla.3d DCA 1962). Each time a Promissory Note is assigned, i.e. sold to another party, the Note itself must be endorsed with the name of the note's new owner. Each time a Mortgage is assigned to another entity, that transaction must be recorded in the County Records Office. In order for a Mortgage or Promissory Note to be valid, it must have what is known as "perfection" of the chain of title. In other words, there must be a clear, unambiguous record of ownership from the time the Defendant signed papers at the closing, to the present moment. ANY LAPSE IN THE CHAIN OF TITLE CAUSES A "DEFECT" IN THE INSTRUMENT, MAKING IT INVALID. Courts have rejected the notion that MERS has the legal authority to assign Title to a particular party in the first place. Again MERS does not have any financial interest in either the property or the Promissory Note. Therefore, since the perfection of the CHAIN OF TITLE cannot be independently verified, the Defendant claims MERS HAS NO LEGAL AUTHORITY TO ASSIGN TITLE OR ASSIGN THE PROMISSORY NOTE as Defendant's alleged loan has been sold to different entities and securitized and sold to an UNKNOWN NUMBER OF ENTITIES . In the U. S. SUPREME COURT case Carpenter v. Logan , it was ruled that where a Promissory Note goes, a deed of trust must follow. In other words, the deed and the Note cannot be separated . If your note has been securitized, it now belongs to someone other than the holder of your mortgage. This is known as BIFURCATION-THE DEED OF TRUSTS points to one party, while the Promissory Note points to another. The BIFURCATION OF THE MORTGAGE AND THE NOTE (in order to package the latter into larger securities) prevents any party from

claiming strong enough title to foreclose, see Horvath v. Bank of N.Y., N.A, 641 F.3d 617, 622 (4th Cir. 2011; Cervantes v. Countrywide Home Loans, Inc. 656 F.3d 1034, 1044 (9th Cir.2011). The Defendant's defense claims that since the relationship between the deed/mortgage and the note has become DEFECTIVE, it renders the deed of trust/mortgage unenforceable, and the Defendant bankrupted the unsecured Note in 2011. In addition, the promissory note must also have a clear chain of title, according to the UCC. Defendant claims there is not clear chain of title on the note. In the case, U. S. Bank NA v. Ibenez, the court ruled that blank assignment is not sufficient to claim perfection, An assignment in blank does not constitute a lawful assignment of a mortgage. Defendant claims there is not a sufficient financial interest in the mortgage to permit Plaintiff to foreclose. Since, the Defendant's loan has been securitized, the original lender has been paid. At that point the debt was written off and the debt should be considered settled. THE CONSTITUTIONAL and JUDICIAL requirement of standing derives from "case and controversy" requirements in Article III of the U.S. Constitution. (Oppenheim Law) In general, the securitization process and resulting trust are governed by what is known as the Pooling and Servicing Agreement (PSA) which sets forth the exact steps necessary for a trust to be created, for the bundled mortgages to be transferred into the trust, for issuance of the securities by the trust to the depositor or on the open market, generally, to institutional investors and for the maintenance of the trust once created in order to maintain favorable tax status. The PSA is a key piece of documentation from the bank in order for the Judge to determine whether the trust owns the loan being foreclosed. However, the true essential component of the PSA is not a public record but rather a document attached to the PSA known as the Master Loan Schedule. While the PSA is essential because it sets forth the rules for each bundle of mortgage loans (which have been violated as note was not transferred by Countrywide to Fannie Mae as noted in this document) and violations of these rules, makes the transfer defective. The Master Loan Schedule establishes whether the subject mortgage was ever transferred to that particular trust. Therefore, while both are essential, if the loan was never transferred to the trust, this is the home run of all foreclosure defense strategies, because the trust, simply put cannot sue to collect on something it does not own. (Oppenheimer Law). Increasingly, there are concerns that in many cases the loan documents have not been properly transferred to the trust which raises questions about whether the trust has title to the loans and hence STANDING to bring foreclosure actions on defaulted loans. These VIOLATIONS create CLOUDED TITLES. It is

also crucial to note that under the PSA, the trustee and the servicer bear liability if they transfer mortgages in violation of the PSA requirements, causing the trust to lose REMIC tax status.

Standing, is one of the five traditional legal requirements the Plaintiff must meet in order to bring suit in a court of law. Of the five requirements, standing is perhaps the most crucial requirement because it requires the aggrieved party to prove that they have the right to seek redress. Under Article III of the United States Constitution, standing is often characterized by the statement that a Plaintiff must show there is "a case and controversy," and there are 3 requirements one must prove. FIRST, they must prove a legally cognizable injury. (The Plaintiff has not been injured and not suffered and financial losses). SECOND, that the injury is concrete and particularized; and THIRD, a causal relationship between the injury and the conduct of the defending party. The Plaintiff has not been injured, but the Defendant has been injured by the Plaintiff's conduct, Robo signing, misrepresentations, predatory lending, non-disclosures and blatant disregard of the Defendant's constitutional protections. STANDING is the substantive due process notion of what a party must do in order to have the legal right to bring a legal action through our judicial system. Without the protective concept of standing, anyone could sue anyone at any time, ultimately causing legal anarchy. To fabricate standing, the banks used fraudulent assignments, bad notaries and allowed for perjured documents to be presented to Judges. The banks were forced to engage in such conduct because...the bank broke the mortgage into different parts, splitting the Note form the Mortgage by assigning the Mortgages to a third party (MERS) and selling the Notes to another entity. the Notes were then further sold off in tranches. Questions will be asked for a generation how BANKS literally HIJACKED the JUDICIAL SYSTEM turning it into their own collection system while dispensing with the Rules of Law that have protected property right owners from the day our great nation was founded. Ironically, the Robo signing crisis was an attempt to placate the recording system requirements in light of the fact that there was significant question as to whether the assignment form MERS would provide an effective Chain of Title. By creating new bogus assignments DATED YEARS after the trusts were created and closed, the banking industry created a smoking gun and literally got their hands caught in a larger and messier cookie jar than the one they were trying to avoid, PROVIDING UNDENIABLE EVIDENCE that the transfers into the trust were INVALID or had never occurred. (Oppenheimer Law)

In defendant's case, the Plaintiff even filed an illegal assignment during the CEASE AND DISIST ORDER FOR MERS from the OCC, not to mention, the Countrywide's testimony of Linda DeMartini stating on the record that the trustee at the time foreclosure, and in fact since the origination of the loan, had never had possession of the note for a particular mortgage. The Judge threw out THE CASE ON GROUNDS THE TRUSTEE DID NO HAVE PROPER STANDING TO FORECLOSE. During an investigation by Abigail Field with FORTUNE, MAGAZINE they examined 130 cases where Bank of America's was foreclosing on Countrywide mortgage backed securities allegedly held by securitized trusts. 104 were blatant failures to properly securitize with lack of proper endorsements and then magically appearing endorsements. Another interesting point to note is that the PSA was specifically designed to govern a securitized trust because CONTRACT COMMON LAW combined with TRUST LAW is virtually indestructible when it comes to the intent of the parties to the contract, which in this case intended very specific rules of transfer. Combined TRUST LAW and CONTRACT LAW set forth extremely rigid principals for the transfer of interests. Besides the general understanding that both types of law apply, PSAs contain very specific language called a recital of the transfer which outlines step-by-step the process of transferring the mortgage to the trustee of a trust. Judge Boyko sets forth the traditional legal principle of standing and explains its relationship to the federal court jurisdiction concept of diversity jurisdiction. Because the bank could not prove who owned the mortgage and note, they could not establish the DIVERSIFTY JURISDICTION of the Court. In his opinion, Judge Boyko made clear that FAILURE TO PROVE STANDING was simply elemental to invoking the jurisdiction of the Court, stating, " In the above captioned cases, NONE of the Assignments show the named Plaintiff to be the owner of the rights, title and interest under the Mortgage at issue as of the date of the foreclosure Complaint. The Assignments, in every instance, express a present intent to convey all rights, title and interest in the Mortgage and the accompanying Note to the Plaintiff named in the caption of the Foreclosure Complaint upon receipt of sufficient consideration on the date the Assignment was signed and notarized. Further, the assignment documents belie Plaintiff's assertion they own the Note and Mortgage by means of a purchase which pre-dated the Complaint by days, months and years. He stated, this Court possesses the independent obligations to preserve the judicial integrity of the federal court and to jealously guard federal jurisdiction...neither the fluidity of the secondary mortgage market, nor monetary or economic

consideration of the parties, nor the convenience of the litigants supersede those obligations...unlike stat law and procedure, as Plaintiffs perceive it, the federal judicial system need not, and will not, be forgiving in this regard." On that note 14 actions were property DISMISSED. (Oppenheimer Law) Defendant request this Honorable Court do the same and DISMISS with prejudice. The Defendant's note was never endorsed in blank and delivered to Fannie Mae Trust as required by the PSA as no endorsement is even to Plaintiff. Applying state law, because the trustee never had possession of the note, the Plaintiff cannot sue to enforce its obligations as the owner and holder in due course. Further, because the note was not properly endorsed by the Plaintiff under the guidelines set forth in the PSA, all requirements for a proper transfer have failed. Also, the Plaintiff has failed to show that it is entitled to relief . And, in Gee v. U. S. National Association as trustee, the court found the bank lacked the documentation to properly establish standing. In reversing summary judgment, the Fifth District established that the traditional argument made by banks that "the borrower defaulted so who cares if we have the right documents" will no longer prevail in foreclosure actions. Moreover, the issue of STANDING, particularly in SECURITIZED TRUSTS, will now be front and center in foreclosure defense. (Oppenheimer Law, attorneys and counselors 2011 Article and quoted in pages 33-36 of this document). Even outside a foreclosure scenario, in order for a possessor of an iterent in real property to be able to lawfully affect title, that person or entity must have an interest under color of law...must be able to prove that they are in fact the possessor of those rights. This is the threshold requirement that is codified and expanded by COMMON LAW in all 50 states. The Plaintiff has not proved at inception they are possessor of those rights.

IN ADDITION, Defendant claims that once a loan has been securitized, or converted to stock, it is no longer a loan and cannot be converted back into a loan which means that the Defendant's Promissory Note no longer exists as such and the mortgage is no longer securing anything. Defendant further claims the Plaintiff, and predecessors and successors have actually destroyed the agreements themselves. And if an agreement no longer exist, how can it be enforced?. The alleged loan is no longer enforceable because it is now owned by many shareholders and a promissory note is only enforceable in its whole entirety. How can thousands of people foreclosure on Defendants home? And now, there is a defect in the Chain of Title. Defendant claims damages as the Plaintiff has damaged the Defendant's Chain of Title and

Defendant claims unlawful and unethical behavior. Plaintiff has HARMED the Defendant by making it appear likely with adverse impact that Defendant would suffer the loss of her home.

In the MBS Litigation with Bank of America and why BOA will lose the Loss Causation argument, Philippe Selendy, MBIA's lead attorney said it as well as anyone before Judge Branstein, "The housing crisis does not give Countrywide a defense to its Day One misconduct leading into these transactions. There would be no insurance policies and no losses but for that fraud...when you think about it, what Countrywide is trying to do here, having first caused the housing crisis, together with other reckless loan originators and underwriters, THEY WANT TO TURN AROUND AND PROFIT FROM IT AGAIN. They want you to rule that the crisis is in effect a Get Out of Jail Free card that allows them to ESCAPE LIABILITY for their FRAUD and SHIFT THE COSTS TO INNOCENT PARTIES. Well, luckily we're in a Country governed by the Rule of Law, and the law doesn't work that way. (October 5, 2011 Transcript at 35:4-25)

15. Defendant states that upon information and belief, the Note has been paid in full by an undisclosed third party who prior or contemporaneously with the closing on the loan transaction paid the Lender in exchange for certain unrecorded rights to the revenues arising out of the loan document which was never a loan and MERS is RICO. Upon information and belief, the Plaintiff has no financial interest in the Note or Mortgage and has not incurred any financial damages concerning the Note. Upon information and belief the missing assignments on the Note may have made it void and a legal nullity, thus they have exploited key and vital evidence or shipped same off-shore to a structured investment vehicle that also has no interest in the note or mortgage or the revenue thereof which may constitute fraud and RICO. "The Supreme Court found that a party in a civil action need establish only a criminal "violation" and not a criminal conviction. Further, the court held that a party need only have caused harm to the other party by the commission of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the party need not demonstrate that the other party is an organized crime figure, a mobster in the popular sense, or that the party in the civil action has suffered some type of special Racketeering injury, all that the party must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation are to be liberally construed to effect the congressional purpose as broadly formulated in the Statute. (Sedima, SPRL v. Imrex Co., 473 US 479 (1985).

16. Plaintiff's claim is barred by the statute of frauds, laches and or the statute of limitations. Estoppel of laches precludes the Plaintiff from bringing an action when the Plaintiff knowingly failed to claim or enforce a legal right at the proper time. Plaintiff failed to show and prove it was the owner of the note or had any LEGAL RIGHTS at the time of Plaintiff's filing the foreclosure complaint. In addition, the Plaintiff has FAILED TO PLEAD CAPACITY. Nowhere in the body of the Plaintiff's Complaint does the Plaintiff set off or describe in any way its entity-status nor does the Plaintiff assert in what capacity does the Plaintiff contend it may avail itself to the jurisdiction of this Court. Additionally, nowhere in the body of Plaintiff's complaint does it assert the basis for its entity-existence or explain in any way the form of the entity that presents itself before the Court. Therefore the Plaintiff has failed to plead its capacity to the extent necessary to show jurisdiction of the Court. CONSEQUENTLY, DISMISSAL OF ITS COMPLAINT IS THEREFORE WARRANTED AND DEFENDANT REQUESTS HER AMENDED MOTION TO DISMISS THIS FORECLOSURE ACTION BE GRANTED concerning SC Civ. Pro. and precedent case law. See MERS v. SAUNDERS. The Plaintiff, as the complaining party, must show that it has suffered an injury fairly traceable to an act of the mortgagor and that the injury is likely to be redressed by the judicial relief sought. See Collins v. State , 2000 ME 85 6, 750 ?A. 2d 1257 (citing Allen v. Wright 468 U.S. 737, 751, 1904 S. Ct. 3315, 82 L.Ed.2d556 (1984). Nothing in the record demonstrates that the Plaintiff, Bank of America, has suffered any injury by the Defendant not making payments on the mortgage. Since the Plaintiff, nor MERS, are a legal mortgagee and have no enforceable right in the alleged debt obligation securing the alleged mortgage, then the Plaintiff cannot provide proof of injury or that it has suffered injury, because the Plaintiff, Bank of America, has not suffered any injury when the Defendant did not make payments on the alleged mortgage. (See Mortg. Elec Registration Sys., Inc. v. Nebraska Dept. of Banking and Fin.,270 Neb, 529, 704 N.W. 2d 784, 788 (2005) (stating that MERS has no independent right to collect on any debt because MERS itself has not extended credit, and none of the mortgage debtors owe MERS any money."). The only right MERS has in the Defendant's alleged mortgage and Note is the right to record the mortgage, and since they never held the Note and mortgage cannot assign it to the Plaintiff. The Plaintiff has not extended any credit to the Defendant, and the Defendant does not owe any money to the Plaintiff. The original Lender, Quicken Loans, never assigned, transferred, or endorsed the note executed by the Defendant to MERS, consequently, MERS cannot assign a Note it never held to

the Plaintiff. Therefore, without possession of the Note at inception, the Plaintiff, Bank of America lacks standing to institute foreclosure proceedings and cannot invoke the jurisdiction of this Court. Further, the Plaintiff's Complaint does not support the Plaintiff's entitlement to foreclosure as a MATTER OF LAW and the Plaintiff is not the real party of interest.

17. Plaintiff's claim is barred and or limited for violation of the Federal Truth in Lending Act. Defendant states she was not told the original Promissory Note was legal tender and would be deposited in a Demand Deposit account. Defendant states these actions were done without the Defendant's knowledge or authorization and constitute willful intent. No deposit slip has been sent to the Defendant, and Defendant claims recoupment for the full amount of the promissory note plus damages for misrepresentation, deception, conversion and fraud.

18. Plaintiff's claim is barred and or limited for violation of RESPA. Upon information and belief, Plaintiff and or its predecessor(s) in interest violated various provisions of the Real Estates Settlement procedures Act ("RESPA"), which is codified at 12 U.S.C. section 2601, et seq. by, inter alia.

(a) failing to provide the Housing and Urban Development (HUD) special information booklet, and a Mortgage Servicing Disclosure Statement.

(b) failing to provide Defendants with an Escrow Disclosure Statement for each year of the mortgage since it's beginning.

(c) Giving or accepting fees, kickbacks and or other things of value in exchange for referrals of settlement service business, and splitting fees and receiving unearned fees for services not actually performed.

(d) Charging a fee at the time of the loan closing (which was not a loan, but an exchange) for the preparation of truth-in-lending, uniform settlement and escrow account statements.

19. Defendant states that claim is barred and or limited for violation of the State and or Federal Fair Debt Collection Practices Act which mandates that changes in servicer and notices to borrower accurately describe when a debt is sold and to what entity a debt is due. Therefore,

if the notes never transferred to the trust, there's no way to retroactively do that now, the trusts are governed by very specific Pooling and Servicing Agreements that for the most part give the trust 90 days to transfer all the required assets. You cannot transfer the loan after it's slipped into default, 3 or 4 years after setting up the trust. It VIOLATES the LAWS and CONTRACTS under which the investors purchased the securities. Defendant was not informed of when debt was sold or to what entity a debt was due prior to Plaintiff filing foreclosure complaint. CONSTRUCTIVE FRAUD is acts of concealment of material facts. Having obtained the Defendant's promissory note by constructive fraud, the Plaintiff is not justified to enforce the mortgage contract by any "implied consent" because true consent, expressed or implied, cannot be given under a cloud of nondisclosure, concealment and suppression of the material facts, or a state of duress.

20. Plaintiff claim for attorney fees is barred for failure to perform or meet conditions precedent under the Promissory Note and or Mortgage upon which action is allegedly based. Alternatively, there is not valid contract or other written agreement between the parties permitting the award of attorney fees in connection with this action. Further Defendant denies any valid contract exists as original lender did not sign mortgage and is misrepresentation, deception and fraud and deems note and mortgage void and was rescinded prior to foreclosure.

21. Plaintiff comes to court with unclean hands and is prohibited by reason thereof from obtaining equitable relief of foreclosure from this Court. The Plaintiff's UNCLEAN HANDS result from the Plaintiff's improvident and predatory intentional failure to comply with material terms of the mortgage and note, failure to comply with the default loan servicing requirements that apply to the alleged loan as described herein above. As a matter of equity, this Court should refuse to foreclose this mortgage because acceleration of the note would be inequitable, unjust and the circumstances of this case render acceleration UNCONSIONABLE. This Court should refuse acceleration or is estopped from doing so because of misleading conduct and unfulfilled CONTRACTUAL and EQUITABLE conditions precedent. The doctrine of unclean hands "precludes a Plaintiff from recovering in equity if he acted unfairly in a matter that is subject of the litigation to the prejudice of the Defendant". (Ingram v. Kasey's Assocs., 340 S.C. 98, 107 N. 2, 531 s. e. 2D 287, 292 N. 2, (2000)).

22. Defendant has made all payments required by law under the circumstances, however, Plaintiff and or its predecessor(s) in interest improperly applied such payments resulting in the fiction that Defendant was in default as no loan was ever made. Defendant is entitled to a full accounting through the master transaction histories and general ledgers for the account from the origination of the loan with the original lender through the Fannie Mae Trust since a dump or summary of said information cannot be relied upon to determine the rightful amounts owed. Defendant request FAS 104, etc. Further, the principal balance claimed as owed is not owed and is the wrong amount, the alleged loan has not been properly credited since there was no loan. Servicing requirements are conditions precedent to the acceleration of the alleged debt or foreclosure. (Pfeifer v. Countrywide Home Loans No. A133071. First dist., Div. Two, Dec.13, 20112 Cal. App 4th)

23. Plaintiff has charged and or collected payments from Defendant for attorney fees, legal fees, litigation attorney fees, foreclosure costs, late charges, property inspection fees, property valuation charges, and other charges and advances, and predatory fees, and other fees and or charges that are not authorized by or in conformity with the terms of the subject note an. mortgage. Defendant CLAIMS a full refund of all payments, charges and fees. In The Defendant's mortgage #22, Acceleration; Remedies, states, "LENDER shall give notice to Borrower prior to acceleration" The Plaintiff is not the Lender, only the Servicer. This is non-compliance with CONDITIONS PRECEDENT to foreclosure.

24. Plaintiff failed to provide Defendant with legitimate and non-predatory access to the debt management and relief that must be made available to borrowers, including this Defendant pursuant to and in accordance with the Pooling and Servicing Agreement or other Trust Agreements that controls and applies to the subject mortgage loan. Plaintiff's non-compliance with the conditions precedent to foreclosure imposed on the Plaintiff pursuant to the applicable Pooling and Servicing Agreement is an actionable event that makes the filing of this foreclosure premature based on a failure of a contractual and or equitable precedent to foreclose which denies Plaintiff's ability to carry out a foreclosure. Plaintiff cannot legally pursue foreclosure unless and until Plaintiff demonstrates compliance with the foreclosure prevention servicing imposed by the subject pooling and servicing or trust agreement under which the Plaintiff alleges owning the subject mortgage loan. In addition the assignment and note stamps

are in conflict of legal names and dates. DEFENDANT was shown a copied eNOTE with no assignment dates by stamps or Trust and believed to have been stamped by the Plaintiff.

25. Plaintiff intentionally failed to act in "Good Faith" or to deal fairly with the Defendant by failing to follow the applicable standards of residential single family mortgage servicing denying Defendant access to the residential mortgage servicing protocols applicable to the subject note and mortgage. Thus, Defendant states that the servicing requirements are conditions precedent to the acceleration of the alleged debt or foreclosure. In addition, Defendant claims PREDATORY LENDING as described by the Office of the Comptroller of the Currency, U.S. Department of the Treasury, FAIR LENDING. Fair Lending Laws contain provisions to address predatory lending practices such as COLLATERAL OR EQUITY STRIPPING, the practice of making loans that rely on the liquidation value of the borrower's home or other collateral rather than the borrower's ability to repay. This was being intentionally done by Quicken Loans in collusion with Countrywide as has been verified previously in this documentation, and also, inadequate disclosure, the practice of failing to fully disclose or explain the true costs and risks of loan transactions. Defendant states none of the disclosures as brought to the attention of this Honorable Court in Defendant's Amended Motion to Dismiss were disclosed, and the most dishonest and unconscionable act being not disclosing to the Defendant the Promissory Note is actual legal tender and used as cash making the loan not a loan, but an exchange and swap with the Lender continuing to refuse to disclose upon written request to the Defendant. This alone and other nondisclosures makes the alleged loan UNCONSCIONABLE.

26. Defendant states that in light of all of the foregoing defenses, and on the face of the purported loan document, the terms and circumstances of the Note and Mortgage were UNCONSCIONABLE when made and were UNCONSCIONABLELY exercised, it is therefore UNCONSCIONABLE to enforce the mortgage foreclosure.

27. Plaintiff cannot prove its case against the Defendant and therefore this Court should enter judgment in Defendant's favor and quiet title in Defendant's favor, voiding the fraudulent promissory note held by the Plaintiff and mortgage upon which Plaintiff seeks to recover herein. In addition, Plaintiff cannot enforce the note and has failed to prove otherwise in Plaintiff's complaint. Also, Plaintiff, as the servicer, acts only as the agent of the owner of the

instrument and has no greater right to enforce the instrument. (see e.g., Greer v. O'Dell 305 F.3d at 1303) Fannie Mae Trust and or investors have no right to enforce the note, then Plaintiff, as it's agent cannot enforce the note. In addition, no agency relationship or rights of principal has been proven, therefore Plaintiff cannot enforce the instrument. Because, the claim filed by Plaintiff, servicer, cannot be enforced under applicable State Law, the claim must be disallowed under U.S.C. 502 (1) (b). (Kemp v. Countrywide, Case, 08-02448-JHW p. 21 & 22.)

28. Plaintiff is liable for Defendant's cost and attorney fees pursuant to terms of the agreement between the parties and South Carolina Statutes, and or applicable provisions of the State and Federal Fair Debt Collection Practices Act and or the Federal Truth and Lending Act. Defendant states the Plaintiff, its predecessors and successors, are not a creditor to whom any debt is owed. The promissory note was used as cash and legal tender and the debt was paid off at the closing. In addition, Plaintiff must prove no violations in the SOUTH CAROLINA MORTGAGE AND LENDING ACT, Chapter 22, Section 37-22-110, (25) (29) (30) (39), and Section 37-22-120 (A) (1) (B) (D) and Section 37-22-190(A) (1) misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise. Defendant claims original lender did not disclose the promissory note was legal tender and used as a cash deposit. Defendant claims predatory lending as loan was a no doc loan during economic crisis and Countrywide hustle of loans not following required underwriting procedures. (2) refuse improperly or fail to issue a satisfaction or a mortgage pursuant to Section 29-3-310. (4) (8) engage in a transaction, practice, or course of business in connection with the making or servicing of, or purchase or sale of, a mortgage loan that is not in good faith or fair dealing, that is unconscionable, as set forth in Section 37-5-108, or that constitutes a fraud upon a person. (11) RESPA (14) fail to provide disclosures as required by state or Federal law or collect any fee before providing required disclosures. Defendant claims original lender failed to provide disclosure on the promissory note being legal tender and a cash deposit. In addition, original Lender has refused to supply Defendant a copy of the cash deposit slip and any information requested in the Defendant's recent written letter of request as required by Federal Law. Defendant has Letters of evidence. As in the Supreme Court of the State of New York, County of New York case, AMBAC ASSURANCE CORPORATION v. EMC MORTGAGE, LLC, Index No, 651013/2012,page38-40B COUNTRYWIDE HOME

LOANS, INC. Representations about the quality of Countrywide's loans and underwriting practices have proven false. Countrywide and its management are currently subject to myriad investigations and actions, some of which have already settled for billions of dollars, for having engaged in systematic fraud in connection with the origination of residential mortgage loans. Among these actions is a lawsuit by Ambac, for fraud and breach of contract, in this Court. Ambac's complaint sets forth in detail the facts establishing what one Federal Judge has referred to as "a Company-wide culture that, at every level, emphasized increased loan origination volume in derogation of underwriting standards," which was "rampantly disregarded." Countrywide's practice was not only unlawful, but a flagrant disregard for its own stated underwriting guidelines. Ambac discovered almost 91% breached one or more of Countrywide's representations and warranties about the quality of the loans and Countrywide's practices in underwriting them. A civil fraud action brought by the SEC against Countrywide confirms Countrywide's duplicity vis-a-vis the public, alleging that from "2005 through 2007" - i.e., when the Transactions at issue in this complaint (Ambac v. EMC) were effectuated, Countrywide's "senior executives misled the market by falsely assuring investors that Countrywide was primarily a prime quality mortgage lender which had avoided the excesses of its competitors." The duplicity was internal to Countrywide as well. In particular, as the SEC's complaint against former Countrywide CEO Angelo Mozilo reveals, Countrywide abused the exceptions process, which was, as its name suggests, intended to be the exception, but became the rule. The allegations in these complaints regarding Countrywide's systematic abandonment of its underwriting guidelines are confirmed by the statements of confidential witnesses. For example, Countrywide confidential witness 1 ("CW-1") who worked at Countrywide as an underwriter form March 2006 to December 2007 has confirmed the allegations that Countrywide systematically abandoned its underwriting guidelines, CLUES, by (a) not assessing whether the income stated on stated-loan applications was reasonable (b) not allowing red fags of fraud to be evaluated. In addition, CW-1 revealed that loan officers at Countrywide would regularly input incorrect data metrics into CLUES, such as inflating borrower's income beyond what the documents in the loan file supported. In short, CW-1 confirmed that Countrywide's actual practices differed from its stated protocols and policies, all in furtherance of Countrywide's goal to fund as many loans as possible, by any means necessary. Also, Countrywide was the largest originator of securitized loans in the industry and Bear Sterns securitized nearly $15 Billion of

loans originated by Countrywide between 2005 and 2007. Defendant claims Quicken Loans was working with Countrywide in this scheme to defraud the public as Countrywide immediately bought the Defendant's loan and Defendant's loan was securitized. Defendant claims predatory lending as Quicken and Countrywide caused loans to be originated without regard to the ability of the borrower to repay the loan.

29. Defendant states plaintiff is in violation of SC Title 29-3 320, Liability for failure to enter satisfaction as Defendant's originated Note was used by original lender, Quicken Loans, Inc. as legal tender and note was an exchange or swap, not a loan, and is binding on assignments or selling of Note to other banks. It is illegal under banking laws to sell credits. Defendant makes demand for RESTITUTION and DAMAGES for Plaintiff's fraud, misrepresentations, deception, unlawful conversion, conspiracy and RICO. A RICO enterprise must have a "common purpose of engaging in a course of conduct" and its existence is proven by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. First Capital Asset Mgmt., Inc. v. Satinwood, Inc., 385 F.3d 159,173 (2d Cir.2004) Also, "An association-in-fact enterprise...need not have a hierarchical structure or a "chain of command. (quoting Boyle v. United states, 129 S. Ct at 2245) Quicken, MERS, and Countrywide and Plaintiff sufficiently describes a collective enterprise formed prior to and during the economic crisis to damage all homeowners chain of titles, facilitate loans without proper underwriting OR ANY UNDERWRITING AT ALL, sell off the loans to unknowing investors, have no financial interest in the loans and then foreclose on homeowners. This is RICO as a MATTER OF LAW and a substantive RICO claim and shows pattern, enterprise, conduct and racketeering activity. Defalco v. Bernas, 244 F.3d 286,306 (2d Cir.2001. RICO violations are a cause of Defendant's injury as foreclosure is a damage and injury and would establish the substantive RICO liability. The Plaintiff's attempt to enforce a foreclosure proximately causes Defendant injury. (see Baisch v. Gallina, 346 F. 3d 366, 373-74 (2ndCir.2003), which include incurring of legal costs. The Plaintiff is involved in a RICO conspiracy as "he knows the general nature of the conspiracy and that the conspiracy extends beyond his individual role" (see United States v. Zichettello, 208 F. 3d 72,99 (2d Cir.2000)(quoting United States v. Rastelli, 870 f.2d 822,828 (2d Cir.1989) (see also Salinas v. United States, 522 U.S. 52,64 (1997) ("a person...may be liable for (1962 d) conspiracy even though he was incapable of committing the substantive offense). Under General Business Law,

(GBL) 349, the Defendant must show that: (1) the Plaintiff's conduct is "consumer oriented", (2) the Plaintiff is engaged in a "deceptive act or practice", (3) the defendant was injured by this practice; and (4) the acts or practices have a broader impact on consumers at large." (see Wilson v. NW. Mut. Ins. Co., 625 F.3d 54, 64 (2d Cir.2010) (citing Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A., 85 N.Y. 2d 20,24-27 (1995). Thus, even though the default judgments against Plaintiffs have been vacated by the state courts or by agreement with defendants, plaintiff's claim for damages cannot be moot. Therefore, in this case, Defendant has alleged facts sufficient to be granted a MOTION TO DISMISS and claims damages. SC JUDICIARY LAW may hold any attorney engaged in "any deceit or collusion, or consents to any deceit or collusion with intent to deceive the court or any party" accountable to the full extent of the law. The filing of as foreclosure action knowing MERS never held the NOTE and

the other foregoing facts provide adequate support for this claim and Defendant claims damages. Defendant seeks, inter alia, DECLARATORY RELIEF that Plaintiffs violated the law and injunctive relief. This court has subject matter jurisdiction based on Defendants facts.

30. Defendant claims that without "consensus as idem", an agreement to the same thing, there is no binding contract. (Peerless), Raffles v. Wichelhaus, 2 H.&c.906 (1894). this principle has been adopted into the American common law tradition and has become a bedrock of our contract dispute jurisprudence. As aforementioned, the Utah Supreme Court has recently held that a lack of the meeting of the minds, a mistake as to fact, can justify a rescission of the contract. A single party may rescind a contract when, at the time the contract was made, the parties make a mutual mistake about a material fact, the existence of which is a basic assumption of the contract". (Deep Creek, LLC v. Utah State Armory BD., 2008 UT 3, 17(quoting Mooney v. GR & Assoc., 746P.29 1174 (Utah Ct. App.1978). Defendant states she was not told at any time prior, during or after the promissory note was signed that is was legal tender and used for cash by the lender. Defendant deems nondisclosure of vital information or hiding material facts as deceptive practices and fraud. In addition, there was no consideration on the alleged mortgage loan deeming it null and void. "it is not necessary for rescission of a contract that a party making the misrepresentations should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made the

false representations, even innocently, to retain the fruits of a bargain induced by such representations." (Whipp v. Iverson, 43 Wis. 2d 166). Defendant states a Statutory Defense.

In fact , the Defendant, borrower, entered an entirely new and different world of high finance where her relationship was bought and sold not between Lenders, but outside the lender relationship to a loan servicing company, but an investment contract and not disclosed to the Defendant.. Therefore, Defendant seeks to rescind and /or void the loan agreement which was not a loan agreement at all based on mistake and the missing of the minds by the parties at contract formation.

31. The Plaintiff did not allege it is both the owner and holder of the Note and Mortgage in the body of the original complaint. This is important because, this is a cause of action in EQUITY to foreclose a mortgage and not an action of LAW for enforcement of the Note. The FAILURE of the Plaintiff to allege, in the body of its COMPLAINT, that in addition to holding the subject note and mortgage, it also owns these instruments prohibits it from asserting the proper chain of ownership of the instruments from their inception. CARPENTER V. LONGAN 83 U.S. 16 Wall 271 (1872). Carpenter established the rule that the security interest necessarily follows the promissory Note, and a security interest is a NULLITY without the underlying promise to pay. Also, Plaintiff has not shown elements of an agency relationship to the true owner of the Note in order to state a cause of action. This the Plaintiff has not done, therefore, Defendant requests the foreclosure be DISMISSED with all her requested remedies, etc as expressed below in her PRAYER FOR RELIEF, and further, Defendant request the Honorable Court DISMISS WITH PREJUDICE.

32. The Fair Debt Collection Practices Act (FDCPA) forbids debt collectors from, inter alia: (1) engaging in "any conduct the natural consequence of which is to harass, OPPRESS or ABUSE any person, 15 U.S.C. 1692d, (2) making a "false, deceptive, or misleading representation, 15 U.S.C. 1692 e, or using "unfair or unconscionable means "to attempt to collect a debt, 15 U.S.C.1692 f. Section 1692 specifically prohibits false representation of "the character, amount, or legal status of any debt and the use of deceptive means "to collect or attempt to collect any debt." 15 U.S.C. 1692 e (2) (A), (10). Plaintiff's attorney's state they are collecting a debt. Based on all the Defendant's claims, the filing of the foreclosure action is

"unfair and unconscionable" in violation of 15 U.S.C. 1692. Kuria v. Palisades Acquisition XVI, LLC, No. 09 Civ. 3321 (JOF)(RGV), F.Supp.2d,2010 WI 4780769, at 7. Defendant claim is plausible and Defendant claims INJURY AND DAMAGES.

33. Moreover, Federal Civ. Rule 12 (b)(6), in order for the Plaintiff to survive the Defendants MOTION TO DISMISS, "a complaint must contain sufficient factual matter, as accepted as true, to state a claim to relief that is plausible on its face" (see. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) DC. The Plaintiffs complaint fails to allege facts that give rise to a plausible claim for relief. The Plaintiff did not produce a wet ink original Note at time of filing complaint and MERS cannot assign the Note to the Plaintiff as MERS never held the NOTE. Also, the Defendant is the originator and maker of the NOTE, registered the NOTE and claims all rights to the NOTE as the CREDITOR. And, Federal Rule of Civil Procedure (17) (a) Bank of America (Plaintiff) has the burden of establishing it is the "real party of interest." Defendant claims Plaintiff did not fulfill their obligation at time of the filing of the foreclosure complaint and Defendant claims civil damages.

34. Lastly, in a foreclosure case the Plaintiff must plead and prove as part of its prima facie case that it owns the note and mortgage and has a right to foreclose.(Wells Fargo Bank, N.A. 80 AD3d 753,915N.Y.S.2d 569 (2dDept2011); Argent Mtge.Co., LLC v. Mentesana, 79 AD3d 1079, 915 N.Y.S.2d 591(2dDept2010) Campaign v. Barba 23AD3d 327,805NYS2d 86 (2nd Dept2005) and herein, Defendant filed a pro se answer containing a general denial, which is a denial of all of Plaintiff's allegations, including the allegation in paragraph 11 that it owns the note and Defendant's general denial asserts that Plaintiff is not entitled to relief because the facts alleged in the complaint ARE NOT TRUE. Also, in Hoffstaedter V. Lichtnestein, 203 App.Div. 494, 496, 196 N.Y.S. 577 (1stDept1922) held that the general denial put the allegations in the Plaintiff's complaint IN ISSUE, and when Plaintiff brought an action to recover on the note, the Defendant answered with a general denial. It went on to state that "it is elementary that under a general denial a defendant may disprove any fact which the Plaintiff is required to prove to establish a prima facie cause of action." Id., at 578. And, the general denials contained in the answer enable the Defendant to controvert the facts upon which the Plaintiff bases her right to recover, Strook Plush Company v. Talcott, 129 AD 14, 113 NYS 214 (2nd Dept1908). Also, A

GENERAL DENIAL IS SUFFICIENT TO CHALLENGE ALL OF THE ALLEGATIONS IN A COMPLAINT, Bodine v. White, 98 NYS 232,233 (APP. Term 1906).

The Defendant did not waive the defense that Plaintiff did not own the note, because Defendant made a general denial to the factual allegations contained in the complaint and amended complaint. The fact that the Defendant in this case contested the factual allegations asserted in Plaintiff's pleading, Defendant's general denial is sufficient to contest whether Plaintiff owns the note and mortgage. And IN RESPONSE TO PLAINTIFF'S MOTION, Defendant contends that Plaintiff IS NOT ENTITLED TO SUMMARY JUDGMENT as it does not own the note and mortgage, because the purported transfer to Plaintiff was VOID as it violated the terms of the Pooling and Servicing Agreement (PSA) which governs acquisitions by the Trust. The manner in which the Trust acquires the mortgages, issues the securities and pays the income from the mortgage to the investors is governed by the Trust's pooling and servicing agreement (PSA). The terms of the PSA require that the Trust does not operate or take action that would jeopardize its REMIC status, Section 9.01 (f) of the PSA, the Depositor must transfer all of the interest in the mortgage notes to the Trustee on behalf of the Trust as of the closing date, PSA Article II, Section 2.05(iii). THE DEFENDANT ASSERTS THAT THE TRANSFER OF THE NOTE HEREIN IS VOID BECAUSE THE NOTE WAS ACQUIRED AFTER THE CLOSING DATE IN VIOLATION OF THE TERMS OF THE PSA. Mere recital of assignment, holding or receipt of an asset is insufficient to transfer an asset to a Trust. The grantor must actually transfer the asset. NO EVIDENCE has been provided at inception proving that the Plaintiff, Bank of America, had authority to acquire the note and mortgage herein after the Trust had closed. Defendant believes the Defendant's note was never delivered to the Trust from Countrywide and non-deliverance or late acquisition violates the terms of the PSA. In Article II, section 2.01 Conveyance of the Mortgage Loans, the PSA requires that the Depositor deliver and deposit with the Trustee the ORIGINAL NOTE, the ORIGINAL MORTGAGE and an ORIGINAL ASSIGNMENT. The Defendant without proof otherwise from the Plaintiff from inception, denies the assignment of the original note, mortgage and assignment was ever assigned from the Depositor to the Trust, and is therefore VOID as in being in contravention of the PSA. THEREFORE the Plaintiff's motion for summary judgment should be denied and the Defendant's AMENDED MOTION TO DISMISS should be granted WITH PREJUDICE.

Further, Defendant request the Honorable Court to NOT ALLOW the Plaintiff to request summary judgment until the Plaintiff strikes all 33 defenses and all other claims within the 33 areas of this OBJECTION TO AND REQUEST FOR DISMISSAL OF THE PLAINTIFF'S AMENDED SUMMONS AND COMPLAINT. Defendant claims Plaintiff's documents provided to this Honorable Court are fake documents and not provided to the court upon inception of the foreclosure proceeding. In addition, a Creditor's standing to file a proof of claim for prepetition debt must exist at the time the claim is filed. See In re: Foreclosure cases, 2007, WL 3232430, at*2;. According to Federal Rule bankruptcy procedure 3001 (c),(d), a claim based on a writing and/or security interest in the debtor's property must include a copy of the writing and evidence of perfection. In this case, the only documents presented include fabricated, altered, false and forged documents and thus fails the evidentiary test. While any default dispenses with the proof of the Note, it does not with its production. (See Sheehy v. Mandeville, 11 U.S. 208, 218 (1812). Also, see UCC 30293 official cmt.1 ("An instrument is a reified right to payment. The right is represented in the instrument itself.") There is no original

Note, and the Defendant bankrupted all unsecured debt in 2011. Therefore, there is a FACTUAL DISPUTE as to the validity, ownership and amount of any claim. Further, the Defendant truly believes that the alleged loan is validly securitized, as a third party of the alleged loan (if any), it should have been paid off, and the Defendant is entitled to proceeds of the transaction between Quicken, Countrywide, Bank of America, the true Plaintiff, and any other parties involved in the securitization of my Note (as Defendant is the Creditor) and Mortgage that was made without my consent and without my permission and without my knowledge at the time of origination, and the Trustee of the trust along with other parties including the title companies that insured my title and the loan in question may be directly and indirectly liable to me for any and all proceeds and profits that may accrue from such securitization. At no time was the Defendant informed of the securitization with no evidence that the note was negotiated and delivered to the Trustee for the asset backed securities which is misrepresentation and concealment. Defendant claims SLANDER OF TITLE, Abuse of Process and attempted CIVIL THEFT and requests Damages.

35. PLEASE SEE ATTACHED SECURITIZATION REPORT FOR THE DEFENDANT AND SUPPORTING CASES WITH ATTACHED SUPPORTING AFFADAVIT. (Exhibit A)

CONCLUSION

WITH ALL THE AFOREMENTIONED extensively stated due diligence answers, counterclaims/claims, defenses and remedies in this MEMORANDUM OF LAW, it is clear the Plaintiff has caused Defendant extreme STRESS, elder financial ABUSE, mental ANGUISH, health problems due to THREATS of continual foreclosure inducing FEAR of being homeless as a senior citizen during this national financial crisis and hardship which was engineered by the Plaintiff and Plaintiff's conspirators. Defendant has spent countless hours of research with no sleep perpetrated upon the Defendant by the Plaintiff. Plaintiff is knowingly seeking to maliciously HARM the Defendant, remove Defendant from her home, and gain unjust compensation, therefore, Plaintiff should be held accountable for damages to the full extent of the law. Defendant deems Plaintiff's complaint filings for foreclosure on Defendant's home severe "Bad Faith" and willful intent by the Plaintiff to cause grave MENTAL, EMOTIONAL AND PHYSICAL INJURY, intense OPPRESSION and further FINANCIAL HARM, and Defendant is entitled to and claims DAMAGES to the full extent of the law. (UCC 4-103). AND, Defendant has alleged facts that constitute "strong circumstantial evidence of conscious misbehavior or recklessness." See, Lerner v. Fleet Bank, N.A., 459 F3d 273,290-91(2nd Cir 2006).

WHEREFORE, DEFENDANT REQUESTS THE HONORABLE COURT FOR:

DEFENDANT'S AMENDED MOTION TO DISMISS "WITH PREJUDICE" BE GRANTED WITH THIS MEMORANDUM OF LAW AND EXHIBIT A .....

AND, PRAYER FOR RELIEF

WHEREFORE, Defendant Deaner requests this Honorable Court Honor DEFENDANT'S AMENDED MOTION TO DISMISS "With Prejudice and DISMISS ALL Plaintiff's Complaints, Summons, Amended Summons and Complaints, all other Plaintiff's filings including this Objection to and Request for Dismissal of Plaintiff's Notice of Motion and Motion to Strike Answer or in the Alternative for Summary Judgment, and Plaintiff's Motion to Compel Reference and Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment pursuant to rule 12 SCRCP and to enter judgment in Defendant's favor, quieting title, awarding costs, recoupment, punitive and other damages, restitution, rescission, court order for removal of lis pendens, removal of MERS false assignment, satisfaction of mortgage (Title 29 Chapter 3 Article 1, Section 29-3-370 & 430) and attorney fees for those reasons set forth herein in addition to other relief deemed proper and required by all applicable common law, public law commercial law, equitable law, banking law, securities law, Federal and State law, judiciary law, Constitutional law, Assignment Law and any other laws including the False Claims Act and fraud laws pertinent and in favor of the Defendant in this matter with the Honorable Court.

Respectfully Submitted,

Date: September 20, 2013
North Augusta, SC
Aiken County

Carolyn S. Deaner

704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

CERTIFICATE OF DELIVERY

I HERBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING HAS BEEN FURNISHED BY U.S.MAIL, FIRST CLASS DELIVERY, THIS 20th DAY OF SEPTEMBER 2013 TO H. GUYTON MURRELL, ATTORNEY AT KORN LAW FIRM, 1300 PICKENS STREET, P. O. BOX 12369, COLUMBIA, SC 29211-2369

Securitization Report for

Carolyn S. Deaner

704 Kershaw Drive
North Augusta SC 29841

December 3, 2012

FILED 9/20 2013
Shirley Gadard
C.C.C.P.&G.S.
3:35 [illegible]

Exhibit "A"

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The Debt & the Security Instruments

General	Principal Amount	$97,600
	Date Granted	June 26, 2007
	Maturity Date	August 1, 2037
	Term	30 Years
The Debt Instrument	Type of Note	Fixed Rate Note
	Initial Interest Rate	7.000%p.a.
	First Interest Rate Change Date	Not Applicable
	Loan Number	3212186468
The Security Instrument	Type of Document	Mortgage
	Date Executed	June 26, 2007
	Lien Priority	First Lien
	MERS ID Number	1000390-3212186468-6

The Parties to the Debt & the Security Instruments

Borrower	Name	Carolyn S. Deaner
	Mailing Address	704 Kershaw Drive North Augusta SA 29841
	Property Address	704 Kershaw Drive North Augusta SA 29841
Co-Borrower	Name	None
Lender	Name	Quicken Loans, Inc.
	Mailing Address	PO Box 553154 Detroit MI 48255
Mortgagee	Name	Mortgage Electronic Registration Systems, Inc.
	Mailing Address	PO Box 2026 Flint MI 48501
Mortgage Servicer	Name	Bank of America, NA
	Mailing Address	400 Countrywide Way Simi Valley CA 93065
Title Company	Name	LSI
	Mailing Address	700 Cherrington Parkway Coraopolis PA 15108

Findings, The Debt & the Security Instruments

1 The loan that is the subject of this securitization audit was granted on June 26, 2007. The Promissory Note names Quicken Loans, Inc. as the originating lender. It is a fixed rate note with a term of 30 years to mature on August 1, 2037.

2 The Mortgage was executed on the same date. The mortgagee is Mortgage Electronic Registration Systems, Inc. as nominee for the lender. This instrument secures the debt of the borrower to the lender including interest thereof. The mortgaged property is located at 704 Kershaw Drive, North Augusta, South Carolina 29841.

3 A mortgage statement dated July 30, 2012 discloses that the subject loan is serviced by Bank of America, NA.

The Search for a Securitization Trust

1 A letter from Bank of America, NA dated March 1, 2012 discloses that the investor on the subject loan is Fannie Mae or the Federal National Mortgage Association (FNMA).

2 This loan is a securitized loan in a private Fannie Mae Trust.

Notes on the Chain of Title and the Foreclosure Process

1 On April 29, 2011, an Assignment of Mortgage was executed by Mortgage Electronic Registration Systems, Inc. This document names the assignee as BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, LP. BAC Home Loans Servicing, LP was succeeded by merger by Bank of America, NA.

2 As of December 3, 2012, the examiners' date of report, no action has yet been initiated in order to foreclose on the property that was mortgaged to secure the note on the subject loan based on the documents that were presented for examination.

Notes on MERS

1. According to the Mortgage, the lender is Quicken Loans, Inc. and the mortgagee is Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for the lender. The Promissory Note also states that the lender is Quicken Loans, Inc. but does not name Mortgage Electronic Registration Systems, Inc. as a party in any capacity whatsoever.

2. There are provisions in the Mortgage that states that (a) "MERS is nominee for the lender," and (b) "MERS is the mortgagee under this Security Instrument." The first statement means that MERS is only an agent for the lender while the second means that MERS is a principal in this instrument.

   These statements contradict a law that presupposes that an agent and its principal must be two different persons or entities (Restatement of the Law – Agency, Section 1.01, Agency, defined).

3. A mortgagee is defined as "he to whom a mortgage is made. He is entitled to the payment of the money secured to him by the mortgage; he has the legal estate in the land mortgaged, and may recover it in ejectment, on the other hand he cannot commit waste, he cannot make leases to the injury of the mortgagor, and he must account for the profits he receives out of the thing mortgaged when in possession" (lawlect.com).

   A mortgage statement dated July 30, 2012 discloses that the loan is serviced by Bank of America, NA. Bank of America, NA is successor by merger to BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, LP. It is the servicer who receives payments on the loan on behalf of the lender or investor.

   A letter from the servicer dated March 1, 2012 discloses that the investor on the subject loan is the Federal National Mortgage Association (Fannie Mae). From this viewpoint, it is clear that Bank of America, NA is acting as servicer for Fannie Mae and not for MERS.

   The assignment dated 7/16/2007 made by mers is fraudulent, and mers has no authority to make such an assignment. The assignment is a fraudulent assignment. Furthermore, the robo signers on the document make the document a fraudulent document and non-executable.

Notes on Robo-Signing

What is Robo-Signing?

In the foreclosure industry, robo-signing is the practice of an employee signing thousands of documents and affidavits without verifying the information contained therein. Some reports have revealed that one bank official signed off on almost 10,000 documents in one month. The practice calls into question the validity of thousands of mortgage foreclosures across the country.

Banks have been under investigation since 2010 for their part in the robo-signing scandal which resulted in many homeowners losing their homes without merit. After the scandal came to light, the banks said they would no longer engage in this practice. However, as recently as July 2011, it was discovered that mortgage robo-signing still continued.

As a result, lawmakers called for hearings and pushed for greater oversight on banks which led to all 50 state Attorneys General filing law suits against the nation's top five banks, among them Bank of America, Chase, Ally Financial, and CitiMortgage. State Prosecutors and the United States government offered a settlement deal of $26 billion dollars which is the largest settlement in the history of this country.

1. Assignment of Mortgage

   The Assignment of Mortgage that was executed by Mortgage Electronic Registration Systems, Inc. on April 29, 2011 was signed by Dominique Johnson, Assistant Secretary, witnessed by Cynthia Santos and Malik Basurto and was notarized by Deborah L. Beard, a notary public of Ventura County, California.

   Dominique Johnson, Cynthia Santos, Malik Basurto, and Deborah L. Bearch are all listed as robo-signers. The links leading to this information are provided herein.

   1.1. Dominique John, Cynthia Santos, and Malik Basurto.

   http://takeyourhomeback.com/?p=1141

   1.2. Deborah L. Beard

   http://livinglies.wordpress.com/2012/05/25/ok-lawyers-step-up-to-this-one-it-is-literally-a-no-brainer/

The Examiner's Closing Statement

From the foregoing findings, the examiners conclude, based on an examination of the documents presented, the subject loan is now owned by the Federal National Mortgage Association.

All pertinent loan and security documents are assumed to be in the possession of the present assignee. However, a cause for the separation of the Promissory Note and the Mortgage would be the nomination of Mortgage Electronic Registration Systems, Inc. as mortgagee. This was done in order to eliminate the need for executing and recording the assignment of Mortgages, with the idea that it would be the mortgagee on record.

Whether or not the Promissory Note and the Mortgage are actually in the possession of the originating lender could be determined only upon actual inspection of these documents.

Finally, the signature on the Assignment of Deed of Trust dated April 29, 2011 could have been a forgery or their signatories had no authority to sign therein. If proven true, the borrower is entitled to all relief provided by law for these acts committed by the lender and its agent or officer.

Attachments

1 Fixed Rate Note dated June 26, 2007.

2 Mortgage dated June 26, 2007.

3 MERS Servicer Information.

4 Mortgage Statement dated July 30, 2012.

5 Letter of Bank of America, NA dated March 1, 2012.

6 Assignment of Mortgage dated April 29, 2011.

Allonge Definition Page

Allonge [ə-lÄ nj, ə-lôzh] n

[French, literally, something that lengthens, from Old French *alonge*, from *alongier* to make long, ultimately from Latin *longus* long]
: a paper attached to an instrument to provide space for additional endorsements
: rider *NOTE: Under Uniform Commercial Code section 3-202(2), an allonge must be so firmly affixed to the instrument that it becomes part of it in order for the endorsements to be valid. Endorsements on an allonge are often considered invalid if there is still room on the instrument for endorsements.*

New Jersey

New York

"An "allonge" is defined as "[a] slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further endorsements when the original paper is filled with endorsements." Black's Law Dictionary (8th ed. 2004)."

Cases Involving Allonge

SCR Joint Venture, L.P. v. Warshawsky, 06 CV 3532 (ADS)(MLO), UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, 2007 U.S. Dist. LEXIS 98643, June 6, 2007, Decided, June 6, 2007, Filed, Reconsideration denied by SCR Joint Venture, L.P. v. Warshawsky, 2007 U.S. Dist. LEXIS 98646 (E.D.N.Y., Aug. 17, 2007)Affirmed by, in part, Vacated by, in part, Remanded by SCR Joint Venture L.P. v. Warshawsky, 559 F.3d 133, 2009 U.S. App. LEXIS 5159 (2d Cir. N.Y., 2009)

Allonge defined and other cases
"The indorsement may be on the instrument itself, or it may be on "a paper affixed to the instrument." Id. Such a paper is called an "allonge", defined as "[a] slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further indorsements when the original paper is filled with indorsements." See Black's Law Dictionary at 88 (9th Ed. 2009)."
Kemp v. Countrywide Home Loans, Inc. (In re Kemp), Case No. 08-18700-JHW, Adversary No. 08-2448, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY, 2010 Bankr. LEXIS 4085, November 16, 2010, Decided, November 16, 2010,

Cases Dismissed for Lack of Standing In NJ & NY

U.S. Bank v. Dellarmo (Standing-NY Sup.Ct.)(4/12)
"In a mortgage foreclosure action, a plaintiff has standing where it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced" (*Bank of N.Y. v Silverberg*, 86 AD3d 274, 279; *see Countrywide Home Loans, Inc. v Gress*, 68 AD3d 709). Where a defendant raises the issue of standing, the plaintiff must prove its standing to be entitled to relief (*see CitiMortgage, Inc. v Rosenthal*, 88 AD3d 759; *U.S. Bank, N.A. v Collymore*, 68 AD3d 752, 753). Moreover, while assignment of a promissory note also effectuates assignment of the mortgage (*see Bank of N.Y. Silverberg*, 86 AD3d at 280; *U.S. Bank, N.A. v Collymore*, 68 AD3d at 753-754; *Mortgage Elec. Registration Sys., Inc. v Cookley*,), the converse is not true: since a mortgage is merely security for a debt, it cannot exist independently of the debt, and thus, a transfer or assignment of only the mortgage without the debt is a nullity and no interest is acquired by it (*see Deutsche Bank Natl. Trust Co. v Barnett*, 88 AD3d 636; *Bank of N.Y. v Silverberg*, 86 AD3d at 280). The failure to record an assignment prior to the commencement of the action is not necessarily fatal since "an assignment of a note and mortgage need not be in writing and can be effectuated by physical delivery" (*Bank of N.Y. v Silverberg*, 86 AD3d at 280; *see Deutsche Bank Natl. Trust Co. v Barnett*, 88 AD3d 636; *U.S. Bank, N.A. v Collymore*, 68 AD3d at 754; *LaSalle Bank Natl. Assn. v Ahearn*, 59 AD3d 911, 912).

Wells Fargo v McNee(11/11) As the First Department held in Katz v. East-Ville Realty Co., (249 AD2d 243, 243), a "[p]laintiff's attempt to foreclose upon a mortgage in which he had no legal or equitable interest [is] without foundation in law or fact" (see Kluge v. Fugazy, 145 AD2d 537). Hence, Wells Fargo's attempt to foreclose upon the subject mortgage must be denied, the complaint dismissed, and McNee's cross-motion(s) to dismiss for lack of standing pursuant to CPLR 3211(a)(3) granted.

Downey v. Trujillo (8/11)(Schack) **Dismissed with prejudice.** Schack was angered after lawyer Margaret Carucci said in a sworn affidavit that a Downey Savings & Loan officer on Dec. 24, 2010 claimed to have personally reviewed and could vouch for the accuracy of the paperwork underlying Trujillo's foreclosure -- although Downey had long ceased to exist.

Deutsche Bank v. Mitchell(8/11) **Summary judgment reversed - sale vacated.** The assignment was not perfected until after the filing of the complaint, and plaintiff presented no evidence of having possessed the underlying note prior to filing the complaint. If plaintiff did not have the note when it filed the original complaint, it lacked standing to do so, and it could not obtain standing by filing an amended complaint.

We vacate the sheriff's sale, the final judgment and the order granting summary judgment and remand to the trial court.

Deutsche Bank v. Francis (Dismissed With Prejudice-Schack)(3/11): I discovered that there is no record of plaintiff DEUTSCHE BANK ever owning the subject mortgage and note.
Therefore, with plaintiff DEUTSCHE BANK lacking standing, the instant action is dismissed with prejudice and the notice of pendency cancelled.
A want of "standing to sue," in other words, is just another way of saying that this particular plaintiff is not involved in a genuine controversy, and a simple syllogism takes us from there to a "jurisdictional" dismissal: (1) the courts have jurisdiction only over controversies; (2) a plaintiff found to lack "standing" is not involved in a controversy; and (3) the courts therefore have no jurisdiction of the case when such a plaintiff purports to bring it.

Johnston v. HSBC** (complaint), (extrinsic fraud, real party) (3/11)
Extrinsic Fraud: Because the fraud is extrinsic in nature, HSBC is precluded from raising the doctrine of-- res judicata --as a defense against this Courts obligation to verify first and foremost that the claimant has federal jurisdiction "real party in interest" status.
Real Party in Interest: HSBC MORTGAGE CORP (USA) (hereinafter, "HSBC") does not qualify as a "real party of interest" pursuant to Rule 17 of the Federal Rules of Civil Procedure, which provides: "An action must be prosecuted in the name of the real party in interest." The purpose of this rule is to require that an action be brought "in the name of the party who possesses the substantive right being asserted under the applicable law...." 6A WRIGHT,MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d § 1541 (1990) ("WRIGHT").

ALE v. U.S. Bank (Expunge Mortgage and Assignment*)(1/11)

American Brokers Conduit v. ZAMALLOA - Judge SCHACK 11Sep2007

EMC Mortgage v. Wink - (1/07) MERS, which is not itself the owner and holder of the note and mortgage, does not have the authority to assign the ownership of the note and mortgage to plaintiff. Judgment of foreclosure and sale is denied

Countrywide Home Loans, Inc. v Taylor - Mayer, J., Supreme Court, Suffolk County / Sept. 2007

American Brokers Conduit v. ZAMALLOA - Judge SCHACK 28Jan2008

Aurora Loan Services v. MACPHERSON - Judge FARNETI 11Mar2008

Bank of New York v. SINGH - Judge KURTZ 14Dec2007

Bank of New York v. TORRES - Judge COSTELLO 11Mar2008

Bank of New York v. OROSCO - Judge SCHACK 19Nov2007

CitiMortgage Inc. v. BROWN - Judge FARNETI 13Mar2008

Countrywide Mortgage v. BERLIUK - Judge COSTELLO 13Mar2008

Deutsche Bank v. Barnes-Judgment Entry

Deutsche Bank v. Barnes-Withdrawal of Objections and Motion to Dismiss

Deutsche Bank v. ALEMANY Judge COSTELLO 07Jan2008

Deutsche Bank v. Benjamin CRUZ - JudgeKURTZ 21May2008

Deutsche Bank v. Yobanna CRUZ - Judge KURTZ 21May2008

Deutsche Bank v. CABAROY - Judge COSTELLO 02Apr2008

he Bank v. CASTELLANOS / 2007NYSlipOp50978U/- Judge SCHACK 11May2007

HE Bank v. CASTELLANOS/ 2008NYSlipOp50033U/ - Judge SCHACK 14Jan2008

HSBC v. Valentin - Judge SCHACK calls them liars and dismisses WITH prejudice **

Deutsche Bank v. CLOUDEN / 2007NYSlipOp51767U/ Judge SCHACK 18Sep2007

Deutsche Bank v. EZAGUI - Judge SCHACK 21Dec2007

Deutsche Bank v. GRANT - Judge SCHACK 25Apr2008

Deutsche Bank v. HARRIS - Judge SCHACK 05Feb2008

Deutsche Bank v. LaCrosse,Cede,DTC Complaint

Deutsche Bank v. NICHOLLS - Judge KURTZ 21May2008

Deutsche Bank v. RYAN - Judge KURTZ 29Jan2008

Deutsche Bank v. SAMPSON - Judge KURTZ 16Jan2008

Deutsche v. Marche - Order to Show Cause to VACATE Judgment of Foreclosure - 11June2009

GMAC Mortgage LLC v. MATTHEWS - Judge KURTZ 10Jan2008

GMAC Mortgage LLC v. SERAFINE - Judge COSTELLO 08Jan2008

HSBC Bank USA NA v. CIPRIANI Judge COSTELLO 08Jan2008

HSBC Bank USA NA v. JACK - Judge COSTELLO 02Apr2008

IndyMac Bank FSB v. RODNEY-ROSS - Judge KURTZ 15Jan2008

LaSalle Bank NA v. CHARLEUS - Judge KURTZ 03Jan2008

LaSalle Bank NA v. SMALLS - Judge KURTZ 03Jan2008

PHH Mortgage Corp v. BARBER - Judge KURTZ 15Jan2008

Property Asset Management v. HUAYTA 05Dec2007

Rivera, In Re

Services LLC v. SATTAR / 2007NYSlipOp51895U/ - Judge SCHACK 09Oct2007

U.S. Bank NA v. AUGUSTE - Judge KURTZ 27Nov2007

U.S. Bank v. Emmanuel - (Judge Schack May 2010) Dismissed with prejudice. "foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity".

U.S. Bank NA v. GRANT - Judge KURTZ 14Dec2007

U.S. Bank NA v. ROUNDTREE - Judge BURKE 11Oct2007

U.S. Bank NA v. VILLARUEL - Judge KURTZ 01Feb2008

Wells Fargo Bank NA v. HAMPTON - Judge KURTZ 03Jan2008

Wells Fargo, Litton Loan v. Farmer WITH PREJUDICE Judge Schack June2008

Plaintiff has renewed its application for an order of reference for the subject premises, but the papers submitted fail to cure the defects enumerated in my prior decision and order. The purported plaintiff, WELLS FARGO, does not own the instant mortgage loan. Therefore, the instant matter is dismissed with prejudice.
- **Two invalid assignments** of the instant mortgage and note took place, with ARGENT assigning the note and mortgage to AMERIQUEST, and then AMERIQUEST assigning the note and mortgage to plaintiff WELLS FARGO. Both of these assignments were not recorded for more than fourteen months, until February 21, 2006, when they were both recorded at that same time.

Wells Fargo v. Reyes WITH PREJUDICE, Fraud on Court & Sanctions Judge Schack June2008 **No defendant answered in this foreclosure action.**
WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE AND CUSTODIAN FOR MORGAN STANLEY ABS CAPITAL1 INC., MSAC 2007-HE4, lacks standing and has never been the mortgagee in this foreclosure action, the instant complaint, Index No. 5516/08, is dismissed with prejudice; and it is further ORDERED, that the Notice of Pendency filed with the Kings County Clerk on February 21, 2008, by purported plaintiff, WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE AND CUSTODIAN FOR MORGAN STANLEY ABS CAPITAL1 INC., MSAC 2007-HE4, in an action to foreclose a mortgage for real property located at 379 Lincoln Avenue, Brooklyn New York (Block 4173, Lot 6, County of Kings), is cancelled.

Deutsche Bank v. Peabody Judge Nolan (Regulation Z)

Indymac Bank,FSB v. Boyd - Schack J. January 2009

Indymac Bank, FSB v. Bethley - Schack, J. February 2009 (The tale of many hats)

Indymac Bank, v. Yano-Horoski -Judge Blasts Bank's Foreclosure Conduct and Cancels Mortgage.

LaSalle Bank Natl. Assn. v Ahearn - Appellate Division, Third Department (*Pro Se*)\

NEW JERSEY COURT DISMISSES FORECLOSURE FILED BY DEUTSCHE BANK FOR FAILURE TO PROVIDE DISCOVERY AS TO OWNER AND HOLDER OF NOTE, SECURITIZED TRUST DOCUMENTS, AND OTHER DOCUMENTS DEMANDED BY BORROWERS

HSBC Bank USA v Miller 2009 NY Slip Op 29444 / Decided on October 29, 2009 / Meddaugh, J.

Lasalle Bank v. Smith, MERS **(Judge Schack - March 22, 2010)**

Wells Fargo Bank, Americas Servicing Company, MERS v Hunte **(Judge Schack, Apr.14, 2010/ Dismissed with prejudice, possible sanctions.)** (The court "discovered that WELLS FARGO executed a satisfaction of the instant mortgage more than ten months ago." "The Court is gravely concerned that: it expended scarce resources on an action that should have been discontinued." "the Court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct.")

Chase v. Johnson (Judge Schack May 4, 2010) **(vacated judgment of foreclosure and sale with prejudice as plaintiff lacked standing.)**

OneWest Bank v. Cullen (Judge Zwack - March 3, 2010) **(The Court finds that OneWest has failed to establish it has standing and dismissed the complaint.)**

ARGENT v. Maitland **(Aug. 2010) (Judge Schack) Plaintiff's counsel never notified the Court that the mortgage had been satisfied and failed to discontinue the instant action with prejudice. I discovered that the mortgage had been satisfied by personally searching the Automated City Register Information System (ACRIS) website of the Office of the City Register, New York City Department of Finance. AHMSI's President and Chief Executive Officer or its Executive Vice President, Chief Legal Officer and Secretary Jordan D. Dorchuck, Esq., its counsel, Melissa A. Sposato, Esq. and her firm, Jordan S. Katz, P.C., will be given an opportunity to be heard as to why this Court should not sanction them for making a "frivolous motion,"**

MERS as Nominee for U.S. Bank v. Munoz - (ORDER TO SHOW CAUSE)
Mortgage Electronic Registration System as Nominee for US Bank, and any of its attorneys, agents, successors and assignees, be and are hereby restrained from implementing the closing of title on any third party sale of the premises and restrained from evicting the family from the premises.

LLP v. Sabine (8/2010) "the assignment produced by LPP is insufficient to demonstrate it has standing as (1) **MERS has no ownership rights in the note and thus cannot assign it**; (2) the language of the assignment of the mortgage does not evidence an intent to assign the underlying note, (3) the assignment arises out of a purchase agreement with an entity who is not a party to this action, and (4) the provision of mortgage document relied on by LPP does not give MERS the authority to assign the mortgage or the note.

Wells Fargo Bank, N.A. v Hughes (1/10) The terms of the proposed **modification agreement**, particularly but not exclusively the inclusion of an adjustable rate component, are unacceptable to this court. "The above matter is hereby **dismissed without prejudice**; and it is further ordered, that in the event Wells Fargo commences a new action in foreclosure with respect to this borrower and the premises at issue herein, no additional costs or attorney fees will be allowed, absent good cause shown.

BACKFIRE! Emigrant Mtge. Co. Inc. v Corcione: (7/10) **"unconscionable, unreasonable [and] overreaching" mortgage agreement.** For all of the foregoing reasons, it is, therefore ordered, adjudged and decreed that plaintiff's application for summary judgment and appointment of a referee is denied; and it is further ordered, adjudged and decreed that plaintiff, its successors, assigns and others are forever barred, foreclosed and prohibited from demanding, collecting or attempting to collect, directly or indirectly, any and all of the sums in this proceeding delineated as interest, default interest, attorney's fees, legal fees, costs, disbursements, advances or any sums other than the principal balance, that may have accrued from May 1, 2008 up to the date of this order; and it is further ordered, adjudged and decreed that defendants recover judgment against plaintiff Emigrant Mortgage Co. Inc., in the principal sum of $100.000.00 as damages for what he said was an **"unconscionable, unreasonable [and] overreaching" mortgage agreement.**

Beneficial v. Steele*** (Judge Spinner)(Jan 7/11) An action claiming foreclosure of a mortgage is a suit in equity, Jamaica Savings Bank v. M.S. Investment Co. 274 NY 215 (1937), and the very commencement of the proceeding invokes the equity jurisdiction of the Supreme Court. Thus, in order to obtain equitable relief, the applicant must come before the Court with clean hands, else such relief will be denied. Thus, where a party comes before the Court and is shown to have acted in a manner which is offensive to good conscience, fairness and justice, that party will be completely without recourse in a court of equity, no matter what his legal rights may be, York v. Searles 97 AD 331 92nd Dept. 1904), aff'd 189 NY 573 (1907). Stated a bit differently, in order to obtain equity, one must do equity.
Here, it is irrefutable that Defendant SUSAN STEELE was not a party to the Loan Agreement and

certainly did not execute the same. It is equally indubitable that Defendant STEPHEN STEELE did not execute the Loan Agreement that has been presented on this application. Nonetheless, Plaintiff has vigorously prosecuted this action, demanding foreclosure of the mortgage as well as money damages against both named Defendants. Under these circumstances, the Court is compelled to conduct a hearing to determine whether or not Plaintiff has proceeded in good faith and what sanction, if any should be imposed should the Court find a lack of good faith. (Id.)

Definitions

Beneficiary:
A beneficiary (also, in trust law, *cestui que use*) in the broadest sense is a natural person or other legal entity who receives money or other benefits from a benefactor. The beneficiaries of a trust are the persons with equitable ownership of the trust assets, although legal title is held by the trustee. The term can also be described as an "*Inheritance*" used in the context for the party (heir or heiress) receiving the property related thereto. Beneficiaries in other contexts are known by other names: for example, the beneficiaries of a will are called *devisees* or *legatees* according to local custom.

Issuing Entity:
The issuing entity provides the securities for the investors which purchase the securities from the issuing entity.

Investor:
An **Investor** is a party that makes an investment into one or more categories of assets — equity, debt securities, real estate, currency, commodity, derivatives such as put and call options, etc. — with the objective of making a profit.

Debtor:
Person or entity who is or has borrowed money from the lender or bank.

Loan Servicer:
A loan servicer is a public or private entity that collects, monitors and reports loan payments, handles property tax, insurance escrows and late payments, forecloses defaulted loans, and remits payments.

Custodian/Servicer:
Involved in the act of collecting the cash flows as well as disturbing them. Custodian also acts as a middle entity between the owners of the securities.
A **Custodian bank**, or simply **custodian**, is a specialized financial institution responsible for safeguarding a firm's or individual's financial assets and is not likely to engage in "traditional" commercial or consumer/retail banking such as mortgage or personal lending, branch banking, personal accounts, ATMs and so forth.

Lender:
The lender is the original entity whom originates the loan to the borrower or also known as the debtor.
A private, public or institutional entity which makes funds available to others to borrow.

Trustee
The trustee is an entity which manages the payments to the holders of the certificates also known as pass through certificates. The trustee basically works for the investors in addition to the trust itself, as a representative, representing them.

Trustee (or the holding of a **Trusteeship**) is a legal term which, in its broadest sense, can refer to any person who holds property, authority, or a position of trust or responsibility for the benefit of another.

Underwriter:

Is the firm which is on wall street who structures the deal. Typically it is a wall street investment firm. They provide the funds and capital to acquire the securities deal. The wall street investment firm who is involved in this transaction layers the deal together in a structured form.

Underwriting refers to the process that a large financial service provider (bank, insurer, investment house) uses to assess the eligibility of a customer to receive their products (equity capital, insurance, mortgage, or credit).

Sponsor:
Is the entity who purchases the loans direct from originators then packages them up into pools and moves forward with the selling of them to depositors.

The Underwriter:
The underwriter creates the securities and arranges to place the various tranches of securities (different classes of certificates) with investors. The underwriter then transfers the mortgage portfolio and securities to the issuer.

VERIFIED AFFIDAVIT

of

Charles K. Lamm, Fraud Examiner IA-CFE #95403

Now comes Charles K. Lamm (hereinafter I) within time, with firsthand knowledge, of legal age, sound mind and competent, in good faith, in honor states as follows:

EXPERIENCE, QUALIFICATIONS AND EXPERTISE OF AFFIANT

1. I, Charles Lamm, am over the age of 21 and have the following experience relating to foreclosure litigation, the secondary mortgage market, and federal home loan compliance requirements pursuant to the Truth in Lending Act, the Equal Credit Opportunity Act, and the Real Estate Settlement Procedures Act and am consulted as a Mortgage Fraud and Forensic Analyst. I have over twenty (20) years of experience as a Fraud Examiner.

2. I have knowledge in mortgage banking and finance along with over one thousand (1000) hours of research and study in the areas of the Truth in Lending Act (TILA), the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), Foreclosure, Litigation, Asset-Backed Securitization and its effects and applications in Foreclosure and Loss Mitigation.

3. I have been trained as a Hand-Writing Analyst specializing in Forensic Document Examinations. I maintain (CPE) regular Continuing Professional Education as a Fraud Examiner in the State of Florida and nationally, I am registered with the Association of Certified Fraud Examiners, ACFE No. 95403, along with The Institute of Internal Auditors, and am highly competent with the state and federal disclosure requirements in federally related mortgage loan transactions.

4. I am proficient and knowledgeable on the Truth in Lending Act, TILA Rescission Rights, foreclosure litigation, mortgage-backed securitization and how these issues find applicability in judicial foreclosure actions. In the course of my consultant work I have read and/or reviewed hundreds of mortgage loan related documents including, but not limited to: home loan disclosures, settlement statements, appraisals, underwriting and processing documents, mortgages, notes, Allonge, assignments, complaints, affidavits and trust documents such as pooling and servicing agreements, prospectuses and prospectus supplements.

5. I perform regular forensic and fraud examinations along with ongoing research into the securitization, sale and transfer aspects of residential mortgage loans and mortgage-backed securities and am proficient in applying that research to the particular facts in a given foreclosure case. I can testify as an expert witness in proceedings and depositions relative to my expert opinions filed in this case should that be requested.

6. On December 28, 2012 I completed a security audit for Carolyn S. Deaner , on a Promissory Note and a Deed of Trust dated June 26, 2007, and recorded in the Aiken County Recorders Office in Aiken County, South Carolina; and

7. The original lender is Quicken Loans, Inc. with a Principal Amount $97,600 of the loan number: 3212186468 with a maturity date of August 1, 2037; and

8. Quicken Loans, Inc. and its affiliates securitized the subject loan after closing in 2007; and

9. A search the filings with the Securities and Exchange Commission for securitization trusts that were established in the year 2007 indicates that the trust into which the subject loan was securitized would be in a private Fannie Mae Trust; and

10. A letter from Bank of America, NA dated March 1, 2012 discloses that the investor on the subject loan is Fannie Mae or the Federal National Mortgage Association (FNMA); and

11. On April 29, 2011, an Assignment of Mortgage was executed by Mortgage Electronic Registration Systems, Inc. This document names the assignee as BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, LP. BAC Home Loans Servicing, LP was succeeded by merger by Bank of America, NA.; and

12. Whether or not the assignments and endorsements were property executed and if any fraud was involved in this loan, as of December 28, 2012 can only be determined upon actual examination of the mentioned documents.

End of Report

VERIFICATION

I, Charles K. Lamm of legal age and of sound mind and competent, with firsthand knowledge, in good faith swears under the penalty of perjury: the telling of the truth, the whole truth, and nothing but the truth and asserts as correct, complete and not misleading for the best of my understanding, knowledge, information and belief, subscribes on the herein verified Affidavit by, before me, on December 28, 2012; and

Affirmed by: _____

Charles K. Lamm, Fraud Examiner CFE- IA-ACFE #95403
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Vero Beach Florida 32966
(772) 563-3537 Fax: (772) 205-3767
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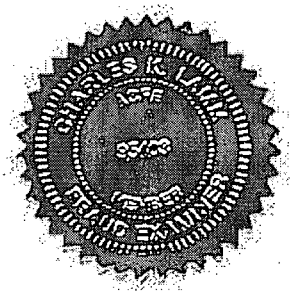
The Institute of Internal Auditors



Note: This affidavit is in support of the securitization findings for Carolyn S. Deaner, loan number: 3212186468. This affidavit is in support of paragraphs 6- 12. The examiner cannot offer any other conclusion of any other report. The results and/or findings of this report are independent of any other professional auditor or Fraud Examiner.

DESIGNATION: 16

16. Defendant Deaner's Memorandum Against Plaintiff's Motion for Summary Judgment...filed 10/30/13

    (contains pages 1-2)

    Affidavit of Carolyn S. Deaner...filed 10/30/2013

    (contains page 1)

    FILED TOGETHER

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	COURT OF COMMON PLEAS
BANK OF AMERICA, NA ET Plaintiff, CAROLYN S. DEANER Defendants.	))))))	CASE NO. 2012-CP-02-699 DEFENDANT DEANER'S MEMORANDUM AGAINST PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Plaintiff filed a Motion on August 26, 2013 to strike the Defendant's Answer or in the Alternative, to move for Summary Judgment. The Defendant wishes to respond as follows:

Defendant admits that she filed a Chapter 7 bankruptcy in which she discharged unsecured debt and TACITLY admitted that she owed Bank of America and that they had a lien on the property that is the subject of this matter. The Defendant Deaner was completely honest in her bankruptcy filings of the facts as she knew them at the time. She was unaware of the issues regarding the Mortgage of this case and has exercised her right to assert defenses in this case. Ms. Deaner was honest with the Bankruptcy Court that hers was a "no asset case" and her discharge of the unsecured debt was proper. The Plaintiff has no standing to contest the issues of the discharge of the unsecured debts anyway.

In order for judicial estoppel to apply in a given case, the following elements must be met:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. Cothran, 357 S.C. at 216, 592 S.E.2d at 631 (citing Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001)).

All five of these elements must be met for the Defendant's Answer to be stricken under the doctrine of judicial estoppel. With regards to (4) above, It is absurd to assume and Plaintiff has no proof that the inconsistency of the 2011 Bankruptcy and the 2012 foreclosure case were intentional. Simply, Ms. Deaner did not know the problems with her mortgage and the defenses that were available to her. Had she known in 2011 what she knew in 2012, Ms. Deaner would have contested the validity of her mortgage in the 2011 bankruptcy. With regards to (3) above, Ms. Deaner received no benefit vis a vis the

10.30.13
1.10 pm

Plaintiff in asserting a position that was favorable to the Plaintiff when she took the position that the Plaintiff's mortgage lien was valid. With regards to (2), the bankruptcy case of 2011 is not related to the 2012 foreclosure case. With regards to (5) above, the positions taken by Ms. Deaner are not totally inconsistent. Ms. Deaner only acknowledged the lien in the Bankruptcy TACITY, before she understood the defenses to the foreclosure available to her. Ms. Deaner did not admit the validity of the debt which she received a discharge from in the bankruptcy. Ms. Deaner is contesting the debt and now the lien that goes with it since she understands the circumstances behind the mortgage better. Again, Ms. Deaner was acting in good faith and not intentionally misleading the bankruptcy Court in Georgia or this Court by now contesting her mortgage.

There is a genuine issue of material fact as to whether or not Ms. Deaner misled the court, which she did not. Therefore, the Summary Judgment requested by Plaintiff must be denied.

Respectfully submitted,

William H. Sloan
Bar No. 69630
1055-F North Main St.
Summerville, SC 29483
843-873-7531
Fax 843-873-7527
Attorney for Defendant
October 18, 2013

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
BANK OF AMERICA, NA ET	)	CASE NO. 2012-CP-02-699
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF
CAROLYN S. DEANER	)	CAROLYN S. DEANER
Defendants.	)	

Comes now Carolyn S. Deaner, who first being duly sworn, states as follows:

1. I am the Defendant in this case.
2. I filed Bankruptcy in Georgia in 2011, prior to the Foreclosure being filed in this case.
3. After I finished bankruptcy in 2011, and before this foreclosure was filed, I realized I had claims and defenses to the foreclosure, and I have asserted them in this case.
4. I did not intend or have intentions to mislead the Court either in this case or in the previous bankruptcy Court as the bankruptcy attorney only requested statements of bills to list on the document and accounts were not reaffirmed or litigated as Plaintiff did not appear at the bankruptcy hearing.
5. I initially was being represented by legal aid in this case. I was then Pro Se after legal aid was relieved as my attorney prior to hiring Mr. Sloan. Mr. Sloan has prepared a brief which is being filed at the same time as this Affidavit which shows that judicial estoppel should not bar my defenses and claims in this case.
6. I reaffirm these defenses as I challenge and deny that the document in Korn Law Firm's file is in fact the original Note that I signed at the closing.

Carolyn S. Deaner

Sworn to and subscribed before me this 23rd day of October, 2013.

Notary Public for South Carolina-Georgia

Commission expires 2/1/2020

10.30.13

1:10pm

CINTHYA DIAZ
COM. EXP.
NOTARY
PUBLIC
2-1-2020
SOUTH CAROLINA

THE LAW OFFICES OF
LEE RINGLER*
808 GREENE STREET, SUITE 200
AUGUSTA, GEORGIA 30901
lringler@leeringler.com
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www.leeringler.com
FAX: (706) 724-1644

October 1, 2013

Re: Carolyn Deaner
Chapter 7 Case No. 11-10874

To whom it may concern:

Please be advised that according to the attached Court docket, there does not appear to be any reaffirmation agreements filed in the above-entitled case. The case was discharged on December 23, 2011 and closed on January 17, 2012.

Sincerely,

Lee Ringler

Enclosure

*** The Law Offices of Lee Ringler, designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States, proudly assist consumers seeking relief under the US Bankruptcy Code.**

DESIGNATION: 17

17. Defendant's Answer to Original Complaint and Affirmative Defenses And Counterclaim...filed 12/23/2013.

    (contains pages 1-7)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **DEFENDANT'S ANSWER TO ORIGINAL COMPLAINT AND AFFIRMATIVE/~~COUNTERCLAIM~~ DEFENSES AND COUNTERCLAIM** **DOCKET NO. 2012-CP-02-00699**

DEFENDANT'S DEANER'S ANSWER TO ORIGINAL COMPLAINT AND AFFIRMATIVE DEFENSES AND COUNTERCLAIM

Now comes Defendant, through her undersigned attorney, to Answer the Complaint filed against her in this case.

I. ANSWERS TO THE ALLEGATIONS OF THE COMPLAINT

Any item not fully admitted is denied and strict proof thereof is demanded.

1. Defendant admits No. 1 of Complaint that she resides in Aiken County, SC. Defendant cannot admit or deny the remainder of No. 1 of the Complaint.

2. Defendant does not need to answer No. 2 of Complaint as there are no other defendants in this case.

3. Defendant admits No. 3 of Complaint.

4. Defendant admits No. 4 of Complaint.

5. Defendant admits No. 5 of Complaint that she signed a mortgage in favor of non-party MERS, Inc. while denying the validity and legality of MERS, Inc. to assign

FILED 12 23 13
C.P.&G.S.
Deputy Clerk

the mortgage or anything else to anybody and while denying that MERS. Inc. is the nominee for Quicken. Loans. Inc. as MERS is merely a tracking entity for the alleged loan and not a nominee.

6. Defendant admits No. 6 of Complaint.

7. Defendant admits No. 7 of Complaint.

8. Defendant is without information sufficient to admit or deny No. 8 of Complaint.

9. Defendant denies No. 9 of Complaint.

10. Defendant is without information to admit or deny No. 10 of Complaint.

11. Defendant is without information to admit or deny No. 11 of Complaint.

12. Defendant is without information to admit or deny No. 12 of Complaint.

13. No. 13 of Complaint is not applicable as the property is owner occupied.

14. Defendant denies that there has been a default and is without information sufficient to admit or deny No. 14 of Complaint.

15. Defendant admits No. 15 of Complaint.

16. Defendant denies No. 16 of the Complaint that the **Admin. Order of 2009** has been complied with and demands strict proof thereof.

17. No. 17 of Complaint cannot be answered by the Defendant since it does not state whether costs contemplated in No. 17 have occurred.

18. Defendant denies No. 18 of Complaint. The Mortgage of this case requires a right to cure letter and Defendant denies receiving same.

II. AFFIRMATIVE DEFENSE ONE- STANDING

19. Defendant repeats §1-18 of the Complaint as it retyped verbatim right here.

20. Defendant asserts that the Plaintiff lacks the standing needed to maintain this foreclosure action.

III. AFFIRMATIVE DEFENSE TWO- CHALLENGE ORIGINAL NOTE

21. Defendant repeats §1-20 of this Answer as if retyped verbatim right here.

22. Defendant challenges the authenticity of the document in the Plaintiff's file that purports to be the original note. The original note is required for the Plaintiff to maintain this action.

IV. AFFIRMATIVE DEFENSE THREE- INVALID ASSIGNMENT

23. Defendant repeats §1-22 of this Complaint as if retyped verbatim right here.

24. Defendant challenges the validity of the Mortgage Assignment in this case since it came from Mortgage Electronic Registration Systems, Inc. non-party and not listed on the Note.

V. AFFIRMATIVE DEFENSE FOUR- UNSECURED DEBT

25. Defendant repeats §1-24 of this Answer as if retyped verbatim right here.

26. The ownership of the Note and the Mortgage have been separated in this action based on the Mortgage being the name of MERS, Inc. who is never mentioned on the Note. The debt in this case is at best an unsecured debt and therefore, the Defendant should be able to assert homestead rights and/or owe the Plaintiff nothing since she has received a discharge of the debt itself in Chapter 7 bankruptcy.

VI. AFFIRMATIVE DEFENSE FIVE- LACK OF PROOF OF AGENCY RELATIONSHIP

27. Defendant repeats §1-26 of this Answer as if retyped verbatim right here.

28. Plaintiff has failed to plead the agency relationship between MERS and Quicken Loans, the original creditor as to the Mortgage Assignment. Further, there is no proof

of the agency relationship between the owner of the note and the Plaintiff who is nothing but the servicer.

VII. AFFIRMATIVE DEFENSE SIX- LACK OF PROOF OF AGENCY RELATIONSHIP

29. Defendant repeats §1-28 of this Answer as it retyped verbatim right here.

30. Plaintiff has failed to plead or show proof of the agency relationship between the owner of the note and the Plaintiff who is nothing but the servicer.

VIII. AFFIRMATIVE DEFENSE SEVEN- LACK OF DAMAGES

31. Defendant repeats §1-30 of this Answer as if retyped verbatim right here.

32. Plaintiff, as merely the servicer, has suffered no damages as the results of any alleged failure of the Defendant to pay.

IX. AFFIRMATIVE DEFENSE EIGHT- LACK OF CAPACITY TO SUE

33. Defendant repeats §1-32 of this Answer as if retyped verbatim right here.

34. Plaintiff has failed to plead its capacity to sue. Plaintiff has not mentioned what state it is incorporated in, nor have they stated whether they have the authority to maintain this proceeding in South Carolina.

X. AFFIRMATIVE DEFENSE NINE- PLAINTIFF FAILED TO SHOW ITSELF AS OWNER OF THE NOTE OR PLEAD SO AT THE TIME THE ACTION WAS FILED- MOTION TO DISMISS, RULE 12-B-6 AND RULE 12-B-1

35. Defendant repeats §1-34 of this Answer as if retyped verbatim right here.

36. Plaintiff has failed to plead that it was the owner or the holder of the Note in this case at the time that the case was filed.

37. The Court can dismiss the case under Rule 12-b-6, SCRCP, for failure to state facts sufficient where relief can be granted or under Rule 12-b-1, SCRCP as the Court would then lack subject matter jurisdiction.

XI. AFFIRMATIVE DEFENSE TEN- NOTE IS NOT NEGOTIABLE INSTRUMENT

38. Defendant repeats §1-37 of this Answer as if retyped verbatim right here.

39. The note of this case is not a negotiable instrument under the South Carolina UCC. Therefore, the Note must have valid assignments to be transferred. As this is not the case, the Plaintiff lacks standing to bring this action.

40. The Note of this case is a "Fannie Mae" note. Please see attached Exhibit A, a letter from Fannie Mae, stating that their Notes are tied in with the Mortgages which make the notes non-negotiable.

XII. AFFIRMATIVE DEFENSE ELEVEN- FAILURE TO STATE SUFFICIENT FACTS TO SUE ON THE NOTE

41. Defendant repeats §1-40 of this Answer as if retyped verbatim right here.

42. The Complaint should be dismissed as it fails to state facts sufficient to grant relief per Rule 12-b-6, SCRCP in that it fails to plead or show any exhibits showing the assignment of the Note from original creditor to the Plaintiff. Under South Carolina law, the mortgage follows the Note. Therefore, the case should be dismissed since they, not as the original creditor, have failed to show, per Article 3 of the UCC, or otherwise, their standing to sue with regards to the Note.

XIII. AFFIRMATIVE DEFENSE TWELVE- DID QUICKEN LOANS FUND THE LOAN

43. Defendant repeats §1-42 of this Answer as if retyped verbatim right here.

44. Upon information and belief, since this is a "Mers" loan and since the note is a "Fannie Mae" note, the Defendant is upon information and belief, that the original "lender", Quicken Loans, did not fund the loan, but rather a securitized mortgage trust funded the loan.

45. If 44 is shown to be true, then the documents do not reflect the transaction and the Plaintiff lacks the standing to sue since they lent Ms. Deaner no value.

XIV. AFFIRMATIVE DEFENSE THIRTEEN- ARTICLE 3 OF UCC DOES NOT APPLY SINCE THE LOAN HAS BEEN SECURITIZED

46. Defendant repeats §1-45 of this Answer as if retyped verbatim right here.

47. Upon information and belief, the loan that is the subject of this matter has been securitized into a Fannie Mae securitized mortgage trust.

48. Assuming that 47 is true, the Note that is the subject of this case is not a negotiable instrument under Article 3 of the UCC, but rather a security under Article 8 and there would be required specific assignment of the Note.

XV. AFFIRMATIVE DEFENSE- FOURTEEN- LACHES

49. Defendant repeats §1-48 of this Answer as if retyped verbatim right here.

50. Defendant asserts the equitable defense of laches to bar the Plaintiff from recovery in this action.

XVI. AFFIRMATIVE DEFENSE FIFTEEN -COUNTERCLAIM ONE- VIOLATION OF FDCPA- OFFSET

51. Defendant repeats §1-50 of this Answer as if retyped verbatim right here.

52. Defendant asserts that the Plaintiff has violated the Fair Debt Collection Practices Act by misrepresenting the nature of the debt in not disclosing in the Complaint they are only the servicer and the true owner of her note.

XVII. AFFIRMATIVE DEFENSE SIXTEEN- UNCLEAN HANDS

53. Defendant repeats §1-52 of this Answer as if retyped verbatim right here.

54. Defendant asserts the equitable defense of unclean hands of the Plaintiff.

XVIII. RESERVATION OF DEFENSES

55. Defendant repeats §1-54 of this Answer as if retyped verbatim right here.

56. Defendant reserves all defenses and/or counterclaims that may come to light at a later date not known now.

WHEREFORE, Defendant Deaner requests this Honorable Court the following relief:

A. Dismissal of this case with prejudice;

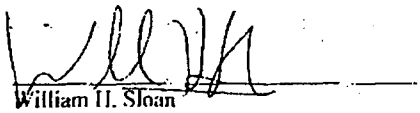
B. Satisfaction of the mortgage that is the record of this case;

C. Judgment for Defendant under the FDCPA for $1,000 for said violation plus attorney's fees;

D. Costs of this action;

E. Any other such relief that this Court deems prudent, just and proper.

Respectfully Submitted.



William H. Sloan
Attorney for Defendant
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
sloanlawfirm@yahoo.com

December 17, 2013

DESIGNATION: 18

18. Order Granting Motion for Summary Judgment...filed 3/27/14.

    (contains pages 1-6)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP.

PLAINTIFF,

vs.

Carolyn S. Deaner,

DEFENDANTS.

L12-00992

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-02-00699

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

3.27.14

Liz Godard
CC.C.P.&G.S.

Anita Knoepfle
Deputy Clerk

This matter came before me on November 19, 2013 for a hearing on Plaintiff's Motion to Strike Answer or in the Alternative for Summary Judgment. Present at this hearing was Chris S. Truluck, attorney for the Plaintiff, William H. Sloan, attorney for Defendant Carolyn S. Deaner, and Carolyn S. Deaner.

As supported by Plaintiff's Affidavit, submitted by Vanessa Hartley, and in the absence of affidavits or evidence to the contradictory, the facts are uncontested as follows. On March 4, 2011, Defendant filed a voluntary Chapter 7 bankruptcy petition in the Southern District of Georgia. Defendant's petition provided, "I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct." Defendant listed Plaintiff's predecessor and the property subject to this foreclosure action in her petition and, in response to Schedule B inquiry twenty-one, she provided that as to any "contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims" she had none. Defendant was discharged from bankruptcy and the action closed on Janauary 17, 2012. Plaintiff filed this foreclosure action against the Defendant on March 19, 2012. Defendant filed her Answer and

Front #1

Counterclaim against the Plaintiff on or about July 3, 2013. On August 26, 2013, Plaintiff filed its Motion to Strike Answer or in the Alternative for Summary Judgment. Defendant filed an affidavit in response on October 30th, 2013.

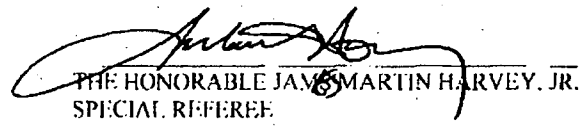
"Once a debtor files for bankruptcy in the federal court, an estate is created that is comprised of 'all legal or equitable interests of the debtor in property as of the commencement of the case.'" 11 U.S.C.A. §541 (a)(1) (2004). "When bankruptcy proceedings close, 'any assets, including claims, that were scheduled by the debtor but not disposed of are deemed abandoned and revert to the debtor.'" *Tyler House Apartments, Ltd. V. U.S.*, 38 Fed. Cl. 1, 6 (1997). "Unscheduled claims, however, remain under the control of the bankruptcy trustee. *Id.* "If a cause of action belongs to the estate, then the trustee has exclusive standing to assert the claim." *In re Educators Group Health Trust*, 25 F.3d 1281, 1284 (5th Cir. 1994) (citation omitted). "The grant of summary judgment [is] proper based on the determination that [Defendant] lack[s] standing to assert the defenses and counterclaims that she raised in her responsive pleadings." *Midfirst v. Brooks*, No. 196, slip op. at 2 (Ct. App. 2008) (granting summary judgment on counterclaims and defenses where Defendant failed to list counterclaims and defenses contained in her responsive pleadings in her bankruptcy petition).

Similarly, [u]nder Rule 56, SCRCP, when a party makes a motion for summary judgment and supports it by affidavits the adverse party may not rest on the allegations of his pleadings but must respond by affidavits or other evidence demonstrating a genuine issue of material fact." *Klippel v. Mid-Carolina Oil, Inc.*, 303 S.C. 127, 129, 399 S.E.2d 163, 164 (Ct.App. 1990). Defendant's affidavit, filed in response to Plaintiff's motion, fails to present any evidence to contradict the factual account as provided above and states only, "[a]fter I finished bankruptcy in 2011, and before this foreclosure was filed, I realized I had claims . . . ." She also failed to

present any evidence to create a genuine issue of material fact as to the allegations contained in her responsive pleadings.

THEREFORE, IT IS ORDERED that Plaintiff's Motion for Summary Judgment be and hereby is granted, and the Defendant's counterclaims and defenses are hereby dismissed in accordance with this order.

IT IS ORDERED.



THE HONORABLE JAMES MARTIN HARVEY, JR.
SPECIAL REFEREE

Barnwell, South Carolina
~~January~~ March 11, 2014

#3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-02-0699

BANK OF AMERICA, N.A. ETC.

PLAINTIFF(S)

CAROLYN S. DEANER

DEFENDANT(S)

Submitted by: J. MARTIN HARVEY

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. ☐ See Page 2 for additional information.

☐ **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 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)
		$
		$
		$

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.**

Circuit Court Judge

Judge Code

March 11, 2014
Date

For Clerk of Court Office Use Only

This judgment was entered on the 27 day of MARCH, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 27 day of MARCH, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Chris S. Truluck, Esq.	William H. Sloan, Esq.
Korn Law Firm	Sloan Law Firm, PA
P. O. Box 12369	P.O. Box 85
Columbia, SC 29211-2369	Summerville SC 29484
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

Liz Godard by Ashleigh
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	C/A NO: 2012-CP-02-00699
Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, PLAINTIFF, vs. Carolyn S. Deaner, DEFENDANT(S).	**CERTIFICATE OF MAILING**

F12-00992

The undersigned hereby certifies that on March 25, 2014, he served one copy of the Order Granting Plaintiff's Motion for Summary Judgment upon the following by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

William H. Sloan, Esq.
Sloan Law Firm, P.A.
Post Office Box 85
Summerville, SC 29484

Dustin A. Brasington
Litigation Paralegal

Columbia, South Carolina

3-27-14
Amy Redgate
T.C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

DESIGNATION: 19

19. Memorandum of Law to Support Motion to Reconsider (Summary Judgment)...filed 7/21/14. (contains pages 1-4)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	))	COURT OF COMMON PLEAS
BANK OF AMERICA, NA ET	)	CASE NO. 2012-CP-02-699
Plaintiff,	)	
CAROLYN S. DEANER Defendants.	))	MEMORANDUM OF LAW TO SUPPORT MOTION TO RECONSIDER

7.21.14
Lis Godard
C.C.P.&G.S.
Anita Knoepfle 12:50
Deputy Clerk

Defendant respectfully moves before this Court to reconsider the Summary Judgment granted by this Court in its ruling in March based on the following:

For the reasons stated, Defendant asks that Summary Judgment for the Plaintiff in this case be reconsidered and the Defendant's defenses and counterclaims be reinstated for the following reasons:

1. **There is a genuine issue of material fact as to whether or not Plaintiff has the original note and standing to sue.**

In the Defendant's Response to Request for Admit, which the Court allowed to answer late, the Defendant denied the Plaintiff has possession of the original note. Further, this denial was also included in the Affidavit of Ms. Deaner filed in December 2013. Therefore, the Plaintiff must establish that they can foreclose which for now is a genuine issue of material fact to deny Summary Judgment and Reconsider Judgment for same.

2. **Plaintiff's 12-b-6 Motion has not been heard and brings up genuine issues of material fact.**

The Plaintiff's Notice of Hearing refers to all outstanding motions. Defendant has sent the Plaintiff Notice of Hearing for the 12-b-6 Motion filed by Ms. Deaner on April 12, 2012, at the outset of the case when she was pro-se. It has been an oversight of the case that this hearing has never taken place, although it should have been heard at the beginning of the case. Mr. Protheroe, the first attorney for Ms. Deaner, filed a brief in favor of this Motion and this brief has been filed with the Motion. Plaintiff's counsel and Mr. Protheroe discussed allowing Plaintiff to amend their Complaint, but no one on behalf of the Defendant consented to this amendment. Plaintiff improperly filed the Motion to Amend Complaint on June 10, 2013 during a 60 day stay of this case and further, this Motion has never been heard, nor has the Plaintiff attempted to schedule this. Before Summary Judgment can be granted and upheld, this Motion filed by Ms. Deaner on April 12, 2012, must be heard.

3. **The Answers to Request to Admit deny other material facts that the Plaintiff has not shown.**

In addition to No. 1, with regards to the original note, the Defendant has denied many genuine issues of material fact that the Plaintiff has yet to prove true. The Court in the hearing on November 19 allowed the Defendant to file late Answers to Requests to Admit, but required the Defendant to modify them. The Defendant did so. In No. 6, they denied that the Note, even if it is the original, was properly assigned to Plaintiff. She further denies in No. 7 that the Mortgage was properly assigned. Further, the Plaintiff has failed to show that it had the standing to bring this case on the date that this case is filed which is a requirement to foreclose.

Further in No. 8 and No. 9, Defendant denies that there has been a default and that default has been cured. This includes, but is not limited to the acceleration Notice that is required under No. 22 of the Mortgage of this case. Plaintiff has failed to show a proper acceleration letter that was sent to Defendant which is a requirement to accelerate the loan and start foreclosure.

4. **Plaintiff has failed to show all elements of judicial estoppel to prevail on this issue.** In order for judicial estoppel to apply in a given case, the following elements must be met:

(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. Cothran vs. Brown, 357 S.C. at 216, 592 S.E.2d at 631(2004) (citing Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001))."

All five of these elements must be met for the Defendant's Answer to be stricken under the doctrine of judicial estoppel. With regards to (4) above, It is absurd to assume and Plaintiff has no proof that the inconsistency of the 2011 Bankruptcy and the 2012 foreclosure case were intentional. Simply, Ms. Deaner did not know the problems with her mortgage and the defenses that were available to her. Had she known in 2011 what she knew in 2012, Ms. Deaner would have contested the validity of her mortgage in the 2011 bankruptcy. With regards to (3) above, Ms. Deaner received no benefit vis a vis the Plaintiff in asserting a position that was favorable to the Plaintiff when she took the position that the Plaintiff's mortgage lien was valid. With regards to (2), the bankruptcy case of 2011 is not related to the 2012 foreclosure case. With regards to (5) above, the positions taken by Ms. Deaner are not totally inconsistent. Ms. Deaner only acknowledged the lien in the Bankruptcy TACITY, before she understood the defenses to the foreclosure available to her. Ms. Deaner did not admit the validity of the debt which she received a discharge from in the bankruptcy. Ms. Deaner is contesting the debt and now the lien that goes with it since understands the circumstances behind the mortgage better. Again, Ms. Deaner was acting in good faith and not intentionally misleading the bankruptcy Court in Georgia or this Court by now contesting her mortgage.

Mr. Truluck maintained his client's position that Ms. Deaner was misrepresenting the Courts, this Court and the Bankruptcy Court in the Southern District of Georgia where she received her discharge in 2011. But Mr. Truluck presented delivered no evidence of this misrepresentation. He did not counteract the affidavit that Ms. Deaner filed in opposition to the Plaintiff's Motion. The court questioned Ms. Deaner, who attended the hearing on various relevant issues of this case, including her bankruptcy and placed her under oath when she answered these questions. Mr. Truluck could have questioned Ms. Deaner under oath as to her intentions to mislead, but he asked no questions of Ms. Deaner and therefore, has failed to show any intent to misrepresent this Court or the Bankruptcy Court in 2011. Plaintiff has certainly failed to prove No. 4 of the elements of judicial estoppel and has failed to prove some of the other elements as well as stated previously.

There is a genuine issue of material fact as to this issue and therefore, summary judgment should be denied and Defendants' counterclaims and affirmative defenses should be allowed to proceed as modified by the Defendant's new counsel. There is a genuine issue of material fact as to whether or not Ms. Deaner misled the court, which she did not. Mr. Truluck waived his chance to question Ms. Deaner on this subject in the hearing on November 19, 2013. Therefore, the Summary Judgment requested by Plaintiff must be denied by this Court and allow the case to continue into discovery.

5. **Argument against "Bankruptcy" estoppel-**

At the hearing on November 19, the Plaintiff cited ***Midfirst Bank vs. Brooks,*** an unpublished opinion from the Court of Appeals from 2008. This case was successfully argued by Plaintiff's law firm representing them in this case that Brooks was estopped from bringing counterclaims and defenses against Midfirst Bank because she did not assert them in her Chapter 13 bankruptcy. However, this case is an unpublished opinion and it lacks any precedential value. Further, Brooks knew of her defenses to the foreclosure and did not assert them which further distinguishes this from Deaner as she was unaware of the defenses available to her when she filed her bankruptcy in 2011. This Equity Court, sitting as a fact-finder, should allow all of the facts and allow Ms. Deaner a full and fair chance to assert all defenses available to her as outlined in her Answer, modified by her new attorney. The "bankruptcy estoppel" argument should not be allowed to give the Plaintiff a summary judgment in this case.

Further, Bank of America lacks the standing to challenge any issues in the bankruptcy of Ms. Deaner. Only the Trustee or unsecured creditors of Ms. Deaner could challenge the discharge of Ms. Deaner and none did so. Bank of America was harmed in no way by Ms. Deaner's bankruptcy with regards to her lien. Bank of America did not object, to the discharge of Ms. Deaner.

Further, Ms. Deaner knows she has valid challenges to the foreclosure in Aiken County that she may not have had available in her bankruptcy case. She knew that Judge Griffith requires a Plaintiff bring an original note to Court in order to foreclose. (This case would have been with Judge Griffith as Master in Equity for Aiken County but for his rightful

recusal). Ms. Deaner filed her bankruptcy voluntarily and filed in order to rid herself of unsecured debt. She did not reaffirm the mortgage debt to Bank of America as the Korn Law Firm well knows when they researched her bankruptcy on PACER. Therefore, the "bankruptcy estoppel" argument must fail.

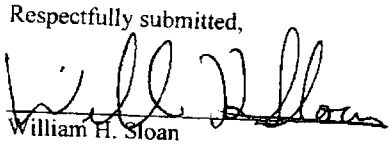
It is certainly possible and is the fact in this case that Ms. Deaner acknowledged the debt as legitimate in her **Georgia, federal court, bankruptcy**. This does not mean that she has defenses available to her in this **South Carolina, state court, foreclosure**. Reference is craved to the proposed Answer that the undersigned filed for Defendant. These are not counterclaims, and rights to setoffs. These are defenses to the foreclosure available to the Defendant in this South Carolina court for foreclosure. This includes, but is not limited to, the following defenses in the Amended Answer filed in December 2013:

1. The 12-b-6 Motion that will be heard by the Court on August 12, 2014 for the deficiencies in the Complaint
2. The equitable defense of laches
3. The equitable defense of unclean hands
4. The possible lack of subject matter jurisdiction of this Court also mentioned in the proposed Answer.

In viewing Ms. Deaner's bankruptcy in this light versus the defenses available to her in this foreclosure, the judicial estoppel argument of Plaintiff must fail.

Defendant, therefore, respectfully asks the Court reconsider the Summary Judgment previously entered against her.

Respectfully submitted,



William H. Sloan
Bar No. 69630
1055-F North Main St.
Summerville, SC 29483
843-873-7531
Fax 843-873-7527
Attorney for Defendant
July 17 2014

DESIGNATION: 20

20. SECURITIZATION REPORT, AFFIDAVIT AND JURAT...filed 8/5/2014 and previously on 9/20/13.

(Contains Report pages 1-23, Verified Affidavit, Verification pages1-3, and Jurat Page 1)

Carolyn S. Deaner

[illegible]
[illegible]

December 3, 2012

C O P Y
ORIGINAL FILED

AUG 05 2014

AIKEN COUNTY
CLERK OF COURT

Carolyn S. Deaner

[illegible]

[illegible]

December 3, 2012

COPY
ORIGINAL FILED
SEP 2 4 2013
AIKEN COUNTY
CLERK OF COURT

Exhibit "A"

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The Debt & the Security Instruments

General	Principal Amount	$97,600
	Date Granted	June 26, 2007
	Maturity Date	August 1, 2037
	Term	30 Years
The Debt Instrument	Type of Note	Fixed Rate Note
	Initial Interest Rate	7.000%p.a.
	First Interest Rate Change Date	Not Applicable
	Loan Number	3212186468
The Security Instrument	Type of Document	Mortgage
	Date Executed	June 26, 2007
	Lien Priority	First Lien
	MERS ID Number	1000390-3212186468-6

The Parties to the Debt & the Security Instruments

Borrower	Name	Carolyn S. Deaner
	Mailing Address	704 Kershaw Drive North Augusta SA 29841
	Property Address	704 Kershaw Drive North Augusta SA 29841
Co-Borrower	Name	None
Lender	Name	Quicken Loans, Inc.
	Mailing Address	PO Box 553154 Detroit MI 48255
Mortgagee	Name	Mortgage Electronic Registration Systems, Inc.
	Mailing Address	PO Box 2026 Flint MI 48501
Mortgage Servicer	Name	Bank of America, NA
	Mailing Address	400 Countrywide Way Simi Valley CA 93065
Title Company	Name	LSI
	Mailing Address	700 Cherrington Parkway Coraopolis PA 15108

Findings, The Debt & the Security Instruments

1 The loan that is the subject of this securitization audit was granted on June 26, 2007. The Promissory Note names Quicken Loans, Inc. as the originating lender. It is a fixed rate note with a term of 30 years to mature on August 1, 2037.

2 The Mortgage was executed on the same date. The mortgagee is Mortgage Electronic Registration Systems, Inc. as nominee for the lender. This instrument secures the debt of the borrower to the lender including interest thereof. The mortgaged property is located at 704 Kershaw Drive, North Augusta, South Carolina 29841.

3 A mortgage statement dated July 30, 2012 discloses that the subject loan is serviced by Bank of America, NA.

The Search for a Securitization Trust

1 A letter from Bank of America, NA dated March 1, 2012 discloses that the investor on the subject loan is Fannie Mae or the Federal National Mortgage Association (FNMA).

2 This loan is a securitized loan in a private Fannie Mae Trust.

Notes on the Chain of Title and the Foreclosure Process

1 On April 29, 2011, an Assignment of Mortgage was executed by Mortgage Electronic Registration Systems, Inc. This document names the assignee as BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, LP. BAC Home Loans Servicing, LP was succeeded by merger by Bank of America, NA.

2 As of December 3, 2012, the examiners' date of report, no action has yet been initiated in order to foreclose on the property that was mortgaged to secure the note on the subject loan based on the documents that were presented for examination.

Notes on MERS

1. According to the Mortgage, the lender is Quicken Loans, Inc. and the mortgagee is Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for the lender. The Promissory Note also states that the lender is Quicken Loans, Inc. but does not name Mortgage Electronic Registration Systems, Inc. as a party in any capacity whatsoever.

2. There are provisions in the Mortgage that states that (a) "MERS is nominee for the lender," and (b) "MERS is the mortgagee under this Security Instrument." The first statement means that MERS is only an agent for the lender while the second means that MERS is a principal in this instrument.

   These statements contradict a law that presupposes that an agent and its principal must be two different persons or entities (Restatement of the Law – Agency, Section 1.01, Agency, defined).

3. A mortgagee is defined as "he to whom a mortgage is made. He is entitled to the payment of the money secured to him by the mortgage; he has the legal estate in the land mortgaged, and may recover it in ejectment, on the other hand he cannot commit waste, he cannot make leases to the injury of the mortgagor, and he must account for the profits he receives out of the thing mortgaged when in possession" (lawlect.com).

   A mortgage statement dated July 30, 2012 discloses that the loan is serviced by Bank of America, NA. Bank of America, NA is successor by merger to BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, LP. It is the servicer who receives payments on the loan on behalf of the lender or investor.

   A letter from the servicer dated March 1, 2012 discloses that the investor on the subject loan is the Federal National Mortgage Association (Fannie Mae). From this viewpoint, it is clear that Bank of America, NA is acting as servicer for Fannie Mae and not for MERS.

   The assignment dated 7/16/2007 made by mers is fraudulent, and mers has no authority to make such an assignment. The assignment is a fraudulent assignment. Furthermore, the robo signers on the document make the document a fraudulent document and non-executable.

Notes on Robo-Signing

What is Robo-Signing?

In the foreclosure industry, robo-signing is the practice of an employee signing thousands of documents and affidavits without verifying the information contained therein. Some reports have revealed that one bank official signed off on almost 10,000 documents in one month. The practice calls into question the validity of thousands of mortgage foreclosures across the country.

Banks have been under investigation since 2010 for their part in the robo-signing scandal which resulted in many homeowners losing their homes without merit. After the scandal came to light, the banks said they would no longer engage in this practice. However, as recently as July 2011, it was discovered that mortgage robo-signing still continued.

As a result, lawmakers called for hearings and pushed for greater oversight on banks which led to all 50 state Attorneys General filing law suits against the nation's top five banks, among them Bank of America, Chase, Ally Financial, and CitiMortgage. State Prosecutors and the United States government offered a settlement deal of $26 billion dollars which is the largest settlement in the history of this country.

1. Assignment of Mortgage

   The Assignment of Mortgage that was executed by Mortgage Electronic Registration Systems, Inc. on April 29, 2011 was signed by Dominique Johnson, Assistant Secretary, witnessed by Cynthia Santos and Malik Basurto and was notarized by Deborah L. Beard, a notary public of Ventura County, California.

   Dominique Johnson, Cynthia Santos, Malik Basurto, and Deborah L. Bearch are all listed as robo-signers. The links leading to this information are provided herein.

   1.1. Dominique John, Cynthia Santos, and Malik Basurto.

   http://takeyourhomeback.com/?p=1141

   1.2. Deborah L. Beard

   http://livinglies.wordpress.com/2012/05/25/ok-lawyers-step-up-to-this-one-it-is-literally-a-no-brainer/

The Examiner's Closing Statement

From the foregoing findings, the examiners conclude, based on an examination of the documents presented, the subject loan is now owned by the Federal National Mortgage Association.

All pertinent loan and security documents are assumed to be in the possession of the present assignee. However, a cause for the separation of the Promissory Note and the Mortgage would be the nomination of Mortgage Electronic Registration Systems, Inc. as mortgagee. This was done in order to eliminate the need for executing and recording the assignment of Mortgages, with the idea that it would be the mortgagee on record.

Whether or not the Promissory Note and the Mortgage are actually in the possession of the originating lender could be determined only upon actual inspection of these documents.

Finally, the signature on the Assignment of Deed of Trust dated April 29, 2011 could have been a forgery or their signatories had no authority to sign therein. If proven true, the borrower is entitled to all relief provided by law for these acts committed by the lender and its agent or officer.

Attachments

1 Fixed Rate Note dated June 26, 2007.

2 Mortgage dated June 26, 2007.

3 MERS Servicer Information.

4 Mortgage Statement dated July 30, 2012.

5 Letter of Bank of America, NA dated March 1, 2012.

6 Assignment of Mortgage dated April 29, 2011.

Allonge Definition Page

Allonge [ə-lÄ nj, a-lȯzh] n

[French, literally, something that lengthens, from Old French *alonge*, from *alongier* to make long, ultimately from Latin *longus* long]
: a paper attached to an instrument to provide space for additional endorsements
: rider *NOTE: Under Uniform Commercial Code section 3-202(2), an allonge must be so firmly affixed to the instrument that it becomes part of it in order for the endorsements to be valid. Endorsements on an allonge are often considered invalid if there is still room on the instrument for endorsements.*

New Jersey

New York

"An "allonge" is defined as "[a] slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further endorsements when the original paper is filled with endorsements." Black's Law Dictionary (8th ed. 2004)."

Cases Involving Allonge

SCR Joint Venture, L.P. v. Warshawsky, 06 CV 3532 (ADS)(MLO), UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, 2007 U.S. Dist. LEXIS 98643, June 6, 2007, Decided, June 6, 2007, Filed, Reconsideration denied by SCR Joint Venture, L.P. v. Warshawsky, 2007 U.S. Dist. LEXIS 98646 (E.D.N.Y., Aug. 17, 2007)Affirmed by, in part, Vacated by, in part, Remanded by SCR Joint Venture L.P. v. Warshawsky, 559 F.3d 133, 2009 U.S. App. LEXIS 5159 (2d Cir. N.Y., 2009)

Allonge defined and other cases
"The indorsement may be on the instrument itself, or it may be on "a paper affixed to the instrument." Id. Such a paper is called an "allonge", defined as "[a] slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further indorsements when the original paper is filled with indorsements." See Black's Law Dictionary at 88 (9th Ed. 2009)."
Kemp v. Countrywide Home Loans, Inc. (In re Kemp), Case No. 08-18700-JHW, Adversary No. 08-2448, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY, 2010 Bankr. LEXIS 4085, November 16, 2010, Decided, November 16, 2010,

Cases Dismissed for Lack of Standing In NJ & NY

U.S. Bank v. Dellarmo (Standing-NY Sup.Ct.)(4/12)
"In a mortgage foreclosure action, a plaintiff has standing where it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced" (*Bank of N.Y. v Silverberg,* 86 AD3d 274, 279; *see Countrywide Home Loans, Inc. v Gress,* 68 AD3d 709). Where a defendant raises the issue of standing, the plaintiff must prove its standing to be entitled to relief (*see CitiMortgage, Inc. v Rosenthal,* 88 AD3d 759; *U.S. Bank, N.A. v Collymore,* 68 AD3d 752, 753). Moreover, while assignment of a promissory note also effectuates assignment of the mortgage (*see Bank of N.Y. Silverberg,* 86 AD3d at 280; *U.S. Bank, N.A. v Collymore,* 68 AD3d at 753-754; *Mortgage Elec. Registration Sys., Inc. v Coakley,*), the converse is not true: since a mortgage is merely security for a debt, it cannot exist independently of the debt, and thus, a transfer or assignment of only the mortgage without the debt is a nullity and no interest is acquired by it (*see Deutsche Bank Natl. Trust Co. v Barnett,* 88 AD3d 636; *Bank of N.Y. v Silverberg,* 86 AD3d at 280). The failure to record an assignment prior to the commencement of the action is not necessarily fatal since "an assignment of a note and mortgage need not be in writing and can be effectuated by physical delivery" (*Bank of N.Y. v Silverberg,* 86 AD3d at 280; *see Deutsche Bank Natl. Trust Co. v Barnett,* 88 AD3d 636; *U.S. Bank, N.A. v Collymore,* 68 AD3d at 754; *LaSalle Bank Natl. Assn. v Ahearn,* 59 AD3d 911, 912).

Wells Fargo v McNee(11/11) As the First Department held in Katz v. East-Ville Realty Co., (249 AD2d 243, 243), a "[p]laintiff's attempt to foreclose upon a mortgage in which he had no legal or equitable interest [is] without foundation in law or fact" (see Kluge v. Fugazy, 145 AD2d 537). Hence, Wells Fargo's attempt to foreclose upon the subject mortgage must be denied, the complaint dismissed, and McNee's cross-motion(s) to dismiss for lack of standing pursuant to CPLR 3211(a)(3) granted.

Downey v. Trujillo (8/11)(Schack) **Dismissed with prejudice.** Schack was angered after lawyer Margaret Carucci said in a sworn affidavit that a Downey Savings & Loan officer on Dec. 24, 2010 claimed to have personally reviewed and could vouch for the accuracy of the paperwork underlying Trujillo's foreclosure -- although Downey had long ceased to exist.

Deutsche Bank v. Mitchell(8/11) **Summary judgment reversed - sale vacated.** The assignment was not perfected until after the filing of the complaint, and plaintiff presented no evidence of having possessed the underlying note prior to filing the complaint. If plaintiff did not have the note when it filed the original complaint, it lacked standing to do so, and it could not obtain standing by filing an amended complaint.

We vacate the sheriff's sale, the final judgment and the order granting summary judgment and remand to the trial court.

Deutsche Bank v. Francis (**Dismissed With Prejudice**-Schack)(3/11): I discovered that there is no record of plaintiff DEUTSCHE BANK ever owning the subject mortgage and note.
Therefore, with plaintiff DEUTSCHE BANK lacking standing, the instant action is dismissed with prejudice and the notice of pendency cancelled.
A want of "standing to sue," in other words, is just another way of saying that this particular plaintiff is not involved in a genuine controversy, and a simple syllogism takes us from there to a "jurisdictional" dismissal: (1) the courts have jurisdiction only over controversies; (2) a plaintiff found to lack "standing" is not involved in a controversy; and (3) the courts therefore have no jurisdiction of the case when such a plaintiff purports to bring it.

Johnston v. HSBC** (complaint), (extrinsic fraud, real party) (3/11)
Extrinsic Fraud: Because the fraud is extrinsic in nature, HSBC is precluded from raising the doctrine of-- res judicata --as a defense against this Courts obligation to verify first and foremost that the claimant has federal jurisdiction "real party in interest" status.
Real Party in interest: HSBC MORTGAGE CORP (USA) (hereinafter, "HSBC") does not qualify as a "real party of interest" pursuant to Rule 17 of the Federal Rules of Civil Procedure, which provides: "An action must be prosecuted in the name of the real party in interest." The purpose of this rule is to require that an action be brought "in the name of the party who possesses the substantive right being asserted under the applicable law...." 6A WRIGHT,MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d § 1541 (1990) ("WRIGHT").

ALE v. U.S. Bank **(Expunge Mortgage and Assignment*)**(1/11)

American Brokers Conduit v. ZAMALLOA - Judge SCHACK 11Sep2007

EMC Mortgage v. Wink - (1/07) MERS, which is not itself the owner and holder of the note and mortgage, does not have the authority to assign the ownership of the note and mortgage to plaintiff. Judgment of foreclosure and sale is denied

Countrywide Home Loans, Inc. v Taylor - Mayer, J., Supreme Court, Suffolk County / Sept. 2007

American Brokers Conduit v. ZAMALLOA - Judge SCHACK 28Jan2008

Aurora Loan Services v. MACPHERSON - Judge FARNETI 11Mar2008

Bank of New York v. SINGH - Judge KURTZ 14Dec2007

Bank of New York v. TORRES - Judge COSTELLO 11Mar2008

Bank of New York v. OROSCO - Judge SCHACK 19Nov2007

CitiMortgage Inc. v. BROWN - Judge FARNETI 13Mar2008

Countrywide Mortgage v. BERLIUK - Judge COSTELLO 13Mar2008

Deutsche Bank v. Barnes-Judgment Entry

Deutsche Bank v. Barnes-Withdrawal of Objections and Motion to Dismiss

Deutsche Bank v. ALEMANY Judge COSTELLO 07Jan2008

Deutsche Bank v. Benjamin CRUZ - JudgeKURTZ 21May2008

Deutsche Bank v. Yobanna CRUZ - Judge KURTZ 21May2008

Deutsche Bank v. CABAROY - Judge COSTELLO 02Apr2008

he Bank v. CASTELLANOS / 2007NYSlipOp50978U/- Judge SCHACK 11May2007

HE Bank v. CASTELLANOS/ 2008NYSlipOp50033U/ - Judge SCHACK 14Jan2008

HSBC v. Valentin - Judge SCHACK calls them liars and dismisses WITH prejudice **

Deutsche Bank v. CLOUDEN / 2007NYSlipOp51767U/ Judge SCHACK 18Sep2007

Deutsche Bank v. EZAGUI - Judge SCHACK 21Dec2007

Deutsche Bank v. GRANT - Judge SCHACK 25Apr2008

Deutsche Bank v. HARRIS - Judge SCHACK 05Feb2008

Deutsche Bank v. LaCrosse,Cede,DTC Complaint

Deutsche Bank v. NICHOLLS - Judge KURTZ 21May2008

Deutsche Bank v. RYAN - Judge KURTZ 29Jan2008

Deutsche Bank v. SAMPSON - Judge KURTZ 16Jan2008

Deutsche v. Marche - Order to Show Cause to VACATE Judgment of Foreclosure - 11June2009

GMAC Mortgage LLC v. MATTHEWS - Judge KURTZ 10Jan2008

GMAC Mortgage LLC v. SERAFINE - Judge COSTELLO 08Jan2008

HSBC Bank USA NA v. CIPRIANI Judge COSTELLO 08Jan2008

HSBC Bank USA NA v. JACK - Judge COSTELLO 02Apr2008

IndyMac Bank FSB v. RODNEY-ROSS - Judge KURTZ 15Jan2008

LaSalle Bank NA v. CHARLEUS - Judge KURTZ 03Jan2008

LaSalle Bank NA v. SMALLS - Judge KURTZ 03Jan2008

PHH Mortgage Corp v. BARBER - Judge KURTZ 15Jan2008

Property Asset Management v. HUAYTA 05Dec2007

Rivera, In Re

Services LLC v. SATTAR / 2007NYSlipOp51895U/ - Judge SCHACK 09Oct2007

U.S. Bank NA v. AUGUSTE - Judge KURTZ 27Nov2007

U.S. Bank v. Emmanuel - (Judge Schack May 2010) Dismissed with prejudice. "foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity".

U.S. Bank NA v. GRANT - Judge KURTZ 14Dec2007

U.S. Bank NA v. ROUNDTREE - Judge BURKE 11Oct2007

U.S. Bank NA v. VILLARUEL - Judge KURTZ 01Feb2008

Wells Fargo Bank NA v. HAMPTON - Judge KURTZ 03Jan2008

Wells Fargo, Litton Loan v. Farmer WITH PREJUDICE Judge Schack June2008

Plaintiff has renewed its application for an order of reference for the subject premises, but the papers submitted fail to cure the defects enumerated in my prior decision and order. The purported plaintiff, WELLS FARGO, does not own the instant mortgage loan. Therefore, the instant matter is dismissed with prejudice.
- **Two invalid assignments** of the instant mortgage and note took place, with ARGENT assigning the note and mortgage to AMERIQUEST, and then AMERIQUEST assigning the note and mortgage to plaintiff WELLS FARGO. Both of these assignments were not recorded for more than fourteen months, until February 21, 2006, when they were both recorded at that same time.

Wells Fargo v. Reyes WITH PREJUDICE, Fraud on Court & Sanctions Judge Schack June2008 **No defendant answered in this foreclosure action.**
WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE AND CUSTODIAN FOR MORGAN STANLEY ABS CAPITAL1 INC., MSAC 2007-HE4, lacks standing and has never been the mortgagee in this foreclosure action, the instant complaint, Index No. 5516/08, is dismissed with prejudice; and it is further ORDERED, that the Notice of Pendency filed with the Kings County Clerk on February 21, 2008, by purported plaintiff, WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE AND CUSTODIAN FOR MORGAN STANLEY ABS CAPITAL1 INC., MSAC 2007-HE4, in an action to foreclose a mortgage for real property located at 379 Lincoln Avenue, Brooklyn New York (Block 4173, Lot 6, County of Kings), is cancelled.

Deutsche Bank v. Peabody Judge Nolan (Regulation Z)

Indymac Bank,FSB v. Boyd - Schack J. January 2009

Indymac Bank, FSB v. Bethley - Schack, J. February 2009 (The tale of many hats)

Indymac Bank, v. Yano-Horoski -Judge Blasts Bank's Foreclosure Conduct and Cancels Mortgage.

LaSalle Bank Natl. Assn. v Ahearn - Appellate Division, Third Department (*Pro Se*)\

NEW JERSEY COURT DISMISSES FORECLOSURE FILED BY **DEUTSCHE BANK** FOR FAILURE TO PROVIDE DISCOVERY AS TO OWNER AND HOLDER OF NOTE, SECURITIZED TRUST DOCUMENTS, AND OTHER DOCUMENTS DEMANDED BY BORROWERS

HSBC Bank USA v Miller 2009 NY Slip Op 29444 / Decided on October 29, 2009 / Meddaugh, J.

Lasalle Bank v. Smith, MERS **(Judge Schack - March 22, 2010)**

Wells Fargo Bank, Americas Servicing Company, MERS v Hunte **(Judge Schack, Apr.14, 2010/ Dismissed with prejudice, possible sanctions.)** (The court "discovered that WELLS FARGO executed a satisfaction of the instant mortgage more than ten months ago." "The Court is gravely concerned that: it expended scarce resources on an action that should have been discontinued." "the Court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct.")

Chase v. Johnson (Judge Schack May 4, 2010) (**vacated judgment of foreclosure and sale with prejudice as plaintiff lacked standing.)**

OneWest Bank v. Cullen (Judge Zwack - March 3, 2010) **(The Court finds that OneWest has failed to establish it has standing and dismissed the complaint.)**

ARGENT v. Maitland **(Aug. 2010) (Judge Schack) Plaintiff's counsel never notified the Court that the mortgage had been satisfied and failed to discontinue the instant action with prejudice. I discovered that the mortgage had been satisfied by personally searching the Automated City Register Information System (ACRIS) website of the Office of the City Register, New York City Department of Finance. AHMSI's President and Chief Executive Officer or its Executive Vice President, Chief Legal Officer and Secretary Jordan D. Dorchuck, Esq., its counsel, Melissa A. Sposato, Esq. and her firm, Jordan S. Katz, P.C., will be given an opportunity to be heard as to why this Court should not sanction them for making a "frivolous motion,"**

MERS as Nominee for U.S. Bank v. Munoz - **(ORDER TO SHOW CAUSE)**
Mortgage Electronic Registration System as Nominee for **US Bank**, and any of its attorneys, agents, successors and assignees, be and are hereby restrained from implementing the closing of title on any third party sale of the premises and restrained from evicting the family from the premises.

LLP v. Sabine (8/2010) "the assignment produced by LPP is insufficient to demonstrate it has standing as (1) **MERS has no ownership rights in the note and thus cannot assign it**; (2) the language of the assignment of the mortgage does not evidence **an** intent to assign the underlying note, (3) the assignment arises out of a purchase agreement with an entity who is not a party to this action, and (4) the provision of mortgage document relied on by LPP does not give MERS the authority to assign the mortgage or the note.

Wells Fargo Bank, N.A. v Hughes (1/10) The terms of the proposed **modification agreement**, particularly but not exclusively the inclusion of an adjustable rate component, are unacceptable to this court. "The above matter is hereby **dismissed without prejudice**; and it is further ordered, that in the event Wells Fargo commences a new action in foreclosure with respect to this borrower and the premises at issue herein, no additional costs or attorney fees will be allowed, absent good cause shown.

BACKFIRE! Emigrant Mtge. Co. Inc. v Corcione: (7/10) "**unconscionable, unreasonable [and] overreaching" mortgage agreement.** For all of the foregoing reasons, it is, therefore ordered, adjudged and decreed that plaintiff's application for summary judgment and appointment of a referee is denied; and it is further ordered, adjudged and decreed that plaintiff, its successors, assigns and others are forever barred, foreclosed and prohibited from demanding, collecting or attempting to collect, directly or indirectly, any and all of the sums in this proceeding delineated as interest, default interest, attorney's fees, legal fees, costs, disbursements, advances or any sums other than the principal balance, that may have accrued from May 1, 2008 up to the date of this order; and it is further ordered, adjudged and decreed that defendants recover judgment against plaintiff Emigrant Mortgage Co. Inc., in the principal sum of $100.000.00 as damages for what he said was an "**unconscionable, unreasonable [and] overreaching" mortgage agreement.**

Beneficial v. Steele*** (Judge Spinner)(Jan 7/11) An action claiming foreclosure of a mortgage is a suit in equity, Jamaica Savings Bank v. M.S. Investment Co. 274 NY 215 (1937), and the very commencement of the proceeding invokes the equity jurisdiction of the Supreme Court. Thus, in order to obtain equitable relief, the applicant must come before the Court with clean hands, else such relief will be denied. Thus, where a party comes before the Court and is shown to have acted in a manner which is offensive to good conscience, fairness and justice, that party will be completely without recourse in a court of equity, no matter what his legal rights may be, York v. Searles 97 AD 331 92nd Dept. 1904), aff'd 189 NY 573 (1907). Stated a bit differently, in order to obtain equity, one must do equity.
Here, it is irrefutable that Defendant SUSAN STEELE was not a party to the Loan Agreement and

certainly did not execute the same. It is equally indubitable that Defendant STEPHEN STEELE did not execute the Loan Agreement that has been presented on this application. Nonetheless, Plaintiff has vigorously prosecuted this action, demanding foreclosure of the mortgage as well as money damages against both named Defendants. Under these circumstances, the Court is compelled to conduct a hearing to determine whether or not Plaintiff has proceeded in good faith and what sanction, if any should be imposed should the Court find a lack of good faith. (Id.)

Definitions

Beneficiary:
A beneficiary (also, in trust law, *cestui que use*) in the broadest sense is a natural person or other legal entity who receives money or other benefits from a benefactor. The beneficiaries of a trust are the persons with equitable ownership of the trust assets, although legal title is held by the trustee. The term can also be described as an "*inheritance*" used in the context for the party (heir or heiress) receiving the property related thereto. Beneficiaries in other contexts are known by other names: for example, the beneficiaries of a will are called *devisees* or *legatees* according to local custom.

Issuing Entity:
The issuing entity provides the securities for the investors which purchase the securities from the issuing entity.

Investor:
An **investor** is a party that makes an investment into one or more categories of assets --- equity, debt securities, real estate, currency, commodity, derivatives such as put and call options, etc. --- with the objective of making a profit.

Debtor:
Person or entity who is or has borrowed money from the lender or bank.

Loan Servicer:
A loan servicer is a public or private entity that collects, monitors and reports loan payments, handles property tax, insurance escrows and late payments, forecloses defaulted loans, and remits payments.

Custodian/Servicer:
Involved in the act of collecting the cash flows as well as disturbing them. Custodian also acts as a middle entity between the owners of the securities.
A **Custodian bank**, or simply **custodian**, is a specialized financial institution responsible for safeguarding a firm's or individual's financial assets and is not likely to engage in "traditional" commercial or consumer/retail banking such as mortgage or personal lending, branch banking, personal accounts, ATMs and so forth.

Lender:
The lender is the original entity whom originates the loan to the borrower or also known as the debtor.
A private, public or institutional entity which makes funds available to others to borrow.

Trustee
The trustee is an entity which manages the payments to the holders of the certificates also known as pass through certificates. The trustee basically works for the investors in addition to the trust itself, as a representative, representing them.

Trustee (or the holding of a **Trusteeship**) is a legal term which, in its broadest sense, can refer to any person who holds property, authority, or a position of trust or responsibility for the benefit of another.

Underwriter:

Is the firm which is on wall street who structures the deal. Typically it is a wall street investment firm. They provide the funds and capital to acquire the securities deal. The wall street investment firm who is involved in this transaction layers the deal together in a structured form.

Underwriting refers to the process that a large financial service provider (bank, insurer, investment house) uses to assess the eligibility of a customer to receive their products (equity capital, insurance, mortgage, or credit).

Sponsor:
Is the entity who purchases the loans direct from originators then packages them up into pools and moves forward with the selling of them to depositors.

The Underwriter:
The underwriter creates the securities and arranges to place the various tranches of securities (different classes of certificates) with investors. The underwriter then transfers the mortgage portfolio and securities to the issuer.

VERIFIED AFFIDAVIT
of
Charles K. Lamm, Fraud Examiner IA-CFE #95403

Now comes Charles K. Lamm (hereinafter I) within time, with firsthand knowledge, of legal age, sound mind and competent, in good faith, in honor states as follows:

EXPERIENCE, QUALIFICATIONS AND EXPERTISE OF AFFIANT

1. I, Charles Lamm, am over the age of 21 and have the following experience relating to foreclosure litigation, the secondary mortgage market, and federal home loan compliance requirements pursuant to the Truth in Lending Act, the Equal Credit Opportunity Act, and the Real Estate Settlement Procedures Act and am consulted as a Mortgage Fraud and Forensic Analyst. I have over twenty (20) years of experience as a Fraud Examiner.

2. I have knowledge in mortgage banking and finance along with over one thousand (1000) hours of research and study in the areas of the Truth in Lending Act (TILA), the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA), Foreclosure, Litigation, Asset-Backed Securitization and its effects and applications in Foreclosure and Loss Mitigation.

3. I have been trained as a Hand-Writing Analyst specializing in Forensic Document Examinations. I maintain (CPE) regular Continuing Professional Education as a Fraud Examiner in the State of Florida and nationally, I am registered with the Association of Certified Fraud Examiners, ACFE No. 95403, along with The Institute of Internal Auditors, and am highly competent with the state and federal disclosure requirements in federally related mortgage loan transactions.

4. I am proficient and knowledgeable on the Truth in Lending Act, TILA Rescission Rights, foreclosure litigation, mortgage-backed securitization and how these issues find applicability in judicial foreclosure actions. In the course of my consultant work I have read and/or reviewed hundreds of mortgage loan related documents including, but not limited to: home loan disclosures, settlement statements, appraisals, underwriting and processing documents, mortgages, notes, Allonge, assignments, complaints, affidavits and trust documents such as pooling and servicing agreements, prospectuses and prospectus supplements.

5. I perform regular forensic and fraud examinations along with ongoing research into the securitization, sale and transfer aspects of residential mortgage loans and mortgage-backed securities and am proficient in applying that research to the particular facts in a given foreclosure case. I can testify as an expert witness in proceedings and depositions relative to my expert opinions filed in this case should that be requested.

6. On December 28, 2012 I completed a security audit for Carolyn S. Deaner , on a Promissory Note and a Deed of Trust dated June 26, 2007, and recorded in the Aiken County Recorders Office in Aiken County, South Carolina; and

7. The original lender is Quicken Loans, Inc. with a Principal Amount $97,600 of the loan number: 3212186468 with a maturity date of August 1, 2037; and

8. Quicken Loans, Inc. and its affiliates securitized the subject loan after closing in 2007; and

9. A search the filings with the Securities and Exchange Commission for securitization trusts that were established in the year 2007 indicates that the trust into which the subject loan was securitized would be in a private Fannie Mae Trust; and

10. A letter from Bank of America, NA dated March 1, 2012 discloses that the investor on the subject loan is Fannie Mae or the Federal National Mortgage Association (FNMA); and

11. On April 29, 2011, an Assignment of Mortgage was executed by Mortgage Electronic Registration Systems, Inc. This document names the assignee as BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, LP. BAC Home Loans Servicing, LP was succeeded by merger by Bank of America, NA.; and

12. Whether or not the assignments and endorsements were property executed and if any fraud was involved in this loan, as of December 28, 2012 can only be determined upon actual examination of the mentioned documents.

End of Report

VERIFICATION

I, Charles K. Lamm of legal age and of sound mind and competent, with firsthand knowledge, in good faith swears under the penalty of perjury: the telling of the truth, the whole truth, and nothing but the truth and asserts as correct, complete and not misleading for the best of my understanding, knowledge, information and belief, subscribes on the herein verified Affidavit by, before me, on December 28, 2012; and

Affirmed by: _____

Charles K. Lamm, Fraud Examiner CFE- IA-ACFE #95403
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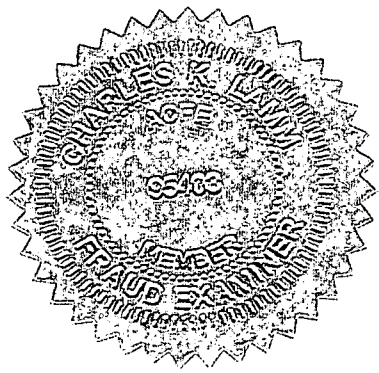
Member:
Association of Certified Fraud Examiners
The Institute of Internal Auditors



Note: This affidavit is in support of the securitization findings for Carolyn S. Deaner, loan number: 3212186468. This affidavit is in support of paragraphs 6- 12. The examiner cannot offer any other conclusion of any other report. The results and/or findings of this report are independent of any other professional auditor or Fraud Examiner.

JURAT

Affirmed as witness

I hereby affirm that I prepared and have read this Affidavit and that the foregoing statements in this affidavit are true and correct to the best of my knowledge and belief. I hereby further affirm that the basis of these beliefs is my own direct knowledge of the evidence described herein.

Affirmed by: _____
Charles K. Lamm, Affiant

On this 27 day of OCTOBER, 2014, Charles K. Lamm, who proved his identity to me to my satisfaction, personally came before me, Dean E. Statler, and acknowledged his signature on this Affidavit in my presence and stated that he did so with full understanding that he was subject to the penalties of perjury.

WITNESS my hand and official seal:

_____
NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC STATE OF FLORIDA
DEAN E. STATLER
MY COMMISSION # EE 066020
EXPIRES: February 22, 2015
Bonded Thru Budget Notary Services

2.22.2015
MY COMMISSION EXPIRES

AFFIDAVIT IN SUPPORT OF:

Note: This affidavit is in support of the securitization findings completed on December 28, 2012 for Carolyn S. Deaner, loan number: 3212186468. This affidavit is in support of paragraphs 6- 12. The examiner cannot offer any other conclusion of any other report. The results and/or findings of this report are independent of any other professional auditor or Fraud Examiner.

JURAT

Affirmed as witness

I hereby affirm that I prepared and have read this Affidavit and that the foregoing statements in this affidavit are true and correct to the best of my knowledge and belief. I hereby further affirm that the basis of these beliefs is my own direct knowledge of the evidence described herein.

Affirmed by: _____
Charles K. Lamm, Affiant

On this 27 day of OCTOBER, 2014, Charles K. Lamm, who proved his identity to me to my satisfaction, personally came before me, Dean E. Statler, and acknowledged his signature on this Affidavit in my presence and stated that he did so with full understanding that he was subject to the penalties of perjury.

WITNESS my hand and official seal:

_____
NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC STATE OF FLORIDA
DEAN E. STATLER
MY COMMISSION # EE 066020
EXPIRES: February 22, 2015
Bonded Thru Budget Notary Services

2.22.2015
MY COMMISSION EXPIRES

AFFIDAVIT IN SUPPORT OF:
Note: This affidavit is in support of the securitization findings completed on December 28, 2012 for Carolyn S. Deaner, loan number: 3212186468. This affidavit is in support of paragraphs 6- 12. The examiner cannot offer any other conclusion of any other report. The results and/or findings of this report are independent of any other professional auditor or Fraud Examiner.

DESIGNATION: 21

21. Memorandum of Law to Support Motion to Support Motion to Reconsider (Second)...filed 8/11/2014.

    (contains pages 1-3)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	COURT OF COMMON PLEAS
BANK OF AMERICA, NA ET	))	CASE NO. 2012-CP-02-699
Plaintiff,	))	
CAROLYN S. DEANER Defendants.	))	MEMORANDUM OF LAW TO SUPPORT MOTION TO RECONSIDER (SECOND)

Defendant respectfully supplements its Memorandum of Law in anticipation of the Motion to Reconsider in this case on this sole issue addressed above:

ACCELERATION LETTER- RIGHT TO CURE NO. 22 OF MORTGAGE

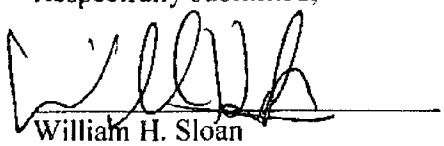
No. 22 of the Mortgage, Page 13, of the Mortgage is attached with this Memorandum.

The item, prepared by the Plaintiff's predecessors in interest, is attached. In No. 18 of the Defendant's answer, filed on or near December 19, 2013, following the November 19, 2013, hearing, the Defendant denied that she received the Notice of Acceleration that is required by No. 22 of the Mortgage. Nothing in the Court's Order for Summary Judgment addresses the issue of proper acceleration being given to Ms. Deaner. Whether or not Ms. Deaner received the Notice of Acceleration is a genuine issue of material fact and a necessary condition precedent prior to the foreclosure regardless of what happened in the bankruptcy. ***Southern Atlantic Financial Services vs. Middleton, 356 SC 448, 449 (2003)*** requires an acceleration notice that complies with the mortgage documents.

This genuine issue of material fact remains unanswered on whether or not the Plaintiff has fulfilled this necessary condition precedent to accelerate the Note and mortgage in this matter. This issue was timely brought up via the Defendant's Answer. Therefore, the Defendant respectfully asks for this reason, in addition to the others previously raised, that the Motion for Summary Judgment be reconsidered and reversed.

FILED 8.11 2014
Liz Godard
C.C.C.P.&G.S.
8:30am
Deputy Clerk

Respectfully submitted,



William H. Sloan
Bar No. 69630
1055-F North Main St.
Summerville, SC 29483
843-873-7531
Fax 843-873-7527
Attorney for Defendant
August 6, 2014

Redacted

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 by 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.

DESIGNATION: 22

22. Referee Harvey's ORDER, "Defendant's MOTION TO DISMISS filed on April 12, 2012 is GRANTED; provided that this matter shall not be dismissed if Plaintiff shall file and serve an AMENDED COMPLAINT within 15 days of the entry of this Order...filed 8/27/2014. (contains pages 1-2)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 **CP**-02-0699

BANK OF AMERICA, N. A. ETC. FILED August 27 2014 CAROLYN S. DEANER

PLAINTIFF(S) C.C.C.P. & G.S. DEFENDANT(S)

Submitted by: J. MARTIN HARVEY	**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. ☐ See Page 2 for additional information.

☐ **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: Defendant's Motion to Dismiss filed on April 12, 2012, is GRANTED; provided that this matter shall not be dismissed if Plaintiff shall file and serve an Amended Complaint within fifteen (15) days of the entry of this Order. Thereafter, Defendant shall have fifteen (15) days to file and serve an answer and any other responsive pleading; and if a reply is necessary, Plaintiff shall have ten (10) days to file and serve a reply.

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)
		$
		$
		$

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.**

~~Circuit Court Judge~~	Judge Code	August 12, 2014 Date

For Clerk of Court Office Use Only

This judgment was entered on the 27th day of August, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 27th day of August, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Chris S. Truluck, Esq. Korn Law Firm	William H. Sloan, Esq. Sloan Law Firm, PA
P. O. Box 12369 Columbia, SC 29211-2369	P.O. Box 85 Summerville SC 29484
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

Jim Gossett By Lisa Conley/sc
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

DESIGNATION: 23

23. Amended Summons, Amended Complaint, Deficiency Waived, Notice Fair Debt Practices Act and Amended Lis Pendens...filed 8/28/2014. (contains pages 1-9)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

PLAINTIFF,

vs.

Carolyn S. Deaner,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

C/A NO: 2012-CP-02-00699

FILED August 28, 2014
Deputy Clerk

F12-00992

Submitted By: Peter D. Korn _____, Dean Hayes ____, Kevin Hardy 76015, Kristen E. Washburn 101415, Elizabeth R. Polk 110

Korn Law Firm, P.A. Telephone #: (803) 252 – 5817

Address: 1300 Pickens Street Fax #: _____

Columbia, SC 29201 Email:

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

DOCKETING INFORMATION (*Check all that apply*)
***If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (*Check One Box Below*)

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

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

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

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

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

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

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

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

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

Submitting Party Signature: _____ **Date:** 8/27/14

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamburg, Barnwell Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg and York

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP PLAINTIFF, vs. Carolyn S. Deaner, DEFENDANT(S).	IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT (NON-JURY MORTGAGE FORECLOSURE) CERTIFICATE OF EXEMPTION FROM ADR C/A NO: 2012-CP-02-0699 DEFICIENCY WAIVED

FILED August 28, 2014
Clerk of Court
C.C.C.P.C.S.
Deputy Clerk
12:49 KS

F12-00992

I certify that this action is exempt from ADR because:

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

Plaintiff/Attorney(s) for Plaintiff(s)

PETER D. KORN / DEAN HAYES
KEVIN HARDY

Date: 8/27/14

Defendant/Attorney(s) for Defendant(s)

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	AMENDED SUMMONS
Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,	(NON-JURY MORTGAGE FORECLOSURE)
PLAINTIFF,	C/A NO: 2012-CP-02-0699
vs.	DEFICIENCY WAIVED
Carolyn S. Deaner,	
DEFENDANT(S).	

FILED August 28 2014
Reg Godard
C.C.P.&G.S.
12:47
Deputy Clerk

F12-00992

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P.O. Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-in-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

[SIGNATURE PAGE TO FOLLOW]

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

PETER D. KORN / SEAN HAYES
KEVIN HARDY
Attorneys for Plaintiff

Columbia, South Carolina
August 27, 2014

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	
Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,	AMENDED COMPLAINT
PLAINTIFF,	(NON-JURY MORTGAGE FORECLOSURE)
vs.	C/A NO: 2012-CP-02-0699
Carolyn S. Deaner,	DEFICIENCY WAIVED
DEFENDANT(S).	

FILED August 28 2014
C.C.P.&G.S.
Deputy Clerk 12:49

F12-00992

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

1. That the Plaintiff is a corporation/limited liability company organized and existing under and by virtue of the laws of the United States of America; and that the Defendant Carolyn S. Deaner, is upon information and belief, a citizen and resident of the County of Aiken, State of South Carolina.

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

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

4. That on or about June 26, 2007, for value received, Carolyn S. Deaner, did execute and deliver to Quicken Loans, Inc., a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Carolyn S. Deaner promised to pay to Quicken Loans, Inc., the sum of Ninety-Seven Thousand Six Hundred And 00/100 Dollars ($97,600.00), together with interest thereon at the rate of Seven And 00/100 per cent (7.00%) per annum.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Carolyn S. Deaner, did execute and deliver on June 26, 2007 unto Mortgage Electronic Registration Systems, Inc., as nominee for Quicken Loans, Inc., its successors and assigns, a mortgage covering the following described property:

Legal description and property address:
THE FOLLOWING DESCRIBED REAL PROPERTY, TO WIT:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, SITUATE, LYING AND BEING IN BELVEDERE, AIKEN COUNTY, SOUTH CAROLINA, DESIGNATED AS LOT 10, BLOCK B, ON A PLAT OF SURVEY OF PINECREST SUBDIVISION, SECTION I, MADE BY CRANSTON & ASSOCIATES, DATED October 3. 1966, REVISED UNDER DATE OF MARCH 29, 1968, AND RECORDED IN PLAT BOOK 3, AT PAGE 151, RECORDS OF AIKEN COUNTY, AND ACCORDING TO SAID PLAT, BEING BOUNDED, NOW OR FORMERLY, AND MEASURING, MORE OR LESS, AS FOLLOWS: NORTH BY KERSHAW DRIVE ON TWO LINES, MEASURING RESPECTIVELY 43.0 FEET AND 78.0 FEET; EAST BY LOT NO, 9, SAID

BLOCK, 153.0 FEET; SOUTH BY LANDS OF TROTTER REALTY COMPANY, 71.22 FEET; AND WEST BY LOT 11, SAID BLOCK 149.03 FEET. REFERENCE IS HEREBY MADE TO SAID PLAT FOR A MORE COMPLETE AND ACCURATE DESCRIPTION OF THE SUBJECT PROPERTY.

THIS BEING THE SAME PROPERTY INTENDED TO BE CONVEYED TO CAROLYN S. DEANER FROM MAROLYN D. SPOORES, INDIVIDUALLY AND AS TRUSTEE OF THE VELDA K. DEANER REVOCABLE TRUST DATED JUNE 28, 2002, AMENDED AND RESTATED OCTOBER 11, 2002, AND FURTHER AMENDED ON DEMEMBER 20, 2002 DONALD D. DEANER, JR., MICHAEL A. DEANER, BY DEED DATED OCTOBER 4, 2004 AND RECORDED OCTOBER 13, 2004, IN BOOK 2458 AT PAGE 111.

704 Kershaw Drive, North Augusta, SC 29841
TMS# 012-14-06-051

6. Thereafter said mortgage was recorded in Book RB-4149 at Page 773 on July 16, 2007 in the Office of the Register of Deeds of Aiken County.

7. Thereafter, by virtue of an assignment dated April 29, 2011, recorded May 9, 2011, in Mortgage Book RB-4356 at Page 932, Mortgage Electronic Registration Systems, Inc. assigned said mortgage unto BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP.

8. Thereafter, said note was endorsed and transferred to Countrywide Bank, FSB by Quicken Loans, Inc.

9. Thereafter, said note was endorsed and transferred to Countrywide Home Loans, Inc. by Countrywide Bank, FSB.

10. Thereafter, said note was endorsed in blank by Countrywide Home Loans, Inc. and transferred to Plaintiff.

11. Plaintiff is the current holder of said note, is in possession of the original version of said note along with all aforementioned endorsements, and is the proper party-in-party to enforce said note.

12. Thereafter, by virtue of a corporate merger, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP merged with Bank of America, N.A. making Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP the present lien holder and Plaintiff herein

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

14. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

15. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

16. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which

provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

17. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

18. The monthly payments due on said note and mortgage are in default since July 1, 2010, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of July 1, 2010 the sum of Ninety-Four Thousand One Hundred Seventy-Eight And 44/100 Dollars ($94,178.44), together with interest at the rate of Seven and 00/100 per cent (7.00 %) per annum from June 1, 2010 and also for the costs and disbursements of this action, including attorney's fees.

19. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

20. That the servicer is participating in the Home Affordable Modification Program (HMP). The HMP modification process specified by the Guidelines or Supplemental directive has been completed without resulting in a modification because the modification of the loan would cause excessive forbearance in violation of the Treasury Department Guidelines.

21. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

22. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

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

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

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

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

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

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

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

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

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

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

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

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

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

PETER D. KORN / SEAN HAYES
KEVIN HARDY
Attorneys for Plaintiff

Columbia, South Carolina
August 27, 2014

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

1. The amount of the debt is $136,556.64 as of August 22, 2014. Because of interest, late charges that may vary from day to day, the amount due on the day you, the Debtor(s), pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after the Creditor receives the funds, in which event the Creditor will inform you before depositing the funds for collection. For further information, write as directed in Paragraph 6 of this Notice.

2. Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP is the creditor to which the debt is owed.

3. The debt as described in the Complaint attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor(s), within thirty (30) days after the receipt of this notice, disputes the validity of the debt or some portion thereof.

4. If you, the Debtor(s) notify the Creditor's law firm within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the Debtor(s) by the Creditor's law firm

5. If the Creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if you, the Debtor(s), make a written request to the Creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to you by the Creditor's law firm.

6. Written requests should be addressed to Korn Law Firm, P.A., Post Office Box 11264, Columbia, South Carolina 29211-1264.

7. This notice should NOT be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days. Please be advised the time period in which you, the Debtor(s), have to dispute the amount of your debt and request additional information does not alter or affect the time period set forth in the South Carolina Rules of Civil Procedure for the filing of an answer or other responsive pleading to the Complaint.

8. If you, the Debtor(s), have received a discharge of the debt described in Paragraph 1 of this Notice pursuant to the United States Bankruptcy Code, then neither the Creditor nor its law firm is seeking to collect any portion of the debt and all information contained herein is supplied for information purposes only. Any pending or ensuing legal action by Creditor's law firm will undertake to foreclose a valid security interest only and neither is intended nor will operate as any effort to collect upon any debt that has been so discharged.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

2014R0200409

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	AMENDED LIS PENDENS
Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,	(NON-JURY MORTGAGE FORECLOSURE)
PLAINTIFF,	C/A NO: 2012-CP-02-0699
vs.	DEFICIENCY WAIVED
Carolyn S. Deaner,	
DEFENDANT(S).	

FILED August 28, 2014
Ellen Godard
C.C.C.P.&G.S.
12:49
Karen Strother (KS)
Deputy Clerk

F12-00992

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this court upon Complaint of the above-named Plaintiff against the above-named Defendant for foreclosure of a certain mortgage of real estate given by Carolyn S. Deaner to Mortgage Electronic Registration Systems, Inc., as nominee for Quicken Loans, Inc., its successors and assigns in the amount of Ninety-Seven Thousand Six Hundred And 00/100 ($97,600.00) Dollars, dated June 26, 2007, and recorded July 16, 2007 in the Office of the Register of Deeds for Aiken County in Book RB-4149 at Page 773.

Thereafter, by virtue of an assignment dated April 29, 2011, recorded May 9, 2011, in Mortgage Book RB-4356 at page 932, Mortgage Electronic Registration Systems, Inc. assigned said mortgage unto BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP.

Thereafter, by virtue of a corporate merger, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP merged with Bank of America, N.A. making Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP the present lien holder and Plaintiff herein

The premises covered and affected by the said mortgage as by the foreclosure thereof, were, at the time of the making thereof, and at the time of the filing of this Notice, described as follows:

LEGAL DESCRIPTION AND PROPERTY ADDRESS:
THE FOLLOWING DESCRIBED REAL PROPERTY, TO WIT:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, SITUATE, LYING AND BEING IN BELVEDERE, AIKEN COUNTY, SOUTH CAROLINA, DESIGNATED AS LOT 10, BLOCK B, ON A PLAT OF SURVEY OF PINECREST SUBDIVISION, SECTION I, MADE BY CRANSTON & ASSOCIATES, DATED October 3. 1966, REVISED UNDER DATE OF MARCH 29, 1968, AND RECORDED IN PLAT BOOK 3, AT PAGE 151, RECORDS OF AIKEN COUNTY, AND ACCORDING TO SAID PLAT, BEING BOUNDED, NOW OR FORMERLY, AND MEASURING, MORE OR LESS, AS FOLLOWS: NORTH BY KERSHAW DRIVE ON TWO LINES, MEASURING RESPECTIVELY 43.0 FEET AND 78.0 FEET; EAST BY LOT NO, 9, SAID BLOCK, 153.0 FEET; SOUTH BY LANDS OF TROTTER REALTY COMPANY, 71.22 FEET; AND WEST BY LOT 11, SAID BLOCK 149.03 FEET. REFERENCE IS HEREBY MADE TO SAID PLAT FOR A MORE COMPLETE AND ACCURATE DESCRIPTION OF THE SUBJECT PROPERTY.

THIS BEING THE SAME PROPERTY INTENDED TO BE CONVEYED TO CAROLYN S. DEANER FROM MAROLYN D. SPOORES, INDIVIDUALLY AND AS TRUSTEE OF THE VELDA K. DEANER REVOCABLE TRUST DATED JUNE 28, 2002, AMENDED AND RESTATED OCTOBER 11, 2002, AND

FURTHER AMENDED ON DEMEMBER 20, 2002 DONALD D. DEANER, JR., MICHAEL A. DEANER, BY DEED DATED OCTOBER 4, 2004 AND RECORDED OCTOBER 13, 2004, IN BOOK 2458 AT PAGE 111.

704 Kershaw Drive, North Augusta, SC 29841
TMS # 012-14-06-051

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

PETER D. KORN / DEAN HAYES
KEVIN HARDY
Attorneys for Plaintiff

Columbia, South Carolina
August 27, 2014

DESIGNATION: 24

24. Defendant Deaner's ANSWER TO AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES AND COUNTERCLAIM.....filed 9/8/2014.

    (contains pages 1-8)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **DOCKET NO. 2012-CP-02-00699**

FILED 9-8-14
Liz Godard
C.C.C.P.&G.S.
Anita Knoepke
Deputy Clerk

DEFENDANT'S DEANER'S ANSWER TO AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES AND COUNTERCLAIM

Now comes Defendant, through her undersigned attorney, to Answer the Complaint filed against her in this case and to assert affirmative defenses and a counterclaim as stated above.

I. ANSWERS TO THE ALLEGATIONS OF THE COMPLAINT

Any item not fully admitted is denied and strict proof thereof is demanded.

1. Defendant admits No. 1 of Complaint that she resides in Aiken County, SC. Defendant cannot admit or deny the remainder of No. 1 of the Complaint.

2. Defendant does not need to answer No. 2 of Complaint as there are no other defendants in this case.

3. Defendant admits No. 3 of Complaint.

4. Defendant admits No. 4 of Complaint.

5. Defendant admits No. 5 of Complaint that she signed a mortgage in favor of non-party Mortgage Electronic Registration Systems, Inc. while denying the validity of

MERS, Inc. to assign the mortgage or anything else to anybody and while denying that MERS, Inc. is the nominee for Quicken Loans or for anyone else allegedly in the chain of title of the ownership of her Note and Mortgage in this matter.

6. Defendant admits No. 6 of Complaint.

7. Defendant admits No. 7 of Complaint that said assignment took place while, in referring to No. 5 of this Answer, denying that the assignment is valid to give the Plaintiff standing to bring this action.

8. Defendant is without information sufficient to admit or deny No. 8 of Complaint.

9. Defendant is without information sufficient to admit or deny No. 9 of Complaint.

10. Defendant is without information sufficient to admit or deny No. 10 of Complaint.

11. Defendant denies No. 11 of Complaint in full and demands strict proof thereof.

12. Defendant denies No. 12 of Complaint to the extent that Defendant denies that Plaintiff has standing to bring this action merely by pleading the corporate merger mentioned therein. It is necessary for Plaintiff to prove that it still owned the Note and Mortgage in this action when the said merger took place.

13. Defendant denies No. 13 of Complaint.

14. Defendant is without information sufficient to admit or deny No. 14 of Complaint, but denies a default or debt is owed to Plaintiff.

15. Defendant is without information sufficient to admit or deny No. 15 of Complaint, but denies the Plaintiff is the valid mortgagee as defined in the Mortgage.

16. Defendant is without information sufficient to admit or deny No. 16 of Complaint.

17. No. 17 of Complaint is not applicable as the property is owner occupied and is not being rented out in any way at this time.

18. Defendant denies that there has been a default and is without information sufficient to admit or deny No. 18 of Complaint.

19. Defendant admits No. 19 of Complaint.

20. Defendant denies No. 20 of the Complaint that the **Admin. Order of 2009** has been complied with and demands strict proof thereof. Defendant only admits No. 20 that the Plaintiff is participating in the HMP program.

21. No. 21 of Complaint cannot be answered by the Defendant since it does not state whether costs contemplated in No. 21 have occurred.

22. Defendant denies No. 22 of Complaint. The Mortgage of this case requires a right to cure letter and Defendant denies receiving same as it is required by No. 22 of the Mortgage that is the subject of this matter.

II. AFFIRMATIVE DEFENSE ONE- STANDING

23. Defendant repeats the previous items of this Answer as it retyped verbatim right here.

24. Defendant asserts that the Plaintiff lacks the standing needed to maintain this foreclosure action.

III. AFFIRMATIVE DEFENSE TWO- CHALLENGE ORIGINAL NOTE

25. Defendant repeats the previous items of this Answer as if retyped verbatim right here.

26. Defendant challenges the authenticity of the document in the Plaintiff's file that purports to be the original note. The original note is required for the Plaintiff to maintain this action and the Plaintiff is not a Person Entitled to Enforce as required by §36-3-301, SC Code Of Laws to bring this foreclosure action. **In addition, Defendant states the note held by the Plaintiff has been altered with a different large bar code attached and not removable on Page 1 covering and destroying the number sequence of the Original Note bar codes rendering it impossible to verify as the Original Note.**

IV. AFFIRMATIVE DEFENSE THREE- INVALID ASSIGNMENT

27. Defendant repeats the previous items of this Answer as if retyped verbatim right here.

28. Defendant challenges the validity of the Mortgage Assignment in this case since it came from Mortgage Electronic Registration Systems, Inc. non-party and not listed on the Note.

V. AFFIRMATIVE DEFENSE FOUR- UNSECURED DEBT

29. Defendant repeats the previous items of this Answer as if retyped verbatim right here.

30. The ownership of the Note and the Mortgage have been separated in this action based on the Mortgage being the name of MERS, Inc. who is never mentioned on the Note. The debt in this case is at best an unsecured debt and therefore, the Defendant should be able to assert homestead rights and/or owe the Plaintiff nothing since she has received a discharge of the debt itself in Chapter 7 bankruptcy.

VI. AFFIRMATIVE DEFENSE FIVE- LACK OF PROOF OF AGENCY RELATIONSHIP

31. Defendant repeats the previous items of this Answer as it retyped verbatim right here.

Plaintiff has failed to plead the agency relationship between MERS and Quicken Loans, the original creditor as to the Mortgage Assignment.

VII. AFFIRMATIVE DEFENSE SIX- LACK OF PROOF OF AGENCY RELATIONSHIP

32. Defendant repeats the previous items of this Answer as it retyped verbatim right here.

33. Plaintiff has failed to plead or show proof of the agency relationship between the owner of the note and the Plaintiff who is nothing but the servicer.

VIII. AFFIRMATIVE DEFENSE SEVEN- LACK OF DAMAGES

34. Defendant repeats the previous items of this Answer as if retyped verbatim right here.

35. Plaintiff, as merely the servicer, has suffered no damages as the results of any alleged failure of the Defendant to pay.

IX. AFFIRMATIVE DEFENSE EIGHT- LACK OF CAPACITY TO SUE

36. Defendant repeats the previous items of this Answer as if retyped verbatim right here.

37. Plaintiff has failed to plead its capacity to sue. Plaintiff has not mentioned what state it is incorporated in, nor have they stated whether they have the authority to maintain this proceeding in South Carolina.

X. AFFIRMATIVE DEFENSE NINE- PLAINTIFF FAILED TO SHOW ITSELF AS OWNER OF THE NOTE OR PLEAD SO AT THE TIME THE ACTION WAS FILED- MOTION TO DISMISS, RULE 12-B-6 AND RULE 12-B-1

38. Defendant repeats the previous items of this Answer as if retyped verbatim right here.

39. Plaintiff has failed to plead that it was the owner or the holder of the Note in this case at the time that the case was filed.

40. The Court can dismiss the case under Rule 12-b-6, SCRCP, for failure to state facts sufficient where relief can be granted or under Rule 12-b-1, SCRCP as the Court would then lack subject matter jurisdiction.

XI. AFFIRMATIVE DEFENSE TEN- NOTE IS NOT NEGOTIABLE INSTRUMENT

41. Defendant repeats the previous items of this Answer as if retyped verbatim right here.

42. The note of this case is not a negotiable instrument under the South Carolina UCC SC Code of Laws §36-3-301. Therefore, the Note must have valid assignments to be transferred. As this is not the case, the Plaintiff lacks standing to bring this action.

43. The Note of this case is a "Fannie Mae" note, a note that is owned and/or securitized by Federal National Mortgage Association. In the undersigned's first Answer, he included a letter from Fannie Mae, stating that their Notes are tied in with the Mortgages which make the notes non-negotiable. Fannie Mae is not the mortgagor as required by the applicable case law.

XII. AFFIRMATIVE DEFENSE THIRTEEN- ARTICLE 3 OF UCC DOES NOT APPLY SINCE THE LOAN HAS BEEN SECURITIZED

44. Defendant repeats the previous items of this Answer as if retyped verbatim right here.

45. Upon information and belief, the loan that is the subject of this matter has been securitized into a Fannie Mae securitized mortgage trust.

46. Assuming that No. 45 is true, the Note that is the subject of this case is not a negotiable instrument under Article 3 of the UCC, but rather a security under Article 8 and there would be need to be specific assignment of the Note.

XIII. AFFIRMATIVE DEFENSE- FOURTEEN- LACHES

47. Defendant repeats the previous items of this Answer as if retyped verbatim right here.

48. Defendant asserts the equitable defense of laches to bar the Plaintiff from recovery in this action.

XIV. AFFIRMATIVE DEFENSE FIFTEEN- UNCLEAN HANDS

49. Defendant repeats the previous items of this Answer as if retyped verbatim right here.

50. Defendant asserts the equitable defense of unclean hands of the Plaintiff.

XV. AFFIRMATIVE DEFENSE SIXTEEN -COUNTERCLAIM ONE- VIOLATION OF FDCPA- OFFSET

51. Defendant repeats §1-50 of this Answer as if retyped verbatim right here.

52. Defendant asserts that the Plaintiff has violated the Fair Debt Collection Practices Act, 15 USC 1692 et seq., "FDCPA", by misrepresenting the nature of the debt in communications with the Defendant when they are only the servicer and the true owner of her note.

53. The Fair Debt Collection Practices Act calls for $1,000 for each violation plus attorney's fees when the debt collector, in this case, Plaintiff, misrepresents the nature of the debt, specifically who the debt is owed to.

XVI. RESERVATION OF DEFENSES

54. Defendant repeats the previous items of this Answer as if retyped verbatim right here.

55. Defendant reserves all defenses and/or counterclaims that may come to light at a later date not known now.

WHEREFORE, Defendant Deaner requests this Honorable Court the following relief:

A. Dismissal of this case with prejudice;

B. Cancellation of the mortgage that is the record of this case;

C. Judgment for Defendant under the FDCPA for $1,000 for each violation of same plus attorney's fees for this action;

D. Costs of this action;

E. Any other such relief that this Court deems prudent, just and proper.

Respectfully Submitted,

William H. Sloan
Attorney for Defendant
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
sloanlawfirm@yahoo.com

September 5, 2014

DESIGNATION: 25

25. Plaintiff's REPLY to Defendant Carolyn S. Deaner's Amended Answer and Counterclaim...filed 9/17/2014.

    (contains pages 1-5)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

PLAINTIFF,

v.

Carolyn S. Deaner,

DEFENDANTS.

F12-00992

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-02-00699

PLAINTIFF'S REPLY TO DEFENDANT CAROLYN S. DEANER'S AMENDED ANSWER AND COUNTERCLAIM

ORIGINAL FILED
SEP 17 2014
AIKEN COUNTY
CLERK OF COURT

TO: WILLIAM H. SLOAN, ATTORNEY FOR DEFENDANT CAROLYN S. DEANER:

Plaintiff, responding to Defendant Carolyn S. Deaner alleges that:

1. Each allegation of Defendant's Answer and Counterclaim not specifically admitted is denied.

2. No response is required to the allegations contained in paragraphs 1 though 50 of Defendant's Answer and Counterclaim. To the extent a response is required, Plaintiff denies all allegations.

AS A FIRST DEFENSE TO DEFENDANT'S FIRST COUNTERCLAIM

Violation of FDCPA

(General Denial)

3. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

4. No response is required to the allegations contained in paragraph 51 of Defendant's Answer and Counterclaims. To the extent a response is required, Plaintiff denies all allegations.

5. Plaintiff denies the allegations set forth in paragraph 52 through 53 of Defendant's Answer and Counterclaims.

AS A SECOND DEFENSE TO DEFENDANT'S FIRST COUNTERCLAIM

(Dismissal pursuant to SCRCP 12(b)(6))

6. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

7. That the Defendant has failed to state facts sufficient to constitute causes of action, therefore, the Defendant's Counterclaim should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

8. That further, by pleading this 12(b)(6) dismissal in its reply herein, the Plaintiff does not intend to waive any right to have the Court hear a motion for dismissal. The dismissal herein is included for notice purposes and to preserve the Plaintiff's right to move for a dismissal at anytime hereafter and up until trial.

AS A THIRD DEFENSE TO DEFENDANT'S FIRST COUNTERCLAIM

(Statute of Limitations)

9. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

10. Defendant's claim is barred by the statute of limitations.

AS A FOURTH DEFENSE TO DEFENDANT'S FIRST COUNTERCLAIM

(Waiver)

11. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

12. Defendant's claim is barred in whole or part by the doctrine of waiver based on Defendant's failure to comply with the agreement, including Defendant's failure to make timely payments under the terms of the note and mortgage.

13. Defendant's claim is also barred in whole or part by the doctrine of waiver based upon Defendant's failure to list certain counterclaims and defenses in her responsive pleadings in a prior bankruptcy action.

AS A FIFTH DEFENSE TO DEFENDANT'S FIRST COUNTERCLAIM

(Estoppel)

14. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

15. Defendant's claim is barred in whole or part by the doctrine of Estoppel based on Defendant's failure to comply with the agreement, including Defendant's failure to make timely payments under the terms of the note and mortgage.

AS A SIXTH DEFENSE TO DEFENDANT'S FIRST COUNTERCLAIM

(Laches)

16. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

17. Defendant's claim is barred by the doctrine of Laches.

AS A SEVENTH DEFENSE TO DEFENDANT'S FIRST COUNTERCLAIM

(Collateral Estoppel)

18. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

19. Defendant's claim is barred by the doctrine of Collateral Estoppel.

AS AN EIGHTH DEFENSE TO DEFENDANT'S FIRST COUNTERCLAIM

(Res Judicata)

20. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

21. Defendant's claim is barred by the doctrine of Res Judicata.

AS AN NINTH DEFENSE TO DEFENDANT'S FIRST COUNTERCLAIM

(Statute of Frauds)

22. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

23. Defendant's Counterclaims and defenses are barred in whole or part by the statute of frauds.

24. No response is required to the allegations contained in paragraph 54 through 55 of Defendant's Answer and Counterclaim. To the extent a response is required, Plaintiff denies all allegations.

25. Plaintiff further responds to Defendant's Answer stating that Plaintiff was previously granted summary judgment on Defendant's defenses and Counterclaims.

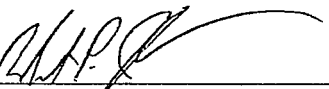
WHEREFORE, having fully responded to the allegations contained in Defendant's Answer and Counterclaim, the Plaintiff prays for the following:

(a) That Defendant's Answer and Counterclaim be dismissed with costs;

(b) That the Plaintiff be granted the relief requested in the Complaint; and

(c) For such other and further relief as the court may determine to be just and proper.

KORN LAW FIRM, P.A.



Dean A. Hayes, SC Bar No. 66066
Robert P. Jackman, SC Bar No. 78755
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817
Facsimile: (803) 231-2060
Dean.hayes@kornlawfirm.com
Bob.jackman@kornlawfirm.com
ATTORNEY FOR PLAINTIFF

September 16, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

PLAINTIFF,

v.

Carolyn S. Deaner,

DEFENDANTS.

F12-00992

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-02-00699

CERTIFICATE OF MAILING

COPY
ORIGINAL FILED
SEP 17 2014
AIKEN COUNTY
CLERK OF COURT

I, Dustin Brasington, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S REPLY TO DEFENDANT CAROLYN DEANER'S ANSWER AND COUNTERCLAIM** was served on counsel for Defendants by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

William Sloan, Esq.
Post Office Box 85
Summerville, SC 29484
ATTORNEY FOR DEFENDANT CAROLYN S. DEANER

this 16 day of September, 2014.

KORN LAW FIRM, P.A.

Dustin Brasington
Paralegal to Dean A. Hayes and Robert Jackman

Columbia, South Carolina

DESIGNATION: 26

26. Trial Transcript and Trial Exhibits from February 4, 2015 Hearing ...filed 11/5/2015 by Plaintiff's original. (Appellant received Copy from Southern Reporting, Inc. on 6/6/2015).
(contains Trial Transcript pages 1-55, plus Exhibits 1,2,3,4,5,6 & 7, pages 1-36)

ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
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CHARLES S. GWYNNE JR.
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CHARLIE.GWYNNE@RTT-LAW.COM
P 803 744 1933
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LICENSED IN SOUTH CAROLINA

ROGERS TOWNSEND
ATTORNEYS AT LAW

November 2, 2015

VIA Fed Ex Overnight
The Honorable Elizabeth Cooper-Godard
Clerk of Court for Aiken County
PO Box 583
Aiken, SC 29802-0583

Re: Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP v. Carolyn S. Deaner
Civil Action # 2012-CP-02-699
Our file # 515262.01898

Dear Ms. Cooper-Godard:

Enclosed please find the original sealed Transcript of Hearing in this mortgage foreclosure case and other exhibits from the foreclosure trial held on February 4, 2015. Please file the original sealed Transcript of Hearing with the court records.

With kind personal regards, I am

Sincerely yours,

Charles S. Gwynne Jr.

CSG/mkt
Enclosures as stated

cc: (w/o enclosures)

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841

FILED November 3, 2015
Liz Godard
C.C.P.&G.S.
Deputy Clerk
9:40am

This firm collects debts for mortgage lenders and other creditors Any information obtained will be used for that purpose However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an enforcement of the lien against the property
12929158

State of South Carolina)
)
County of Aiken)

Bank of America, N.A.,) 2012-CP-02-699
successor by merger to)
BAC Home Loan Servicing,)
LP, f/k/a Countrywide)
Home Loans Servicing,) Transcript
LP,)
) of
Plaintiff,)
) Hearing
v.)
)
Carolyn S. Deaner,)
)
Defendant.)

Date: Wednesday, February 4, 2015

Time: 10:10 a.m.

Location: Harvey & Kulmala (The Harvey Building),

110 Main Street, Barnwell, South Carolina

Reported by
Sandra J. Ayers

APPEARANCES

Presiding: The Honorable J. Martin Harvey
Special Referee
Harvey & Kulmala (The Harvey Building)
110 Main Street
Barnwell, South Carolina 29812

For the Plaintiff: Charles S. Gwynne, Jr., Esq.
Rogers Townsend & Thomas, PC
220 Executive Center Drive
Columbia, South Carolina 29210

For the Defendant: William H. Sloan, Esq.
Sloan Law Firm, PA
1055 North Main Street, Suite F
Summerville, South Carolina 29483

Also present: Diane DeLoney
Carolyn S. Deaner
Connor Parker

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EXHIBITS

Plaintiff's Exhibit Number 1, "Note." 6

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1 PROCEEDINGS

2 THE COURT: -- proceeding today in a trial on the merits

3 in the case. The court reporter has noted the

4 appearances. This -- we -- I entered a consent to

5 scheduling order on November 3rd. The -- today is

6 the date set -- set for a trial, and counsel is

7 here with their respective client representative or
8 client. You can proceed, Mr. Gwynne.
9 MR. GWYNNE: Thank you, your honor. For the record,
10 this is Charlie Gwynne here on behalf of the
11 plaintiff, and the plaintiff would like to call its
12 first -- it's only witness -- or its first witness,
13 Diane DeLoney.
14 THE COURT: D-i-a-n-e?
15 MR. GWYNNE: Yes.
16 THE COURT: D-e-L- --
17 MR. GWYNNE: -- o-n-e-y.
18 THE COURT: -- e-y.
19 (The witness is sworn.)
20 THE COURT: (To Mr. Gwynne) You may proceed.
21 DIRECT EXAMINATION OF MS. DELONEY
22 BY MR. GWYNNE:
23 Q Okay. Ms. DeLoney, would you state your full
24 name for the record again, please?
25 A Diane DeLoney, spelled D-e-l-o-n-e-y.

1 Q And what company do you work for?
2 A Bank of America.
3 Q And where is the physical location of your office?
4 A I'm located in Plano, Texas.
5 Q And what's your job title at Bank of America?
6 A I'm an assistant vice-president with the Mortgage
7 Resolution Team.

8 Q And what are some of your job duties?
9 A I assist counsel and -- on default loans that are
10 in litigation.
11 Q Okay. And are you authorized to testify on behalf
12 of your company at today's foreclosure hearing?
13 A I do.
14 Q And is Bank of America, N.A., the loan servicer for
15 this loan?
16 A Yes.
17 Q And is Fannie Mae the investor for this loan?
18 A Yes.
19 Q And in the ordinary course of its business, does
20 Bank of America maintain records for the mortgage
21 loans that it services, including this -- the loan
22 for this lawsuit?
23 A Yes.
24 Q And as part of your job duties, are you familiar
25 with those records maintained by your company?

1 A I am.
2 Q Including the records in connection with this loan?
3 A Yes.
4 Q And do you have personal knowledge of this loan,
5 based on your review of such records?
6 A Yes.
7 Plaintiff's Exhibit Number 1, "Note."
8 Plaintiff's Exhibit Number 2, "Affidavit

9 of Attorney's Fees and Costs."
10 Q I'm going to show you what's been marked as
11 Plaintiff's Exhibit Number 1 and 2. Is it -- is
12 Exhibit 1 a copy of the note in this case?
13 A Yes.
14 Q And according to the note, does the borrower --
15 who's the borrower?
16 A The borrower is Carolyn S. Deaner.
17 Q And when was the note signed, or what's the date on
18 the note?
19 A Well, the note was signed on June 26th, 2007, same
20 as the date on the note.
21 Q And according to the note, who is the original
22 lender?
23 A The original lender is Quicken Loans, Inc.
24 Q And does it cover the property address which is the
25 subject of this lawsuit?

1 MR. SLOAN: Objection: leading.
2 THE COURT: Sustained.
3 Q What is the subject property identified in the
4 note?
5 A It is -- the property address is 704 Kershaw Drive,
6 North Augusta, South Carolina 29841.
7 Q At the time that the note was signed, what was the
8 principal amount borrowed under the note?
9 A $97,600.

10 Q And is the note endorsed in blank?
11 A Yes.
12 Q And is Bank of America in physical possession of
13 the original note?
14 A We are.
15 Q And that's in the room today at today's hearing; is
16 that correct?
17 A Yes.
18 THE COURT: (To Mr. Sloan) Have you seen the
19 original note?
20 MR. SLOAN: Yes, sir. A couple of times.
21 THE COURT: All right. Any objection to this
22 copy? You -- I think you told me that --
23 A Copy?
24 THE COURT: -- beforehand, but this copy could
25 be a -- off --

1 MR. SLOAN: Oh. No -- no objection to that,
2 your Honor.
3 THE COURT: All right. Okay.
4 Q On the same day that the note was signed, did the
5 borrower give a mortgage?
6 A Yes.
7 Q And that's June 26th, 2007?
8 A Yes.
9 Q And it covers the property address that you already
10 testified about; is that correct?

11 A Yes.
12 Q And does the mortgage constitute a first-mortgage
13 lien on the property?
14 A It does.
15 Q And is the mortgage signed by the borrower, Ms.
16 Deaner?
17 A Yes.
18 Q Okay. Your Honor, plaintiff moves Exhibit 2 into
19 evidence.
20 MR. SLOAN: No objection.
21 THE COURT: Without objection. The record
22 will reflect -- just let me take a look at
23 that. The record will reflect the mortgage is
24 recorded in the RMC office for Aiken County on
25 July 16, 2007, in Book RB-4149, Pages 773 to

1 788.
2 Q And just for the record, I think we've already done
3 this, but I just want to move Plaintiff's 1 into
4 evidence, your Honor.
5 THE COURT: Yes. Without objection?
6 MR. SLOAN: Without objection.
7 Plaintiff's Exhibit Number 3, "Assignment
8 of Mortgage."
9 Q Ms. DeLoney, I'm going to show you what's been
10 marked as Plaintiff's Exhibit 3 -- well, first, let
11 me ask you: Has the mortgage been assigned in this

12 case?
13 A Yes.
14 Q And is Exhibit 3 a copy of an assignment of
15 mortgage from the original lender to the plaintiff,
16 BAC Home Loan Servicing, LP?
17 A Yes. It is.
18 Q And that has been recorded in Aiken County; is that
19 correct?
20 A Yes.
21 Q And is Bank of America, N.A., the successor by
22 merger to BAC Home Loans Servicing, LP, formerly
23 known as Countrywide Home Loan Servicing, LP?
24 A Yes.
25 Q Did the borrower eventually fail to make her

1 payments and go into default under the terms of the
2 loan documents?
3 A Yes. The loan is currently in default.
4 Plaintiff's Exhibit Number 4, Payment
5 History.
6 Q Okay. I'm going to show you what's been marked as
7 Plaintiff's Exhibit 4.
8 THE COURT: Did you offer Exhibit 3 into
9 evidence, and that was the assignment?
10 MR. GWYNNE: Yes, your Honor. I have not done
11 that.
12 THE COURT: Okay. All right.

13 MR. GWYNNE: Your Honor, plaintiff moves to
14 enter Exhibit 3 into evidence.
15 THE COURT: (To Mr. Sloan) With any --
16 MR. SLOAN: No objection, your Honor.
17 THE COURT: No objection? Without objection.
18 Q Well -- well, let me first ask you this, Ms.
19 DeLoney. In the ordinary course of its business,
20 does Bank of America maintain an electronic-payment
21 history for the loans that it services?
22 A Yes.
23 Q And does electronic-payment history record credits
24 and charges to the loan at or near the time those
25 charges or credits occur?

1 A "Credits" -- you're meaning payments paid on the
2 loan?
3 Q Yes.
4 A Yes.
5 Q Okay. And is Exhibit 4 a copy of the payment
6 history in this case?
7 A It is.
8 MR. GWYNNE: And if we could just have a
9 moment, your Honor. I'm sorry. I thought the
10 exhibits were marked. I apologize.
11 THE COURT REPORTER: My fault.
12 MR. GWYNNE: No.
13 THE COURT REPORTER: I apologize.

14 MR. GWYNNE: That's okay, Sandra.
15 Q So, once again, Exhibit 4 is a copy of the payment
16 history on this loan?
17 MR. SLOAN: Objection: leading.
18 THE COURT: Sustained.
19 Q What is Exhibit 4, Ms. DeLoney?
20 A Exhibit 4 is the loan-payment history for the
21 property at issue.
22 Q Okay. And does the payment history show that the
23 borrower has defaulted on terms of her note -- her
24 mortgage?
25 MR. SLOAN: Objection: leading.

1 THE COURT: Mr. Gwynne, try to be -- I know
2 we're trying to be efficient, but --
3 Q Ms. DeLoney, is the --
4 THE COURT: -- follow the rules.
5 MR. GWYNNE: I'm sorry, your Honor. Yes.
6 Q Ms. DeLoney, is the loan currently in default?
7 A Yes. The loan is due -- currently due for the July
8 2010 payment.
9 Q And how do you know that it's due for the July 2010
10 payment?
11 A Well, according to the payment history, the last
12 payment applied was on June 11th, 2010, for the
13 June 2010 payment, and no payments have been made
14 since then.

15 Q Okay. Now, as a result of the borrower being in
16 default, was a demand letter sent to the borrower?
17 A Yes.
18 Q I'm going to show you what's been marked as
19 Plaintiff's --
20 MR. GWYNNE: Before I do that, your Honor,
21 plaintiff moves Exhibit 4 into evidence.
22 MR. SLOAN: No objection.
23 THE COURT: All right. Thank you. Without
24 objection.
25 Plaintiff's Exhibit Number 6, "Notice of

1 Intent to Accelerate."
2 Q Ms. DeLoney, I'm going to show you what's been
3 marked as Plaintiff's Exhibit --
4 MR. SLOAN: Five.
5 A Well, it . . .
6 Q It should be 5.
7 A Should be 5?
8 THE COURT REPORTER: Sorry.
9 MR. GWYNNE: That's okay. We could leave it
10 as 6. That's fine. Just . . .
11 THE COURT: It doesn't matter.
12 MR. GWYNNE: Doesn't matter.
13 THE COURT: If they're marked, as long as they
14 can be marked 155 to 160. And I've had trials
15 where that's actually happened, and the judge

16 has said, "Where's Exhibits 1 through 154?"
17 "We don't need them."
18 "Okay, fine."
19 Plaintiff's Exhibit Number 5, "Mortgage."
20 Q Ms. DeLoney, is -- what is Exhibit 6, that's been
21 marked as the -- exhibit that's been marked as
22 Plaintiff's Exhibit 6?
23 A Exhibit 6 is a copy of the notice of intent to
24 accelerate the loan, dated August 16, 2010.
25 Q Okay. And was that letter sent -- it's addressed

1 to the borrower?
2 A Yes.
3 Q Okay. And was it sent to the borrower, according
4 to your business records?
5 A Yes.
6 Q Okay. Does the borrower owe a certain sum of money
7 to the plaintiff?
8 A Yes.
9 Q Have you reviewed the records of the plaintiff to
10 determine what that amount is?
11 A Yes.
12 Plaintiff's Exhibit Number 7, Judgment
13 Figure Summary.
14 Q Okay. I'm going to show you what's --
15 MR. GWYNNE: Your Honor, plaintiff moves
16 Exhibit 6 into evidence.

17 MR. SLOAN: No objection.
18 Q All right. Let me show you what's been marked as
19 Plaintiff's Exhibit 7. Can you tell me what that
20 exhibit is?
21 A Exhibit 7 is a breakdown of the debt or -- also
22 known as the "judgment figures" for the loan.
23 Q Okay. And the first two pages, a summary of those
24 figures?
25 A Yes.

1 Q And the second two pages, is that a business record
2 of your company?
3 A Yes.
4 Q And can you tell the Court what the total amount
5 due on the loan is? For example, can you say what
6 the principal is first?
7 A Principal -- outstanding principal is $94,178.44.
8 Q And what about interest?
9 A Interest outstanding is $30,818.90.
10 Q And what about escrow advances?
11 A Escrow outstanding is $6,800.65.
12 Q Okay. And property inspections?
13 A Outstanding, we have $389.
14 Q Okay. And can you tell me what "prior foreclosure
15 fees" were, meaning fees that weren't paid to my
16 firm?
17 A Yes. $9,036.50.

18 Q And does that -- does that total equal $141,223.49?
19 A I'm sorry. The number, again?
20 Q $141,223.49.
21 A Yes.
22 Q Does the plaintiff also ask for reasonable
23 attorney's fees to be included to that amount that
24 has been paid to my firm?
25 A Yes.

1 MR. GWYNNE: Your Honor, plaintiff moves
2 Exhibit 7 into evidence.
3 MR. SLOAN: No objection.
4 THE COURT: All right. Can I see that,
5 please?
6 MR. GWYNNE: And just for the record, your
7 Honor, I've prepared a separate affidavit for
8 --
9 THE COURT: Sure.
10 MR. GWYNNE: -- my firm's attorney's fees,
11 which I've marked for identification purposes
12 as Exhibit 2. Just for the record --
13 THE COURT: I thought the mortgage was Exhibit
14 2.
15 MR. GWYNNE: I was -- it's -- that's the
16 Exhibit 5.
17 THE COURT: Okay.
18 MR. GWYNNE: So if I could just have a moment,

19 your Honor, I'll make sure that the record's
20 straight. Exhibit 1 is the note.
21 THE COURT: Okay.
22 MR. GWYNNE: Exhibit 2 is my affidavit
23 attorney's fees.
24 THE COURT: Okay.
25 MR. GWYNNE: Exhibit 3 is the assignment of

1 mortgage.
2 THE COURT: Okay.
3 MR. GWYNNE: Exhibit 4 is the payment history.
4 THE COURT: All right.
5 MR. GWYNNE: Exhibit 5 is the mortgage.
6 THE COURT: Okay.
7 MR. GWYNNE: Exhibit 6 is the demand letter,
8 and Exhibit 7 is the judgment figure summary.
9 THE COURT: All right. I think in testimony -
10 - for the record, the testimony reflected that
11 mortgage was Exhibit 2, so the record will
12 reflect that the actual numbers on the
13 exhibits are the correct exhibit numbers --
14 MR. GWYNNE: Yes, your Honor.
15 THE COURT: -- irrespective of what the
16 testimony reflects.
17 MR. GWYNNE: Yes, your Honor.
18 THE COURT: All right.
19 MR. GWYNNE: No further questions.

20 THE COURT: (To Mr. Sloan) Go ahead. You may
21 cross.
22 MR. SLOAN: Thank you, your Honor.
23 CROSS EXAMINATION OF MS. DELONEY
24 BY MR. SLOAN:
25 Q Ms. DeLoney, right?

1 A Yes.
2 Q Okay. I had it right the first time. Can I direct
3 your attention -- let's first take up the -- Number
4 6, the notice of intent to accelerate. What is the
5 date of the letter?
6 A August 16, 2010.
7 Q Okay. And what is the date that the letter gives
8 Ms. Deaner the chance to cure the alleged default?
9 A Through -- on or before September 15th, 2010.
10 Q Yeah. Okay. And is that a time period of 30 days?
11 A Yes.
12 Q The -- is it your testimony, based on the business
13 records, that the letter was mailed out on August
14 the 16th?
15 A No. That's not what I said.
16 Q Okay. Oh, when was the letter mailed out?
17 A Actually placed in the mail?
18 Q Yes, ma'am.
19 A I don't know the exact date.
20 Q You don't -- you don't know?

21 A No.
22 Q Okay. If -- if you don't know something, you --
23 you don't know it, but is there any reason for you
24 to believe that the letter was mailed out before
25 August 16th?

1 A No.
2 Q Okay. And BAC Home Loans Servicing, at the time,
3 was the servicer of the note and mortgage; is that
4 correct?
5 A Yes.
6 Q Okay. Who was the mortgagee of record at the Aiken
7 County Register of Deeds on August 16th, 2010?
8 That was not Bank of America, was it?
9 A No.
10 Q That was -- was that -- that was Quicken Loans; is
11 that correct?
12 A What's the date, again? What's was it? What's
13 your date of reference?
14 Q I'm sorry. The -- the date this letter apparently
15 -- or the date this letter was mailed was August
16 16th, 2010. That's the date of this letter,
17 correct?
18 A Yes.
19 Q Okay. But the mortgage was not assigned to Bank of
20 America, BAC, etc., etc., before 2011; is that
21 correct? What number is the assignment? I think

22 it's Number 3.
23 A BAC was servicing the loan as of August 2010. The
24 assignment recorded in Aiken County was recorded
25 May 9th, 2011.

1 Q So -- so Bank of America was not the mortgagee of
2 record on August 16th, 2010; is that correct?
3 A Well, when you say "of record," are you talking
4 about in the county records?
5 Q At the Aiken County Register of Deeds' office.
6 A That's correct.
7 Q Okay. And do -- do your business records state how
8 -- by what device that right-to-cure letter was
9 mailed?
10 A Yes.
11 Q And -- and what was that?
12 A It was sent First-Class mail.
13 Q First-Class mail? Okay. And did -- was there any
14 confirmation that Ms. Deaner received -- received
15 it?
16 A First-Class mail, there's no confirmation of
17 receipt.
18 Q Okay. So -- okay. I direct your attention, if you
19 would, please, to the mortgage. I think that was
20 Number 2. And if you would, please turn to Page
21 13.
22 A Okay. For the record, the mortgage is actually

23 Exhibit 5.
24 Q Oh, I'm -- the -- thank you for correcting me on
25 that. Please --

1 THE COURT: Should've been --
2 Q If you --
3 THE COURT: Go ahead.
4 Q If you would, please turn to Page 13 of the
5 mortgage, Number 22.
6 A Okay.
7 Q It says that the "Lender shall give notice to the
8 borrower . . . a breach of any covenant
9 . . ."; is that -- is that what the mortgage says?
10 A Yes.
11 Q Okay. Who was the lender of this mortgage on
12 August 16th, 2010?
13 A The lender?
14 Q Yes.
15 A How are you defining "lender"?
16 Q The -- this is -- this is the Bank of America's
17 document, correct?
18 A Yes.
19 Q Okay. I've -- I don't know how to define "lender,"
20 per the terms of this mortgage, so do you know who
21 the lender of this mortgage was on August 16th,
22 2010?
23 A Yes.

24 Q Okay. Who was that?
25 A BAC Home Loan Servicing.

1 Q Okay. But they were not the -- they were not the
2 lender of record on the Aiken -- at the Aiken
3 County Register of Deeds on August 16th, 2010; is
4 that correct?
5 A According to the date the assignment was recorded,
6 that is correct.
7 Q Okay. Quicken Loans, via Mortgage Electronic
8 Registration System, Inc., MERS, was the lender of
9 record at the Aiken County Register of Deeds on
10 August 16th, 2010; is that -- is that correct?
11 A I'm sorry. Say it one more time.
12 Q Quicken Loans, the original lender, via Mortgage
13 Electronic Registration System, Inc., was the
14 lender of record, "of record" being the Aiken
15 County Register of Deeds, on August 16th, 2010; is
16 that correct?
17 A Yes.
18 Q Okay. All right. Okay. If you would, please
19 refer back to Number 22 of the mortgage, as well,
20 on Page 13. Just to save some time, Line 4 of that
21 paragraph, Letter C, it says that the borrower
22 shall have "not less than 30 days from the date of
23 the notice is given to the borrower" to cure any
24 default; is that correct?

25 A That is what it says. Yes.

1 Q Okay. All right. And Bank of America, BAC, gave
2 Ms. Deaner until September 15th, 2010, to cure any
3 default; is that -- is that correct, based on the
4 right-to-cure letter?
5 A Yes.
6 Q Okay. Where was the right-to-cure letter mailed
7 from?
8 A I don't know.
9 Q Okay. And if you would, please turn to Page 2 of
10 the right-to-cure letter. Who signed this letter
11 for Bank of America?
12 A Oh, there is no signature on it.
13 Q Okay. Do you know who sent the letter out?
14 A I don't.
15 Q So just to clarify, you don't know who sent the
16 letter out?
17 A Specifically, who sent the letter out?
18 Q Yes, ma'am.
19 A No.
20 Q And you don't know where the letter was mailed
21 from?
22 A Correct.
23 Q Okay. So, how can you be certain that the letter
24 was mailed out? You don't have -- you didn't mail
25 the letter out, did you?

1 A No.
2 Q Okay. You have no personal knowledge -- personal
3 knowledge of the letter being mailed out, correct?
4 A Correct.
5 Q Okay. You're simply relying on the business
6 records of your company --
7 A Yes.
8 Q -- to say that the letter was sent out?
9 A And we have a bar code -- a First-Class bar code
10 attached in our business record to this notice of
11 acceleration -- notice to -- of intent to
12 accelerate.
13 Q Okay. But -- but your attorney has not admitted
14 that bar code into -- into evidence; is that
15 correct?
16 A Yes.
17 Q Okay. And you received no confirmation from Ms.
18 Deaner that she received this letter?
19 A I -- I didn't look to see if that was -- if she
20 ever called in to say, "I did or did not get the
21 letter." I didn't --
22 Q You -- you don't know?
23 A -- don't recall it in the business record.
24 Q Okay. I understand. When did Bank of America
25 become the servicer of this mortgage?

1 A July 2011.
2 Q July 2011?
3 A Yes.
4 Q Okay. That's when they became the servicer of the
5 mortgage?
6 A Yes.
7 Q Okay. All right. Who was the servicer of the
8 mortgage prior to July of 2011?
9 A Bank -- Bank of America Corp -- BAC Home Loan
10 Servicing, LP.
11 Q I -- I'm sorry. Let me -- let me rephrase my
12 question. When did the plaintiff or their
13 predecessors become servicer of this note and
14 mortgage?
15 A Shortly after origination.
16 Q Okay.
17 A Within a month or two.
18 Q Okay. Okay. I'm sorry if I'm jumping around a
19 little bit. If you would -- note's Number 1,
20 correct?
21 THE COURT: Yeah. Yes.
22 Q See -- Ms. DeLoney, if you would, please turn to
23 the note. And I direct your attention to what you
24 referred to as "the endorsement in blank" on the
25 very last page. When did Countrywide endorse this

1 note in blank?
2 A I don't know.
3 Q And do you know when it was attached to the
4 original note?
5 A No.
6 Q Okay. You just know that that is based on your
7 work experience that that's -- that's an
8 endorsement in blank from Countrywide to whoever
9 holds it?
10 A Well, to blank, yes.
11 Q Okay. But, again, no -- no idea as to when that
12 endorsement was stamped?
13 A I don't know.
14 Q Okay. If you don't know, you -- you don't know.
15 I'm sorry -- jumping around again. The assignment
16 of mortgage. If you would, have that in front of
17 you. I direct your attention to the signature
18 portion of the assignment of mortgage. The way I
19 read it, but I'm -- but this is your assignment of
20 mortgage. It's signed by Mortgage Electronic
21 Registration Systems, Inc.; is that correct?
22 A Yes.
23 Q Okay. It does not purport to act on behalf of
24 Quicken Loans, who is the -- who -- who was the
25 original lender; is that correct? There's no

1 mention of Quicken Loans in that portion of the
2 signature of this assignment; is that correct?
3 A I want to make sure I understand your question.
4 Are you stating: On the signature line, is there
5 reference to Quicken Loans?
6 Q Yes, ma'am. You phrased the question better than
7 me.
8 A No. There is not.
9 Q Okay. You have answered my question.
10 MR. SLOAN: May I have a moment, please, your
11 Honor?
12 THE COURT: Certainly. You can step outside
13 if you like.
14 (Off the record from 10:35 a.m.
15 until 10:35 a.m.)
16 THE PROCEEDING CONTINUES.
17 THE COURT: Are we ready?
18 MR. SLOAN: Thank you, your Honor. The -- I'm sorry. I
19 don't know where your exhibits went.
20 THE COURT: Oh, I got them.
21 MR. SLOAN: I'm -- I'm sorry. I was going to ask Ms.
22 DeLoney about the assignment of mortgage.
23 THE EXAMINATION OF MS. DELONEY BY MR. SLOAN CONTINUES.
24 Q Ms. DeLoney, the assignment of mortgage purports to
25 assign the note and the mortgage; is that -- is

1 that correct? Am I reading that correctly?
2 A Where are you reading?
3 Q I'm sorry. Under "Assignment of Mortgage" -- one,
4 two, three -- starting at the fourth and down to
5 the fifth line, ". . . all beneficial interest
6 under that certain mortgage . . . together with the
7 note . . ."?
8 A Yes.
9 Q Okay. But you said Fannie Mae is the investor of
10 this note; is that correct?
11 A Yes.
12 Q Okay. Does Bank of America have any ownership
13 interest in this note?
14 A How are you defining "ownership interest"?
15 Q Do they -- do they own the note? Do they have the
16 right to pocket any of the payments, since Fannie
17 Mae is the investor?
18 A I don't know the accounting of, as you phrase it,
19 the "pocketing" of the payments. I don't know how
20 that structure is between the bank and Fannie Mae.
21 Q Okay. As far as you know, based on your
22 investigation of the business records, Bank of
23 America is only the servicer of the mortgage?
24 A Bank of America is also the holder of the note.
25 Q I -- I -- I understand that. Do they have the

1 right -- they have -- they have the right to
2 collect the payments. Do they have any ownership
3 interest in the payments?
4 A Well, as I testified earlier, I don't know what
5 they've got -- any sort of "pocketing," as you
6 phrased it --
7 Q Okay.
8 A -- in the funds.
9 Q Okay. So your attorney had -- in -- in your direct
10 examination, you had laid out the amount that is
11 allegedly due and owing on the note. Does that go
12 to Fannie Mae -- that 141,000?
13 A What do you mean?
14 Q Who has the right to receive those -- that -- that
15 payment of 141,000? Who would that go to?
16 A It would come to Bank of America, as servicer of
17 the loan.
18 Q Yeah. Okay. But what would be its ultimate
19 destination?
20 A Well, as I testified earlier, the accounting --
21 behind-the-scenes accounting with the investor, I
22 don't know.
23 Q Okay. So Bank of America would not be -- is not
24 being damaged by 141,000 by Ms. Deaner's payment or
25 non-payment, since they're -- since Fannie Mae is

1 the investor?
2 A I'll -- same testimony. Since -- behind the scenes
3 with the investor, I don't know.
4 Q Okay.
5 A We have paid out -- out-of-pocket expenses, taxes,
6 insurance, attorney fees, inspection fees, things
7 like that that we haven't been reimbursed for, so
8 if you want to say we've been "damaged," we're out
9 those expenses.
10 Q So you have been -- you have -- for lack of a
11 better verb, you have fronted the inspection fees?
12 A Yes.
13 Q You've fronted the taxes?
14 A When you say "fronted" -- we've -- we've made the
15 payments and have not been reimbursed for those
16 expenses.
17 Q Okay. Is that also true with the property
18 insurance?
19 A Yes.
20 Q Okay. Is that also true with the attorney's fees?
21 A Yes.
22 Q Okay. So those -- those fees, Bank of America has
23 dispersed and has not been repaid?
24 A Correct.
25 Q Okay. Okay. So those are certainly -- certainly

1 damages that Bank of America has incurred -- costs

2 that they have incurred as part of this case?
3 A To date, yes.
4 Q Okay. I was going to ask you the same question a
5 fifth time, but I'm -- I -- I don't think that's
6 necessary. Why -- why was the note not endorsed --
7 Fannie Mae is -- is the investor, correct?
8 A Yes.
9 Q All right. Why was the note not endorsed to Fannie
10 Mae?
11 A We -- part of the servicer-investor relationship is
12 that the bank -- the notice endorsed to the bank is
13 being the holder of the note.
14 Q Okay. And you said that Bank of America,
15 parenthesis, their predecessors, Countrywide, BAC,
16 have been the servicer of the note and mortgage
17 since almost the beginning -- the inception?
18 A Yes.
19 Q Has Bank of America or their predecessors ever been
20 -- ever been the owner of the note and mortgage?
21 A I don't know. I didn't review the investor history
22 on the loan.
23 Q Okay. Okay.
24 MR. SLOAN: One moment, please, your Honor?
25 THE COURT: Certainly.

1 Q The Mortgage Electronic Registration System, they -
2 - they are not listed in any way on the note; is

3 that correct?

4 A No. After a quick review of the note copy, I do

5 not find the word "MERS" on it, except for the

6 reference to the MERS MIN number in the upper left-

7 hand corner.

8 Q Okay. But I direct your attention to Number 1,

9 "Borrower's promise to pay." The lender is listed

10 as Quicken Loans, Inc., correct?

11 A That is what it says. Yes.

12 Q And no mention of -- of MERS as the -- as the

13 lender?

14 A Correct.

15 Q Okay. The -- so the only mention you see of MERS

16 on the note is the MERS MIN number?

17 A Yes.

18 Q Okay.

19 MR. SLOAN: (To Ms. Deaner) Was there

20 anything else?

21 MS. DEANER: The tracking number.

22 MR. SLOAN: Was there anything else?

23 MS. DEANER: Can we go outside, please?

24 MR. SLOAN: I -- it won't --

25 THE COURT: Sure.

1 MR. SLOAN: Thank you, your Honor.

2 (Off the record from 10:44 a.m.

3 until 10:46 a.m.)

4 THE PROCEEDING CONTINUES.

5 THE COURT: (To Mr. Sloan) Go ahead.

6 MR. SLOAN: Thank you, your Honor. No further questions

7 at this time. I would reserve the right to call

8 Ms. DeLoney in -- in our case if necessary.

9 MR. GWYNNE: Brief --

10 THE COURT: Any redirect?

11 MR. GWYNNE: Brief redirect, your Honor.

12 THE COURT: Go ahead.

13 MR. SLOAN: Excuse me.

14 REDIRECT EXAMINATION OF MS. DELONEY

15 BY MR. GWYNNE:

16 Q Ms. DeLoney, if you look at Exhibit 5, Page 10 of

17 15, Paragraph 15, where it says "Notices" --

18 A Yes.

19 Q -- does it state -- the second sentence: "Any

20 notice to borrower in connection with the security

21 instruments shall be deemed to have been given

22 to the borrower when mailed by First-Class

23 mail . . ."?

24 A Yes. That's what it states.

25 Q Okay. And you've testified that the demand letter

1 that we talked about was mailed to the borrower

2 property address, according to your company

3 records, correct?

4 A Yes. Well, to -- it was sent to a PO box, but,

5 yes.
6 Q Okay. Which -- that would've been the address that
7 Bank of America had on file to send notices to?
8 A Yes.
9 Q Okay. One other question. If you look at the
10 mortgage again -- the first page -- the mortgage --
11 the lenders actually merge as nominee for Quicken
12 Loans; is that correct?
13 MR. SLOAN: Objection: leading.
14 THE COURT: Sustained.
15 MR. GWYNNE: Yes, your Honor.
16 Q If you look at the Exhibit 5, Page 1, Section C, at
17 the bottom --
18 A Yes.
19 Q -- it talks about MERS, correct?
20 A Yes. It does.
21 Q Okay. And is your understanding that MERS is the -
22 - is the lender or is the nominee for Quicken Loans
23 under the terms of the mortgage; is that correct?
24 A It's the nominee for the lender and the lender's
25 successors and assigns.

1 Q So MERS would've had authority to sign the
2 assignment of mortgage; is that correct?
3 MR. SLOAN: Objection: leading.
4 THE COURT: Sustained.
5 Q Based on your knowledge of the loan documents,

6 would MERS have authority to have signed the
7 assignment of mortgage in this case?
8 MR. SLOAN: Objection: calls for speculation.
9 MR. GWYNNE: (To the Court) Mr. Sloan asked
10 her a question about who signed the -- signed
11 the mortgage. I'm just trying to follow up on
12 that.
13 THE COURT: I'll allow it.
14 A Yes.
15 MR. GWYNNE: I have no further questions, your
16 Honor.
17 THE COURT: Recross.
18 MR. SLOAN: Thank you, your Honor.
19 RECROSS EXAMINATION OF MS. DELONEY
20 BY MR. SLOAN:
21 Q Very briefly, you testified in your redirect
22 moments ago that MERS is the nominee for the lender
23 and lender's successors and assigns, reading from
24 the mortgage, correct?
25 A Yes.

1 Q Okay. And -- and the assignment of mortgage, which
2 you just testified that MERS had the authority to -
3 - but the assignment of mortgage was not recorded -
4 - executed until April 29th, 2011; is that correct?
5 A Well, there are two parts -- two answers to your
6 statement. It was -- it's dated April 29, 2011.

7 It's recorded May 9, 2011.

8 Q Okay. And going back to your redirect on Number 15

9 of the mortgage, your business records do not say

10 who prepared the right-to-cure letter; is that

11 correct?

12 A I -- again, I don't know who did.

13 Q And you have no idea of where this right-to-cure

14 letter was mailed from?

15 A I don't.

16 Q Okay.

17 MR. SLOAN: No further questions at this time,

18 your Honor.

19 THE COURT: (To Mr. Gwynne) Anything else?

20 MR. GWYNNE: No, your Honor.

21 THE COURT: In other -- well, I've got a

22 question, ma'am.

23 EXAMINATION OF MS. DELONEY

24 BY THE COURT:

25 Q Do you know what is meant by the term "nominee" and

1 how that plays with investor versus servicer versus

2 holder of the note?

3 A In general terms, yes.

4 Q Answer that, then.

5 A Basically, title will -- will reside with the

6 nominee at a higher level. The servicer -- but

7 then it will have a different servicer on the next

8 level down, and that's who payments are made to.
9 Q Okay.
10 A The -- once we started foreclosure action, we
11 assign the loan from the nominee to the servicer.
12 Q Okay.
13 A So the nominee is strictly for title purposes.
14 Q All right. More like a trustee; is that --
15 A Exactly.
16 Q Okay.
17 A Exactly.
18 Q Not -- not -- not as a -- not a legal trust, but
19 I'm just asking for a --
20 A They --
21 Q -- kind of, analogous-type thing.
22 A They have no monetary interest in the loan,
23 basically.
24 THE COURT: All right. Okay. Gentleman --
25 Mr. Gwynne, anything in follow-up after my

1 question?
2 MR. GWYNNE: No, your Honor.
3 THE COURT: Mr. Sloan?
4 MR. SLOAN: Very briefly, I'm -- I'm sorry.
5 RECROSS EXAMINATION OF MS. DELONEY
6 BY MR. SLOAN:
7 Q Who do you say has no monetary interest in the
8 loan?

9 A MERS.

10 Q MERS? Okay.

11 MR. SLOAN: That -- that's -- that's all I

12 have at this time, your Honor.

13 THE COURT: All right. Any other witnesses?

14 MR. GWYNNE: No other witnesses, your Honor.

15 THE COURT: Okay. You want to take a break,

16 or you want to continue?

17 MR. SLOAN: I am going to call Ms. Deaner to

18 the stand, but I don't think we'll take long.

19 THE COURT: All right. Let's proceed, then.

20 MR. SLOAN: Very good.

21 (The witness is sworn.)

22 THE COURT: You may proceed, Mr. Sloan.

23 MR. SLOAN: Thank you, your Honor. While Ms.

24 Deaner's getting mic'ed up.

25 DIRECT EXAMINATION OF MS. DEANER

1 BY MR. SLOAN:

2 Q Ms. Deaner, I'd direct your attention to --

3 THE COURT: Mr. Sloan, I don't know if Mr.

4 Gwynne will be the -- will be back, but I

5 don't think -- be careful that you don't lead

6 as much because I -- he -- I'm sure he will --

7 he will remind you of your -- of your -- your

8 objections.

9 MR. SLOAN: Just as vigorously as I did to

10 him.

11 Q Ms. Deaner, I direct your attention to -- I can't
12 remember the number. I think it's Number 6, the
13 right-to-cure letter. Do you see that in front of
14 you?
15 A Yes.
16 Q Okay. When is the first time you saw this right-
17 to-cure letter?
18 A When it was in the documents from -- a bunch of
19 documents from Korn Law Firm.
20 Q Are you referring to the discovery exchange that
21 occurred --
22 A Right.
23 Q -- during this case?
24 A Right.
25 Q Okay. And asking -- what -- what is the figure

1 stated in the right-to-cure letter to cure any
2 alleged default?
3 A It's $1,331.15.
4 Q And what is the "good through" date that the letter
5 gives you to cure that alleged default?
6 A September the 15th, 2010.
7 Q And between August 16th, 2010, and September 15th,
8 2010, would you have had those funds available to
9 cure this alleged default?
10 A Yes. I would say probably, yes.

11 Q Okay.

12 MR. SLOAN: No further questions, your Honor.

13 THE COURT: Cross examination?

14 MR. GWYNNE: Yes, your Honor.

15 CROSS EXAMINATION OF MS. DEANER

16 BY MR. GWYNNE:

17 Q Ms. Deaner, when did you take out this loan?

18 A It was in 2007.

19 Q Okay. So did you make your payments in 2007 under

20 the terms of the note and mortgage?

21 A Yes.

22 Q What about 2008?

23 A Yes.

24 Q 2009? Did you make your payments under the terms

25 of the note and mortgage?

1 A I'm -- I'm -- I'm -- I'm guessing yes.

2 Q Okay. And you made your payments all the way to

3 June of 2010, correct?

4 A That -- I believe that's correct.

5 Q Okay. Did you make your July 1st, 2010, payment?

6 A I really don't know.

7 Q Okay. What about all the payments after that?

8 Have you made any payments since June of 2010?

9 A No.

10 MR. GWYNNE: No questions. No further

11 questions, your Honor.

12 THE COURT: Redirect?

13 A But I don't think I owed any.

14 MR. SLOAN: No, your Honor.

15 THE COURT: All right. Anything else? Any other

16 witnesses?

17 MR. SLOAN: No, sir. Defense rests.

18 THE COURT: (To Mr. Gwynne) Anything in reply?

19 MR. GWYNNE: I just have a brief closing statement to

20 make, but I can do that --

21 THE COURT: All right. I'll --

22 MR. GWYNNE: -- whenever.

23 THE COURT: Okay. But no other -- no other -- no other

24 evidence?

25 MR. GWYNNE: No, your Honor.

1 THE COURT: Okay. (To Mr. Sloan) Are you going to make

2 a -- you want to make a closing, as well?

3 MR. SLOAN: Please, sir.

4 THE COURT: All right. Now, if you're going to argue

5 law, gentlemen, and it's going to get lengthy, I'll

6 be glad to let you briefly close, but I would

7 prefer written -- a written memorandum.

8 MR. SLOAN: Okay.

9 THE COURT: You know, you've got affirmative defenses

10 that are matters of law. I know you are going to

11 argue those matters of law, but I'm not going to

12 make a decision today. I think -- I think I told -

13 - I've told y'all before. So -- but if you want to
14 put something on the record as far as your closing
15 -- I'm not trying to prohibit you. I'm just
16 letting you know there's not a -- a lot to -- to
17 talk about, but I would -- it would be better --
18 your clients would be better served by you putting
19 it in writing than putting -- putting it verbally.
20 But go ahead, Mr. Gwynne.
21 MR. GWYNNE: Thank you, your Honor. Well, just for the
22 record, your Honor, I just want to say that the
23 plaintiff is obviously seeking the foreclosure of
24 its mortgage, which constitutes a first mortgage
25 lien on the property. Deficiency has been waived.

1 We're obviously going to ask for the quickest
2 possible public sale date. The total of judgment
3 we're seeking is $146,023.49, which includes the
4 figures that Ms. DeLoney has talked -- has
5 testified to, additionally -- plus the total of my
6 affidavit of attorney's fees. And I'll just put
7 that on the record, your Honor -- the -- the total
8 amount. Fees and costs of $4,800.
9 THE COURT: That's through today, or does that include
10 estimated time, or . . .
11 MR. GWYNNE: That's through today, your Honor.
12 THE COURT: Okay. So you put however -- you estimated
13 however much time you were going to be spending

14 coming to today's hearing and included that, or do
15 I need to take further consideration and you -- let
16 you submit a supplemental affidavit?
17 MR. GWYNNE: I included what the -- my client has agreed
18 to pay my firm.
19 THE COURT: I understand.
20 MR. GWYNNE: Yeah. So it's --
21 THE COURT: So you're not seeking anything over and
22 above what -- what your firm is going -- is going
23 to be receiving?
24 MR. GWYNNE: Unless there's, obviously, more --
25 THE COURT: You're not getting an efficiency, so it's no

1 use in me awarding anything over and above what --
2 that figure?
3 MR. GWYNNE: Yes. I'd agree with that, your Honor.
4 THE COURT: Okay. All right. Go ahead.
5 MR. GWYNNE: And very briefly, your Honor, I understand
6 that we can certainly submit -- we will submit
7 memorandums of law, but just very briefly, your
8 Honor, the -- I think Mr. Sloan and his client are
9 essentially arguing -- challenging the assignment
10 of mortgage in this case as a way to somehow
11 challenge -- well, to challenge standing of the
12 plaintiff. And based on -- I -- I'll name the
13 cases, your Honor, but, obviously, I'll put them in
14 writing to you. But based on the MidFirst Bank

15 case, which is 893 F. Supplement 1304, which is a
16 district court of South Carolina case, the
17 assignment of a note secured by a mortgage carries
18 with it the assignment of the mortgage. The
19 enforcement of a note in South Carolina does not
20 require the plaintiff to have a written assignment
21 of mortgage securing the note. That's the
22 Woodberry case, which is a bankruptcy -- South
23 Carolina bankruptcy court case, at 383 B.R. 377.
24 So --
25 THE COURT: You -- you said 377?

1 MR. GWYNNE: Three, seven, seven, your Honor.
2 THE COURT: Okay.
3 MR. GWYNNE: So, essentially, your Honor, in South
4 Carolina law, the assignment of mortgage is
5 irrelevant to standing because the mortgage follows
6 the note. The only issue relevant to standing in
7 this case is whether the plaintiff has possession
8 of the original note properly endorsed. The -- the
9 witness has testified that the note is present in
10 the room today, endorsed in blank, and it's --
11 because the plaintiff is in possession of the note
12 endorsed in blank, the plaintiff is the holder of
13 the note and has the power to enforce it under the
14 South Carolina Uniform Commercial Code Section 2,
15 which is codified in 36-3-301. And then I'll

16 direct the Court also to the Draper case, which is
17 405 S.C. 214, which is a court of appeals case in
18 which the Court clearly said that servicers have
19 the right -- have the standing to enforce the note
20 and to have standing to be the plaintiff in
21 foreclosure cases such as this. So that's
22 basically the argument. So the assignment of the
23 mortgage is an instrument that puts the world on
24 notice, but it does not -- it does not -- does not
25 convey ownership in the terms of if it needs to be

1 recorded on a certain date in order to enforce the
2 note and that type of thing. It's -- it's for
3 third parties, and it certainly makes sense to do
4 assignments of mortgage so people know who has the
5 mortgage at certain times. But it's not required
6 under -- in South Carolina.
7 THE COURT: All right. Thank you.
8 MR. GWYNNE: Thank you.
9 THE COURT: Mr. Sloan?
10 MR. SLOAN: Briefly, your Honor -- first, as far as Bank
11 of America being the servicer, we are -- because of
12 Draper, we are certainly not contesting that Bank
13 of America has the standing to bring the
14 foreclosure action. They did file the foreclosure
15 action after the -- the -- after they recorded an -
16 - an assignment. We would just contest the damages

17 that the plaintiff, not as the owner or the
18 investor, but as the servicer -- the damages that
19 Bank of America has suffered. And in the witness's
20 testimony, the only damages that have been clearly
21 identified are not principal, not interest; they
22 are just the -- the attorney's fees, the escrow
23 advances, and the property inspections. Those --
24 those are certainly -- if -- if the Court awards
25 the foreclosure, those are certainly damages. We

1 don't think that the plaintiff has shown any other
2 damages suffered by Bank of America, the plaintiff.
3 This action's not being brought in the name of
4 Fannie Mae. Again, it's being brought in the name
5 of Fannie Mae, as the servicer -- Bank of America,
6 as the servicer. The assignment of mortgage, we
7 would -- we would contend that that -- we are
8 contesting standing to a limited extent, since that
9 mortgage assignment was signed by MERS and not --
10 does not appear to act on behalf of Quicken Loans.
11 As the Court would take note, we spent a large
12 amount of time on the right-to-cure letter. First,
13 while we -- we can discuss Draper, we can discuss
14 Draper about standing to foreclose. The mortgage
15 itself sets out conditions precedent to start the
16 foreclosure, which, specifically, is that right-to-
17 cure letter. First, the -- we contend that the

18 plaintiff has not provided satisfactory evidence
19 that the letter was sent out. The witness does not
20 know where it was mailed from. The witness does
21 not know who mailed it. Further, the letter is
22 dated August 16th, 2010. The witness does not know
23 of when the letter was -- was mailed out. She
24 lacked the personal knowledge to do so, but even if
25 -- accepting the letter on face value, that it was

1 mailed out August 16th, it did not give Ms. Deaner
2 30 days to cure that default, since she -- at -- at
3 best, she would've gotten the letter the next day,
4 and probably several days later, since it was --
5 well, I don't know where it came from. But
6 allegedly, it's coming from Dallas, Texas.
7 Ms. Deaner testified that she did not get this
8 letter. The plaintiff's witness did not put into
9 evidence a bar code which showed that the letter
10 had been mailed. The plaintiff has failed to show
11 that this letter was sent, which is a condition
12 precedent to sending it. The letter does not come
13 from the lender because the lender, according to
14 the public records at the time that the letter was
15 mailed out, was Quicken Loans via Mortgage
16 Electronic Registration System. So even if the
17 letter was mailed -- even if the letter was timely
18 mailed, it did not come from the lender, as stated

19 in the mortgage. Ms. Deaner further testified that
20 -- that she did not get the letter, and that -- and
21 that is not being refuted by the plaintiff since it
22 was sent First-Class mail, not certified, verified.
23 Ms. Deaner testified that she had the ability to
24 cure that default during that less-than-30-day
25 period in late August/early September 2010. And I

1 will further supplement that in writing, your
2 Honor, but those are the big arguments as to why
3 the -- the foreclosure should not be granted, or if
4 it is granted, that the only damages calculated by
5 the Court would be the damages Bank of America
6 actually suffered.
7 THE COURT: Okay.
8 MR. SLOAN: I thank the Court.
9 MR. GWYNNE: (To the Court) Okay. A brief reply, and I
10 did not --
11 THE COURT: Sure.
12 MR. GWYNNE: I -- I didn't do the -- I didn't talk about
13 the demand letter issue, but, your Honor, the --
14 the mortgage is clear that it is deemed received
15 when mailed by First-Class mail. I understand
16 mortgages are kind of one-sided, but that's what
17 Ms. Deaner signed. And the -- the witness for the
18 plaintiff testified that it was mailed to her. The
19 records show that, and Ms. Deaner can't dispute

20 that except to say, "Well, that may not have
21 happened." So I think the records -- we've
22 established that the note was properly accelerated
23 and a notice was mailed.
24 THE COURT: In other words, you're stating that the
25 mortgage creates a presumption of receipt that she

1 has to overcome by the preponderance of the
2 evidence as opposed to you having to prove by the
3 preponderance of the evidence that the -- that it
4 was mailed?
5 MR. GWYNNE: Yes, your Honor.
6 THE COURT: Mr. Sloan?
7 MR. SLOAN: Your Honor, the -- the plaintiff was -- the
8 plaintiff's witness was reading from -- was reading
9 -- was -- was referring to business records just
10 that the -- that the letter was sent out. The
11 business records, admittedly, under the plaintiff's
12 testimony are deficient with regards to: No one
13 signed the letter. We don't know when the letter
14 was signed. It did not give Ms. Deaner 30 days to
15 cure. We don't know where it was -- we don't know
16 where it was sent from, and the plaintiff
17 admittedly had a bar code where it was sent out
18 which is not admitted into evidence. So I -- I
19 believe the preponderance in the evidence favors
20 Ms. Deaner --

21 THE COURT: Well, I'll let you --

22 MR. SLOAN: -- on this issue.

23 THE COURT: I'll let you brief me on that. I'm not

24 precluding you from arguing anything else that --

25 that you may want to argue as a matter of law. How

1 quickly can you -- can you get that to me? I'm --

2 you've had plenty of time to do discovery. I

3 presume you've done enough research that you can

4 get something to me. You don't need to make it a

5 formal brief. You can send me a letter.

6 MR. SLOAN: Okay.

7 THE COURT: But I -- I think 20 days is -- is plenty.

8 MR. SLOAN: That -- that's plenty of time, your Honor.

9 THE COURT: All right.

10 MR. GWYNNE: Yes, sir.

11 THE COURT: And then I've got my notes. I would like to

12 -- or if you want to just scan me the documents or

13 we can make copies. I would like -- yeah. I think

14 we could make -- we'll make copies of the note and

15 the mortgage.

16 MS. DELONEY: Just the note and the mortgage?

17 THE COURT: And the assignment. Yeah. I don't think I

18 need the --

19 MS. DELONEY: Oh.

20 THE COURT: Okay. Great.

21 MR. GWYNNE: Let me give you the affidavit of attorney's

22 fees, too, your Honor.

23 THE COURT: Okay. I mean, I've got your -- I'll be --

24 I'll be looking at -- taking into consideration,

25 and I'm going to make a decision as quickly as I

1 can after this is -- after I get your letters.

2 MR. GWYNNE: Can we submit proposal orders, too, at that

3 time?

4 THE COURT: You're welcome to submit a -- if you want to

5 send a -- submit a brief in the form of a proposed

6 order, that would be -- that would be -- probably

7 be the most efficient way of doing it.

8 MR. GWYNNE: I --

9 MR. SLOAN: Okay.

10 THE COURT: But, again, if you want -- if it -- if it's

11 a matter of your personal time sending me a letter,

12 I -- you can -- you can do that, as well.

13 Whichever.

14 MR. GWYNNE: I'll do a proposed order, your Honor.

15 THE COURT: That'll be fine. All right. That'll

16 conclude today's hearing. I -- oh, don't go off

17 the record yet. Two things: You're going to

18 attach the exhibits to the transcript, or do you

19 want to record the -- take the exhibits across the

20 street and file it with the clerk of court?

21 MR. GWYNNE: What I -- what I've typically done is just

22 have them part of the sealed transcript --

23 THE COURT: That'll be fine.

24 MR. GWYNNE: -- and make a copy, but they're -- they're

25 sealed, ready to -- and I usually file the sealed

1 transcript with the Court.

2 THE COURT: Okay.

3 MR. GWYNNE: So there's a record -- the exhibits on the

4 record, and the hearing transcript will go to

5 Court.

6 THE COURT: All right.

7 MR. GWYNNE: If that's okay with your Honor, I'll do

8 that.

9 THE COURT: Okay. I don't recall having asked this

10 question before. My involvement so far has been

11 some motions arguments. This was a contested

12 matter. Typically, in default matters on

13 foreclosures, the plaintiff incurs all the fees.

14 Do you have any kind of agreement on how my fee is

15 being paid, or is -- or . . .

16 MR. SLOAN: We -- we haven't -- I know your office had

17 sent a bill and -- billing us for part of the time

18 before today, and we did --

19 THE COURT: Right.

20 MR. SLOAN: -- pay it. We don't have a formal period --

21 THE COURT: Okay. If I sent something -- again, I

22 hadn't looked at my file. If I had sent something

23 and you agree to pay half -- each pay half --

24 that's typically the way it's done in a contested
25 matter.

1 MR. GWYNNE: Just -- my -- my firm's only been involved
2 since October. Korn was involved before us, so --
3 THE COURT: Oh, that's right. I was trying to figure
4 out, "When did you go" --
5 MR. GWYNNE: And, so --
6 THE COURT: -- everybody else is doing the merry-go-
7 round in Columbia --
8 MR. GWYNNE: Yeah.
9 THE COURT: -- and I just didn't remember --
10 MR. GWYNNE: Yeah.
11 THE COURT: -- whether you were --
12 MR. GWYNNE: No. The file -- the file did the merry-go-
13 round this time, so it came to my firm in October.
14 So I don't know if there was a prior agreement,
15 but, obviously, half is fine with -- with mine.
16 THE COURT: Okay.
17 MR. SLOAN: I -- I don't think that'll be a problem,
18 your Honor.
19 THE COURT: I mean, you only spent an hour, so it was
20 going to be -- you know, it'll be about $100 each
21 for you, so . . .
22 MR. SLOAN: We don't like to waste your time or --
23 THE COURT: Okay.
24 MR. SLOAN: -- or mine.

25 THE COURT: All right. Well, very good. I appreciate

1 that you were able to thoroughly get this case
2 digested before you came in here. Both of you did
3 a -- conducted yourselves professionally and -- and
4 did a good job on behalf of your client.
5 MR. SLOAN: Thank you.
6 MR. GWYNNE: Thank you, sir.
7 THE COURT: That'll conclude the hearing.
8 (Whereupon the within hearing was
9 concluded at 11:08 a.m.)
10 (*This transcript may contain quoted material.
11 Such material is reproduced as read or quoted
12 by the speaker.)
13 (**Certificate accompanies sealed original
14 only.)

MERS MIN: 100039032121864686

[redacted]
Deaner, Carolyn

NOTE

June 26, 2007 [Date] | North Augusta [City] | SC [State]

704 Kershaw Dr
North Augusta, SC 29841
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 97,600.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Quicken Loans Inc.

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 7.000%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(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 1st day of each month beginning on September 1, 2007. 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 August 1, 2037, 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 P.O. Box 553154, Detroit, MI 48255-3154 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 649.34

4. 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 date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
1 BANK OF AMERIC
2/4/15 aa

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % 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.

7. 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.

8. 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.

9. 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.

10. 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. 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.

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.

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

06/26/2007 (Seal)
Carolyn S. Deaner
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

WITHOUT RECOURSE
Pay To the Order of
Countrywide Bank, FSB
QUICKEN LOANS, INC.
By
SCOTT JOHNSON
CAPTURE MANAGER

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

PAY TO THE ORDER OF
Countrywide Home Loans, Inc
WITHOUT RECOURSE
COUNTRYWIDE BANK, FSB

(Seal)
-Borrower

BY
LAURIE MEDER
SENIOR VICE PRESIDENT

[Sign Original Only]

q03212186468 0140 173 0303

PAY TO THE ORDER OF

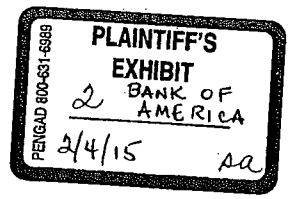
WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC

BY: Michele Sjolander

MICHELE SJOLANDER
EXECUTIVE VICE PRESIDENT

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Plaintiff, v. Carolyn S. Deaner, Defendant(s).	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2012-CP-02-699 **AFFIDAVIT OF ATTORNEY'S FEES AND COSTS**

(515262.01898 CSG)



PERSONALLY appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I am one of the attorneys for Plaintiff in the above-captioned action.

Background of Representation and Nature, Extent and Difficulty of the Representation

2. On or about October 2, 2014, Plaintiff engaged my law firm, Rogers Townsend & Thomas, PC, to complete the foreclosure of the mortgage that is the subject of this action. Plaintiff instructed our firm to handle this action as expeditiously as possible. Moving foreclosure cases along quickly is important to our clients because almost always our client's equity position deteriorates with time as the borrower fails to pay interest on the loan. Furthermore, in foreclosure cases, our clients face the increased risk that borrowers will not preserve the value of their homes or property as well as those borrowers who are not in default. Finally, there is a risk that they will allow their insurance to lapse or will not be able to pay their real property taxes.

3. When it referred this case to us, our client also provided us with an extensive list of instructions, including compliance with investor requirements and/or government or private insuring agreements and federal and state consumer protection laws.

4. At the time we accept a case, we do not know the full extent of the challenges we will run into and have to deal with for the fees we have agreed to handle the case for.

5. When RTT assumed the representation of Plaintiff in this foreclosure action, we assumed a number of risks. Those risks include the possibility that any of the parties involved (the plaintiff, the court, our own staff, a third-party bidder, or some other third party) could make an error at any stage of the process. Errors made in the process of a foreclosure case can be expensive to remediate, largely because of the value of real property, but also because our client's instruction that we complete

cases as expeditiously as possible requires us to presume that, for the most part, the legal process will run smoothly and without unnecessary errors or delays. We also incurred the risk that the borrower might try to mislead us about a loss mitigation resolution or that he or she might file a bankruptcy petition just before a critical event in the case.

6. I am informed and believe that Plaintiff selected RTT to handle this foreclosure because we have a large staff of attorneys and other skilled non-attorney professionals who are highly trained in a legal system that enables RTT to comply with Plaintiff's instructions. RTT also has expensive computer systems, and RTT creates and maintains data about our clients and the court system in the state that enable us to move cases quickly, to comply with the law, and to deal with borrowers. RTT also has sufficient capital to allow it to advance the litigation expenses required for cases to move quickly and efficiently. RTT has a proven track record with Plaintiff for accomplishing its work expeditiously and inexpensively.

7. We received this file and entered data about this case into our system to enable the rest of the foreclosure process to run smoothly. We then updated that data as we learned more about the case. Ultimately, my fellow counsel, our staff, and I have been responsible for the preparation of the following pleadings and other documents in this case:

a) Entering case data into our system
b) Updating the information as the case progressed.
c) Preparation of Consent Order Substituting Counsel
d) Preparation of Discovery Requests
e) Preparation of Discovery Responses
f) Preparation of Consent Scheduling Order
g) Preparation of Notice of Final Foreclosure Hearing
h) Preparation of proposed Judgment of Foreclosure and Sale
i) Preparation of Notice of Sale

8. Additionally, we have been responsible for preparing and serving the pleadings upon each defendant personally or by statutory/substitute service; obtaining reinstatement and payoff figures and payment histories (if requested or required); and scheduling and attending the hearing in this matter.

9. Our responsibilities after today include sending copies of the notice of the entry of judgment to appearing defendants, obtaining bidding instructions from Plaintiff or its designee, representing Plaintiff at the sale or arranging for such representation, preparing an Order of Sale or Report on Sale and Disbursements and Order Confirming Sale, and preparing the Foreclosure Deed and any other documents necessary in this particular action.

I am informed and believe that all litigation expenses were reasonably and necessarily incurred.

Time Necessarily Devoted to the Case

10. Depending upon the interest shown by defendants, third parties, or counsel for either and the inherent negotiations required thereby, other time may also be committed to the completion of the case. In that regard, I reserve the right to re-visit the question of attorney's fees should the action proceed in an unexpected way.

11. On or about November 24, 2014, my firm was substituted as counsel for the Plaintiff. I and other attorneys in my department became personally involved in this case, and my paralegals and I kept up with our time. The time spent was reasonably necessary to accomplish the result of an order for foreclosure and sale in this matter. The number of hours spent by attorneys and paralegals through January 28, 2015 was reasonable.

12. Moreover, depending upon the interest shown by defendants, third parties, or counsel for either, yet other time may also be committed to the completion of the case. In that regard, I reserve the right to re-visit the question of attorney's fees should the action proceed in an unexpected way.

Professional Standing of Counsel

13. I was admitted to the South Carolina Bar in 2005 and concentrate my practice in civil litigation, including real estate litigation and mortgage foreclosure litigation.

In addition, we have available to us other attorneys in the firm who handle non-routine or contested litigation matters more than we do. Finally, we are able to provide legal services inexpensively because we use a staff of highly trained and efficient non-attorney professionals, all of whom are supervised by some or all of the attorneys listed above.

Contingency of Compensation

14. As of January 28, 2015, Plaintiff has agreed to compensate my firm to handle this matter through the trial set for February 4, 2015 in the amount of $4,775.00. Actual hourly fees incurred by myself and my paralegal exceed this amount.

Beneficial Results Obtained

15. I have submitted this affidavit because I believe the Court will enter a judgment of foreclosure and sale consistent with the relief we requested in the pleadings. Therefore, if the court is considering this affidavit, it is only because my law firm has obtained a beneficial result for my client.

Customary Legal Fees for Similar Services

16. The fee I am requesting in this case is reasonable and in line with other fee awards for similar residential foreclosure cases in South Carolina. This sum is contemplated in language contained in the note and mortgage previously offered into evidence in this action.

Conclusion

19. My firm paid or incurred the following expenses

Order Filing Fee	$25.00
Total Expenses:	**$25.00**

Attorney Fees	$4,775.00
Expenses	**$25.00**
TOTAL ATTORNEY'S FEES AND EXPENSES:	**$4,800.00**

I am informed and believe that all of these litigation expenses were reasonably and necessarily incurred.

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 Tel
(803) 343-7017 Fax
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors.

Sworn to before me this 29th day of January, 2015.
Regina W. Dunlap
Notary Public for South Carolina
My Commission Expires: 11/8/2022

11924115

2011010187
ASSIGNMENT
RECORDING FEES $6.00
PRESENTED & RECORDED:
05-09-2011 09:55 AM
JUDITH WARNER
REGISTER OF MESNE CONVEYANCE
AIKEN COUNTY, SC
BY: MARILYN SEIGLER DEPUTY
BK: RB 4356
PG: 932 - 932

Recording Requested By:
Bank of America
Prepared By: Youda Crain
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

DocID# 11017223107618879
Tax ID: 10-078-0-08-004
Property Address:
704 KERSHAW DR
North Augusta, SC 29841
SC0-AM 13841456 4/28/2011

This space for Recorder's use

MIN #: 100039032121864686 MERS Phone #: 888-679-6377

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 3300 S.W. 34TH AVENUE, SUITE 101 OCALA, FL 34474 does hereby grant, sell, assign, transfer and convey unto BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP whose address is 13150 WORLD GATE DR, HERNDON, VA 20170 all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

Original Lender:	QUICKEN LOANS INC.
Original Borrower(s):	CAROLYN S. DEANER, A SINGLE WOMAN
Date of Mortgage:	6/26/2007
Original Loan Amount:	$97,600.00

Recorded in Aiken County, SC on: 7/16/2007, book RB 4149, page 773 and instrument number 2007023608

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on
Dated: 04/29/2011

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: Dominique Johnson
Dominique Johnson, Assistant Secretary

Witness: Cynthia Santos

Witness: Malik Basurto

State of California
County of Ventura

On April 29th 2011 before me, Deborah L. Beard, Notary Public, personally appeared Dominique Johnson, who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is ~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity (~~ies~~), and that by ~~his/her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Deborah L. Beard
Notary Public: Deborah L. Beard
My Commission Expires: 6/26/2013

(Seal)

DEBORAH L. BEARD
Commission # 1853913
Notary Public - California
Ventura County
My Comm. Expires Jun 26, 2013

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
3
BANK OF AMERICA
2/4/15 AA

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
4 BANK OF AMERICA
2/4/15 Aa

Bank of America
Home Loans

Loan Number: REDACTED
Statement Period: 06/2007 - 10/2014
Date Prepared: 10/02/2014

Property Address:
704 KERSHAW DR
NORTH AUGUSTA, SC 29841

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional Data	Buydown	Late Charges Total	Unapplied Total
	Beginning Balance			**97,600.00**		**.00**	.00			**.00**
09/04/2007	REGULAR PAYMENT	649.34	09/2007	80.01 97,519.99	569.33	.00 .00	.00	.00	.00 .00	.00 .00
09/28/2007	REGULAR PAYMENT	649.34	10/2007	80.47 97,439.52	568.87	.00 .00	.00	.00	.00 .00	.00 .00
11/06/2007	REGULAR PAYMENT	649.34	11/2007	80.94 97,358.58	568.40	.00 .00	.00	.00	.00 .00	.00 .00
12/04/2007	REGULAR PAYMENT	649.34	12/2007	81.41 97,277.17	567.93	.00 .00	.00	.00	.00 .00	.00 .00
01/07/2008	REGULAR PAYMENT	649.34	01/2008	81.89 97,195.28	567.45	.00 .00	.00	.00	.00 .00	.00 .00
02/04/2008	REGULAR PAYMENT	649.34	02/2008	82.37 97,112.91	566.97	.00 .00	.00	.00	.00 .00	.00 .00
03/03/2008	REGULAR PAYMENT	649.34	03/2008	82.85 97,030.06	566.49	.00 .00	.00	.00	.00 .00	.00 .00
04/04/2008	REGULAR PAYMENT	649.34	04/2008	83.33 96,946.73	566.01	.00 .00	.00	.00	.00 .00	.00 .00
05/02/2008	REGULAR PAYMENT	649.34	05/2008	83.82 96,862.91	565.52	.00 .00	.00	.00	.00 .00	.00 .00
06/03/2008	REGULAR PAYMENT	649.34	06/2008	84.31 96,778.60	565.03	.00 .00	.00	.00	.00 .00	.00 .00
07/07/2008	REGULAR PAYMENT	649.34	07/2008	84.80 96,693.80	564.54	.00 .00	.00	.00	.00 .00	.00 .00
08/04/2008	REGULAR PAYMENT	649.34	08/2008	85.29 96,608.51	564.05	.00 .00	.00	.00	.00 .00	.00 .00
10/03/2008	REGULAR PAYMENT	649.34	10/2008	86.29 96,436.43	563.05	.00 .00	.00	.00	.00 .00	.00 .00
10/31/2008	REGULAR PAYMENT	649.34	11/2008	86.79 96,349.64	562.55	.00 .00	.00	.00	.00 .00	.00 .00
12/04/2008	REGULAR PAYMENT	649.34	12/2008	87.30 96,262.34	562.04	.00 .00	.00	.00	.00 .00	.00 .00

Bank of America
Home Loans

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
01/02/2009	REGULAR PAYMENT	649.34	01/2009	87.81 96,174.53	561.53	.00 .00	.00	.00	.00 .00	.00 .00
02/02/2009	REGULAR PAYMENT	649.34	02/2009	88.32 96,086.21	561.02	.00 .00	.00	.00	.00 .00	.00 .00
03/05/2009	REGULAR PAYMENT	649.34	03/2009	88.84 95,997.37	560.50	.00 .00	.00	.00	.00 .00	.00 .00
04/03/2009	REGULAR PAYMENT	649.34	04/2009	89.36 95,908.01	559.98	.00 .00	.00	.00	.00 .00	.00 .00
05/05/2009	REGULAR PAYMENT	649.34	05/2009	89.88 95,818.13	559.46	.00 .00	.00	.00	.00 .00	.00 .00
06/02/2009	REGULAR PAYMENT	649.34	06/2009	90.40 95,727.73	558.94	.00 .00	.00	.00	.00 .00	.00 .00
07/06/2009	REGULAR PAYMENT	649.34	07/2009	90.93 95,636.80	558.41	.00 .00	.00	.00	.00 .00	.00 .00
07/06/2009	MISC. POSTING	100.00	07/2009	100.00 95,536.80	.00	.00 .00	.00	.00	.00 .00	.00 .00
08/03/2009	REGULAR PAYMENT	649.34	08/2009	92.01 95,444.79	557.33	.00 .00	.00	.00	.00 .00	.00 .00
08/03/2009	MISC. POSTING	100.00	08/2009	100.00 95,344.79	.00	.00 .00	.00	.00	.00 .00	.00 .00
09/09/2009	REGULAR PAYMENT	649.34	09/2009	93.12 95,251.67	556.22	.00 .00	.00	.00	.00 .00	.00 .00
09/09/2009	MISC. POSTING	100.00	09/2009	100.00 95,151.67	.00	.00 .00	.00	.00	.00 .00	.00 .00
10/05/2009	REGULAR PAYMENT	649.34	10/2009	94.15 95,057.52	555.19	.00 .00	.00	.00	.00 .00	.00 .00
10/05/2009	MISC. POSTING	100.00	10/2009	100.00 94,957.52	.00	.00 .00	.00	.00	.00 .00	.00 .00
11/03/2009	REGULAR PAYMENT	649.34	11/2009	95.35	553.99	.00	.00	.00	.00	.00
11/30/2009	REGULAR PAYMENT	649.34	12/2009	95.98 94,756.19	553.36	.00 .00	.00	.00	.00 .00	.00 .00
01/04/2010	REGULAR PAYMENT	649.34	01/2010	96.54 94,669.65	552.80	.00 .00	.00	.00	.00 .00	.00 .00
02/03/2010	REGULAR PAYMENT	649.34	02/2010	97.10 94,572.55	552.24	.00 .00	.00	.00	.00 .00	.00 .00

Bank of America
Home Loans

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
03/05/2010	REGULAR PAYMENT	649.34	03/2010	97.67 94,474.88	551.67	.00 .00	.00	.00	.00 .00	.00 .00
04/15/2010	REGULAR PAYMENT	649.34	04/2010	98.24 94,376.64	551.10	.00 .00	.00	.00	.00 .00	.00 .00
05/11/2010	REGULAR PAYMENT	649.34	05/2010	98.81 94,277.83	550.53	.00 .00	.00	.00	.00 .00	.00 .00
06/11/2010	REGULAR PAYMENT	649.34	06/2010	99.39 94,178.44	549.95	.00 .00	.00	.00	.00 .00	.00 .00
12/23/2010	COUNTY TAX PMT	-394.49	06/2010	.00 94,178.44	.00	-394.49 -394.49	.00	.00	.00 .00	.00 .00
12/28/2010	HAZARD INS PMT	-764.44	06/2010	.00 94,178.44	.00	-764.44 -1,158.93	.00	.00	.00 .00	.00 .00
12/09/2011	COUNTY TAX PMT	-453.47	06/2010	.00 94,178.44	.00	-453.47 -1,612.40	.00	.00	.00 .00	.00 .00
12/27/2011	HAZARD INS PMT	-764.44	06/2010	.00 94,178.44	.00	-764.44 -2,376.84	.00	.00	.00 .00	.00 .00
12/03/2012	COUNTY TAX PMT	-462.51	06/2010	.00 94,178.44	.00	-462.51 -2,839.35	.00	.00	.00 .00	.00 .00
12/26/2012	HAZARD INS PMT	-1,009.58	06/2010	.00 94,178.44	.00	-1,009.58 -3,848.93	.00	.00	.00 .00	.00 .00
11/18/2013	COUNTY TAX PMT	-453.26	06/2010	.00 94,178.44	.00	-453.26 -4,302.19	.00	.00	.00 .00	.00 .00
12/27/2013	HAZARD INS PMT	-1,012.72	06/2010	.00 94,178.44	.00	-1,012.72 -5,314.91	.00	.00	.00 .00	.00 .00

Fee Transaction Activity (06/2007 - 10/2014)

04/15/2010	Mortgage Pay Fee-Phone	15.00	.00
04/15/2010	Mortgage Pay Fee-Phone	.00	15.00
01/10/2012	Expedited Payoff Service Fee	30.00	.00
01/11/2012	Expedited Payoff Service Fee - Adjustment	-30.00	.00

Bank of America

Home Loans

Transaction Date	Fee Description	Charges	Payments
03/07/2012	Property Inspection	15.00	.00
03/20/2012	Attorney/Trustee Fee	435.00	.00
03/20/2012	Title Fee	225.00	.00
03/22/2012	Property Inspection	15.00	.00
04/10/2012	Attorney/Trustee Fee	580.00	.00
04/10/2012	Court Filing Fee	150.00	.00
04/10/2012	Process Server	60.00	.00
05/08/2012	Property Inspection	14.00	.00
06/27/2012	Property Inspection - Adjustment	-15.00	.00
08/22/2012	Property Inspection	14.00	.00
10/09/2012	Property Inspection	15.00	.00
10/24/2012	Court Cost	25.00	.00
11/13/2012	Property Inspection	15.00	.00
12/26/2012	Property Inspection	15.00	.00
02/04/2013	Property Inspection	15.00	.00
03/06/2013	Property Inspection	15.00	.00
03/21/2013	Property Inspection - Adjustment	-14.00	.00
04/03/2013	Property Inspection	15.00	.00
05/06/2013	Property Inspection	15.00	.00
06/04/2013	Property Inspection	15.00	.00
07/01/2013	Property Inspection	15.00	.00
07/10/2013	Litigation Management Fee	231.00	.00
[illegible]	Court Cost	[illegible]	[illegible]
07/29/2013	Property Inspection	15.00	.00
08/26/2013	Property Inspection	15.00	.00
09/09/2013	Litigation Management Fee	306.00	.00
09/25/2013	Property Inspection	15.00	.00

Bank of America
Home Loans

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Transaction Date	Fee Description	Charges	Payments
10/03/2013	Litigation Management Fee	1,330.50	.00
10/25/2013	Property Inspection	15.00	.00
10/31/2013	Litigation Management Fee	444.00	.00
10/31/2013	Court Cost	50.00	.00
11/04/2013	Litigation Management Fee	1,837.50	.00
11/04/2013	Court Cost	200.00	.00
11/21/2013	Property Inspection	15.00	.00
12/23/2013	Property Inspection	15.00	.00
01/22/2014	Property Inspection	15.00	.00
02/24/2014	Property Inspection	15.00	.00
03/21/2014	Property Inspection - Adjustment	-15.00	.00
03/26/2014	Property Inspection	15.00	.00
05/20/2014	Property Inspection	15.00	.00
06/16/2014	Property Inspection	15.00	.00
07/15/2014	Property Inspection	15.00	.00
07/31/2014	Litigation Management Fee	15.00	.00
07/31/2014	Litigation Management Fee	2,797.50	.00
07/31/2014	Court Cost	175.00	.00
08/12/2014	Expedited Payoff Service Fee	30.00	.00
08/13/2014	Expedited Payoff Service Fee - Adjustment	-30.00	.00
09/11/2014	Property Inspection	15.00	.00

RECALL S.CA. FILE
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Return To:

3559958

A FIDELITY NATIONAL FINANCIAL COMPANY
Recording Department
700 Cherrington Parkway
Coraopolis, PA 15108

2007023608
MORTGAGE
RECORDING FEES $22.00
PRESENTED & RECORDED:
07-16-2007 03:35 PM
JUDITH WARNER
REGISTER OF MESNE CONVEYANCE
AIKEN COUNTY, SC
By: JULIE STUTTS DEPUTY
BK:RB 4149
PG:773-788

Prepared By:
Rhonda Bostic

Recording Requested By:
LSI

610 172231076 D2 001 001

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100039032121864686

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 June 26, 2007, together with all Riders to this document.
(B) "**Borrower**" is Carolyn S. Deaner, a single woman

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.

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT 5 BANK OF AMERICA
2/4/15 Aa

[redacted]

(D) "Lender" is Quicken Loans Inc.

Lender is a Corporation
organized and existing under the laws of the State of Michigan
Lender's address is 20555 Victor Parkway, Livonia, MI 48152

(E) "Note" means the promissory note signed by Borrower and dated June 26, 2007
The Note states that Borrower owes Lender Ninety Seven Thousand Six Hundred and 00/100 Dollars
(U.S. $97,600.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than August 1, 2037 .

(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] Legal Attached

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

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

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

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

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

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

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

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. 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

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[redacted]

in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify 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 Aiken :

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.
SUBJECT TO COVENANTS OF RECORD.

Parcel ID Number: 10078008004 which currently has the address of
704 Kershaw Dr [Street]
North Augusta [City], South Carolina 29841 [Zip Code]
("Property Address"):

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

BORROWER COVENANTS that Borrower is lawfully seised 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.

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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

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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, 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

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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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.

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(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.

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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.

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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

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous 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.

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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 by 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.

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[redacted]

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:

_____ _____ 06/26/2007 (Seal)
Carolyn S. Deaner -Borrower

_____ _____ (Seal)
-Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

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[redacted]

STATE OF SOUTH CAROLINA,
County of Aiken

Personally appeared before me Donna F. Banks 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 Jason Seth Parrott, witnessed the execution thereof.

Donna F. Banks

Sworn to before me this 26th day of June, 2007.

My Commission Expires: 11/21/2016

Notary Public for South Carolina

Initials:

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Order Number: [redacted]

Exhibit A

Legal Desciption:

THE FOLLOWING DESCRIBED REAL PROPERTY, TO WIT:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, SITUATE, LYING AND BEING IN BELVEDERE, AIKEN COUNTY, SOUTH CAROLINA, DESIGNATED AS LOT 10, BLOCK B, ON A PLAT OF SURVEY OF PINECREST SUBDIVISION, SECTION I, MADE BY CRANSTON & ASSOCIATES, DATED October 3, 1966, REVISED UNDER DATE OF MARCH 29, 1968, AND RECORDED IN PLAT BOOK 3, AT PAGE 151, RECORDS OF AIKEN COUNTY, AND ACCORDING TO SAID PLAT, BEING BOUNDED, NOW OR FORMERLY, AND MEASURING, MORE OR LESS, AS FOLLOWS: NORTH BY KERSHAW DRIVE ON TWO LINES, MEASURING RESPECTIVELY 43.0 FEET AND 78.0 FEET; EAST BY LOT NO. 9, SAID BLOCK, 153.0 FEET; SOUTH BY LANDS OF TROTTER REALTY COMPANY, 71.22 FEET; AND WEST BY LOT 11, SAID BLOCK 149.03 FEET. REFERENCE IS HEREBY MADE TO SAID PLAT FOR A MORE COMPLETE AND ACCURATE DESCRIPTION OF THE SUBJECT PROPERTY.

MEANING AND INTENDING THE SAME PREMISES AS CONVEYED TO CAROLYN S. DEANER FROM MAROLYN D. SPOORES, INDIVIDUALLY AND AS TRUSTEE OF THE VELDA K. DEANER REVOCABLE TRUST DATED June 28, 2002, AMENDED AND RESTATED October 11, 2002, AND FURTHER AMENDED ON December 20, 2002 BY DEED DATED 10/13/04, RECORDED 10/13/04 IN BOOK 2458, PAGE 111.

Parcel/Tax I.D. #: 10-078-0-08-004

Commonly known as: 704 KERSHAW DRIVE, NORTH AUGUSTA, SC 29841

Bank of America

Home Loans
P.O. Box 660694
Dallas, TX 75266-0694

Business Address:
7105 Corporate Drive
Plano TX 75024

Send Payments to:
P.O. Box 650070
Dallas, TX 75265-0070

August 16, 2010

Carolyn S Deaner
PO BOX 485
AUGUSTA, GA 30903-0485

Account No.: REDACTED
Property Address:
704 Kershaw Dr
North Augusta, SC 29841

NOTICE OF INTENT TO ACCELERATE

Dear Carolyn S Deaner:

BAC Home Loans Servicing, LP (hereinafter "BAC Home Loans Servicing, LP") services the home loan described above on behalf of the holder of the promissory note (the "Noteholder"). The loan is in serious default because the required payments have not been made. The total amount now required to reinstate the loan as of the date of this notice is as follows:

Monthly Charges:	07/01/2010	$1,298.68
Late Charges:	07/01/2010	$32.47
Other Charges:	Total Late Charges:	$0.00
	Uncollected Costs:	$0.00
	Partial Payment Balance:	($0.00)
	TOTAL DUE:	$1,331.15

You have the right to cure the default. To cure the default, on or before September 15, 2010, BAC Home Loans Servicing, LP must receive the amount of $1,331.15 plus any additional regular monthly payment or payments, late charges, fees and charges which become due on or before September 15, 2010.

The default will not be considered cured unless BAC Home Loans Servicing, LP receives "good funds" in the amount of $1,331.15 on or before September 15, 2010. If any check (or other payment) is returned to us for insufficient funds or for any other reason, "good funds" will not have been received and the default will not have been cured. No extension of time to cure will be granted due to a returned payment. BAC Home Loans Servicing, LP reserves the right to accept or reject a partial payment of the total amount due without waiving any of its rights herein or otherwise. For example, if less than the full amount that is due is sent to us, we can keep the payment and apply it to the debt but still proceed to foreclosure since the default would not have been cured.

If the default is not cured on or before September 15, 2010, the mortgage payments **will be accelerated** with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property. If your property is foreclosed upon, the Noteholder may pursue a deficiency judgment against you to collect the balance of your loan, if permitted by law.

You may, if required by law or your loan documents, have the right to cure the default after the acceleration of the mortgage payments and prior to the foreclosure sale of your property if all amounts past due are paid within the time permitted by law. However, BAC Home Loans Servicing, LP and the Noteholder shall be entitled to collect all fees and costs incurred by BAC Home Loans Servicing, LP and the Noteholder in pursuing any of their remedies, including but not limited to reasonable attorney's fees, to the full extent permitted by law. Further, you may have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure.

Your loan is in default. Pursuant to your loan documents, BAC Home Loans Servicing, LP may, enter upon and conduct an inspection of your property. The purposes of such an inspection are to (i) observe the physical condition of your property, (ii) verify that the property is occupied and/or (iii) determine the identity of the occupant. If you do not cure the default prior to the inspection, other actions to protect the mortgagee's interest in the property (including, but not limited to, winterization, securing the property, and valuation services) may be taken. **The costs of the above-described inspections and property preservation efforts will be charged to your account as provided in your security instrument and as permitted by law.**

If you are unable to cure the default on or before September 15, 2010, BAC Home Loans Servicing, LP wants you to be aware of various options that may be available to you through BAC Home Loans Servicing, LP to prevent a foreclosure sale of your property. For example:

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

Please write your account number on all checks and correspondence.
We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.

BLONSENV 8795 12/11/2008

Payment Instructions:

- Make your check payable to BAC Home Loans Servicing, LP
- Don't send cash
- Please include coupon with your payment

For all full month payment periods, interest is calculated on a monthly basis. Accordingly, interest for all full months, including February, is calculated as 30/360 of annual interest, irrespective of the actual number of days in the month. For partial months, interest is calculated daily on the basis of a 365 day year.

Account Number: REDACTED
Carolyn S Deaner
704 Kershaw Dr
North Augusta, SC 29841

Balance Due for charges listed above: $1,331.15 as of August 16, 2010.
Please update e-mail information on the reverse side of this coupon.

BLONSENV

Additional Principal

Additional Escrow

Check Total

BAC Home Loans Servicing, LP
PO BOX 650070
Dallas, TX 75265-0070

REDACTED

REDACTED

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
6 BANK OF AMERICA
2/4/15 sa

- Repayment Plan: It is possible that you may be eligible for some form of payment assistance through BAC Home Loans Servicing, LP. Our basic plan requires that BAC Home Loans Servicing, LP receive, up front, at least ½ of the amount necessary to bring the account current, and that the balance of the overdue amount be paid, along with the regular monthly payment, over a defined period of time. Other repayment plans also are available.
- Loan Modification: Or, it is possible that the regular monthly payments can be lowered through a modification of the loan by reducing the interest rate and then adding the delinquent payments to the current loan balance. This foreclosure alternative, however, is limited to certain loan types.
- Sale of Your Property: Or, if you are willing to sell your home in order to avoid foreclosure, it is possible that the sale of your home can be approved through BAC Home Loans Servicing, LP even if your home is worth less than what is owed on it.
- Deed-in-Lieu: Or, if your property is free from other liens or encumbrances, and if the default is due to a serious financial hardship which is beyond your control, you may be eligible to deed your property directly to the Noteholder and avoid the foreclosure sale.

If you are interested in discussing any of these foreclosure alternatives with BAC Home Loans Servicing, LP, you must contact us immediately. If you request assistance, BAC Home Loans Servicing, LP will need to evaluate whether that assistance will be extended to you. In the meantime, BAC Home Loans Servicing, LP will pursue all of its rights and remedies under the loan documents and as permitted by law, unless it agrees otherwise in writing. Failure to bring your loan current or to enter into a written agreement by September 15, 2010 as outlined above will result in the acceleration of your debt.

Additionally, the U.S. Department of Housing and Urban Development (HUD) funds free or very low cost housing counseling across the nation. Housing counselors can help you understand the law and your options. They can also help you to organize your finances and represent you in negotiations with your lender if you need this assistance. You may find a HUD-approved housing counselor near you by calling 1-800-569-4287. For the hearing impaired, HUD Counseling Agency (TDD) numbers are available at 1-800-877-8339.

Time is of the essence. Should you have any questions concerning this notice, please contact Loan Counseling Center immediately at 1-800-669-0102. Our office hours are between Mon - Fri; 8am to 9pm Eastern Time.

Sincerely,

Loan Counseling Center

BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A.

E-mail use: Providing your e-mail address below will allow us to send you information on your account.
Account Number: REDACTED
Carolyn S Daaner E-mail address:

How we post your payments: All accepted payments of principal and interest will be applied to the longest outstanding installment due, unless otherwise expressly prohibited or limited by law. If you submit an amount in addition to your scheduled monthly amount, we will apply your payments as follows: (i) to outstanding monthly payments of principal and interest, (ii) escrow deficiencies, (iii) late charges and other amounts you owe in connection with your loan and (iv) to reduce the outstanding principal balance of your loan. Please specify if you want an additional amount applied to future payments, rather than principal reduction.

Postdated checks: Postdated checks will be processed on the date received unless a loan counselor agrees to honor the date written on the check as a condition of a repayment plan.

Deaner
704 Kershaw Drive
North August, SC 29841

Principal		$94,178.44
Interest from June 1, 2010 through February 4, 2015 at 7.00% per annum		$30,818.90
Escrow Advance		
Taxes		
12/12/14	$453.26	
11/18/13	$453.26	
12/03/12	$462.51	
12/09/11	$453.47	
12/23/10	$394.49	
Total	$2,216.99	$6,800.65
Hazard		
12/29/14	$1,032.48	
12/27/13	$1,012.72	
12/26/12	$1,009.58	
12/27/11	$764.44	
12/28/10	$764.44	
Total	$4,583.66	
Property Inspections		
12/15/14	$15.00	
11/10/14	$15.00	
10/13/14	$15.00	
09/11/14	$15.00	
07/15/14	$15.00	
06/16/14	$15.00	
05/20/14	$15.00	
03/26/14	$15.00	$389.00
02/24/14	$15.00	
01/22/14	$15.00	
12/23/13	$15.00	
11/21/13	$15.00	
10/25/13	$15.00	
08/26/13	$15.00	
07/29/13	$15.00	
07/01/13	$15.00	

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
7 BANK OF AMERICA
2/4/15 Aa

11874606

06/04/13 $15.00 05/06/13 $15.00 04/03/13 $15.00 03/06/13 $15.00 02/04/13 $15.00 12/26/12 $15.00 11/16/12 $15.00 10/09/12 $15.00 05/08/12 $14.00 03/07/12 $15.00 Total $389.00		
Prior Counsel Foreclosure / Litigation Fees and Costs 03/20/12 $435.00 03/20/12 $225.00 04/10/12 $580.00 04/10/12 $150.00 04/10/12 $60.00 10/24/12 $25.00 07/10/13 $25.00 07/10/13 $231.00 09/09/13 $306.00 10/31/13 $50.00 10/03/13 $1,330.50 10/31/13 $444.00 11/04/13 $200.00 11/04/13 $1,837.50 07/31/14 $175.00 07/31/14 $15.00 07/31/14 $2,797.50 11/05/14 $150.00 Total: $9,036.50		$9,036.50
TOTAL PRINCIPAL, INTEREST AND EXPENSES:		$141,223.49

Bank of America, N.A.

Account Information Statement

Account#(last four digits):[redacted]

Borrower Name : CAROLYN S DEANER

Good Through Date:02/04/2015 Paid to Date:06/01/2010 Based on Date:01/02/2015

Unpaid Principal Balance						94,178.44
Interest						30,818.90
Change Date		Interest Rate(%)		No of Days		
06/01/2010		7.000		1710		
Payment Due Total						43,518.56
From Date	To Date		No of Payments Due	Amount($)		
07/01/2010	06/01/2012		24	649.35	15,584.40	
07/01/2012	05/01/2013		11	957.91	10,537.01	
06/01/2013	05/01/2014		12	871.13	10,453.56	
06/01/2014	02/01/2015		9	771.51	6,943.59	
Late Charges						0.00
Assessed Late Charges					0.00	
Advances Total						18,421.15
Escrow Advances					6,800.65	
Taxes				2,216.99		
Date Paid	Description		Actual($)	Anticipated($)		
12/12/2014	COUNTY TAX PMT		453.26			
11/18/2013	COUNTY TAX PMT		453.26			
12/03/2012	COUNTY TAX PMT		462.51			
12/23/2010	COUNTY TAX PMT		394.49			
12/09/2011	COUNTY TAX PMT		453.47			
MIP/PMI				0.00		
Date Paid	Descripiton		Actual($)	Anticipated($)		
Hazard Insurance				4,583.66		
Date Paid	Description		Actual($)	Anticipated($)		
12/29/2014	HAZARD INS PMT		1,032.48			
12/27/2013	HAZARD INS PMT		1,012.72			
12/26/2012	HAZARD INS PMT		1,009.58			
12/28/2010	HAZARD INS PMT		764.44			
12/27/2011	HAZARD INS PMT		764.44			
Fee Due Advances					11,620.50	
Foreclosure Fees				2,200.00		
Tran Date	Description		Actual($)	Anticipated($)		
03/20/2012	ATTORNEY/TRUSTEE FEE		435.00			
04/10/2012	ATTORNEY/TRUSTEE FEE		580.00			
10/24/2012	COURT COSTS		25.00			
07/10/2013	COURT COSTS		25.00			
10/31/2013	COURT COSTS		50.00			
11/04/2013	COURT COSTS		200.00			
07/31/2014	COURT COSTS		175.00			
11/05/2014	COURT COSTS		150.00			
04/10/2012	FILING FEES		150.00			
12/30/2014	FILING FEES		25.00			
04/10/2012	PROCESS SERVER		60.00			
03/20/2012	TITLE FEES		225.00			
11/26/2014	TITLE FEES		100.00			
Bankruptcy Fees				0.00		
Tran Date	Description		Actual($)	Anticipated($)		
Property Inspection Fees				389.00		
Tran Date	Descripiton		Actual($)	Anticipated($)		
03/07/2012	INSPECTION-OCCUPIED		15.00			
05/08/2012	INSPECTION-OCCUPIED		14.00			
10/09/2012	INSPECTION-OCCUPIED		15.00			
11/16/2012	INSPECTION-OCCUPIED		15.00			
12/26/2012	INSPECTION-OCCUPIED		15.00			
02/04/2013	INSPECTION-OCCUPIED		15.00			

Bank of America, N.A.

Account Information Statement

Account#(last four digits): [redacted]

Borrower Name : CAROLYN S DEANER

Good Through Date:02/04/2015 Paid to Date:06/01/2010 Based on Date:01/02/2015

03/06/2013	INSPECTION-OCCUPIED	15.00		
04/03/2013	INSPECTION-OCCUPIED	15.00		
05/06/2013	INSPECTION-OCCUPIED	15.00		
06/04/2013	INSPECTION-OCCUPIED	15.00		
07/01/2013	INSPECTION-OCCUPIED	15.00		
07/29/2013	INSPECTION-OCCUPIED	15.00		
08/26/2013	INSPECTION-OCCUPIED	15.00		
10/25/2013	INSPECTION-OCCUPIED	15.00		
11/21/2013	INSPECTION-OCCUPIED	15.00		
12/23/2013	INSPECTION-OCCUPIED	15.00		
01/22/2014	INSPECTION-OCCUPIED	15.00		
02/24/2014	INSPECTION-OCCUPIED	15.00		
03/26/2014	INSPECTION-OCCUPIED	15.00		
05/20/2014	INSPECTION-OCCUPIED	15.00		
06/16/2014	INSPECTION-OCCUPIED	15.00		
07/15/2014	INSPECTION-OCCUPIED	15.00		
09/11/2014	INSPECTION-OCCUPIED	15.00		
10/13/2014	INSPECTION-OCCUPIED	15.00		
11/10/2014	INSPECTION-OCCUPIED	15.00		
12/15/2014	INSPECTION-OCCUPIED	15.00		
Others			9,031.50	
Tran Date	Description	Actual($)	Anticipated($)	
07/10/2013	LITIGATION MGT FEE	231.00		
09/09/2013	LITIGATION MGT FEE	306.00		
10/03/2013	LITIGATION MGT FEE	1,330.50		
10/31/2013	LITIGATION MGT FEE	444.00		
11/04/2013	LITIGATION MGT FEE	1,837.50		
07/31/2014	LITIGATION MGT FEE	15.00		
07/31/2014	LITIGATION MGT FEE	2,797.50		
12/17/2014	LITIGATION MGT FEE	1,517.50		
12/30/2014	LITIGATION MGT FEE	552.50		
Credits				0.00
Date Paid	Description		Actual($)	Anticipated($)
Total Amount Owed				143,418.49

DESIGNATION: 27

27. Defendant's TRIAL CLOSING SUMMARY in Letter form per Ref. Harvey's request at trial and e-mailed to Sp. Ref. Harvey 2/23/2015, and ...filed 7/17/2015 after a hearing as Referee Harvey held original to be sent to Aiken County Deputy Clerk.

    (contains pages 1-6)

SLOAN LAW FIRM, PA
1055-F N. MAIN STREET
Post Office Box 85
SUMMERVILLE, SC 29484
843-873-7531 PH
843-873-7527 FAX
William H. Sloan, Jr.
whs@sloanlawfirm.net

February 20, 2015

Marty Harvey, Esq.,
Special Referee,
Post Office Box 705
Barnwell, SC 29812

VIA E-MAIL AND REGULAR MAIL

COPY
ORIGINAL FILED
JUL 17 2015
3:50pm
AIKEN COUNTY
CLERK OF COURT

Re: Bank of America, NA vs. Carolyn Deaner
Case No. 2013-CP-02-699

Dear Judge Harvey:

Thank you for the opportunity to supplement the closing arguments in this case with this letter in support of Ms. Deaner's position. I also thank you for sufficient time to prepare this position letter to you.

As stated in the trial, and during the closing arguments, I wish to highlight the key points that I discussed at the trial in this letter:

I. DAMAGES TO PLAINTIFF

It is not a dispute in this case that the Plaintiff is the servicer in this case. It is not a dispute that a servicer has the **rebuttable presumption of** standing to bring a foreclosure case. It is not a dispute that the investor is not the Plaintiff. It is Federal National Mortgage Association, Fannie Mae.

So Ms. Deaner's question is:
Exactly what damages have the Plaintiff suffered since they are not the owner of the Note and Mortgage? Are the Plaintiff damaged by Ms. Deaner's alleged failure to pay principal and interest?

The Plaintiff's corporate witness testified that the Plaintiff advanced, "fronted" escrow items, money for inspections, and attorney's fees which they have not been reimbursed for. These amounts are clearly damages to the Plaintiff (if the Court allows this foreclosure to go forward). However, Plaintiff did not know how much of

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VIA E-MAIL AND REGULAR MAIL

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So Ms. Deaner's question is:
Exactly what damages have the Plaintiff suffered since they are not the owner of the Note and Mortgage? Are the Plaintiff damaged by Ms. Deaner's alleged failure to pay principal and interest?

The Plaintiff's corporate witness testified that the Plaintiff advanced, "fronted" escrow items, money for inspections, and attorney's fees which they have not been reimbursed for. These amounts are clearly damages to the Plaintiff (if the Court allows this foreclosure to go forward). However, Plaintiff did not know how much of

the principal and interest payments of Ms. Deaner that they were allowed to keep, if any, and how much they were to send to Fannie Mae. She testified that she did not know who is entitled to the payments, but did testify that Fannie Mae is the investor and not Plaintiff. Plaintiff's witness said nothing about Bank of America being allowed to retain, "pocket" any of the principal and interest payments. Plaintiff has failed to show that it is entitled to the damages of unpaid principal and interest since they have failed to show that they have been damaged. Therefore, if the Court were to order judgment, it should order judgment just on the costs advanced by the Plaintiff (that they have not been reimbursed for) and not for any unpaid principal and interest.

II. ASSIGNMENT OF MORTGAGE

MERS, Inc. is the nominee listed on the Mortgage. However, they only have the authority to act on behalf of Quicken Loans, Inc., the original lender, the Lender listed on the Mortgage. The Assignment of Mortgage merely mentions Quicken Loans, Inc. as opposed to saying that the Assignment of Mortgage is being signed by MERS, as nominee for Quicken Loans. Therefore, the assignment of Mortgage is invalid and Plaintiff lacks the standing to bring this action.

III. DEFICIENCIES WITH THE RIGHT TO CURE LETTER

A. WAS THE RIGHT TO CURE LETTER SENT?

For purposes of this letter, the "Right to Cure Letter" is the same as the "Notice of Intent to Accelerate" Letter that was admitted into evidence at the trial.

Plaintiff relies solely on the testimony of the corporate witness at the trial, relying solely on the business records of the Plaintiff that the Right to Cure (also known as the Notice of Intent to Accelerate) Letter was sent to Ms. Deaner. The witness claims that there is a bar code on the letter that was sent out, **but the Plaintiff did not introduce this bar code into evidence to further their case**. The witness had no idea in her business records who sent the letter out or even where it was sent from. (Also, the Plaintiff's witness failed to say when the letter was sent out from Bank of America, but I will discuss this later). Ms. Deaner testified that she never received the Right to Cure letter and had the ability to pay the amount requested in the letter within the limited time allotted.

As stated in closing arguments, Defendant argues that the Plaintiff has failed to prove that the letter should be deemed as sent per No. 15 of the Mortgage simply on the testimony of the witness without any proof as to where the letter:

a. was sent from or
b. who mailed the letter
c. or the bar code which Plaintiff neglected to bring to court.

Clearly, in No. 22 of the Mortgage, it is a necessary perquisite for the Plaintiff to foreclose that they sent the right to cure letter and to accelerate the entire balance due. Defendant argues that they have failed to meet their burden of proof, by preponderance of the evidence, that they have done so.

B. EVEN IF THE RIGHT TO CURE LETTER WAS SENT, IT DID NOT COMPLY WITH REQUIREMENTS OF NO. 22 OF THE MORTGAGE IN THAT IT DID NOT GIVE MS. DEANER 30 DAYS TO CURE THE ALLEGED DEFAULT

In one of their arguments, Plaintiff uses the "exact words" of No. 15 of the Mortgage to say since the Right to Cure Letter has been sent out by first class mail, the Court should conclude that is has been sent. However, the Plaintiff should also be held in this Equity Court to the "exact" words of No. 22 which provides the Borrower **not less than 30 days** to cure any default prior to acceleration of the Note and Mortgage. Even if the Court accepts the premise of the Plaintiff, "deeming" that the Right to Cure letter was sent, the Plaintiff has failed to show that the Defendant was given 30 days to cure the alleged default. The Plaintiff's witness failed to state **when the letter was mailed** and therefore, the Plaintiff has failed to prove that the Defendant was given **not less than** 30 days to cure the "default." Even if the Court accepts that the letter was mailed on August 16, 2010, the date of the letter, it only gives Ms. Deaner until September 15, 2010 to cure the default. As the Plaintiff testified that the letter was mailed first class mail, it would have taken **at least one day (and probably much longer)** for the letter to arrive at Ms. Deaner's post office box. No. 22(c) of the Mortgage states that ***"a date, not less than 30 days from the date the Notice is given to Borrower".*** Therefore, the right to cure letter does not comply with No. 22 of the Mortgage and, therefore, is invalid and therefore, there has been no valid acceleration of the balance due. Therefore, the Plaintiff is not entitled to a full judgment for the entire balance due. They are only entitled to a money judgment for any payments missed before February 1, 2015 at **best.**

C. MS. DEANER DID NOT RECEIVE THE LETTER, AND SHE HAD THE ABILITY TO PAY

The argument that Ms. Deaner is promulgating on the lack of proper acceleration is not merely an academic argument. She testified that she had the ability to catch up on the missed payments of $1,331, the balance requested in the right to cure letter. This failure of Bank of America to properly accelerate the loan shows failure to mitigate their damages in this case.

D. PLAINTIFF IS NOT THE LENDER PER NO. 22 OF MORTGAGE

Further, No. 22 of the Mortgage states that the Notice of the Right to Cure must come from the **Lender**. Plaintiff claims to be the successor in interest to the

original lender, Quicken Loans, Inc. and its nominee, MERS, Inc., "Mortgage Electronic Registration Systems, Inc." Quicken Loans, Inc. remained the Mortgagee of record, the **Lender,** for the mortgage via the Aiken County Register of Deeds until 2011, **after the Right to Cure Letter was sent out by Bank of America.**

Therefore, per the terms of the Mortgage, the Lender, per the definition of the Mortgage, remained Quicken Loans, Inc. until 2011, when the Assignment of Mortgage was finally recorded. Therefore, the Notice of Right to Cure Letter was not sent by the Lender of Record. In 2010, the Right to Cure Letter needed to be sent by Quicken Loans, Inc., (or MERS, Inc., its nominee), not by Bank of America. It is just as invalid for Bank of America to send the Right to Cure Letter as if they had executed the Assignment of Mortgage to itself. The Mortgage does not state that Right to Cure Letter can be sent by the servicer for the Lender. It must be sent by the Lender, which Bank of America did not become until at least 2011. Therefore, the attempt to accelerate this mortgage fails for one more reason.

IV. Plaintiff has failed to show standing to bring this lawsuit at the time that the suit was filed.

Plaintiff has failed to prove by preponderance of the evidence at trial that they had standing to bring this action **at the time that the suit was filed**. Plaintiff had to establish **standing at the time that the suit was filed**. Plaintiff relies on possession of the original note signed by Ms. Deaner at closing. There is no doubt that Plaintiff had possession of the original note at the trial, but there is no evidence of this **at the time that the suit was filed.** The original lender was Quicken Loans, Inc. There is an endorsement on the note from Quicken to Countrywide Bank, FSB. Subsequently, there is an "endorsement in blank" from Countrywide which Plaintiff relies on to maintain standing in this case. **However, the endorsement has no date**. Plaintiff, in relying on one witness who reviewed its business records, could not state when the endorsements aforementioned were made. **If the Plaintiff did not have an endorsement at the time that they filed the suit, whether or not they are the servicer or not, they were not a PETE, a person entitled to enforce, per SC Code Ann. §36-3-301. SC Code Ann. §36-3-412 states that a maker, Ms. Deaner here, has a duty only to pay a PETE.**

Standing is to be determined at the commencement of suit. *Lujan vs. Defenders of Wildlife 504 US 555, 570-1 n.5 (1992)* accord *Young vs. People's Bank* 163 SC 57, 161 SE 2nd 324, 329 (1931). "Plaintiff's right to recovery depended on its right at the inception of the lawsuit, and the non-existence of a cause of action when the suit was started is a fatal defect, which cannot be cured by the accrual of a cause of action pending suit."

In Young, our Supreme Court adopted the holding of *Carpenter vs. Longan* 83 US 271, 16 Wall. 271, 21 L. Ed. 313 (1872) which held that the Plaintiff must own the note and mortgage at the time of filing to foreclose. Judge Nicholson adopted this as the law of

the case in *Deutsche Bank National Trust Co. v. Heinrich,* 2011-CP-10-1060 (July 31, 2013) in dismissing a foreclosure where the Complaint was filed two weeks before the assignment of Mortgage was recorded. While the Assignment of Mortgage in this matter (which Defendant contests) was recorded prior to the filing of this lawsuit, Plaintiff failed to show that it was a PETE at the time of the filing of this lawsuit with regards to enforcing the Note.

In South Carolina, the assignment of a mortgage alone does not carry with it an assignment of the Note. *Hahn v. Smith*, 157 S.C. 157, 164, 154 S.E. 112, 115 (1930), cited in *Bank of America, et al. v. Draper*, No. 2012-208806, Opinion No. 5140 (Ct.App. June 5, 2013) and citing SC Code sec. 36-3-203(b). So the Plaintiff has failed to show standing at the time this lawsuit was filed. Recently, the Appellate Court of Florida in ***Joseph vs. BAC Home Loans Servicing LP (4th District Court Appeals Florida January 7, 2015)*** **ruled** directly on this issue that the Plaintiff needed to show standing as a PETE at the time the lawsuit was filed.

Also, Plaintiff's witness testified that they are acting as the servicer for Federal National Mortgage Association, Fannie Mae. While *Draper* allows the servicer to bring a foreclosure, Plaintiff has failed to establish an agency relationship with Fannie Mae, who is the real PETE in this matter as the owner. *In Re Veal, 450 BR at 920.*

SUMMARY

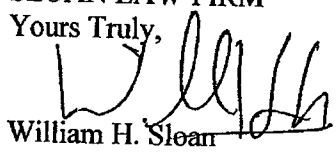
Plaintiff has failed to show the damages that they, the Plaintiff, have suffered from this case for lack of payments on principal and interest as they are not the owners of the Note and Mortgage and have failed to show that they have the right to receive payments on their behalf in any way. Any judgment for Plaintiff should only be for advanced costs such as attorney's fees, inspection fees and escrow items.

Plaintiff has lack of standing to bring the foreclosure since the Assignment of Mortgage from MERS, Inc. does not purport to act on behalf of Quicken Loans, Inc., the originator of the Note and Mortgage.

Plaintiff has failed to show that they mailed the Notice of Right To Cure Letter. **Plaintiff did not** give the Defendant 30 days to cure the default under the evidence most favorable to it. Plaintiff was not the "Lender" as required by the Mortgage when they sent the right to cure letter.

Therefore, the Defendant asks this Court for a verdict in its favor.

SLOAN LAW FIRM
Yours Truly,



William H. Sloan

Cc: Charlie Gwynne, Esq.
Rogers Townsend and Thomas
Post Office Box 100200
Columbia, SC 29202

VIA E-MAIL AND REGULAR MAIL

DESIGNATION: 28

28. Judgment of Foreclosure and Sale, Deficiency Judgment Waived...filed 3/10/2015.

    (contains pages 1-12)

FORM 4

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

JUDGMENT IN A CIVIL CASE

DOCKET NO. 2012-CP-02-699

Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP
PLAINTIFF(S)

Carolyn S. Deaner
DEFENDANT(S)

Submitted by: Charles S. Gwynne Jr. (SC Bar#73844) 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 : As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case.

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)**

11924115

N/A	N/A	N/A
		$

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

All that certain piece, parcel or lot of land, situate, lying and being in Belvedere, Aiken County, South Carolina, designated as Lot 10, Block B, on a plat of survey of Pinecrest Subdivision, Section I, made by Cranston & Associates, dated October 3, 1966, revised under date of March 29, 1968, and recorded in Plat Book 3, at Page 151, records of Aiken County, and according to said Plat, being bounded, now or formerly, and measuring, more or less, as follows: North by Kershaw Drive on two lines, measuring respectively 43.0 feet and 78.0 feet; East by Lot No.9, said block, 153.0 feet; south by lands of Trotter Realty Company, 71.22 feet; and west by Lot 11, said Block 149.03 feet. Reference is hereby made to said Plat for a more complete and accurate description of the subject property.

This being the same property intended to be conveyed to Carolyn S. Deaner from Marolyn D. Spoores, individually and as trustee of the Velda K. Deaner Revocable Trust dated June 28, 2002, amended and restated October 11, 2002, and further amended on December 20, 2002 Donald D. Deaner, Jr., Michael A. Deaner, by deed dated October 4, 2004 and recorded October 13, 2004, in Book 2458 at Page 111.

Property Address: 704 Kershaw Drive
North Augusta, SC 29841

TMS# 012-14-06-051

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.**

Special Referee _____ **Judge Code** _____ **Date** May 25 2015

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:

Charles S. Gwynne, Jr., Esq.
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202-3400
ATTORNEY(S) FOR THE PLAINTIFF(S)

William H. Sloan, Esquire
Sloan Law Firm, P.A.
PO Box 85
Summerville, SC 29484
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

11924115

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Plaintiff, v. Carolyn S. Deaner, Defendant(s).	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2012-CP-02-699 **JUDGMENT OF FORECLOSURE AND SALE** Deficiency Judgment Waived

(515262.01898 CSG)

Charles S. Gwynne Jr., Esquire
Attorney for the Plaintiff

William H. Sloan, Esquire
Attorney for Defendant Carolyn S. Deaner

A hearing was held on February 4, 2015 at 10:00 A.M. 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 March 19, 2012.

2. The Summons and Complaint were filed on March 19, 2012.

3. The Amended Lis Pendens was filed on August 28, 2014.

4. The Amended Summons and Complaint were filed on August 28, 2014.

5. Service was made upon all Defendant(s) as shown by proof(s) of service filed herein.

6. The Defendant Carolyn S. Deaner is 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, certificate or order filed or will be filed herein.

7. The Court finds Plaintiff has standing to prosecute this action as Plaintiff as loan servicer of the subject loan.

8. Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-20-01 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).

9. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.

10. On or about September 8, 2014, Defendant Carolyn S. Deaner filed an Answer and Counterclaim to the Amended Complaint, through her attorney William H. Sloan, Esquire.

11. 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.

12. Carolyn S. Deaner for value received, made, executed and delivered a Fixed Rate Note ("Note") dated June 26, 2007 promising hereby to pay to Plaintiff or its predecessor the sum of $97,600.00 with interest at 7.000% per annum. Other terms and conditions are stated in the Note, of record herein.

13. To better secure the payment of the Note described above, Carolyn S. Deaner made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for Quicken Loans, Inc., a certain real estate Mortgage in writing, dated June 26, 2007 covering real property in Aiken County, which is the same as that described in the Complaint. This Mortgage was filed on July 16, 2007, and is of record in the Office of RMC/ROD in Book RB 4149 at Page 773. Thereafter, by virtue of an assignment dated April 29, 2011, recorded May 9, 2011, in Mortgage Book RB 4356 at Page 932, Mortgage Electronic Registration Systems, Inc. assigned said Mortgage unto BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP. By virtue of a corporate merger, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP merged with Bank of America, N.A. making Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP.

14. This mortgage constitutes a first Priority lien on the subject property, subject to ad valorem taxes or other liens/taxes given priority by statute.

15. 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. The Plaintiff or its predecessor has acted as the loan servicer since 2007. I find and conclude the Plaintiff has standing to bring this action even though the assignment was not recorded until 2011. The Plaintiff was in physical possession of the original note endorsed in blank and presented the original note at trial. Possession of a bearer instrument [note] is *prima facie* evidence of ownership. In re Woodberry, 383 B.R. 373, 377 (Bankr. D.S.C. 2008). South Carolina law "does not require both possession of the note and a written assignment of the mortgage to prove ownership." Id. at 376. "South Carolina recognizes the 'familiar and uncontroverted proposition' that 'the assignment of a note secured

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by a mortgage carries with it an assignment of the mortgage.'" Midfirst Bank, SSB v. C.W. Haynes & Co., Inc., 893 F. Supp. 1304, 1318 (D.S.C. 1994)(citing Hahn v. Smith, 157 S.C. 157, 154 S.E. 112 (1930); *Ballou v. Young*, 42 S.C. 170, 20 S.E. 84 (1894)). "The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee. . . ." South Carolina Nat'l Bank v. Halter, 293 S.C. 121, 128, 359 S.E.2d 74, 77 (Ct.App.1987) (citing Hahn, 157 S.C. 157, 154 S.E. 112). Thus, enforcement of a note in South Carolina does not require the plaintiff to have a written assignment of the mortgage securing the note. Woodberry, 383 B.R. at 377. "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." § 36-3-205(b). Because the Plaintiff has possession of the Note indorsed in blank, Plaintiff is the holder of the Note and has the power to enforce the Note under the South Carolina Commercial Code. § 36-3-301.

16. Payment due on the Note was not made as provided for therein, and Plaintiff, as the holder or nominee for the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of the attorney herein for remedy for collection by foreclosure. Defendant was notified of the acceleration by letter dated August 16, 2010. The terms of the mortgage specifically provide that notices such as the acceleration letter are deemed to be received by the borrower when mailed by first class mail. The terms do not require the mortgagee to prove the mortgagor received the notices. The Plaintiff has met its burden of proof that notice of acceleration was given through the testimony of the Plaintiff's witness and the terms of the mortgage. I conclude the Plaintiff property accelerated the subject note.

17. Defendant argued at trial that Plaintiff's damages should be limited to actual expenses incurred by the Plaintiff as a loan servicer and Plaintiff is not entitled to seek damages on behalf of the investor of the loan. Loan servicers are real parties in interest and able to prosecute foreclosure actions. (See Bank of America, N.A. v. Draper, 405 S.C. 214, 746 S.E.2d 478 (Ct.App.2013)). As such, the Plaintiff has standing to seek all available damages due to the default by the borrower.

18. The sum of $4,800.00 is a reasonable fee and cost to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the 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

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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.

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 Note, with interest at the rate provided in the Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Note and Mortgage, is as follows:

Principal		$94,178.44
Interest from June 1, 2010 through February 4, 2015 at 7.00% per annum		$30,818.90
Escrow Advance		
Taxes		
12/12/14	$453.26	
11/18/13	$453.26	
12/03/12	$462.51	
12/09/11	$453.47	
12/23/10	$394.49	
Total	$2,216.99	
		$6,800.65
Hazard		
12/29/14	$1,032.48	
12/27/13	$1,012.72	
12/26/12	$1,009.58	
12/27/11	$764.44	
12/28/10	$764.44	
Total	$4,583.66	
Property Inspections		
12/15/14	$15.00	
11/10/14	$15.00	
10/13/14	$15.00	
09/11/14	$15.00	
07/15/14	$15.00	$389.00
06/16/14	$15.00	
05/20/14	$15.00	
03/26/14	$15.00	
02/24/14	$15.00	
01/22/14	$15.00	

12/23/13	$15.00	
11/21/13	$15.00	
10/25/13	$15.00	
08/26/13	$15.00	
07/29/13	$15.00	
07/01/13	$15.00	
06/04/13	$15.00	
05/06/13	$15.00	
04/03/13	$15.00	
03/06/13	$15.00	
02/04/13	$15.00	
12/26/12	$15.00	
11/16/12	$15.00	
10/09/12	$15.00	
05/08/12	$14.00	
03/07/12	$15.00	
Total	$389.00	
Prior Counsel Foreclosure / Litigation Fees and Costs		
03/20/12	$435.00	
03/20/12	$225.00	
04/10/12	$580.00	
04/10/12	$150.00	
04/10/12	$60.00	
10/24/12	$25.00	
07/10/13	$25.00	
07/10/13	$231.00	
09/09/13	$306.00	
10/31/13	$50.00	$9,036.50
10/03/13	$1,330.50	
10/31/13	$444.00	
11/04/13	$200.00	
11/04/13	$1,837.50	
07/31/14	$175.00	
07/31/14	$15.00	
07/31/14	$2,797.50	
11/05/14	$150.00	
Total:	$9,036.50	
Rogers Townsend & Thomas, PC Attorney's Fees incurred (paid, billed but unpaid or unbilled)		$4,775.00
Rogers Townsend & Thomas, PC Expenses *(Order Filing Fee)*		$25.00
TOTAL PRINCIPAL, INTEREST AND		**$146,023.49**

Exhibit #5

EXPENSES:

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 7.000% per annum (pursuant to the terms of the 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. There are no claims of a subordinate lien upon or subordinate legal interest in the subject property.

IT IS THEREFORE ORDERED:

22. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Orders 2009-05-22-01 dated May 22, 2009 and 2011-05-02-01 dated May 2, 2011, and the foreclosure action may proceed.

23. Defendant Carolyn S. Deaner's Answer and Counterclaim is dismissed with prejudice.

24. There is due on the Note and purchase money first Mortgage set forth in the Amended Complaint the sum of $146,023.49, 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.

27. The Defendant(s) liable for the aforesaid judgment debt of the Note and Mortgage including interest at the rate of 7.000% 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

Jun H #6

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 by the below signed Special Referee or other court-appointed or designated agent or auctioneer at public auction at the Aiken County Courthouse, in the City of Aiken, and State of South Carolina on a sales day determined by the below signed Special Referee or other court-appointed or designated agent, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. 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 30 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 7.000%.

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 Special Referee 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

Exhibit #7

thereof within 30 days after date of sale, then the Special Referee 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 Special Referee will apply the proceeds of the sale as follows:

FIRST: To the payment of the permitted costs, charges, and expenses of this action, including any Guardian ad Litem fee, servicemember Civil Relief Act attorney fee, or any other attorney's awarded under this or any other Order of this Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and the Plaintiff's attorney shall receive and disburse such funds only in absolute compliance with Plaintiff's principal, interest allowable advances, and related calculations of this Court, including the Court's award for attorney fees, court permitted charges and taxable costs pursuant to Rules 54 and 71 of the South Carolina Rules of Civil Procedure and the terms of the Note and Mortgage; After crediting the proceeds of sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

NEXT: Any surplus should be held pending further Order of this court as provided for in the South Carolina Rules of Civil Procedure, particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

35. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Aiken 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

Initial #8

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), is 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, situate, lying and being in Belvedere, Aiken County, South Carolina, designated as Lot 10, Block B, on a plat of survey of Pinecrest Subdivision, Section I, made by Cranston & Associates, dated October 3, 1966, revised under date of March 29, 1968, and recorded in Plat Book 3, at Page 151, records of Aiken County, and according to said Plat, being bounded, now or formerly, and measuring, more or less, as follows: North by Kershaw Drive on two lines, measuring respectively 43.0 feet and 78.0 feet; East by Lot No.9, said block, 153.0 feet; south by lands of Trotter Realty Company, 71.22 feet; and west by Lot 11, said Block 149.03 feet. Reference is hereby made to said Plat for a more complete and accurate description of the subject property.

This being the same property intended to be conveyed to Carolyn S. Deaner from Marolyn D. Spoores, individually and as trustee of the Velda K. Deaner Revocable Trust dated June 28, 2002, amended and restated October 11, 2002, and further amended on December 20, 2002 Donald D. Deaner, Jr., Michael A. Deaner, by deed dated October 4, 2004 and recorded October 13, 2004, in Book 2458 at Page 111.

Property Address: 704 Kershaw Drive
North Augusta, SC 29841

TMS# 012-14-06-051

J. Martin Harvey
Special Referee for Aiken County

February 25, 2015

11924115

#9

NOTICE OF SALE

BY VIRTUE of a decree heretofore granted in the case of: Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP vs. Carolyn S. Deaner, C/A No. 2012-CP-02-699, The following property will be sold on April 6, 2015, at 12:00 Noon at the Aiken County Courthouse to the highest bidder:

All that certain piece, parcel or lot of land, situate, lying and being in Belvedere, Aiken County, South Carolina, designated as Lot 10, Block B, on a plat of survey of Pinecrest Subdivision, Section I, made by Cranston & Associates, dated October 3, 1966, revised under date of March 29, 1968, and recorded in Plat Book 3, at Page 151, records of Aiken County, and according to said Plat, being bounded, now or formerly, and measuring, more or less, as follows: North by Kershaw Drive on two lines, measuring respectively 43.0 feet and 78.0 feet; East by Lot No.9, said block, 153.0 feet; south by lands of Trotter Realty Company, 71.22 feet; and west by Lot 11, said Block 149.03 feet. Reference is hereby made to said Plat for a more complete and accurate description of the subject property.
Derivation: Book 2458 at Page 111
Property Address: 704 Kershaw Drive, North Augusta, SC 29841
TMS# 012-14-06-051

SUBJECT TO ASSESSMENTS, AD VALOREM TAXES, EASEMENTS AND/OR, RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

TERMS OF SALE: A 5% deposit in certified funds is required. The deposit will be applied towards the purchase price unless the bidder defaults, in which case the deposit will be forfeited. If the successful bidder fails, or refuses, to make the required deposit on the day of sale or fails or refuses to comply with the bid within 30 days, then the property will be resold at the bidder's risk. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. The successful bidder will be required to pay interest on the amount of the bid from date of sale to date of compliance with the bid at the rate of 5% per annum. For complete terms of sale, see Judgment of Foreclosure and Sale filed with the Aiken County Clerk of Court at C/A # 2012-CP-02-699.

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

John J. Hearn, Esq.
Attorney for Plaintiff
PO Box 102200
Columbia, SC 29202-3400
(803) 744-4444
515262.01898
Website: www.rtt-law.com (see link to Resources/Foreclosure Sales)

J. Martin Harvey
Special Referee for
Aiken County

NOTICE TO PRINTER: Please insert:

_____Once during week commencing _____
_____Once during week commencing _____
_____Once during week commencing _____

11924115

DESIGNATION: 29

29. MOTION TO RECONSIDER JUDGMENT...filed 3/16/2015.

(contains pages 1-2)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
BANK OF AMERICA, NA Plaintiff	)	CASE NO. 2012-CP-02-699
	)	
v.	)	MOTION AND ORDER INFORMATION FORM AND COVER SHEET
	)	
CAROLYN S. DEANER X Defendant.	)	

Defendant's Attorney:	Plaintiff's Attorney:
William H. Sloan, Esq., Bar No. 69630 Address: P.O. Box 85 Summerville, SC 29484 phone: (843) 873-7531 fax: (843) 873-873-7527 e-mail: other:	Charlie Gwynne, Esq., Rogers Townsend and Thomas Post Office Box 100200 Columbia, SC 29202 phone: 803-744-444 e-mail: other:

X MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider Final Judgment
Estimated Time Needed: 15 minutes Court Reporter Needed: xYES / NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒Plaintiff / ☐Defendant — March 16, 2015 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION Date Filed:

Collected by: _____
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	COURT OF COMMON PLEAS
BANK OF AMERICA, NA ET AL	))	CASE NO. 2012-CP-02-699
Plaintiff,	)	MOTION
CAROLYN S. DEANER Defendants.	)TO RECONSIDER)JUDGMENT)	

Comes now, Defendant, through the undersigned, to move for the Court, namely Special Referee Harvey, to reconsider his Judgment for issues that will be more fully developed in a brief prior to the argument of the Motion.

Defendant respectfully includes and repeats by reference all of the issues previously raised before this Court at the trial. This Motion includes, but is not limited to the fact that the "right to cure" letter, which is a necessary pre-requirement in order to foreclose, was not sent to the property address which is required by No. 15 of the Mortgage of this case. Plaintiff failed to prove that the Defendant advised them that she was to receive any notices from the Post Office box in Augusta, GA. Therefore, per No. 15 of the Mortgage, there is not to be an assumption that the Notice of Right to cure was sent to Ms. Deaner, which was further confirmed by Ms. Deaner's testimony that she never received the right to cure letter.

WHEREFORE, Defendants move before this Court that:

A. Reconsider and reverse the Judgment entered in this case within the last 10 days;
B. Any other relief that this Court deem prudent, just and proper.

William H. Sloan
Sloan Law Firm, PA
1055-F North Main St.
Summerville, SC 29483
(843) 873-7531
Attorney for Defendant
March 16, 2015

DESIGNATION: 30

30. Defendant's Affidavit to Motion to Reconsider Judgment...filed 3/19/2015 (contains page 1), plus Motion To Reconsider Judgment...filed date of 3/16/2015. (contains page 1)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	COURT OF COMMON PLEAS
BANK OF AMERICA, NA ET Plaintiff, CAROLYN S. DEANER Defendants.	))))))	CASE NO. 2012-CP-02-699 AFFIDAVIT OF CAROLYN S. DEANER PRIOR TO MOTION TO RECONSIDER

Comes now Carolyn S. Deaner, who first being duly sworn, states as follows:

1. I am the Defendant in this case.
2. The property address that is the subject of this matter is 704 Kershaw Drive, Belvedere, South Carolina 29841. The Plaintiff has often misstated the property address as 704 Kershaw Drive, North Augusta, SC 29841.
3. After reviewing my records, I do not see (nor do I recall) ever authorizing Bank of America or Countrywide to send any notices to any address other than the property address, including Post Office Box 485, Augusta, GA 30903-0485.
4. As I stated at the trial, I never received the Notice of Right to Cure also known as the Acceleration Letter in 2010 when I did have the funds to get the loan current.

FILED 3.19 2015
Li Godard
C.C.P. & G.S.
Anita Knowlee 12:05 ask
Deputy Clerk

FURTHER AFFIANT SAYETH NOT!

Carolyn S. Deaner

Sworn to and subscribed before me this 11th day of March, 2015.

Notary Public for South Carolina-Georgia

Commission expires July 29 2024

DENISE WHALEY
NOTARY PUBLIC
JULY 29, 2024
SOUTH CAROLINA

Per Mr. Sloan - please file
3.19.15 @ 12:03 pm ask

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	COURT OF COMMON PLEAS
BANK OF AMERICA, NA ET AL	))	CASE NO. 2012-CP-02-699
Plaintiff,	)	MOTION
CAROLYN S. DEANER Defendants.	)TO RECONSIDER)JUDGMENT)	

Comes now, Defendant, through the undersigned, to move for the Court, namely Special Referee Harvey, to reconsider his Judgment for issues that will be more fully developed in a brief prior to the argument of the Motion.

Defendant respectfully includes and repeats by reference all of the issues previously raised before this Court at the trial. This Motion includes, but is not limited to the fact that the "right to cure" letter, which is a necessary pre-requirement in order to foreclose, was not sent to the property address which is required by No. 15 of the Mortgage of this case. Plaintiff failed to prove that the Defendant advised them that she was to receive any notices from the Post Office box in Augusta, GA. Therefore, per No. 15 of the Mortgage, there is not to be an assumption that the Notice of Right to cure was sent to Ms. Deaner, which was further confirmed by Ms. Deaner's testimony that she never received the right to cure letter.

WHEREFORE, Defendants move before this Court that:

A. Reconsider and reverse the Judgment entered in this case within the last 10 days;
B. Any other relief that this Court deem prudent, just and proper.

William H. Sloan
Sloan Law Firm, PA
1055-F North Main St.
Summerville, SC 29483
(843) 873-7531
Attorney for Defendant
March 16, 2015

FILED 3.16 2015
Liz Ledard
C.C.P.&G.S.
Anita Knoepple
Deputy Clerk

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	COURT OF COMMON PLEAS
BANK OF AMERICA, N.A., Plaintiff, CAROLYN S. DEANER Defendants.	CASE NO: 2012-CP-02-699 AFFIDAVIT OF CAROLYN S. DEANER PRIOR TO MOTION TO RECONSIDER

Comes now Carolyn S. Deaner, who first being duly sworn, states as follows:

1. I am the Defendant in this case.
2. The property address that is the subject of this matter is 704 Kershaw Drive Belvedere, South Carolina 29841. The Plaintiff has often misstated the property address as 704 Kershaw Drive North Augusta, SC 29841.
3. After reviewing my records, I do not see (nor do I recall) ever authorizing Bank of America or Countrywide to send any notices to any address other than the property address, including Post Office Box 485, Augusta, GA 30903-0485.
4. As I stated at the trial, I never received the Notice of Right to Cure also known as the Acceleration Letter in 2010 when I did have the funds to get the loan current.

FURTHER AFFIANT SAYETH NOT.

Carolyn S. Deaner

Sworn to and subscribed before me this 7 day of March, 2015

Notary Public for South Carolina-Georgia

Commission Expires: July 29, 2024

DESIGNATION: 31

31. Referee Harvey's ORDER on MOTION TO RECONSIDER JUDGMENT and STAY FORECLOSURE SALE...filed 4/1/2015.

    (contains pages 1-5)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-02-699

Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

Plaintiff,

v.

Carolyn S. Deaner,

Defendant(s).

(515262.01898 CSG)

ORDER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

APR 01 2015

Liz Godard
C.C.C.P. & G.S., Aiken County, S.C.

Deputy Clerk

This matter came before me at a hearing on March 23, 2015, on Defendant Carolyn S. Deaner's ("Defendant") Motion to Reconsider Judgment and Motion to Stay Foreclosure Sale Currently Scheduled for April 6, 2015 and to Set Bond Pending Appeal. Charles S. Gwynne Jr., Esquire, appeared on behalf of the Plaintiff; and William H. Sloan, Esquire appeared on behalf of the Defendant. The court makes the following ruling based on the evidence presented and the arguments of counsel.

Motion to Reconsider Judgment

In her Motion the Defendant seeks an Order vacating the Judgment of Foreclosure and Sale filed on March 10, 2015. Defendant alleges the Notice of Intent to Accelerate letter which was marked as Plaintiff's Exhibit 6 at the foreclosure trial held on February 4, 2015 was improperly address to the Defendant and was never received by the Defendant. Therefore, Defendant alleges Plaintiff failed to comply with paragraph 15 of the subject Mortgage which addresses proper notice requirements to the borrower. The Court finds that based on the evidence and testimony presented at trial, the Plaintiff has met its burden of proof that notice of acceleration was properly given to the Defendant pursuant to the terms of the subject note and mortgage. Defendant's Motion to Reconsider Judgment is denied.

FILED 4/1 2015

Liz Godard
C.C.C.P.&G.S.

8:30am

Deputy Clerk

11521918

Motion to Stay Foreclosure Sale Currently Scheduled for April 6, 2015 and to Set Bond Pending Appeal

In her Motion to stay the foreclosure sale and set a bond pending appeal, Defendant seeks the right to set a bond to stay the sale of the property pending an appeal pursuant to Rule 62. At the hearing Plaintiff's counsel represented that Plaintiff was not prepared to proceed with the April 6, 2015 sale date at this time. For the following reasons, Defendant's request to stay the enforcement of the Judgment of Foreclosure and Sale pursuant to Rule 62 is denied, however, the Court grants Defendant's request to post a bond to stay the foreclosure sale.

Defendant's request is controlled by S.C. Code Ann. § 18-9-170, which provides, in relevant part, that:

> If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking. When the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and 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, but not exceeding the amount of such deficiency, which sum shall be duly entered as a payment on the judgment ...

S.C. Code Ann. § 18-9-170.

The Court finds that the sum of Twenty-Three Thousand Four Hundred Dollars ($23,400) is a reasonable amount for the bond. In setting the bond amount, the Court was mindful that appeals to the South Carolina Court of Appeals can typically last three years. The bond amount

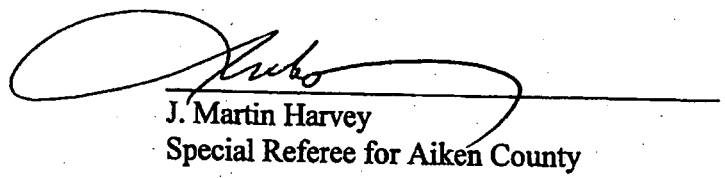
is equal to three years of mortgage payments of approximately Six Hundred and Fifty Dollars ($650). Defendant's Motion to stay the foreclosure sale and set a bond pending appeal is granted in part.

IT IS HEREBY ORDERED

1. The foreclosure sale of the subject property shall occur on or after May 4, 2015; and

2. In order to stay the sale of the subject property, Defendant shall post a bond in the sum of $23,400 with the Aiken County Clerk of Court's office in the form and manner provided by S.C. Code Ann. § 18-9-170 and shall file a Notice of Appeal before the scheduled sale date of the subject property.

IT IS SO ORDERED.



J. Martin Harvey
Special Referee for Aiken County

March 30, 2015
Barnwell, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

DOCKET NO. 2012-CP-02-699

Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP
PLAINTIFF(S)

Carolyn S. Deaner
DEFENDANT(S)

Submitted by: Charles S. Gwynne Jr. (SC Bar#73844) 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: _____

FILED 3/1 2015
Liz Godard
C.C.C.P.&G.S.
8:30am
Deputy Clerk

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	N/A	N/A

12131863

		$

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

All that certain piece, parcel or lot of land, situate, lying and being in Belvedere, Aiken County, South Carolina, designated as Lot 10, Block B, on a plat of survey of Pinecrest Subdivision, Section I, made by Cranston & Associates, dated October 3, 1966, revised under date of March 29, 1968, and recorded in Plat Book 3, at Page 151, records of Aiken County, and according to said Plat, being bounded, now or formerly, and measuring, more or less, as follows: North by Kershaw Drive on two lines, measuring respectively 43.0 feet and 78.0 feet; East by Lot No.9, said block, 153.0 feet; south by lands of Trotter Realty Company, 71.22 feet; and west by Lot 11, said Block 149.03 feet. Reference is hereby made to said Plat for a more complete and accurate description of the subject property.

This being the same property intended to be conveyed to Carolyn S. Deaner from Marolyn D. Spoores, individually and as trustee of the Velda K. Deaner Revocable Trust dated June 28, 2002, amended and restated October 11, 2002, and further amended on December 20, 2002 Donald D. Deaner, Jr., Michael A. Deaner, by deed dated October 4, 2004 and recorded October 13, 2004, in Book 2458 at Page 111.

Property Address: 704 Kershaw Drive
North Augusta, SC 29841

TMS# 012-14-06-051

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

Circuit Court Judge/Master in Equity/Special Referee	**Judge Code**	March 30 2015 **Date**

For Clerk of Court Office Use Only

This judgment was entered on the 18 day of April, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 18 day of April, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Charles S. Gwynne, Jr., Esq. Rogers Townsend & Thomas, PC P.O. Box 100200 Columbia, SC 29202-3400 **ATTORNEY(S) FOR THE PLAINTIFF(S)**	William H. Sloan, Esquire Sloan Law Firm, P.A. PO Box 85 Summerville, SC 29484 **ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter:

12131863

DESIGNATION: 32

32. Proof of "Tender of Payment" documents:

    Fed-X Receipt, Letter to Mr. Bruce R. Thompson, CFO of Bank of America, Dated 3/27/2015, Letter from Jason Agaton verifying receipt of Letter, International Promissory Note (hereafter, IPN) copy, IPN mailings to U.S. Dep. of Treasury, Federal Reserve and Comptroller with certified mailings receipt, Letter of 4/28/2015 to Mr. Thompson, Mr. Agaton and Mrs. Bowles with copy of Mrs. Bowles Letter of 4/22/2015.

    (contains Pages 1-11)

FedEx USA Airbill FedEx Tracking Number 822633993018

Form ID No. 0200

1 From Please print and press hard.

Date 3/27/2015 Sender's FedEx Account Number

Sender's Name CAROLYN S. DEANER Phone (706) 399-5496

Company

Address 704 KERSHAW DRIVE

Dept./Floor/Suite/Room

City BELVEDERE State SC ZIP 29841-2738

Billing Reference
Appears on invoice.

2 To

Recipient's Name BRUCE R. THOMPSON, CFO Phone (704 386-5681

Company BANK OF AMERICA, NA

Address 100 NORTH TRYON STREET
To "HOLD" at FedEx location, print FedEx address.
We cannot deliver to P.O. boxes or P.O. ZIP codes.

Dept./Floor/Suite/Room

City CHARLOTTE State NC ZIP 28255

Questions? Call 1·800·Go·FedEx® (800-463-3339)
Visit our Web site at www.fedex.com

By using this Airbill you agree to the service conditions on the back of this Airbill and in our current Service Guide, including terms that limit our liability.

4a Express Package Service

Packages up to 150 lbs. Delivery commitment may be later in some areas.

- [x] FedEx Priority Overnight — Next business morning
- [ ] FedEx Standard Overnight — Next business afternoon
- [ ] FedEx First Overnight — Earliest next business morning delivery to select locations
- [ ] FedEx 2Day* — Second business day
- [ ] FedEx Express Saver* — Third business day

* FedEx Envelope/Letter Rate not available. Minimum charge: One-pound rate

4b Express Freight Service

Packages over 150 lbs. Delivery commitment may be later in some areas.

- [ ] FedEx 1Day Freight* — Next business day
- [ ] FedEx 2Day Freight — Second business day
- [ ] FedEx 3Day Freight — Third business day

* Call for Confirmation:

5 Package Profile

* Declared value limit $500

- [x] FedEx Envelope/Letter*
- [ ] FedEx Pak*
- [ ] Other Pkg. — Includes FedEx Box, FedEx Tube, and customer pkg.

6 Special Handling

- [ ] SATURDAY Delivery — Available for FedEx Priority Overnight and FedEx 2Day to select ZIP codes
- [ ] SUNDAY Delivery — Available for FedEx Priority Overnight to select ZIP codes
- [ ] HOLD Weekday at FedEx Location — Not available with FedEx First Overnight
- [ ] HOLD Saturday at FedEx Location — Available for FedEx Priority Overnight and FedEx 2Day to select ZIP codes

Does this shipment contain dangerous goods?

- [ ] No
- [ ] Yes — As per attached Shipper's Declaration
- [ ] Yes — Shipper's Declaration not required
- [ ] Dry Ice — Dry Ice, 9, UN 1845 _____ x

Dangerous Goods cannot be shipped in FedEx packaging.

- [ ] Cargo Aircraft Only

7 Bill to:

- [ ] Sender — Acct. No. in Section 1 will be billed.
- [ ] Recipient
- [ ] Third Party
- [ ] Credit Card
- [ ] Cash/Check

FedEx Acct. No. Credit Card No. Exp. Date

Total Packages	Total Weight	Total Declared Value†
1	15	$ 1 .00

†Our liability is limited to $100 unless you declare a higher value. See back for details.

FedEx Use Only

8 Signature

Sign to authorize delivery without obtaining signature.

By signing you authorize us to deliver this shipment without obtaining signature and agree to indemnify and hold us harmless from any resulting claims.

360

Rev. Date 8/99 • Part #154815 • ©1994–99 FedEx • PRINTED

FedEx

1070 BERTRAM ROAD
Augusta, GA 30909

Location:	AGSA
Device ID:	AGSA-POS2
Employee:	931513
Transaction:	850123846015

PRIORITY OVERNIGHT

822633993018	0.15 lb (S)	23.19

Scheduled Delivery Date 03/31/2015

Shipment subtotal:	23.19
Total Due:	**23.19**
(V) CreditCard:	23.19
**********5285	

H = Weight entered manually
S = Weight read from scale
T = Taxable item

Subject to additional charges. See FedEx Service Guide at fedex.com for details. All merchandise sales final.

Visit us at: fedex.com
Or call 1.800.GoFedEx
1.800.463.3339

March 30, 2015 5:06:28 PM

Delivered 3/31/2015 Tuesday 8:26 AM
Left with Front Desk
Signature Not Required
Delivery Fee Waived

MARCH 27, 2015

TO: MR. BRUCE R. THOMPSON

CHIEF FINANCIAL OFFICER

BANK OF AMERICA, NA

RE: International Promissory Note/Legal Tender

Dear Mr. Thompson:

Please find enclosed a Promissory note to pay off the existing loan number 172231076 and/or the judgment case 2013-CP-02-00699 in full including principal, interest, escrow and fees.

Also, I am sending this directly to you as after several conversations, many customer service representatives do not understand promissory notes. I will greatly appreciate you taking care of this for me as it will be beneficial in the future in developing areas.

The IRS treats promissory notes as cash. Under Title 12 USC 1813 (L)(1), when you deposit a promissory note, it becomes cash. 31 USC 5103, Legal Tender, "and circulating promissory notes of National Banks." Please e-mail a receipt for the completion of this request and transaction.

Thank you for your time and understanding in this matter, and am grateful for your assistance.

Cordially,

Carolyn S. Deaner

(706) 399-5496

cdeaner@bellsouth.net

704 Kershaw Drive

Belvedere, SC 29841-2738

Enterprise Customer Care Resolution

April 3, 2015

Contact Us:
1.800.669.6650

Loan Ending:
1076

Service Request Number:
1-545731086

Ms. Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841

Correspondence received on: March 31, 2015

Dear Ms. Deaner:

Our Enterprise Customer Care Resolution team has received your correspondence addressed to Mr. Bruce Thompson, CFO of Bank of America.

My name is Jason Agaton and I am a Customer Advocate with Bank of America.

What you can expect next

My goal is to respond to your correspondence in writing by April 15, 2015.

Our acknowledgement

Thank you for the opportunity to respond to your inquiry.

Sincerely,

Jason Agaton
Customer Advocate
Enterprise Customer Care Resolution

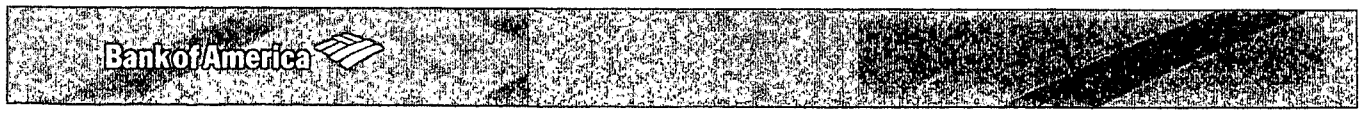
For more information about help for homeowners, visit bankofamerica.com/homeloanhelp or makinghomeaffordable.gov

To check on the status of a loan modification, go to bankofamerica.com/loanhelpstatus

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector. If you are currently in a bankruptcy proceeding or have previously obtained a discharge of this debt under bankruptcy law, this notice is for informational purposes only and is not an attempt to collect a debt, a demand for payment or an attempt to impose personal liability for a discharged debt.

Mortgages funded and administered by an Equal Housing Lender.
Protect your personal information before recycling this document.

Bank of America, NC1-007-5816
100 N Tryon Street, Charlotte, NC 28255-0001



NEGOTIABLE INTERNATIONAL PROMISSORY NOTE (UNCITRAL CONVENTION) NEGOTIABLE

Note Number: [ACCT# 7500] Date: March 27, 2015
Pay to the Order
[BANK OF AMERICA, NA
ONE HUNDRED FORTY SEVEN THOUSAND NO /100 **** DOLLARS

$ 147,000.00 USD

For Private Offset Account #(PRIMARY 250720646)

This instrument is an UNCONDITIONAL INTERNATIONAL PROMISSORY NOTE (UNCITRAL CONVENTION) tendered by the Undersigned Respondent, **[CAROLYN SUE DEANER)** ©, Authorized Representative, hereinafter "Maker," in good faith, and in accordance with law, as codified at Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Article 47-4(c). and Public Policy at House Joint Resolution 192 of June 5, 1933, as full satisfaction of a alleged debt claimed and allegedly owed in favor of Payee herein, i.e. **[BANK OF AMERICA, NA)**, d.b.a. a debt collector, as per Payee's/Debt Collector's Presentment:

On this 27th day of MARCH 2015, I, **[CAROLYN SUE DEANER]** ©, By this negotiable instrument governed by UNCITRAL CONVENTION, promise to Pay to **[BANK OF AMERICA, NA] [ONE HUNDRED FORTY SEVEN THOUSAND AND NO/100]** USD without interest or other charges, Payable on demand upon presentment of this original instrument properly endorsed on or after _MARCH 27, 2015, **at [900 WEST TRADE STREET, SUITE 650] , [CHARLOTTE, NORTH CAROLINA, 28255]** Alleged Creditor: [BANK OF AMERICA, NA]; Alleged Account No.: **[172231076]**; Alleged Amount Due: **[ONE HUNDRED FORTY SEVEN THOUSAND AND NO/100]**. A true and correct copy of Presentment is attached hereto, made fully part hereof, and included herein by reference. This statement constitutes Maker's promise for paying this instrument upon presentment and Endorsement, at Maker's location.

As an operation of law, Payee/Debt Collector tacitly consents and agrees that there is accord and satisfaction by use of this instrument for satisfying Payee's/Debt Collector's claim and Maker is hereby discharged from liability on this alleged account and the obligation is suspended in pursuant to UNCITRAL CONVENTION codified at Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Article 47-4(c).

[CAROLYN SUE DEANER]©TRUST

DATED MARCH 27, 2015

By, **[CAROLYN SUE DEANER]**
"As good as Aval" Authorized Representative Secured Party, Without Recourse UCC 1-308
[NIP # [2507206461] For Private Set off Account Number: [CAROLYN SUE DEANER] [250-72-0646]

Witness ..... Witness .....

Authorized person indorsing below. Print name and official title when presenting this Instrument for payment. Government-issued ID with photograph required, i.e. only the following types of ID accepted: state-issued Drivers License; state-issued Identification Card; Passport.

PARTY RECEIVING PAYMENT*

Printed Name of Endorser — Form of Photo Identification

Official Title of Endorser — Form of Official Identification

Date of Presentment and Endorsement — Signature of Endorser

Right Thumb Print

Date endorser received document: _____, 20___

Respondent's Private International Administrative Remedy Demand No. [ACCT# 7500]

[illegible] [CAROLYN SUE DEANER]. [illegible] amount indicate..

VOID WHERE PROHIBITED BY LAW – WITHOUT RECOURSE TO PROVIDER IF NOT ACCEPTED

Date of Notice: MARCH 27, 2015

Notice served by: **[250720646]**., acting as agent for
[CAROLYN SUE DEANER]©TRUST
c/o [704 KERSHAW DRIVE]
[BELVEDERE, SOUTH CAROLINA 29841-2738]
All rights in commerce are explicitly under reserve and without recourse

Notice served on: [BANK OF AMERICA, NA]
Respondent: c/o [BRIAN THOMAS MOYNIHAN, CEO/PRESIDENT/OFFICER]
[900 WEST TRADE STREET, SUITE 650], [CHARLOTTE, NORTH CAROLINA 28255]

Reference: NOTICE OF FORECLOSURE Case/Account No. **2013-CP-02-00699**

Pursuant to DEMAND letter issued instructing [CAROLYN SUE DEANER]©TRUST to pay a debt in the amount of $[147,000], and in accord with current UNCITRAL CONVENTION, with said CONVENTION having never been repealed and still being in full force and effect, and in accord **with my private exemption authorized therein for the discharge of debts,** I, [CAROLYN SUE DEANER], Sovereign, acting in good faith, with clean hands and at arm's length, hereby and herein tender payment for a debt in the amount of [$147,000] in full compliance and full satisfaction of said Order, issued by [BANK OF AMERICA, NA], c/o [BRIAN THOMAS MOYNIHAN, CEO/PRESIDENT/OFFICER], instructing [CAROLYN SUE DEANER] to pay a debt.

In as much as no lawful money of account exists in circulation, and pursuant of current "UNCITRAL CONVENTION", [CAROLYN SUE DEANER]©TRUST has no money with which to pay a debt. Because [CAROLYN SUE DEANER]© TRUST has no money with which to pay a debt, he has had to resort to tendering a negotiable instrument, pursuant, to the UNCITRAL CONVENTION Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Article 47-4(c). Statement, issued instructing [CAROLYN SUE DEANER)]©TRUST to pay a debt.

As you will note, pursuant to UNCITRAL CONVENTION Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Article 47-4(c), the attached International Promissory Note is an instrument and clearly satisfies the requirements of [BANK OF AMERICA, NA], issued on MARCH 27, 2015 instructing [CAROLYN SUE DEANER]©TRUST to pay a debt. Said International Promissory Note is being issued in good faith, with clean hands and at arm's length, and is not a dishonor of saic Demand. *Upon delivery of this payment to receiving party, that receiving party has 72 hours (3 business days) to deny or accept this payment or return to provider of this payment. Failure to deny and return by that time constitutes acceptance of thi payment in full without recourse, with full credit for payment due to the account of [CAROLYN SUE DEANER]. This settl the payment of the above stated debt in full up to the amount indicated.

Please send me a signed receipt acknowledging receipt of my payment to the above address.

Verification: I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on MARCH 27, 2015 AD.

Attachment: Copy of Negotiable Instrument in the form of an International Promissory Note, Signed in red ink, dated MARCH 27, 2015 in the amount of **[$147,000]**, issued to [BANK OF AMERICA, NA].

Respectfully served, [CAROLYN SUE DEANER]©TRUST

X

By [CAROLYN SUE DEANER], Authorized Representative, Without Recourse, All Rights Reserved, Without Prejudice
CUSIP # [250720646] Private Set off Account Number [CAROLYN SUE DEANER] [250-72-0646]

OPTIONAL: For mailing a COPY of the International Promissory Note and Registering it.

US Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220
PH 202-622-2000 Fax 202-622-6415

Registered mail# 4/9/2015

Federal Reserve Bank Headquarters
20th Street and Constitution Ave NW
Washington, DC 20551-0001
PH 202-452-3000

Registered mail# 4/9/2015

Comptroller of the Currency
Administrator of National Banks
Washington, DC 20219

Registered mail# 4/9/2015

see attached →

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

US DEPARTMENT OF THE TREASURY
1500 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20220

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7010-3090-0002-7343-4120

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Received 5/19/2015

Received

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FEDERAL RESERVE BANK
HEADQUARTERS
20th STREET & CONSTITUTION AVE NW
WASHINGTON, DC 20551-0001

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 4-14-15

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7010-3090-0002-7343-4083

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COMPTROLLER OF THE CURRENCY
ADMINISTRATION OF NATIONAL BANKS
Washington, DC 20219

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7010-3090-0002-7343-4090

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

DATE: APRIL 28, 2015

TO: MR. BRUCE R. THOMPSON, CHIEF FINANCIAL OFFICER, BANK OF AMERICA, N.A.

MR. JASON AGATON, CUSTOMER ADVOCATE, BANK OF AMERICA, N.A.

MRS. LOUISE BOWES, COUNSELOR AT LAW, BLANK ROME, LLP

IN RESPONSE TO A LETTER RECEIVED FROM MRS. LOUISE BOWES DATED APRIL 22, 2015 AND RECEIVED ON APRIL 24, 2015 VIA UPS, MAY IT BE NOTED THE DECLINED INTERNATIONAL PROMISSORY NOTE (IPN) WAS NOT RETURNED AS REQUIRED, THEREFORE, THE OBLIGATION OF LOAN NUMBER #172231076 IS DISCHARGED AS OF 4/28/2015. THE IPN MUST BE RETURNED AS INSTRUCTED AT THE BOTTOM OF THE INTERNATIONAL PROMISSORY NOTE IN BLUE INK.

BY KEEPING THE INTERNATIONAL PROMISSORY NOTE WHICH IS A CASH ITEM, WOULD CONSTITUTE UNJUST ENRICHMENT. AT THE BOTTOM OF THE IPN, IT SPECIFICALLY STATES TO RETURN THE IPN. IN ADDITION, IT IS A REGISTERED NOTE. I ALSO MADE THAT REQUEST VERBALLY TO JASON SHOULD IT BE DECLINED AND REQUESTED LEGAL REASONS FOR A DECLINE. I DID NOT RECEIVE ANY LEGAL, EITHER FEDERAL OR STATE, REASONS OR REASONABLE JUSTIFICATION FOR A DECLINE OF THE TENDER OF PAYMENT. PROMISSORY NOTES ARE CASH WHEN DEPOSITED AND ARE CERTIFIED FUNDS.

UCC 3-603 (b) STATES, IF TENDER OF PAYMENT TO AN OBLIGATION TO PAY AN INSTRUMENT IS MADE TO A PERSON ENTITLED TO ENFORCE THE INSTRUMENT (WHICH WAS MR. BRUCE R. THOMPSON, CHIEF FINANCIAL OFFICER OF BANK OF AMERICA, N.A.) on 3/31/2015 AND THE TENDER IS REFUSED, THERE IS DISCHARGE, TO THE EXTENT OF THE AMOUNT OF THE TENDER, OF THE OBLIGATION OF AN ENDORSER OR ACCOMMODATION PARTY HAVING A RIGHT OF RECOURSE WITH RESPECT TO THE OBLIGATION TO WHICH THE TENDER RELATES.

MY REMEDY IS TITLE 12 Section 411 AND Section 16 OF THE FEDERAL RESERVE ACT. THE ORIGINAL PROMISSORY NOTE WAS DEPOSITED FOR CASH FROM THE FEDERAL RESERVE, AND I WAS NOT PAID IN LAWFUL MONEY AND AM REQUESTING RECOUPMENT AS THERE WAS NEVER A LOAN, BUT AN UNLAWFUL EXCHANGE OR SWAP OF CURRENCY WITHOUT DISCLOSURES AT THE ALLEGED LOAN CLOSING TO THE BORROWER WHICH WOULD ENCOMPASS PREDECESSORS AND SUCCESSORS AND IS A VIOLATION OF THE TRUTH IN LENDING ACT 12 CFR 226 17(c)(1) WHICH VOIDS AND NULLIFIES THE ORIGINAL NOTE.

THANK YOU, AND I APPRECIATE YOUR SERVICES IN LAYING THIS MATTER TO REST.

CORDIALLY,

Carolyn S. Deaner

BLANK ROME LLP
COUNSELORS AT LAW

Phone: *(215) 569-5391*
Fax: *(215) 832-5391*
Email: *LBowes@BlankRome.com*

April 22, 2015

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841

Re: Borrower: Carolyn S. Deaner (the "Borrower")
Property Address: 704 Kershaw Drive, North Augusta, SC 29841
Loan Number Ending In: 1076 (the "Loan")

Dear Ms. Deaner:

This firm represents Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP ("Bank of America"), for the sole purpose of responding to your correspondence dated March 27, 2015 (collectively, the "Letter"). Bank of America has reviewed the Letter and is writing in response to the inquiries and/or allegations in the Letter that contain a Notice of Error under 12 C.F.R. §1024.35, an Information Request under 12 C.F.R. §1024.36, or which otherwise require a response under state or federal law. The results of this review are set forth below and in the documents enclosed herewith.

The Letter makes certain vague and conclusory allegations relating to the Loan; however, Bank of America has reviewed the Letter and is unable to ascertain any specific error alleged by the Letter. As you may be aware, 12 C.F.R. §1024.35 does not require a servicer to respond to overbroad allegations that do not allow the servicer to reasonably determine the specific error(s) alleged. Therefore, it is Bank of America's position that the Letter does not contain a Notice of Error under 12 C.F.R. §1024.35.

Enclosed is a Payment History, which lists the transactions relating to the Loan during Bank of America's servicing. Please note this history provides pertinent information on payments received, tax and insurance payments disbursed, funds in the suspense/unapplied funds balance, and late charges assessed and paid. There are no codes used in the Payment History that require specific definitions.

The Letter, among other things, purports to pay off the Loan using a "Negotiable International Promissory Note." Please be advised that the "Negotiable International Promissory Note," is not an acceptable form of payment, and payments made in connection with a loan in foreclosure status must be in the form of certified funds. We have requested a payoff demand statement to be sent to you under separate cover, which will show all amounts necessary to pay off the Loan.

IPN is certified cash

The Letter also appears to conclude that any failure to by Bank of America to take certain actions will confer certain rights upon the Borrower. Please be advised that Bank of America is under no duty or obligation to respond to the Letter in the manner demanded by the Borrower or to take any actions demanded therein. Please be further advised that notwithstanding anything contained in the Letter or any failure by Bank of America to respond to all or any portion of the Letter, the Loan documents remain enforceable as written and the respective rights and obligations of the parties remain unaffected. Your remaining claims and allegations are vague and conclusory, and are inconsistent with the enclosed documents. Based on the foregoing, Bank of America considers the issues raised in the Letter resolved.

It is Bank of America's position that no further response to the Letter is required. The remaining requests and/or allegations contained in the Letter do not require a substantive response under 12 C.F.R. §§1024.35-1024.36 (and/or the exceptions articulated therein), seek documentation or information beyond that which is available through a request for verification of debt made under 12 U.S.C. §1692g, or do not otherwise require a response under state or federal law.

Questions or concerns regarding the contents of this letter should be submitted to Bank of America in writing at P.O. Box 942019, Simi Valley, CA 93094-2019. If you have other questions or concerns regarding the Loan, please contact Customer Advocate Jason Agaton at (877) 471-4367, ext. 383243.

In providing the above response, Bank of America is not limiting or waiving any rights or remedies it may now have or hereafter have, whether arising under the Loan documents, at law or in equity, all of which rights and remedies are expressly reserved.

Sincerely,

Louise Bowes

Enclosures

DESIGNATION: 33

33. MOTION BY DEFENDANT TO STAY FORECLOSURE SALE...filed 4/16/2015.

(contains pages 1-2)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	COURT OF COMMON PLEAS
BANK OF AMERICA, NA ET AL Plaintiff, CAROLYN S. DEANER Defendants.	))))))	CASE NO. 2012-CP-02-699 MOTION BY DEFENDANT TO STAY FORECLOSURE SALE

COMES NOW DEFENDANTS, Carolyn Deaner, through her undersigned attorney, to move to stay this action pending mortgage modification:

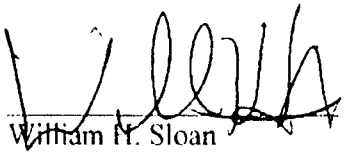
1. This is a foreclosure action filed after May 4, 2009.
2. This action is for a foreclosure for a loan originated prior to January 1, 2009.
3. The property that is the subject of this matter is the primary residence of the Defendant.
4. The ***Administrative Order Re: Mortgage Foreclosures and the Home Affordable Modification Program (HMP)*** was released on May 21, 2009, by Chief Justice Toal, South Carolina Supreme Court which is binding to this action.
5. Plaintiff's Amended Complaint states that the servicer is participating in HMP which is true. Plaintiff's Amended Complaint continues and states that the solicitation process has continued with completed without a loan modification. This allegation is inaccurate as the parties are still attempting to work out a modification. As evidence of this, Defendant submits Exhibit A with this Motion which is a cover letter from Plaintiff's new counsel giving the Defendant a modification package to complete and a deadline to complete the package of May 10, 2015, **6 days after the scheduled judicial sale of this property scheduled for May 4, 2015.**
6. In §3 of the ***Administrative Order,*** it states that

"if a judge determines that the HMP is applicable, but that the process to determine if a modification will be made under the HMP has not been completed, the foreclosure action shall ...be stayed until the HMP process is completed."

7. Defendant's attorney, the undersigned, filed and served two other Motions in this case on April 10, 2015, including a Motion to be relieved as Defendant's counsel. The undersigned requests that this Motion be heard at the same time as the Motion to be relived and that Defendant decide whether she wants the undersigned to argue it or if Defendant herself would prefer to do so.

FILED April 16 200 15
Liz Godard
C.C.C.P.&G.S.
Lisa Conner
DEPUTY CLERK
12:50 pm

WHEREFORE, Defendant moves before this Court for an Order staying this action pending modification attempts between the parties per HMP and the previously mentioned *Administrative Order* and any other such relief that this Court deems prudent, just and proper.



William H. Sloan
Sloan Law Firm, PA
1055-F North Main St.
Summerville, SC 29483
(843) 873-7531
Attorney for Defendant
April 13, 2015

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)))	COURT OF COMMON PLEAS
BANK OF AMERICA, NA ET AL	))	CASE NO. 2012-CP-02-699
Plaintiff,	))	MOTION BY DEFENDANT TO STAY FORECLOSURE SALE
CAROLYN S. DEANER Defendants.	))	

COMES NOW DEFENDANTS, Carolyn Deaner, through her undersigned attorney, to move to stay this action pending mortgage modification:

1. This is a foreclosure action filed after May 4, 2009.
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5. Plaintiff's Amended Complaint states that the servicer is participating in HMP which is true. Plaintiff's Amended Complaint continues and states that the solicitation process has continued with completed without a loan modification. This allegation is inaccurate as the parties are still attempting to work out a modification. As evidence of this, Defendant submits Exhibit A with this Motion which is a cover letter from Plaintiff's new counsel giving the Defendant a modification package to complete and a deadline to complete the package of May 10, 2015, **6 days after the scheduled judicial sale of this property scheduled for May 4, 2015.**
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"if a judge determines that the HMP is applicable, but that the process to determine if a modification will be made under the HMP has not been completed, the foreclosure action shall ...be stayed until the HMP process is completed."

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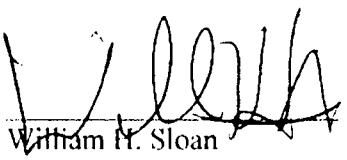
FILED April 16 2015
Sig Gedard
C.C.C.P.&G.S.
Tina Comer
DEPUTY CLERK
12:50 pm

WHEREFORE, Defendant moves before this Court for an Order staying this action pending modification attempts between the parties per HMP and the previously mentioned *Administrative Order* and any other such relief that this Court deems prudent, just and proper.



William H. Sloan
Sloan Law Firm, PA
1055-F North Main St.
Summerville, SC 29483
(843) 873-7531
Attorney for Defendant
April 13, 2015

DESIGNATION: 34

34. Notice of Appeal...filed 5/7/2015

    (contains 1 page)

FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Master-in-Equity via

J. Martin Harvey, Esq., Special Referee

Case No. 2012-CP-02-699

Bank of America, NA, successor by
Merger to BAC Home Loans Servicing,
LP fka Countrywide Home Loans Servicing,
LP, Respondent,

v.

Carolyn Deaner, Appellants.

NOTICE OF APPEAL

Carolyn Deaner appeals the order-judgment of the Honorable J. Martin Harvey, Esq., Special Referee, dated April 1, 2015. Appellants received written notice of entry of this order-judgment on April 7, 2015 from Plaintiff's counsel.

May 7, 2015

William Sloan
Post Office Box 85
Summerville, South Carolina 29484
(843) 873-7531
Attorney for Appellant

Other Counsel of Record:
Charlie Gwynne, Esq.
Rogers Townsend and Thomas
Post Office Box 100200
Columbia, SC 29202
Attorney for Respondent
803-744-4444

DESIGNATION: 35

35. Special Referee Harvey's ORDER on Motion to Stay Foreclosure Sales, Motion to Reduce Bond and Attorney William H. Sloan's Motion to be Relieved as Counsel for Defendant...filed 5/14/2015.
(contains pages 1-2)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

Plaintiff,

v.

Carolyn S. Deaner,

Defendant(s).

(515262.01898 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-02-699

ORDER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

MAY 14 2015

C.C.C.P. & G. A., Aiken County, S.C.

Deputy Clerk

This matter came before me at a hearing on April 30, 2015, on Defendant Carolyn S. Deaner's ("Defendant") Motion to Reduce Bond or Make Rolling Bond; Defendant's Motion to Stay Foreclosure Sale set for May 4, 2015 and William H. Sloan's Motion to be Relieved as Counsel for Defendant. Charles S. Gwynne Jr., Esquire, appeared on behalf of the Plaintiff; and William H. Sloan, Esquire appeared on behalf of the Defendant. The court makes the following ruling based on the evidence presented and the arguments of counsel.

Motion to Stay Foreclosure Sale set for May 4, 2015

Based on representations made by Plaintiff's counsel, the Plaintiff is not seeking to sell the property at the May 4, 2015 foreclosure sale to allow loss mitigation efforts to occur. Therefore, the Court finds this motion is moot.

Motion to Reduce Bond or Make Rolling Bond

The Court denies the Defendant's motion to reduce the bond set by the Court's previous order filed April 1, 2015. The sum of Twenty-Three Thousand Four Hundred Dollars ($23,400) is a reasonable amount for the bond. Additionally, the Court finds no legal basis to allow the Defendant to make monthly payments in posting the bond required by S.C. Code Ann. § 18-9-170.

FILED 5-14-15

C.C.C.P. & G.S.

12:50 pm

Deputy Clerk

12312099

William H. Sloan's Motion to be Relieved as Counsel for Defendant

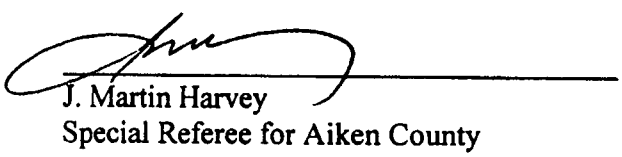
With the consent of Plaintiff, William H. Sloan is relieved as counsel for the Defendant. All proceedings related to the sale of the property shall be stayed for thirty (30) days from the date this Order is filed to allow Defendant to obtain new counsel and notify this Court of such. Until Defendant retains new counsel all parties and the Clerk of Court are hereby notified that for purposes of providing notices, motions, pleadings, or other documents to which Defendant may be entitled, the Defendant may be properly served at the following address:

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

IT IS HEREBY ORDERED

1. Defendant's Motion to Stay Foreclosure Sale set for May 4, 2015 is moot;
2. Defendant's Motion to Reduce Bond or Make Rolling Bond is denied; and
3. William H. Sloan's Motion to be Relieved as Counsel for Defendant is granted.

IT IS SO ORDERED.



J. Martin Harvey
Special Referee for Aiken County

May 12, 2015
Barnwell, South Carolina

12312099

DESIGNATION: 36

36. DEFENDANT'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE...filed 5/6/2015

(contains pages 1-12)

including attached:

Mortgage Compliance Investigators Chain Of Title Analysis and

Mortgage Fraud Investigation Report, (contains pages 1-34)

Affidavit (contains pages 1-5)

with Exhibits,

A (same as Note in Trail Transcript)

B (same as Mortgage in Trial Transcript)

C (same as MERS Assignment in Trail Transcript)

D (MERS Procedural Manual Terms and Conditions, 4 pages)

E (MERS Servicer ID, 1 page),

F (Fannie Mae Trust REMIC Master Trust Agreement, 6 pages) and

G (Affidavit)

MCI REPORT and ALL EXHIBITS...filed on 5/6/2015).

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **DEFENDANT'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE** **DOCKET NO. 2012-CP-02-00699** FILED 5-6-15 C.C.P. & G.S. Deputy Clerk

TO: PLAINTIFF, Bank of America, N.A., successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P.

YOU WILL PLEASE TAKE NOTICE that CAROLYN S. DEANER, Defendant, Pro Se, will on or about MAY 7, 2015 and as soon thereafter as Defendant may be heard, move before the Court, pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, for an order granting DEFENDANT'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE, pursuant TO South Carolina Rules of Civil Procedure in RULE 60 (b)(1-5):

This motion is made on the grounds that the Defendant intends to SHOW FORTH NEW EVIDENCE AND FRAUD IN THE DEFENDANT'S CASE as more accurately described and defined in the ATTACHED filing of the MORTGAGE COMPLIANCE INVESTIGATORS, CHAIN OF TITLE ANALYSIS & MORTGAGE FRAUD INVESTIGATION along with EXHIBITS A, B, C, D, E & F as attached and filed. A copy of the Defendant's EVIDENCE IS attached hereto and incorporated herein respectively.

Pursuant to Rule 11 of the South Carolina Rules of Civil procedure, the undersigned hereby certifies that prior to filing this Motion she and her legal attorney communicated with

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **DEFENDANT'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE** **DOCKET NO. 2012-CP-02-00699**

COPY
ORIGINAL FILED
MAY 06 2015
AIKEN COUNTY
CLERK OF COURT

TO: PLAINTIFF, Bank of America, N.A., successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P.

YOU WILL PLEASE TAKE NOTICE that CAROLYN S. DEANER, Defendant, Pro Se, will on or about MAY 7, 2015 and as soon thereafter as Defendant may be heard, move before the Court, pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, for an order granting DEFENDANT'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE, pursuant TO South Carolina Rules of Civil Procedure in RULE 60 (b)(1-5):

This motion is made on the grounds that the Defendant intends to SHOW FORTH NEW EVIDENCE AND FRAUD IN THE DEFENDANT'S CASE as more accurately described and defined in the ATTACHED filing of the MORTGAGE COMPLIANCE INVESTIGATORS, CHAIN OF TITLE ANALYSIS & MORTGAGE FRAUD INVESTIGATION along with EXHIBITS A, B, C, D, E & F as attached and filed. A copy of the Defendant's EVIDENCE IS attached hereto and incorporated herein respectively.

Pursuant to Rule 11 of the South Carolina Rules of Civil procedure, the undersigned hereby certifies that prior to filing this Motion she and her legal attorney communicated with

opposing counsel and attempted in "Good Faith" to resolve this matter with a cash offer of a reverse mortgage with no response from opposing council. In addition, the Defendant paid a legal tender payment on March 31, 2015 and a decline from Plaintiff was received on April 22, 2015 creating a discharge of the extent of the amount of the tender of the obligation of an endorser which was the full amount of the judgment and alleged debt obligation.

1. **On motion and upon such terms as are just, the court may relieve a party or a party's legal representation from a final judgment, decree order or proceedings for the following reasons, Rule 60 (1-5) with special emphasis on: (3) fraud, misrepresentation, or other misconduct of an adverse party.**

2. The findings and evidence in the MCI CHAIN OF TITLE ANALSIS & MORTGAGE FRAUD INVESTIGATION proves to this court from the findings that the Plaintiff has committed a fraud upon this court which has only become apparent to the Defendant within the last days of April and fully with the receipt of this attached report on May 1, 2015 upon discovery that the "lender" bank and others have engaged in a pattern of fraud and deception across the country and the State of South Carolina in attempting to foreclose residential properties AFTER it has already been paid in full PLUS a fee for standing for an undisclosed lender.

3. The Plaintiff's allegations that the Plaintiff has not been paid are false is easily ascertainable by the 10K and 8K filings with the Plaintiff's sworn filings with the **SEC, wherein** the description of the loan transaction fits exactly with ALL loans that were securitized and eventually sold in shares to investors around the world. It was not until the last days that Defendant consulted a MORTGAGE FRAUD INVESTIGATOR who informed her and demonstrated the fraud. The Defendant assumed that because the Plaintiff refused to accept legal tender payment that the allegation they were making was that they had not received any payment on the note, when in fact, they had already been PAID IN FULL **long before this action was commenced and contemporaneously with the loan closing. PLAINTIFF did not disclose that the loan had been paid, and did not disclose that the true holder in due course and the parties in possession of indorsement or the NOTE itself have long since been owners of these mortgage documents, and in fact, mislead this Defendant and the Court to**

believe the contrary. Defendant was only able to discover this fact upon consulting with an expert who advised the Defendant that the pattern and policy of Plaintiff was to treat ALL loans in this manner and that by granting the Plaintiff the right to foreclose the Court was essentially giving Plaintiff the money AND the property.

4. In plain language, Plaintiff has been **PAID IN FULL** wants the real property too and is about to get it unless the court allows the case to be tried on its new merits and the judgment vacated and sale dismissed with prejudice.

5. Plaintiff filed the foreclosure action and now is intent on taking title to the property in addition to having been paid in full PLUS a fee for standing in for the mortgage aggregator, who was the real lender, unregistered in the State of South Carolina to do business as an investment bank.

6. This Motion is filed because the Defendant verily believes she will and should prevail on the merits, that the Plaintiff has been paid, that the holder in due course has been paid, and that the affidavits and representations of counsel were false, KNOW TO BE FALSE WHEN MADE, and have been found to be false repeatedly in other cases around the country.

7. Defendant requests recoupment for violations of The Truth in Lending Act, damages for RICO, TILA Violations, usury, fraud in the inducement, fraud in the execution and damages for malicious abuse of process among other causes of action.

8. The failure to disclose the real parties, and all the fees paid to the undisclosed parties is a violation on the face of TILA and fair dealings, in addition to a breach and in fact total abdication of the fiduciary duty **OWED BY THE LENDER TO ITS BORROWER in which underwriting standards were reduced to zero, and the borrower was never told the promissory note was a cash item, that there was never a loan, but only an exchange or swap of currency, a direct violation of the Truth in Lending Act and bank accounting regulations.** The entire scheme was intended to trick investors into investing their capital into securities that were unregistered and unregulated, using the Defendant's signature as the issuer of the negotiable instruments which was perceived to give an inflated value to the derivative security purchased by these victimized investors.

10. The Plaintiff at trial failed to present sufficient facts to establish who the Plaintiff is and its relationship to the Defendant and to the claim for foreclosure of a promissory note, including the date of the alleged assignment of the mortgage and note, no dates on the endorsements of the promissory note, no named payee, and the identity of the owner of the subject promissory note. The Plaintiff fails to sufficiently identify who the Plaintiff is and fails to allege facts sufficient to determine the standing to the Plaintiff based on the CHAIN OF TITLE ANALYSIS AND MORTGAGE FRAUD INVESTIGATION REPORT ATTACHED.

11. The **Plaintiff's failure to meet the standing requirements of the commencement of this foreclosure action renders the judgment fatally defective and, therefore, constitutes misrepresentation as to who the Plaintiff really is. Standing requires that the party prosecuting the action have a sufficient stake in the outcome and that the party bringing the claim be recognized IN THE LAW as being a real party of interest ENTITLED TO BRING THE CLAIM as of the date of the commencement of the action and must be 'PLAUSIBLE ON ITS FACE'.**

12. Further, failure to join indispensable and necessary parties, those being the real holders in due course of the subject loan documents, Bank of America, wishes to place the alleged borrower and innocent third parties in untenable situations:

(a) the borrower can AGAIN be sued on the same note by a third party who has not be given notice of this lawsuit.

(b) if the note was separated from the mortgage, then the mortgage is unenforceable by definition. If the mortgage is unenforceable by definition then any "foreclosure sale" is either void or voidable. A cloud on title exists even in the presence of the Court's Judgment to the contrary

13. DEFENDANT'S **CHAIN OF TITLE ANALYSIS AND MORTGAGE FRAUD INVESTGATION** clearly explained and proved, 25-47 how it is not possible for ownership of the Deaner Mortgage to have been assigned to BAC Home loans Servicing LP FKA Countrywide Home Loans Servicing, LP. (SEE ALL ATTACHMENTS)

14. DEFENDANT'S **CHAIN OF TITLE ANALYSIS AND MORTGAGE FRAUD INVESTIGATION 1-70 IN ITS ENTIRETY PROVES THE FAILURE OF THE PLAINTIFF TO LEGALLY RECORD THE CHAIN OF TITLE INCLUDING THE MULTIPLE CLASSES OF THE FNMA-2007-91 TRUST who are required to have interest in the Deaner Note and Interest in the Deaner Mortgage and have SLANDERED THE TITLE AND CAUSED DAMAGES TO THE DEFENDANT'S PROPERTY. (#1-5)**

(A) In #6-11, **AS MULTIPLE CLASSES OF THE FNMA-2007-91 TRUST HAVE AN INTEREST IN THE DEANER INTANGIBLE OBLIGATION, MULTIPLE CLASSES OF THE FNMA-2007-91 TRUST ARE REQUIRED TO HAVE INTEREST IN THE DEANER NOTE AND INTEREST IN THE DEANER MORTGAGE.**

(1) In #6, Fannie Mae states, "We remit cash proceeds to the lender in payment of the purchase price of these mortgages." Loan paid in full to lender. It is also the Defendant's understanding when the loan defaults insurance pays the alleged loan in full.

(2) In #8, the sale of the rights to the Deaner INTANGIBLE OBLIGATION to multiple classes of the FNMA-2007-91 Trust without stripping away the rights to the Deaner Intangible Obligation from the rights to the Deaner Note could only be accomplished with the accompanying negotiation of the Deaner Note and the accompanying assignment of the Deaner Mortgage to the multiple classes of the FNBMA-2207-91 Trust **which is a LEGAL IMPOSSIBILITY.**

(3) In #10, Title 18 USC Chapter 47 1021, the assignment of the Deaner Mortgage is a conveyance of an instrument concerning real property and Plaintiff is in violation and is a felonious criminal act.

(4) In #11, the negotiation of the Deaner Note to Fannie Mae is required by Fannie Mae's own requirements and South Carolina Law. Deaner Note is not endorsed to Fannie Mae and was told to Court at the Trial along with the error of no dates on the endorsements of the Deaner Note.

(B) In #12-24, **MULTIPLE CLASSES OF THE FNMA-2007-91 TRUST CAN NOT CLAIM INTEREST IN EITHER THE DEANER NOTE OR THE DEANER MORTGAGE.**

(1) In #14, violations of the FNMA-2007-91 Trust appears to have violated Title 18, USC Chapter 47 1021.

(2) In #16, SC Code violations

(3) In # 19, proves lack of standing of Plaintiff

(4) In #20 , presentment of a Note carries no indicia of ownership or intent to transfer the Deaner Mortgage Loan,

(5) In #21, The concept that a noteholder, even one who is not legitimate, may nevertheless bring an action on the Deaner Note, is entrenched in commercial law and commonly summarized by the axiom "even a thief may enforce a note." However, the taking of the Deaner Home by foreclosure is an **EQUITABLE REMEDY, and EQUITY does not allow a "thief" to use a stolen DEANER NOTE to foreclose on the Deaner Mortgage lien.**

(6) In #22, The claim that "the mortgage follows the note" is **INCORRECT, as under South Carolina Law the lien follows the Secured Party of Record. That equitable right must be proven with evidence of a delivery. Intention does not override the requirement of law.**

(7) In #23, rights to the Deaner Intangible Obligation have been stripped from the rights to the Deaner Note and the rights to the Deaner Mortgage.

(8) in #24, sale of a "partial interest" in the Deaner Note strips the rights to the Deaner Intangible Obligation from the rights to the Deaner Note, leaving the Deaner Note without an obligation to evidence and the Deaner Mortgage without an obligation to hold condition over.

(C) In 25-47, **THE DOCUMENT PURPORTING TO BE AN "ASSIGNMENT OF MORTAGE" DATED APRIL 29, 2011 IS INVALID AS AN ASSIGNMENT OF MORTGAGE.**

(1) In #26, the filing of this document, "Assignment of Mortgage" **DID NOT** and **DOES NOT** assign/convey any **LEGAL RIGHTS to enforce the Deaner Note. Enforceability of a lien is dependent upon compliance with state law and local laws of jurisdiction.**

(2) In #27, the SALE is to be done in accordance with statutory requirement of law Code 1976 36-7-501, which has not happened. The acquiring of rights is to be done in accordance with statutory requirement of law Code 1976 36-3-203, which has not happened.

(3) In #28, with Quicken Loans Inc. selling only the Deaner Intangible Obligation to Countrywide Home Loans Inc., the Deaner Tangible Promissory Note is no longer eligible for negotiation per Code 1976 36-3-203 (d), as it is now less than full value. In order to claim the full value of the Deaner Tangible Promissory Note, a party would need to both be named as payee to the Deaner Tangible Promissory Note and have sole claim to the Deaner Intangible Obligation. With **NO NEGOTIATION, TRANSFER, AND DELIVERY of the Deaner Tangible Promissory Note evidenced through proper endorsement with Countrywide Home Loans, Inc. being named to the Deaner Tangible Promissory Note, a true "Assignment of Mortgage" could not take place....Code 1976 36-3-203.** "Transfer of instrument; rights acquired by transfer (d) if a transferor purports to transfer less that the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee."

(4) In #29, Countrywide Home Loans, Inc. was acting as the Account Debtor pursuant to Code 1976 36-9-102 (3) when they created and sold a transferable record to FANNIE MAE: Code 1976 36-9- 102, (a) In this chapter: (3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. **The term does not include persons obligated to pay a negotiable instrument,** even if the instrument constitutes part of chattel paper.

(5) In #30, the Assignee, BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP, **IS NOT made the sole party of interest in the Deaner Mortgage on the face of this document purporting to be an "Assignment of Mortgage" dated April 29, 2011. Additionally, there are other issues that render this document INVALID as an Assignment of Mortgage.**

(6) In 31-47, MERS ISSUES, namely in #13 MERS was paid a value by BAC Home Loans Servicing in the Deaner Mortgage. This means the Original Lender, Quicken Loans, Inc. **MAY NOT BE PAID good and valuable consideration for its beneficial interest which is recorded in the Official Records of the Aiken County Register of Mesne Conveyance. In #32 The value paid to MERS is certainly not the full and complete value of the Deaner Mortgage. When MERS transfers its value of beneficial interest, while ignoring the value held by Quicken Loans, Inc. it purports to transfer less than the entire instrument of the Deaner Mortgage and BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP DOES NOT become the SOLE PARTY OF INTEREST in the DEANER MORTGAGE. In #33, rights of the Deaner Intangible Obligation stripped away. In #34, the Note is without an Intangible Obligation to evidence and the Deaner Mortgage is without an Intangible Obligation to enforce conditions against.** In #36, Under the Consumer Credit Protection Act Title 15 USC Chapter 41 1641 (f) any treatment of the SERVICER of the Deaner Intangible Obligation as an OWNER of the Deaner Intangible Obligation would be in violation of Federal Statute. The assignment is either a fraudulent claim or BAC Home Loans Servicing LP FKA Countrywide home Loans Servicing LP's actions under the claim of ownership are in violation of Federal Law.

In #37-47, MERS, other misrepresentations and violations, as in #43, any electronic transfers of the Deaner Mortgage that may have been executed without recording within the Official Records of the Aiken County Register of Mesne Conveyance are void under Uniform Electronic Transactions Act (UETA) USC 15-96-1-7003 and $44, the assignment of the Deaner Mortgage is a conveyance of an instrument concerning real property which must be recorded to be acted upon. **United States code considers that anyone certifying that a real estate instrument has been assigned when in fact it has not is guilty of a felonious criminal act, Title 18 USC Chapter 47 1021.** In #45-47, is MERS statements on its own agreements.

(D) In #48-58, **NO ONE CAN CLAIM THE RIGHT TO ENFORCE THE DEANER NOTE.** In #48-50, only **contractual** rights of the Deaner Note would have been transferred, without acquiring rights of enforcement as defined in Code 1976 36-3203 (a), as there is a lack of agency relationship between the Deaner Note and the Deaner Mortgage filed on record, **since a party cannot establish an Agency relationship with an as-of-yet-unnamed payee...code 1976 36-3-205, when endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specifically indorsed...and Code 1976 36-3-2013 (a), An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.** In #51, The Deaner Mortgage filed of record **IS UNPERFECTED, as one CAN NOT perfect an instrument to an as-of-yet-unnamed payee.** In #52, the Deaner Note with an as-of-yet-unnamed payee is an incomplete instrument pursuant to Code 1976 36-3-115. In #54, In agreement with code 1976 36-3-203 (c), even Mortgage Electronic Registration systems, Inc. (MERS) admits that "The debt can only be transferred by

property endorsing the promissory note to the transferee...source, MERS Procedural Manual. In #55-56, Countrywide did not delivery the Deaner Note to an as-of-yet-unnamed payee and Countywide no longer has the entire rights to the Deaner Note. Countrywide Home Loans, Inc. must have an entire interest in the Deaner Note for a negotiation to occur. In #57, Countrywide can no longer claim the entire rights to the Deaner Note...Code 1976 36-7-501 and 36-3-203. In #58, whoever becomes the transferee of the Deaner Note, through being named payee, will not acquire the right to enforce the Deaner Note.

(E) In #59-64, **THE TERMS OF THE DEANER MORTGAGE HAVE BEEN VIOLATED AND THE DEANER MORTGAGE IS UNENFORCEABLE.** In #60, the Deaner Mortgage is governed by South Carolina Law. South Carolina Law and Federal Law recognize and require proper recordation of assignment to transfer ownership of the Deaner Mortgage....#16 of Deaner's Mortgage. In #61, **it was previously explained in 25-47 how it is NOT POSSIBLE FOR OWNERSHIP OF THE DEANER MORTGAGE TO HAVE BEEN ASSIGNED TO BAC HOME LOANS SERVICING LP FKA COUNTRYWIDE HOME LOANS SERVICING LP. In #62, the Deaner Mortgage is an unenforceable contract.** In #63, interest in the Deaner Mortgage is no longer with Quicken Loans, Inc., yet no one else has any authority to enforce its terms, while the Deaner Note is waiting for someone to acquire rights. The Deaner Mortgage is an unenforceable contract, no longer tied to an obligation to enforce its contractual terms over. In #64, Even if ownership of the Deaner Note and the Deaner Mortgage could be rejoined, the Deaner Mortgage, s a now unenforceable contract, no longer tied to an obligation to enforce its contractual terms over, **CAN NOT be returned to being an enforceable contract without Carolyn S. Deaner's consent.**

(F) In #65-70, **INTEREST IN THE DEANER INTANGIBLE OBLIGATION CAN NOT BE REJOINED TO THE INTEREST IN THE DEANER NOTE OR THE DEANER MORTGAGE.** In #65, Multiple classes of the FNMA-2007-91 Trust have rights to the Deaner Intangible Obligation. Multiple classes of the FNMA-2007-01 Trust **were not each and all named as payee on the Deaner Note and DO NOT now have rights to the Deaner Note.** In # 66, there is no possible way for the Deaner Note to be transferred to each and all multiple class of the FNMA-2007-91 Trust for the partial rights to the Deaner Intangible Obligation that each owns. Interest in the Deaner Intangible Obligation and rights to the Deaner Note will remain separate. In #67, Because the **RIGHTS TO THE DEANER MORTGAGE WERE SEPARATED FROM THE RIGHTS TO THE DEANER INTANGIBLE OBLIGATION, AND WILL REMAIN SEPARATE, THE DEANER MORTGAGE IS LEFT WITH NO WAY TO ENFORCE ITS CONDITIONS OVER THE OBLIGATION WHICH SHOULD BE EVIDENCED BY THE DEANER NOTE, MAKING THE DEANER MORTGAGE AN UNENFORCEABLE CONTRACT.**

(G) In 68-70, **WITH INTEREST IN THE DEANER INTANGIBLE OBLIGATION STRIPPED AWAY AND NO WAY TO ENFORCE THE CONDITIONS UNDER THE DEANER MORTGAGE, THE DEANER MORTGAGE CONTRACT IS A NULLITY.** In #68, no Intangible Obligation to enforce conditions over. In #69, with no properly-recorded owner of the Deaner Mortgage, there is no one to enforce the conditions over the Deaner Intangible Obligation which is no longer evidenced by the Deaner Note. **THE DEANER INTANGIBLE OBLIGATION IS NO LONGER SECURED BY THE DEANER PROPERTY.** In #70, Having no specific properly-secured owner of the limited beneficial interest of the Deaner Note, there is no way to enforce the stripped-away Deaner Intangible

Obligation through the Deaner Note.

NOTE: ATTACHED TO THIS MOTION IS THE MORTGAGE OF TITLE ANALYSIS & MORTGAGE FRAUD INVESTIGATION, EXHIBITS: A (Note), B (Mortgage), C (MERS Assignment), D (MERS Procedural Manual), E (MERS Servicer ID) and F (Affidavit for the MCI Chain of Title & Report), Copies of the Fannie Mae REMIC Master Trust Agreement for Guaranteed REMIC Pass Through Certificates and Fannie Mae RCR Master Trust Agreement for Guaranteed Grantor Trust Pass-Through Certificates. All laws, Titles, Codes and Equitable remedies in the Mortgage Compliance Investigators CHAIN OF TITLE ANALYSIS & MORTGAGE FRAUD INVESTIGATION are incorporated in the Defendant's Emergency MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE and any other SC laws and remedies.

WHEREFORE, Defendant claims recoupment, and attorney fees, and Defendant requests this court grant Defendant's Motion To Vacate Judgment and Reverse or Cancel Sale with prejudice and any other Relief this court deems just and EQUITABLE.

Respectfully Submitted,

Date: May 8, 2015
North Augusta,, SC
Aiken County

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

MORTGAGE COMPLIANCE INVESTIGATORS

CHAIN OF TITLE ANALYSIS & MORTGAGE FRAUD INVESTIGATION

Prepared For:
Carolyn S. Deaner

Real Property Located at:
704 Kershaw Dr.
North Augusta, SC 29841

Prepared By:
Mortgage Compliance Investigators
7901 Cameron Rd #317
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SECTION 1: CONVEYANCE OF A SECURITIZED MORTGAGE LOAN

Elements of a Mortgage Loan Instrument and how they are governed:

A. **Promissory Note (Tangible)** = A "writing" in tangible form, signed, unconditional, and identifying an indebtedness or unsecured promise by one party (the Maker or Promisor) to another *drawer* (the Payee or Promisee or Tangible Obligee) that commits the maker (Debtor or Tangible Obligor) to pay a specified sum on demand, or on a fixed or a determinable date. If the Paper Promissory Note is to be a "Secured" indebtedness, the Security Instrument is also identified within the Paper Promissory Note. The Paper Promissory Note is governed by Uniform Commercial Code Article 3 or the State equivalent. *A signature on The Paper Promissory Note is NOT governed by the ESIGN Act – 15 USC §7003 – which clearly excludes items governed by Uniform Commercial Code (UCC) Article 3 or the State equivalent, and as such the indebtedness can be only in paper tangible form.*

B. **Security Instrument (Tangible)** = A "writing" in tangible form to memorialize Obligor's or Debtor's Pledging of an asset or property as an alternate method to secure payment to a Tangible Obligation if in accordance with all applicable laws of local jurisdiction.

C. **Security Interest (Pledging of tangible alternate Real Property Rights for Payment)** = An Interest constituting a lien or claim created by a security agreement (Mortgage or Deed of Trust), or by the operation of law, that if valid and enforceable provides the alternate means to fulfill value of an intangible financial obligation between the Tangible Obligee and Tangible Obligor. Thus, if such Security Interest (Mortgage or Deed of Trust) is no longer valid or enforceable in accordance to local laws of jurisdiction then the Tangible UCC 3 Note is no longer secured by such Security Interest.

D. **Promissory Note (Intangible "eNote" / Intangible Payment Obligation)** = An electronic transferrable record (created during securitization) and signed in accordance with ESIGN Act that commits the maker (Account Debtor or Intangible Obligor) to pay a specified sum on demand in accordance with a contract NOT governed by UCC Article 3 to an Intangible Obligee. Transferrable records are governed by UCC Article 8 and the Security Interests securing transferrable records are governed by UCC Article 9.

E. **Security Interest (Intangible to UCC Article 8 "eNote")** = Intangible Obligations (created during securitization by an Account Debtor) are routinely swapped for another Intangible Obligation (Certificates), and as being a Transferable Record such transaction would fall under governance of UCC 8. For this Certificate Intangible to be secured by an Intangible Account Debtor's Personal Property, the negotiation of the Intangible Obligation must be in compliance with UCC 8 as it applies to Transferable Records. As to the Personal Property securing the Transferable Record, UCC 9 would provide governing law.

SECTION 1: CONVEYANCE OF A SECURITIZED MORTGAGE LOAN (cont'd)

Mortgage Loan Instrument or Personal Property – What really got securitized?

We begin with the mortgage loan originator. Immediately after closing, the mortgage loan originator has taken possession of many documents of which only two (2) are required to be followed through to the securitization process. These two (2) documents are the *Paper Tangible Promissory Note* and the *Paper Tangible Security Instrument* (Mortgage, Deed of Trust, or Security Deed). The Promissory Note and the Mortgage (or Deed of Trust or Security Deed) together can be considered one tangible instrument. With a perfected Tangible lien of record securing a Tangible Promissory Note, this would then be in compliance to all applicable laws. As such, intangible and tangible laws apply granting the mortgage loan originator legal and equitable rights to the Note (tangible and intangible) as Holder in Due Course that would have legal and equitable rights to the security securing if the Note and security (tangible and intangible) are in compliance to all applicable law.

Assuming originating lender has complied with all applicable laws in origination of the mortgage loan; the originating lender could and routinely does offer up the mortgage loan to securitization by selling the payment stream interest to an Account Debtor (Sponsor/Seller) who then in accordance to an intangible contract swaps the intangible payment stream for certificates which are sold to investors. Such swap in legal parlance is considered to be a "True Sale".

The "unknown fact" is that the monetary value contained within the Tangible Obligation, and the Security Instrument securing it, were offered for sale in the secondary market as an UCC Article 8 note (eNote/Transferable Record usually tracked on a national database [book entry system]), the book entry system tracks who is the UCC8 Intangible Obligee with rights to the UCC 9 security interest. Although, the electronic book entry system does not track who has a vested legal interest in the tangible security instrument that is reserved by statutory law governed by local laws of jurisdiction.

The instrument is an Intangible Obligation. Thus, a second (non- UCC Article 3) instrument was created. The existence of the (non- UCC Article 3) Intangible instrument is dependent upon the existence of the UCC Article 3 Tangible instrument. To provide a security interest to allow for an alternate method to collect value for the (UCC Article 8) Intangible instrument, the maker of the (UCC Article 8) Intangible instrument pledged as collateral the *"Electronic Mortgage Loan Package", evidenced by the* UCC Article 3 Tangible instrument and its underlying security interest (instrument).

What should have happened:

For the UCC Article 8 Intangible Obligee (Trust) to have a perfected and continuous alternate method to collect via alternate tangible such as a true sale of real property (Alternate method of value for the Tangible Payment Stream); the UCC Article 8 transferable record Intangible Obligee (Trust) would need to have been assigned rights to the Tangible Security Instrument in accordance to laws of local jurisdiction securing the UCC Article 3 obligation in order to be in compliance with state and federal law.

A Tangible Paper Promissory note denotes two distinguishing values, one of legal rights contained within which is routinely stripped out as an intangible obligation thus leaving the second value to be only the value of paper and ink being that of tangible property without legal rights but limited to that of being of personal property of the party that stripped the rights value (legal and monetary).

Thus, a Tangible Obligee may or may not be a holder in due course of a secured UCC 3 Instrument, whereas when distinct and separate laws applying to the tangible security instrument have not been followed, even if Tangible Obligee was entitled to enforce the UCC 3 Instrument does not mean that the Tangible Obligee is a party entitled to enforce security instrument [party to enforce the tangible note and the tangible security instrument].

When an Intangible claim (Payment Stream) or lien created by an Intangible security agreement extends to the Tangible Note and the Tangible Security Instrument, such actions must be in compliance with all applicable law. Signatures on Intangible Security Interest, Tangible Note and the Tangible Security Interest (Security Instrument) are not governed by Uniform Commercial Code Article 9 or State equivalent. The collection rights are governed under UCC 9 but the transfer of an intangible is governed under UCC 8; therefore negotiation of the Article 8 Instrument cannot be negotiated with an electronic signature attempting to effect transfer and thus the Security Interest falling under UCC 9 is also not transferred.

Legal guidance for signatures under ESIGN Act – 15 USC §7003 – clearly excludes instruments governed by the Uniform Commercial Code Article 3, 8, & 9 or the State equivalent so the Intangible Claim cannot be negotiated electronically. The Tangible Personal Property Security Interest (Tangible Note and continuously assigned perfection of the Tangible Security securing the Tangible Note) can only be pledged as an intangible interest in the payment stream as a UCC8 instrument. As such the Intangible Payment Obligation can only be negotiated in paper form. The Intangible Security Interest cannot be sold as an electronic transferable record.

What Did Happen: Outside Applicable Law

To provide a security interest to allow for an alternate method to collect value (Payment Stream) for the (UCC Article 8) Intangible instrument, the maker of the (UCC Article 8) Intangible instrument pledged as collateral the "Electronic Mortgage Loan Package", evidenced by the UCC Article 3 Tangible instrument and its underlying security interest (instrument). This "Electronic Mortgage Loan Package" is simply an intangible interest in personal property (Intangible Payment Obligation). As future legal actions were unanticipated, the paper documents were either placed in storage (Custodial and Non-Custodial Custody) or deliberately destroyed.

It's important to understand Standard Operating Procedure in regards to the conveyance of a securitized mortgage loan; specifically the conversion of a Tangible Mortgage Loan Instrument into an Intangible, electronic "eNote" Form, which is typical in this new world of Electronic Securitization. Illusion of legality is the key to this scheme.

Upon the loan closing, the paper Promissory Note and the Security Instrument are scanned into an electronic digitized graphics package. The data from both sets of documents is converted to an electronic data file and paired with the electronic version of the Promissory Note and Security Instrument, along with all other closing documents which is called a "Mortgage Loan Package". Where this "Electronic Mortgage Loan Package" is routinely addressed as the "Mortgage Loan Package", it is nothing more than an interest in the [monetary] Intangible Payment Obligation, whose source of funding is captured by the

payments made regarding the Tangible Promissory Note Obligation. The "Electronic Digitized Mortgage Loan Package" is now falsely represented as the legal "Mortgage Loan Package".

The electronic version of the Warranty Deed may have been electronically submitted to be filed in Public Records by a third-party submitter as approved by the state; as the Warranty Deed contains the information that transfers the title (legal and equitable) of the property from the Seller to the Buyer (Homeowner). Title to the property is required to offer the property as security in the Security Instrument as collateral for the paper Promissory Note. The Warranty Deed is required to be filed in Public Records. The Warranty Deed is not governed under the Uniform Commercial Code or State equivalent and would be allowable under ESIGN Act to be filed in electronic form.

The electronic version of the Security Instrument is then electronically filed in Public Records. If the Obligee attempts to apply UCC Article 9 laws of perfection to support legal claims within the Security Instrument, then this filing would be unlawful. If the Obligee uses the laws of local jurisdiction to support perfection, then the filing would be lawful.

Conveyance of an "eNote":

If Mortgage Electronic Registration Systems (hereinafter "MERS") is involved, registration on the MERS system is required, and when this registration occurs, an 18-digit Mortgage Identification Number "MIN" is created. The first seven (7) digits identify the registering lender and the last digit is a checksum number. If the "Electronic Mortgage Loan Package" is registered in the MERS Registry, there is no physical transfer of the "Electronic Mortgage Loan Package". The MERS Registry is updated as to who has control and ownership rights of the electronic digitized file identified as a non-lawful and intangible form of the electronic Promissory Note "eNote".

The First Electronic Sale / Assignment (Investment Vehicle as Example, Fannie/Freddie Similar) occurs when The "Loan Originator" (Assignor, Tangible Obligee) offers the "Electronic Mortgage Loan Package" to a perspective buyer (Intangible Obligor) to offset a prearranged line-of-credit by intangible obligee (Lender). In this scenario, Recipient (Assignee, Seller/Securitizer) of the Investment Vehicle, Intangible Obligee) of the "Electronic Mortgage Loan Package" has already conditionally agreed to accept the (conveyance) as a tender of funds has already occurred leaving only taking control of the "Electronic Mortgage Loan Package" as a transferable record, unbeknownst that it is a transaction not supported by law.

There are counties that identify on the face of the instrument that the instrument was submitted for recording in electronic form from the submitter, where the submitter has received from an intangible obligee an instrument that is to be recorded. If a "Notice of Assignment" reflecting this "electronic negotiation" is NOT filed in Public Records, as such a filing would be unlawful. There is no law that requires notice to be filed of Public Records upon the selling or purchasing of an electronic Promissory Note "eNote". As such, an "eNote" would only apply to personal property (Article 8 Intangible payment obligation) and not real property (Article 3 negotiable instruments), in order to be in compliance with UCC Article 9, ESIGN Act and UETA.

The First Transfer of Personal Property (Payment Intangible) differs from the first Electronic Sale as the Intangible Obligation (Payment Stream, rights to future payments, or beneficial interest) has been bifurcated from the Tangible Obligation (Paper Promissory Note), and in accordance to UCC Article 3-3203(d), rights to enforce the Tangible Obligation have not been negotiated to the Intangible Obligor

(Seller/Securitizer), the only rights conveyed are rights to simply hold and possess the Tangible Paper Obligation.

The Second Electronic Sale / Assignment happens when the "Seller/Securitizer of the Investment Vehicle," (Assignor/Intangible Obligor), sells/assigns the "Electronic Mortgage Loan Package" to the Buyer (Depositor of the Investment Vehicle / Subsequent Intangible Obligor). The recipient (Assignee, Depositor of the Investment Vehicle / Subsequent Intangible Obligor) of the "Electronic Mortgage Loan Package" under the terms of the trust accepts the transfer and takes control of the "Electronic Mortgage Loan Package".

The Third Electronic Sale / an Assignment happens when the "Depositor of the Investment Vehicle" (Assignor) sells/assigns the electronic loan package to the Trustee of the Investment Vehicle. The recipient (Assignee, Depositor of the Investment Vehicle) then takes control of the "Electronic Mortgage Loan Package". The "Depositor of the Investment Vehicle", in compliance with the Investment Trust's documents, takes control of the Investment Trust's Electronic Certificates in exchange for selling/assigning the "Electronic Mortgage Loan Package".

It is not uncommon to find in Public Records a "Notice of Assignment" filed reflecting a transfer of lien rights from the Original Assignor (Tangible Obligee) to a 3rd subsequent Intangible Assignee (Subsequent Intangible Obligor) of the Intangible Obligation, usually the Trustee or Mortgage Servicer). In this scenario the perfection of lien rights (Perfected Chain of Title) does not match the match the "Chain of Negotiation" of the Paper Promissory Note shown by indorsements, and, as such, proves the Paper Promissory Note is no longer secured by the Security Instrument as the Security Instrument has become a "Nullity" by operation of law. These filings in public records are fraud upon public records.

As an illusion, to allegedly provide a security interest to allow for an alternate method to collect value for the (UCC Article 8) Intangible instrument, the maker of the (UCC Article 8) Intangible instrument pledged as collateral the "Electronic Mortgage Loan Package", evidenced by a digitized copy of an UCC Article 3 Tangible instrument and its underlying security interest (instrument), not perfected of record in the intangible purchaser's name. To further the account debtor's deception, claims are made that Account Debtor was executing a true sale of the tangible note and it's security to the purchaser of the intangible obligation, this is a legal impossibility Intangible purchaser never obtained legal rights to alternate tangible method of payment.

Security Interest to an alleged Account Debtor (rights to collect Future Payments pledged by the Account Debtor), which was to have been secured by the Payment Stream from the Tangible Obligation; where an alternate method to receive value was done via a properly attached and perfected real property security interest, could not have taken place legally under the current governing laws without having been in written tangible paper form. Real property Security Interests are governed by local laws of jurisdiction. UCC Article 9 governance for attachment and perfection of security rights to the intangible obligation is limited to personal property security interests such as goods and services.

A Tangible Obligor or Account Debtor may or may not be a holder in due course of an UCC 3 Instrument, where distinct and separate laws apply to the tangible security instrument have not been followed, even if Tangible Obligor/Account Debtor was entitled to enforce the UCC 3 Instrument does not mean that the Tangible Obligor is a party entitled to enforce security instrument (party to enforce the tangible note and the tangible security instrument). The trust has been conveyed a transferable record, leaving a Tangible paper UCC Article 3 Note **LESS** the rights securing it, as would have existed if the Security Instrument securing the UCC Article 3 Tangible Note had been assigned in accordance to laws of local jurisdiction.

Furthermore, by NOT assigning the Security Instrument securing the UCC Article 3 Tangible Note in accordance to local laws of jurisdiction, the UCC 8 Intangible Obligee has taken possession of an "Electronic Mortgage Loan Package" lacking legal rights to the tangible security instrument. Pursuant to local laws of jurisdiction, without the UCC Article 8 transferable record and the Intangible Obligee perfecting of record, (the tangible rights that are found in the Tangible Security Instrument include the power of sale) the UCC 8 transferable record Intangible Obligee is NOT a Perfected Tangible Obligee.

It is important to understand that UCC Article 9 does not distinguish a difference between negotiable UCC Article 3 (Tangible Negotiable Instruments) and non-negotiable (Intangible non-Article 3 instrument such as an eNote or Transferable Record), as transferable record instruments are governed by UCC Article 8; which is also exclusion of ESIGN Act and UETA. UCC Article 9 governance is limited to personal property security interests, such as goods and services. Personal property Security Interests are governed by UCC Article 9. Within the current process of securitizing real property mortgage instruments, it is not uncommon to notice an improper use of applying UCC Article 9 laws to real property security interests in Note transactions where such UCC 8 Transferable record Intangible Promissory Note transactions are in fact non-negotiable transactions.

This system of securitization has a serious legal flaw as it provides that the Account Debtor (Intangible Obligor) and the Debtor (Tangible Obligor) have to be one in the same which is a logistical and legal impossibility. As the Intangible Obligee is not perfected of record to the Tangible Mortgage (Tangible Security securing the Tangible Article 3 Note) and not having the Tangible Article 3 instrument negotiated from Tangible Obligee to Intangible Obligee as provided under UCC 3, the Intangible Obligee has no real property securing an Obligation created by the Account Debtor. Whereas UCC 3 allows proving up an Article 3 Tangible Instrument, such law does not extend to the Tangible Security that once secured the Tangible Article 3 Note made payable to the Originating Tangible Obligee.

NON-Holder-in-Due-Course Alleges Default: *(Trustee/Mortgage Servicer)*

- **The Mortgage Servicer or the Trustee of the INTANGIBLE Investment Vehicle** declares default.
- Numerous actions of fraud are readily identifiable.
- As noted in the four (4) electronic negotiations of the electronic loan package to securitization, there is a lack of supporting law to allow electronic negotiation. Only the Holder of the "Paper Promissory Note" entitled in the indebtedness has a right to collect payments.
- Lost Note Affidavits based on Electronic Records are Hearsay
- Introduction of fraud into the Securities Market
- Fraudulent creation of assignments in attempt to transfer lien rights from Originator to 3rd or 4th subsequent purchaser bypassing 1st and 2nd purchasers resulting in fraudulent filing in public records.
- **Reader note: Specific details of client's unique transaction history found in the Chain of Title Analysis and Mortgage Fraud Investigation will determine if a violation has occurred.**

SECTION 2: MORTGAGE LOAN TRANSACTION HISTORY

Mortgage Loan Details:

BORROWER(S)	Carolyn S. Deaner
SUBJECT ADDRESS	704 Kershaw Dr. North Augusta, SC 29841
MORTGAGE LENDER	Quicken Loans Inc.
MORTGAGE NOMINEE/BENEFICIARY	MERS
CLOSING DATE	June 26, 2007
ORIGINAL LOAN AMOUNT	$97,600
ORIGINAL INTEREST RATE	7.000%
TYPE OF LOAN (ARM or FIXED)	Fixed
LOAN NUMBER	3212186468
CURRENT SERVICER	Bank of America N.A.

Verification from MERS Website:

4/29/2015

MERS® ServicerID - Investor

Select borrower type and enter borrower information to see Investor for MIN 1000390-3212186468-6.

Investor for Individual Borrower

Your entries may be either upper or lower case.
*Fields markedare required.
*Last Name: Deaner

Servicer: Bank of America, N.A.
Simi Valley, CA

Phone: (800) 669-6607

Investor: Fannie Mae

Securitization Details:

INVESTMENT BANK	Countrywide Home Loans Inc.
TRUSTEE	Fannie Mae
REMIC NAME	Fannie Mae REMIC Trust 2007-91
ISSUE DATE	September 01, 2007
MATURITY DATE	September 28, 2007

Loan Found In GSE Trust:

FNMA REMIC 2007-091			
Deal Amount	390,831,824.00	**Issuer**	
Issue Date	9/25/2007	**Underwriter**	
Series Year	2007	**Series**	091
Pricing Date			

Classes Active/Paid:

Tranche	Security	Cusip	Coupon	Issue Amount	Balance	Factor	Factor Date	Issue Date	Maturity Date	Coll Group
FA	FNMA 2007-091-FA	31396XYP3	0.671250	103,096,104.00	10,654,189.54	0.10334231	4/25/2015	9/25/2007	10/25/2037	1
SA	FNMA 2007-091-SA	31396XYQ1	6.328750	103,096,104.00	10,654,189.54	0.10334231	4/25/2015	9/25/2007	10/25/2037	1
AF	FNMA 2007-091-AF	31396XYR9	0.781250	54,665,764.00	10,529,709.62	0.19261982	4/25/2015	9/25/2007	10/25/2037	2
AS	FNMA 2007-091-AS	31396XYS7	6.218750	54,665,764.00	10,529,709.62	0.19261982	4/25/2015	9/25/2007	10/25/2037	2
DF	FNMA 2007-091-DF	31396XYT5	0.781250	45,334,236.00	15,401,872.83	0.33974043	4/25/2015	9/25/2007	10/25/2037	3
DS	FNMA 2007-091-DS	31396XYU2	6.218750	45,334,236.00	15,401,872.83	0.33974043	4/25/2015	9/25/2007	10/25/2037	3
EF	FNMA 2007-091-EF	31396XYV0	0.721250	50,000,000.00	10,872,465.00	0.21744930	4/25/2015	9/25/2007	10/25/2037	4
ES	FNMA 2007-091-ES	31396XYW8	6.278750	50,000,000.00	10,872,465.00	0.21744930	4/25/2015	9/25/2007	10/25/2037	4
HF	FNMA 2007-091-HF	31396XYX6	0.511250	50,000,000.00	8,758,853.50	0.17517707	4/25/2015	9/25/2007	10/25/2037	5
HI	FNMA 2007-091-HI	31396XYY4	1.350000	10,000,000.00	1,751,770.70	0.17517707	4/25/2015	9/25/2007	10/25/2037	5
GF	FNMA 2007-091-GF	31396XYZ1	2.992500	1,921,000.00	0.00	0.00000000	6/1/2008	9/25/2007	10/25/2037	5
JF	FNMA 2007-091-JF	31396XZA5	0.781250	5,704,000.00	3,532,721.63	0.61934110	4/25/2015	9/25/2007	10/25/2037	5
HS	FNMA 2007-091-HS	31396XZB3	6.218750	57,625,000.00	12,291,575.58	0.21330283	4/25/2015	9/25/2007	10/25/2037	5
FE	FNMA 2007-091-FE	31396XZC1	0.481250	69,289,000.00	4,653,855.97	0.06716587	4/25/2015	9/25/2007	6/25/2037	6
FX	FNMA 2007-091-FX	31396XZD9	3.676250	699,000.00	0.00	0.00000000	2/1/2008	9/25/2007	6/25/2037	6
FY	FNMA 2007-091-FY	31396XZE7	0.562500	7,261,623.00	0.00	0.00000000	5/25/2010	9/25/2007	6/25/2037	6
MF	FNMA 2007-091-MF	31396XZF4	0.481250	2,861,097.00	172,365.01	0.06024438	4/25/2015	9/25/2007	6/25/2037	6
R	FNMA 2007-091-R	31396XZG2	0.000000	0.00	0.00	1.00000000	4/1/2015	9/1/2007	10/25/2037	0
RL	FNMA 2007-091-RL	31396XZH0	0.000000	0.00	0.00	1.00000000	4/1/2015	9/1/2007	10/25/2037	0
FB	FNMA 2007-091-FB	31396XZJ6	0.781250	100,000,000.00	25,931,582.00	0.25931582	4/25/2015	9/25/2007	10/25/2037	0
KF	FNMA 2007-091-KF	31396XZK3	0.781250	7,625,000.00	3,532,721.59	0.46330775	4/25/2015	9/25/2007	10/25/2037	5
CF	FNMA 2007-091-CF	31396XZL1	0.562500	7,960,623.00	0.00	0.00000000	5/25/2010	9/25/2007	6/25/2037	6

SECTION 3: MCI INFOGRAPHICS & MORTGAGE FRAUD INVESTIGATION

Intro to MCI Infographic:

1. The chain of custody refers to the chronological documentation or paper trail, showing the seizure, custody, control, transfer, analysis, and disposition of evidence both physical and electronic. I have included research regarding documents that were not found to be recorded in the chain of custody. To allow for the Power of Sale to be available for a party to have standing, the chain of indorsements appearing on the face of the Note Instrument must be in tandem match the recordation of the chain of Assignments of [Security Instrument] in the Public Records. Failure to properly record Assignments of the [Security Instrument] (lien) which would memorialize a Note's negotiation, where without indorsements as it pertains to the transfer of beneficial and security interest in real property, can render the [Security Instrument] a nullity by operation of law as the Note is unenforceable under UCC 3-201, 3-204 & 3-302(d). "A security interest cannot exist independent of the obligation it secures." Negus-Sons, Inc., 460 B.R. at 758, quoting In re Advanced Aviation, Inc., 101 B.R. 310, 313 Bankr. M.D. Fla. 1989

2. Banking Practice does not overcome Uniform Commercial Code USCA (1988). The United States Court of Appeals Fifth Circuit determined that banking practice cannot overcome or substitute for enacted Uniform Commercial Code Statute: "Hibernia's reliance on commercial custom is misplaced. Commercial custom does not apply where the UCC provides otherwise. See UCC Sec. 1-103; also UCC Sec. 3-104, Official Comment 2 ("writing cannot be made a negotiable instrument within this Article by contract or by conduct.") Moreover, it would be inequitable to apply the banking industry's unilateral "custom" to a maker, such as the Army, that is unaware of or may not recognize such a custom." 841 F. 2d 592 United States of America v. Hibernia National Bank 96 A.L.R.Fed. 895, 5 UCC Rep.Serv. 2d 1392 United States Court of Appeals, Fifth Circuit 1988"

3. It is a cornerstone and long held concept within United States Law, that when the rights to the Tangible Paper Note and the rights to the Security Instrument are separated, the Security Instrument, because it can have no separate existence, cannot survive and becomes a nullity.
   In Carpenter v. Longan 16 Wall 271,83 U.S. 271, 274, 21 L.Ed. 313 (1872), *the U.S. Supreme Court stated "The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while assignment of the latter alone is a nullity... The mortgage can have no separate existence. When the note is paid the mortgage expires. It cannot survive for a moment the debt which the note represents. This dependent and incidental relation is the controlling consideration . . . ."*

4. This schematic shows the approximate paths that should have been taken by the parties involved which would have achieved a properly secured party. The documents that would have been filed, indexed and recorded by the county recorder would have created an encumbrance of the property and would have lawfully taken place. This process would have achieved a properly secured party. This schematic also shows what the banks often actually do in regards to transferring the Tangible documents and the Intangible records:

Reader Note: The following info graphic depicts transactions that pertain to your unique "Chain of Title Analysis". References may be made in text boxes within the infographic that pertain to specific paragraphs within your unique Chain of Title Analysis.

Requirements for Securitization (using MERS) of Fannie Mae Loans, per Fannie Mae Documents

BORROWER
Carolyn S. Deaner

See ¶ 1 in Analysis

SIGNED AT TITLE COMPANY ON CLOSING DATE - 06-26-2007

Deaner NOTE PAYMENT OBLIGATION | Deaner Mortgage

MERS IS NAMED AS BENEFICIARY/NOMINEE OF RECORD

SIGNED SECURITY INSTRUMENT RECORDED

AIKEN COUNTY RECORDERS OFFICE

See ¶ 5 in Analysis

LENDER
Quicken Loans Inc.

See ¶ 1 in Analysis

Deaner NOTE PAYMENT OBLIGATION | Deaner Mortgage

INTANGIBLE SECURITY OBLIGATION

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Authored & Researched by Joseph Esquivel
Illustrated by Bradley Walker 11/10/2013

TANGIBLE/INTAGIBLE BIFURCATION

ORIGINATOR
Countrywide Home Loans Inc.

Deaner NOTE PAYMENT OBLIGATION | Deaner Mortgage

NO LONGER SECURED TO TANGIBLE NOTE

PAPER NOTE IS SCANNED INTO SYSTEM, STAMPED WITH A PAYEE UNNAMED, THEN DELIVERED TO CUSTODIAN

INTANGIBLE PAYMENT OBLIGATION IS STRIPPED AND TRANSFERRED ELECTRONICALLY

TANGIBLE PAPER NOTE IS NO LONGER ELIGIBLE FOR NEGOTIATION PURSUANT TO Code 1976 § 36-3-203(d)

Mortgage Electronic Registration Systems i.e. MERS

See ¶ 25

UPON LOAN DEFAULT, OFTEN YEARS LATER

Federal National Mortgage Association AKA Fannie Mae

PAYMENT OBLIGATION

After the Tangible Obligation (Note) is Registered on MERS, any interests in the Intangible Payment Obligation are tracked

A SECOND INTANGIBLE OBLIGATION IS CREATED BY FANNIE MAE

FannieMae Certificates PAYMENT OBLIGATION

Upon Default, a document "PURPORTING" to be an Assignment is Recorded in the Servicer's name with MERS listed as the Assignee.

COUNTY RECORDERS OFFICE

The purported Assignment transferred NOTHING, as the Intangible Payment Obligation (Debt) has already been stripped from the Tangible Note.

INTANGIBLE PAYMENT OBLIGATION IS PLEDGED AS COLLATERAL TO FNMA-2007-91

SECURED BY INTANGIBLE PAYMENT STREAM

This Recording of Assignment does NOT Memorialize either the Sale or Negotiation of the Tangible Note.

FANNIE MAE TRUST FNMA-2007-91

FannieMae Certificates PAYMENT OBLIGATION

SERVICER OF INTANGIBLE PAYMENTS
Bank of America N.A.

SERVICER OF TANGIBLE NOTE
Bank of America N.A.

SECURITY INSTRUMENT

See ¶ 1 in Analysis

CUSTODIAN OF DOCUMENTS
N/A

Deaner NOTE

SECTION 3: MORTGAGE FRAUD INVESTIGATION

Chain of Title Analysis and Mortgage Fraud Investigation:

The following Chain of Title details are a listing of the documents related to the property in chronological order. This chain of custody is necessary to maintain an "unbroken" chain at all times pursuant to State Law. We have investigated the documents that were recorded within the County Recorder's Office where the real property resides, as well as the documents that were NOT recorded within the County Recorder's Office but were made official by filing into public record as exhibits.

We have examined the following documents:

A. Complaint filed into District Court Aiken County South Carolina on March 19, 2012 in case # 2012-CP-02-00699.

B. Copy of a document purporting to be the Tangible Promissory Note of Carolyn S. Deaner, dated June 26, 2007, regarding a loan for $97,600. (see Exhibit "A" attached within) The Original Lender of the June 26, 2007 Deaner loan is Quicken Loans Inc..

C. Copy of a Recorded document purporting to be the Tangible Mortgage of Carolyn S. Deaner, dated June 26, 2007 and filed in the Official Records of the Aiken County Register of Mesne Conveyance on July 16, 2007 as ins# 2007023608. (see Exhibit "B" attached within)

D. Copy of a Recorded document purported to be an "Assignment of Mortgage", dated April 29, 2011 and filed in the Official Records of the Aiken County Register of Mesne Conveyance on May 09, 2011 as ins# 2011010187 (see Exhibit "C" attached within)

E. Voluntary Lien Search pertaining to the Transaction Details for 704 Kershaw Dr., North Augusta, SC 29841 which includes all publicly recorded documents filed in the Official Records of the Aiken County Register of Mesne Conveyance.

F. Fannie Mae Single-Family Selling Guide published May 15, 2012

G. Fannie Mae Requirements for Document Custodians v6.0 dated December 15, 2010

H. MERS Procedures Manual, Release 19.0, dated June 14, 2010, and MERS Residential Marketing Kit, *Terms And Conditions*: (see Exhibit "D" attached within)

An Examination of the Carolyn S. Deaner Mortgage Loan

The Deaner Intangible Obligation was sold to Multiple Classes of the

Fannie Mae REMIC Trust 2007-91

on or before the Trust Closing Date of September 28, 2007

1. On May 01, 2015 I researched Carolyn S. Deaner whose property address is 704 Kershaw Dr., North Augusta, SC 29841. Carolyn S. Deaner had allegedly signed a Note in favor of Quicken Loans Inc. on June 26, 2007. This loan was identified in multiple classes of the Fannie Mae REMIC Trust 2007-91 (hereinafter "FNMA-2007-91"). The loan is being serviced by Bank of America N.A..

2. The rights to the Deaner Intangible Obligation have been conveyed as a Transferable Record to multiple classes of the FNMA-2007-91 Trust. For the rights to the Deaner Intangible Obligation not to have been stripped away from the rights to the Deaner Note by that conveyance, the rights to the Deaner Note must have also been transferred to multiple classes of the FNMA-2007-91 Trust.

3. Even though the Deaner Intangible Obligation is owned by multiple classes of the FNMA-2007-91 Trust, it can only be determined if the original Deaner Note had been physically delivered to multiple classes of the FNMA-2007-91 Trust by checking with the custodian of documents. Until then, there is no evidence that multiple classes or even one class of the FNMA-2007-91 Trust possessed in any manner the Deaner Note before rights to the Deaner Intangible Obligation were stripped away on or before the Trust Closing Date of September 28, 2007.

4. The rights to the Deaner Intangible Obligation have been conveyed as a Transferable Record to multiple classes of the FNMA-2007-91 Trust. For the conditions of Deaner Mortgage over the Deaner Intangible Obligation not to have been stripped away by that conveyance, the rights to the Deaner Mortgage must have also been transferred to multiple classes of the FNMA-2007-91 Trust.

5. The beneficial interest (ownership) of the Deaner Mortgage has been recorded in the Official Records of Aiken County Register of Mesne Conveyance as being in the name of Quicken Loans Inc., the Original Lender of the loan dated June 26, 2007. However, it is clear that Quicken Loans Inc. sold all ownership interest in the Deaner Intangible Obligation to Countrywide Home Loans Inc. on or before the Trust Closing Date of September 28, 2007. Interest in the Deaner Intangible Obligation is held in multiple classes of the FNMA-2007-91 Trust, and the payments under the Deaner Intangible Obligation are disbursed to the investors of FNMA-2007-91 Trust who hold certificates to the investment classes into which payments under the Deaner Intangible Obligation are scheduled to flow. Therefore the transfer of beneficial interest in the Deaner Mortgage by Quicken Loans Inc. might be accomplished, but that beneficial interest is no longer attached to the rights to the Deaner Intangible Obligation.

As Multiple Classes of the FNMA-2007-91 Trust have an Interest in the Deaner Intangible Obligation, Multiple Classes of the FNMA-2007-91 Trust Are Required to Have Interest in the Deaner Note and Interest in the Deaner Mortgage

6. Fannie Mae has purchased an interest in the Deaner Mortgage Loan and delivered that interest in the Deaner Mortgage Loan into the FNMA-2007-91 Trust and claims to have control of the Deaner Note and the Deaner Mortgage.

Fannie Mae states in its May 2012 Fannie Mae Single-Family Selling Guide, under Preface: Terms and General Conventions, page xxiii:

"...when the lender contracts to sell mortgages to Fannie Mae as whole mortgages (to hold in our portfolio or to include later in MBS pools that we form). We remit cash proceeds to the lender in payment of the purchase price for these mortgages."

7. By multiple classes of the FNMA-2007-91 Trust purchasing the Deaner Intangible Obligation and doing with it whatever was done, multiple classes of the FNMA-2007-91 Trust were exercising rights of ownership over the Deaner Mortgage Loan and the payment stream. By exercising rights of ownership over the Deaner Mortgage Loan and the payment stream, multiple classes of the FNMA-2007-91 Trust were making a claim of rights to <u>all three parts</u> of the Deaner Mortgage Loan, a claim which is misplaced.

8. The Deaner Mortgage Loan only exists through the tangible instruments creating it, the Deaner Note and the Deaner Mortgage. The sale of the rights to the Deaner Intangible Obligation to multiple classes of the FNMA-2007-91 Trust without stripping away the rights to the Deaner Intangible Obligation from the rights to the Deaner Note could only be accomplished with the accompanying negotiation of the Deaner Note and the accompanying assignment of the Deaner Mortgage to the multiple classes of the FNMA-2007-91 Trust which is a legal impossibility. Whereas the Trust as a standalone party has not lawfully been conveyed the Deaner Note, much less been filed of record as a secured creditor.

9. Multiple classes of the FNMA-2007-91 Trust have made and continue to make claims of interest in the rights to the Deaner Intangible Obligation and exercise those claims. To exercise claims of rights to the Deaner Intangible Obligation, proper assignments of the Deaner Mortgage should have been accomplished. Multiple classes of the FNMA-2007-91 Trust are acting as if proper assignments of the Deaner Mortgage have been accomplished.

10. The assignment of the Deaner Mortgage is a conveyance of an instrument concerning real property which must be recorded to be acted upon. United States Code considers that anyone certifying that a real estate instrument has been assigned when in fact it has not is guilty of a felonious criminal act.

> *Title 18 USC Chapter 47 § 1021*
> *Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property or any other instrument which by such law may be recorded, knowingly certifies falsely that such conveyance or instrument has or has not been recorded, shall be fined under this title or imprisoned not more than five years, or both.*

11. The negotiation of the Deaner Note to Fannie Mae is required both by Fannie Mae's own requirements and South Carolina State Law.

Fannie Mae states in its own December 2010 Fannie Mae Requirements for Document Custodians v6.0, page 27:

> *8.1 Mortgage (or Deed of Trust) Note*
> *The Document Custodian must receive the original mortgage (or deed of trust) note for each mortgage listed on the Schedule of Mortgages (Form 2005).*

Multiple Classes of the FNMA-2007-91 Trust can not Claim Interest in either the Deaner Note or the Deaner Mortgage

12. Multiple classes of the FNMA-2007-91 Trust have an interest in the Deaner Intangible Obligation. However the transfer of rights, to either of the two tangible parts of the security instrument that evidence the Deaner Intangible Obligation, from Quicken Loans Inc. to multiple classes of the FNMA-2007-91 Trust is not memorialized in the Official Records of the Aiken County Register of Mesne Conveyance in a manner which observes United States Code.

13. Under the Consumer Credit Protection Act Title 15 USC Chapter 41 § 1641(g): any transfers of the Deaner Mortgage Loan to multiple classes of the FNMA-2007-91 Trust would be in violation of Federal Statute, if those transfers had not been recorded in the Official Records of the Aiken County Register of Mesne Conveyance within 30 days along with notification of Carolyn S. Deaner that the transfers had occurred. As there are no recorded assignments of the Deaner Mortgage to multiple classes of the FNMA-2007-91 Trust within 30 days of June 26, 2007, either there has been a violation of Federal

Law or multiple classes of the FNMA-2007-91 Trust, who have an interest in the Deaner Intangible Obligation, are not the owners of either the Deaner Note or the Deaner Mortgage.

Title 15 USC Chapter 41 § 1641(g)

(g) ***Notice of new creditor***
(1) ***In general***
In addition to other disclosures required by this subchapter, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—
(A) the identity, address, telephone number of the new creditor;
(B) the date of transfer;
(C) how to reach an agent or party having authority to act on behalf of the new creditor;
(D) the location of the place where transfer of interest in the debt is recorded; and
(E) any other relevant information regarding the new creditor.

14. The FNMA-2007-91 Trust certifies that an assignment of the Deaner Mortgage has been accomplished by selling certificates as shares of the FNMA-2007-91 Trust to investors based on the placement of the Deaner Mortgage Loan. However, there have been no assignments of the Deaner Mortgage to multiple classes of the FNMA-2007-91 Trust recorded in the Official Records of the Aiken County Register of Mesne Conveyance, although both Fannie Mae's own requirements (cited below) and South Carolina State Law require assignments memorializing the sale and negotiations of the Deaner Note along with the acquiring of rights. Therefore, the FNMA-2007-91 Trust appears to have violated Title 18 USC Chapter 47 §1021.

Fannie Mae states in its own December 2010 Fannie Mae Requirements for Document Custodians v6.0, page 8:

Documents: ***For each Mortgage Loan, the related promissory note, mortgage assignment to Fannie Mae,*** *and other documents that* ***Fannie Mae requires to be deposited with the Document Custodian****: (i) for its review and certification to Fannie Mae (as such requirements are specified in the Guides, the RDC, both, and/or any other notice to the Document Custodian that describes Fannie Mae requirements for specific Mortgage Loans or Mortgage Loan types), and (ii) if the Mortgage Loans are acquired by Fannie Mae, for custody on behalf of Fannie Mae.*

Electronic Record: a contract or other information record that is created, generated, sent, communicated, received, or stored by electronic means. An electronic record may be delivered as part of an electronic transaction by the lender, a Document Custodian, or Fannie Mae (or when a third party is involved, by the lender, a Document Custodian, or the third party). ***All electronic records for Mortgage Loans sold to Fannie Mae must comply with the standards of*** *the federal Electronic Signatures in Global and National Commerce Act (E-SIGN) and, if applicable,* ***the Uniform Electronic Transactions Act (UETA) adopted by the state in which the electronic record is initiated.***

15. Any electronic transfers of the Deaner Mortgage that may have been executed without recording within the Official Records of the Aiken County Register of Mesne Conveyance are void under Uniform Electronic Transactions Act (UETA) USC § 15-96-1-7003:

> *(a) Excepted requirements*
>
> *The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by —*
>
> > *(3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.*

16. Multiple classes of the FNMA-2007-91 Trust have an interest in the Deaner Intangible Obligation; however, according to South Carolina State Law, multiple classes of the FNMA-2007-91 Trust can only be entitled to enforce the Deaner Mortgage if they took the Deaner Mortgage by way of assignments pursuant to:

> *Code 1976 § 30-7-40. Manner of recordation of assignment or transfer of mortgage.*
> *The recordation of such an assignment or transfer as is mentioned in § 30-7-30 shall, to be effective under such section, be upon the record of the recorded mortgage or other written instrument, except that it may be recorded elsewhere in the record for the recording of mortgages should there be no place upon the record of the recorded mortgage or other written instrument sufficient for the recordation of such assignment, in which event there shall be entered on the margin of the recorded mortgage or other written instrument whose assignment has been thus recorded elsewhere an appropriate reference to such recordation, giving the name of the assignee, the date of the assignment and the record and page where recorded.*
>
> *Code 1976 § 30-5-90. Recordation of marriage settlements, conveyances, mortgages, and other writings*
> *The register of deeds is required to record in the order of the times at which they may be brought to his office, all marriage settlements and all conveyances and mortgages, renunciations of dower and other writings concerning the titles to lands situate in his county which may be lodged with him to be recorded if the execution of any such writing shall be proved by affidavit of a subscribing witness, or otherwise, as herein provided. Every such writing shall be recorded within one month after its lodgment and the recording shall bear even date with the lodgment. On every such writing shall be endorsed a certificate, to be signed by the register or his deputy, specifying the time when and book and page where it was recorded.*
>
> *Code 1976 § 30-7-50. Manner in which assignment shall be executed and probated*
> *Any assignment to be entitled to be recorded as provided in Section 30-7-40 shall be in writing and witnessed as mortgages of real property are required to be witnessed and shall not be probated when it is upon, or attached to, the original mortgage itself, but when it is upon a separate piece not attached to the original mortgage itself then it shall be probated in the same way as is now provided by law for the probating of mortgages of real property. Assignment of mortgage forms shall include the name of the mortgagor and the name and address of the mortgagee and the book, page, and date of recording of the original mortgage, and may include a toll free number for the assignee if such a number is available.*

17. The Deaner Mortgage must have been duly assigned to multiple classes of the FNMA-2007-91 Trust for multiple classes of the FNMA-2007-91 Trust to be entitled to enforce the Deaner Mortgage.

18. A duly recorded assignment of the Deaner Mortgage constitutes constructive notice while an unrecorded assignment of the Deaner Mortgage is notice only to immediate parties. With constructive notice, all persons attempting to acquire rights in the Deaner Property are deemed to have notice of the recorded instrument. In this way, the Recording Statute is intended to expose the chain of title of the Deaner Mortgage to inspection by examination of real property records, protecting innocent junior purchasers and lenders from secret titles and the subsequent fraud attendant to such titles.

19. Assignments of the Deaner Mortgage must be accompanied by parallel endorsements of the Deaner Note for the Deaner Mortgage Loan to remain secured by the Deaner Property. Because endorsements are very often undated and because a plaintiff must prove that it had standing at the inception of a case, Marianna & B.R. Co. v. Maund, 56 So. 670, 672 (Fla. 1911), the assignment will be determinative of, or at least evidence that would support or contradict, a plaintiff's claim of standing. No evidence is available to evidence negotiations of the Deaner Note to multiple classes of the FNMA-2007-91 Trust. This would have required indorsements and proper negotiations of the Deaner Note from Quicken Loans Inc. to multiple classes of the FNMA-2007-91 Trust, including any intervening claims of ownership. Of course for the Deaner Mortgage Loan to remain a secured loan, there would have been assignments and transfers of the beneficial interest of the Deaner Mortgage, concurrent to negotiations of the Deaner Note and those transfers of the Deaner Mortgage would have to be entered into the Official Records of the Aiken County Register of Mesne Conveyance.

20. Importantly, mere presentment of the Deaner Note (even if shown to be the original), is not in itself proof of an equitable transfer of the Deaner Mortgage Loan along with its Security Instrument. This demonstration of possession may be sufficient to enforce the Deaner Note, but carries no indicia of ownership or intent to transfer the Deaner Mortgage Loan. The Uniform Commercial Code ("UCC") consecrates a preference in commercial transactions for simple possession of indorsed instruments over proof of actual ownership, an exception in the law that was intended to foster free trade of commercial paper.

21. The concept that a noteholder, even one who is not legitimate, may nevertheless bring an action on the Deaner Note, is entrenched in commercial law and commonly summarized by the axiom "even a

thief may enforce a note." However, the taking of the Deaner Home by foreclosure is an equitable remedy, and equity does not allow a "thief" to use a stolen Deaner Note to foreclose on the Deaner Mortgage lien.

22. The claim that "the mortgage follows the note" is incorrect, as under South Carolina Law the Lien follows the Secured Party of record. That equitable right must be proven with evidence of a delivery. Intention does not override the requirements of law.

23. Multiple classes of the FNMA-2007-91 Trust, who have an interest in the Deaner Intangible Obligation, can not show that accompanied negotiations of the rights to the Deaner Note and accompanied transfers of the rights to the Deaner Mortgage have occurred. The rights to the Deaner Intangible Obligation have been stripped from the rights to the Deaner Note and the rights to the Deaner Mortgage.

24. The Deaner Mortgage contains notice to the Borrowers that the Deaner Note or a partial interest in the Deaner Note may be sold. However, a sale of a "partial interest" in the Deaner Note strips the rights to the Deaner Intangible Obligation from the rights to the Deaner Note, leaving the Deaner Note without an obligation to evidence and the Deaner Mortgage without an obligation to hold conditions over:

From the Deaner Mortgage:

"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..."

The document purporting to be an "Assignment of Mortgage" dated April 29, 2011 is Invalid as an Assignment of Mortgage

Black's Law Dictionary defines the term valid as "having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or sent aside... Founded on trust of fact; capable of being justified; supported, or defended; not weak or defective... of binding force; legally sufficient or efficacious; authorized by law... as distinguished from that which exists or took place in fact or appearance, but has not the

requisites to enable it to be recognized and enforced by law."(See Black's Law Dictionary, Sixth Edition, 1990, page 1550)

25. There is a document purporting to be an "Assignment of Mortgage", dated April 29, 2011 and filed in the Official Records of the Aiken County Register of Mesne Conveyance on May 09, 2011 as ins# 2011010187, signed by Dominique Johnson as Assistant Secretary and notarized April 29, 2011 by Deborah L. Beard, California Notary Commission #1853913, where MERS grants, assigns, and transfers to BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP all beneficial interest under a Mortgage dated June 26, 2007 and filed in the Official Records of the Aiken County Register of Mesne Conveyance on July 16, 2007 as ins# 2007023608.

26. First and most importantly, the filing of this document purporting to be an "Assignment of Mortgage" did not and does not assign/convey any legal rights to enforce the Deaner Note. Enforceability of a lien is dependent upon compliance with state law and local laws of jurisdiction and, contrary to popular misconception, does NOT fall under the jurisdiction of UCC Article 9 or state equivalent Code 1976 § 36-9-109.as stated in:

> *Code 1976 § 36-9-109. Scope.*
> *(a) Except as otherwise provided in subsections (c) and (d), this chapter applies to:*
> *(d) This chapter does not apply to:*
> *(A) liens on real property in Sections 36-9-203 and 36-9-308;*
> *(D) security agreements covering personal and real property in Section 36-9-604;*

27. The purpose of the "Assignment of Mortgage" document is to simply memorialize the purported sale of the Deaner Tangible Promissory Note and the acquiring of rights; it does not cause the sale nor the acquiring of rights. The sale is to be done in accordance with statutory requirement of law Code 1976 § 36-7-501, which has not happened. The acquiring of rights is to be done in accordance with statutory requirement of law Code 1976 § 36-3-203, which has not happened.

> *Code 1976 § 36-7-501. Form of negotiation and requirements of "due negotiation".*
> *(1) A negotiable document of title running to the order of a named person is* ***negotiated by his indorsement and delivery****...* (emphasis added)

28. With Quicken Loans Inc. selling only the Deaner Intangible Obligation to Countrywide Home Loans Inc., the Deaner Tangible Promissory Note is no longer eligible for negotiation per Code 1976 § 36-3-203(d), as it is now less than the full value. In order to claim the full value of the Deaner Tangible Promissory Note, a party would need to both be named as payee to the Deaner Tangible Promissory Note and have sole claim to the Deaner Intangible Obligation. With no negotiation, transfer, and delivery of the Deaner Tangible Promissory Note evidenced through proper indorsement with Countrywide Home

Loans Inc. being named to the Deaner Tangible Promissory Note, a true "Assignment of Mortgage" could not take place.

> *Code 1976 § 36-3-203. Transfer of instrument; rights acquired by transfer*
> *(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.*

29. The borrower, Carolyn S. Deaner, is NOT the party that created the transferable record that was sold. A third-party, the Account Debtor, created this Intangible Obligation using the Intangible payment stream of the Deaner Tangible Promissory Note. Countrywide Home Loans Inc. was acting as the Account Debtor pursuant to Code 1976 § 36-9-102(3) when they created and sold a transferable record to Fannie Mae.

> *Code 1976 § 36-9-102. Definitions and index of definitions.*
> *(a) In this chapter:*
> *(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible.* ***The term does not include persons obligated to pay a negotiable instrument****, even if the instrument constitutes part of chattel paper.* (emphasis added)

30. The Assignee, BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP, is not made the sole party of interest in the Deaner Mortgage on the face of this document purporting to be an "Assignment of Mortgage" dated April 29, 2011. Additionally, there are other issues that render this document invalid as an Assignment of Mortgage...

31. MERS was paid a value by BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP for the beneficial interest in the Deaner Mortgage. This means the Original Lender, Quicken Loans Inc., may not be paid good and valuable consideration for its beneficial interest which is recorded in the Official Records of the Aiken County Register of Mesne Conveyance.

32. The value that was paid to MERS is certainly not the full and complete value of the Deaner Mortgage. When MERS transfers its value of beneficial interest, while ignoring the value held by Quicken Loans Inc., it purports to transfer less than the entire instrument of the Deaner Mortgage and BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP does not become the sole party of interest in the Deaner Mortgage. Someone, being perhaps either Quicken Loans Inc. or MERS, still maintains their interest which can still be exercised.

33. The Original Lender, Quicken Loans Inc., gave up all rights to the Deaner Intangible Obligation to Countrywide Home Loans Inc. on or before the Trust Closing Date of September 28, 2007. Once Quicken Loans Inc. had given up the rights to the Deaner Intangible Obligation, the rights to the Deaner Intangible Obligation were stripped away from the rights to the Deaner Note and the rights to the Deaner Mortgage. Quicken Loans Inc. could transfer beneficial rights to the Deaner Note or Mortgage; however, that beneficial interest would not include rights to the Deaner Intangible Obligation.

34. The consequences of the rights to the Deaner Intangible Obligation being stripped away from the beneficial interests of the Deaner Note and Mortgage are that the Note is without an Intangible Obligation to evidence and the Deaner Mortgage is without an Intangible Obligation to enforce conditions against.

35. Quicken Loans Inc. or their nominee MERS can assign beneficial interest in the Deaner Mortgage, albeit with no rights to the Deaner Intangible Obligation, to whomever they please. In order for this document purporting to be an "Assignment of Mortgage" dated April 29, 2011 to be valid as an Assignment of Mortgage, it would have to be determined if a transfer could be made to the Assignee. I will explain how transfer to the Assignee named could not have been accomplished by this document purporting to be an "Assignment of Mortgage".

36. BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP, the Assignee, is the SERVICER of the Deaner Intangible Obligation for multiple classes of the FNMA-2007-91 Trust. Under the Consumer Credit Protection Act Title 15 USC Chapter 41 § 1641(f) any treatment of the SERVICER of the Deaner Intangible Obligation as an OWNER of the Deaner Intangible Obligation would be in violation of Federal Statute. As this assignment to BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP would be in violation of Federal Statute if BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP was not the OWNER of the Deaner Intangible Obligation, BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP's claim of rights to the Deaner Intangible Obligation is either a fraudulent claim or BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP's actions under the claim of ownership are in violation of Federal Law.

> 15 USC Chapter 41 § 1641(f) ***Treatment of servicer***
> ***(1) In general***
> *A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is or was the owner of the obligation.*
> ***(2)Servicer not treated as owner***
> ***on basis of assignment for administrative convenience***

A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

37. In the document purporting to be an "Assignment of Mortgage" dated April 29, 2011, MERS is the entity granting, assigning, and transferring all beneficial interest in the Deaner Mortgage to BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP.

38. As explained earlier, the beneficial interest of Quicken Loans Inc. did not include the rights to the Deaner Intangible Obligation on or before the Trust Closing Date of September 28, 2007, as they had been transferred to the FNMA-2007-91 Trust. Certainly MERS as Nominee for Quicken Loans Inc. can only assign the beneficial interest of Quicken Loans Inc. and no more.

39. MERS can not act on its own behalf as party of interest in the Deaner Mortgage.

40. MERS is named completely contradictorily on the face of the Deaner Mortgage as both solely nominee and as beneficiary.

41. MERS never had any interest at all in the Deaner Note evidencing the Deaner Intangible Obligation. MERS has no financial or other rights to whether or not the loan is repaid.

42. MERS is not the owner of the Deaner Note secured by the Deaner Mortgage and has no rights to the payments made by Deaner on the Deaner Note. MERS is not the owner of the servicing rights relating to the Deaner Intangible Obligation and MERS does not service any loans, ever. The beneficial interest in the mortgage (or the person or entity whose interest is secured by the mortgage) runs to the owner and holder of the Deaner Note. In essence, MERS merely and only immobilizes the mortgage lien while transfers of the promissory Notes and servicing rights continue to occur.

43. As explained previously, any electronic transfers of the Deaner Mortgage that may have been executed without recording within the Official Records of the Aiken County Register of Mesne Conveyance are void under Uniform Electronic Transactions Act (UETA) USC § 15-96-1-7003:

(a) Excepted requirements
The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by—

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.

44. The assignment of the Deaner Mortgage is a conveyance of an instrument concerning real property which must be recorded to be acted upon. United States Code considers that anyone certifying that a real estate instrument has been assigned when in fact it has not is guilty of a felonious criminal act.

> *Title 18 USC Chapter 47 § 1021*
> *Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property or any other instrument which by such law may be recorded, knowingly certifies falsely that such conveyance or instrument has or has not been recorded, shall be fined under this title or imprisoned not more than five years, or both.*

45. MERS has emphatically stated under its own agreement with its mortgage-lender members, that MERS *"cannot exercise, and is contractually prohibited from exercising, any of the rights or interests in the mortgages or other security documents"* and that MERS has *"no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans."* Source: *Mortgage Electronic Registration Systems, Inc. v. Nebraska Dept. of Bnkng and Fin.*, 704 N.W.2d 784 (Neb. 2005), Brief of Appellant at 11-12.

46. It is stated in the MERS Procedures Manual, Release 19.0, dated June 14, 2010:
Page 63 – Transfer of Beneficial Rights to Member Investors, Overview:
"Although MERS tracks changes in ownership of the beneficial rights for loans registered on the MERS System, ***MERS cannot transfer the beneficial rights to the debt. The debt can only be transferred by properly endorsing the promissory note to the transferee.*** *"* (emphasis added)

47. It is stated in the MERS Residential Marketing Kit, *Terms And Conditions*:
2. ...MERS shall serve as mortgagee of record with respect to all such mortgage loans ***solely as a nominee****, in an administrative capacity, for the beneficial owner or owners thereof from time to time.* ***MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans. MERS agrees not to assert any rights*** *(other than rights specified in the Governing Documents) with respect to such mortgage loans or mortgaged properties. References herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and beneficiary under a deed of trust and any other form of security instrument under applicable state law.* (emphasis added)
6. MERS and the Member agree that: (i) ***the MERS System is not a vehicle for creating or transferring beneficial interests in mortgage loans****...* (emphasis added)

No One Can Claim the Right to Enforce the Deaner Note

48. The Deaner Note has been indorsed by the Original Lender, Quicken Loans Inc., signed by Scott Johnson as Capture Manager. The indorsement states "Pay to the Order of Countrywide Bank FSB without Recourse". This constitutes a negotiation under Code 1976 § 36-7-501 concerning negotiable instruments with the intent of Quicken Loans Inc. transferring ownership to Countrywide Bank FSB. With Countrywide Bank FSB named as Payee, clearly Quicken Loans Inc. has released all interest in the Deaner Note.

> *Code 1976 § 36-7-501. Form of negotiation and requirements of "due negotiation".*
> *(1) A negotiable document of title running to the order of a named person is* ***negotiated by his indorsement and delivery****...* (emphasis added)

49. The Deaner Note has also been indorsed by Countrywide Bank FSB, signed by Laurie Meder as Senior Vice President. The indorsement states "Pay to the Order of Countrywide Home Loans Inc. without Recourse". This constitutes a negotiation under Code 1976 § 36-7-501 concerning negotiable instruments with the intent of Countrywide Bank FSB transferring ownership to Countrywide Home Loans Inc.. With Countrywide Home Loans Inc. named as Payee, clearly Countrywide Bank FSB has released all interest in the Deaner Note.

50. The Deaner Note has also been signed by Countrywide Home Loans Inc., signed by Michele Sjolander as Executive Vice President. The instructions preceding the signature state "Pay to the Order of _____ without Recourse", where Countrywide Home Loans Inc. has elected to transfer the Deaner Note **by possession alone** by virtue of an indorsement made pursuant to Code 1976 § 36-3-205(b). With the Deaner Note indorsed in blank, only **contractual** rights of the Deaner Note would have been transferred, WITHOUT acquiring rights of enforcement as defined in Code 1976 § 36-3-203(a), as there is a lack of Agency relationship between the Deaner Note and the Deaner Mortgage filed of record, since a party cannot establish an Agency relationship with an as-of-yet-unnamed payee.

> *Code 1976 § 36-3-205. Special indorsement; blank indorsement; anomalous indorsement.*
> *(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 36-3-110 apply to special indorsements.*
> *(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.*

Code 1976 § 36-3-203. Transfer of instrument; rights acquired by transfer
(a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

51. The Deaner Mortgage filed of record is unperfected, as one can not perfect an instrument to an as-of-yet-unnamed payee. For the Deaner Note to remain a perfected public County record, the secured Mortgage requires the identity of the subsequent payee(s) to be on the face of the Deaner Note and the assignment of the Mortgage rights needs to be properly and timely filed of record in the Official Records of the Aiken County Register of Mesne Conveyance.

52. Countrywide Home Loans Inc., along with signing away all rights to the Deaner Note, wrote instructions that made its intention of negotiation of the Deaner Note clear. The clear intention was that Countrywide Home Loans Inc.'s negotiation of the Deaner Note will only be complete when the payee is named. The Deaner Note with an as-of-yet-unnamed payee is not and can not be treated as a "bearer" instrument as no person will acquire any right to the Deaner Note until a payee is named. The Deaner Note with an as-of-yet-unnamed payee is an incomplete instrument pursuant to Code 1976 § 36-3-115.

Code 1976 § 36-3-115. Incomplete instrument.
(a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, ***the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers***. (emphasis added)

Code 1976§ 36-3-110. Identification of person to whom instrument is payable.
(a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name...

53. Under Code 1976 § 36-3-203(a), a transfer of the Deaner Note through which rights can be acquired by a transferee is defined as a delivery from one person to another person.

Code 1976 § 36-3-203. Transfer of instrument; rights acquired by transfer
(a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

54. In agreement with Code 1976 § 36-3-203(c), even Mortgage Electronic Registration Systems, Inc. (MERS) admits that ***"The debt can only be transferred by properly endorsing the promissory note to the transferee."*** Source: MERS Procedures Manual, Release 19.0, dated June 14, 2010, Page 63, *Transfer of Beneficial Rights to Member Investors, Overview*.

Code 1976 § 36-3-203. Transfer of instrument; rights acquired by transfer
(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

55. When Countrywide Home Loans Inc. signed away all rights to the Deaner Note to an as-of-yet-unnamed payee, Countrywide Home Loans Inc. did not deliver the Deaner Note to another person as required of a transfer through which rights can be acquired.

56. Beside the fact that all rights were released upon signature, or that the signing away of all rights did not accomplish a negotiation of the Deaner Note, Countrywide Home Loans Inc. no longer has the entire rights to the Deaner Note. Countrywide Home Loans Inc. must have an entire interest in the Deaner Note for a negotiation to occur. The intangible interest in the Deaner Note has been transferred to multiple classes of the FNMA-2007-91 Trust. Countrywide Home Loans Inc. can no longer claim the entire rights to the Deaner Note. Countrywide Home Loans Inc. can not accomplish a negotiation of the Deaner Note.

57. Under Code 1976 § 36-7-501, Countrywide Home Loans Inc. is now the only party that can accomplish a negotiation of the Deaner Note. Under Code 1976 § 36-3-203(d), a negotiation of the Deaner Note can not occur until Countrywide Home Loans Inc. regains an entire interest in the Deaner Note. Countrywide Home Loans Inc. can not accomplish a negotiation of the Deaner Note because Countrywide Home Loans Inc. can no longer claim the entire rights to the Deaner Note. A negotiation of the Deaner Note can not occur until Countrywide Home Loans Inc. regains the entire rights to the Deaner Note.

Code 1976 § 36-7-501. Form of negotiation and requirements of "due negotiation".
(1) A negotiable document of title running to the order of a named person is ***negotiated by his indorsement and delivery****...* (emphasis added)

Code 1976 § 36-3-203. Transfer of instrument; rights acquired by transfer
(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

58. Quicken Loans Inc. transferred the rights to the Deaner Intangible Obligation to Countrywide Home Loans Inc., and Countrywide Home Loans Inc. released the rights to the Deaner Note without naming a transferee. The rights to the Deaner Intangible Obligation were transferred to multiple classes of the FNMA-2007-91 Trust so the Deaner Note will travel on without the rights to the Deaner Intangible Obligation. Whoever becomes the transferee of the Deaner Note, through being named payee, will not

acquire the right to enforce the Deaner Note.

The Terms of the Deaner Mortgage have been Violated and the Deaner Mortgage is Unenforceable

59. Countrywide Home Loans Inc. has released all rights to the Deaner Note to an as-of-yet-unnamed payee. The Deaner Mortgage as a contract can only enforce its contractual terms against the obligation evidenced by the Deaner Note.

60. The Deaner Mortgage is governed by South Carolina Law. South Carolina Law and Federal Law recognize and require proper recordation of assignment to transfer ownership of the Deaner Mortgage.

From the Deaner Mortgage:

*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.*

61. It was previously explained in ¶ 25-47 how it is not possible for ownership of the Deaner Mortgage to have been assigned to BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP.

62. There is a document concerning the Deaner Mortgage recorded in the Official Records of the Aiken County Register of Mesne Conveyance, with Quicken Loans Inc. releasing all rights to the Deaner Mortgage, intending that transfer to be to BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP. However, Countrywide Home Loans Inc. released, through signature, the rights to the Deaner Note, evidencing the obligation, to whoever wishes to fill in the payee line. BAC Home Loans Servicing LP FKA Countrywide Home Loans Servicing LP may now claim ownership of the Deaner Mortgage, but that ownership would have nothing to enforce the Deaner Mortgage contractual terms against. The Deaner Mortgage is an unenforceable contract.

63. Interest in the Deaner Mortgage is no longer with Quicken Loans Inc., yet no one else has any authority to enforce its terms, while the Deaner Note is waiting for someone to acquire rights. The Deaner

Mortgage is an unenforceable contract, no longer tied to an obligation to enforce its contractual terms over.

64. Under long existing contract law, if the terms of a contract are violated, affecting the conditions under which the Payor is obligated, without the properly evidenced consent of the Payor, that contract is void and cannot be returned to without the consent of the Payor. Even if ownership of the Deaner Note and the Deaner Mortgage could be rejoined, the Deaner Mortgage, as a now unenforceable contract, no longer being tied to an obligation to enforce its contractual terms over, can not be returned to being an enforceable contract without Carolyn S. Deaner's consent.

Interest in the Deaner Intangible Obligation Can Not be Rejoined to Interest in the Deaner Note or the Deaner Mortgage

65. Multiple classes of the FNMA-2007-91 Trust have rights to the Deaner Intangible Obligation. Multiple classes of the FNMA-2007-91 Trust were not each and all named as payee on the Deaner Note and do not now have rights to the Deaner Note. For multiple classes of the FNMA-2007-91 Trust to gain rights to the Deaner Note, multiple classes of the FNMA-2007-91 Trust would each and all have to be named payee.

66. There is no possible way for the Deaner Note to be transferred to each and all multiple class of the FNMA-2007-91 Trust for the partial rights to the Deaner Intangible Obligation that each owns. Interest in the Deaner Intangible Obligation and rights to the Deaner Note will remain separate.

67. Because the rights to the Deaner Mortgage were separated from the rights to the Deaner Intangible Obligation, and will remain separate, the Deaner Mortgage is left with no way to enforce its conditions over the obligation which should be evidenced by the Deaner Note, making the Deaner Mortgage an unenforceable contract.

With Interest in the Deaner Intangible Obligation Stripped Away and No Way to Enforce the Conditions Under the Deaner Mortgage, the Deaner Mortgage Contract is a Nullity

68. The Interest in the Deaner Intangible Obligation was separated from the rights to the Deaner Note and the rights to the Deaner Mortgage, leaving the Deaner Note no Intangible Obligation to evidence and the Deaner Mortgage no Intangible Obligation to enforce conditions over.

69. Quicken Loans Inc. retained no beneficial interest in the Deaner Intangible Obligation after selling the Deaner Intangible Obligation to Countrywide Home Loans Inc. on or before the Trust Closing Date of September 28, 2007. No acceptable assignments of the Deaner Mortgage to each and all multiple class of the FNMA-2007-91 Trust have been recorded into the Official Records of the Aiken County Register of Mesne Conveyance. There is no evidence of negotiations of the Deaner Note to each and all multiple class of the FNMA-2007-91 Trust. With no properly-recorded owner of the Deaner Mortgage, there is no one to enforce the conditions over the Deaner Intangible Obligation which is no longer evidenced by the Deaner Note. The Deaner Intangible Obligation is no longer secured by the Deaner Property.

70. Having no specific properly-secured owner of the limited beneficial interest of the Deaner Note, there is no way to enforce the stripped-away Deaner Intangible Obligation through the Deaner Note.

SECTION 4: APPLICABLE EDUCATIONAL MATERIAL

Note: This information may or may not apply to reader's mortgage loan depending on your given documents and the transactions that have or have not taken place.

NY TRUST LAW (EXAMPLE)

NY Estates, Powers and Trust Law § 7-1.18 Trust Asset
Unless an asset is transferred into a lifetime trust, the asset does not become trust property.

NY Estates, Powers and Trust Law § 7-2.4 Trustees Duties
A trustee's act that is contrary to the trust agreement is void.

NY Estates, Powers and Trust Law § 5-1401. Choice of law

1. The parties to any contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars, including a transaction otherwise covered by subsection one of section 1-105 of the uniform commercial code, may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not such contract, agreement or undertaking bears a reasonable relation to this state. This section shall not apply to any contract, agreement or undertaking (a) for labor or personal services (b) relating to any transaction for personal, family or household services, or (c) to the extent provided to the contrary in subsection two of section 1-105 of the uniform commercial code.

2. Nothing contained in this section shall be construed to limit or deny the enforcement of any provision respecting choice of law in any other contract, agreement or undertaking.

NY Estates, Powers and Trust Law § 5-1402. Choice of forum

1. Notwithstanding any act which limits or affects the right of a person to maintain an action or proceeding, including, but not limited to, paragraph (b) of section thirteen hundred fourteen of the business corporation law and subdivision two of section two hundred-b of the banking law, any person may maintain an action or proceeding against a foreign corporation, non-resident, or foreign state where the action or proceeding arises out of or relates to any contract, agreement or undertaking for which a choice of New York law has been made in whole or in part pursuant to section 5-1401 and which (a) is a contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate, not less than one million dollars, and (b) which contains a provision or provisions whereby such foreign corporation or non-resident agrees to submit to the jurisdiction of the courts of this state.

2. Nothing contained in this section shall be construed to affect the enforcement of any provision respecting choice of forum in any other contract, agreement or undertaking.

INFORMATION ON INDORSEMENT

Uniform Commercial Code or Reader's State Equivalent

§ 3-204. INDORSEMENT

(a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

§ 3-205. SPECIAL INDORSEMENT; BLANK INDORSEMENT; ANOMALOUS INDORSEMENT

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

SECTION 4: APPLICABLE EDUCATIONAL MATERIAL (CONT'D)

TYPES OF INDORSEMENTS, ILLUSTRATED:

BLANK INDORSEMENT:

Lender Signature

***INCOMPLETE* STAMPING:**
Intent is shown; however, Payee is not yet named.

Pay to the Order of:

_____

Lender Signature

SPECIAL INDORSEMENT:

Pay to the Order of:
ABC Mortgage Inc.

Lender Signature

RESTRICTIVE INDORSEMENT:

For Deposit Only

Lender Signature

BEARER PAPER:

Pay to Bearer

Lender Signature

After Recording Return to:
Carolyn S. Deaner
704 Kershaw Dr.
North Augusta, SC 29841

AFFIDAVIT OF JOSEPH R. ESQUIVEL JR.

I, Joseph R. Esquivel Jr, declare as follows:

1. I am over the age of 18 years and qualified to make this affidavit.

2. I am a licensed private investigator of in the State of Texas, License # A18306.

3. I make this affidavit based on my own personal knowledge.

4. I make this affidavit in support of *Mortgage Compliance Investigators'* Chain Of Title Analysis & Mortgage Fraud Investigation prepared for Carolyn S. Deaner regarding the Security Instrument and the real property located at 704 Kershaw Dr., North Augusta, SC 29841, as referenced in the Aiken County Record.

5. I have no direct or indirect interest in the outcome of the case at bar for which I am offering my observations.

6. I have personal knowledge and experience in the topic areas related to the securitization of mortgage loans, real property law, Uniform Commercial Code practices, predatory lending practices, assignment and assumption of securitized loans, creation of trusts under deeds of trust, pooling and servicing agreements, issuance of asset-backed securities and specifically mortgage-backed securities by special purpose vehicles in which an entity is named as trustee for holders of certificates of mortgage backed securities, the foreclosure process of securitized and non-securitized residential mortgages in both judicial and non-judicial states, and the various forms of foreclosure-related fraud.

7. I perform my research through the viewing of actual business records and Corporate/Trust Documents.

8. I use professional resources to view these records and documents.

9. I have the training, knowledge and experience to perform these searches and understand the meaning of these records and documents with very reliable accuracy.

10. I am available for court appearances, in person or via telephone for further clarification or explanation of the information provided herein, or for cross examination if necessary.

11. My research through professional services and the viewing of actual business records and Corporate/Trust Documents, determined that an interest in the Carolyn S. Deaner Mortgage Loan Instrument was sold sometime shortly after June 26, 2007 to multiple classes of the Fannie Mae REMIC Trust 2007-91.

12. The Fannie Mae website confirms that they have acquired an interest in the Carolyn S. Deaner Loan Instrument. This information is given at https://knowyouroptions.com/loanlookup

13. I have looked at a purported to be true and correct copy of a Tangible Promissory Note of Carolyn S. Deaner, dated June 26, 2007, regarding a loan for $97,600. The Original Lender of the June 26, 2007 Deaner loan is Quicken Loans Inc.:

    a. This copy of the Carolyn S. Deaner Note shows an indorsement, to the Note, from Quicken Loans Inc., signed by Scott Johnson as Capture Manager, made payable to Countrywide Bank FSB

    b. This copy of the Carolyn S. Deaner Note shows a second indorsement, on the Note itself, from • Countrywide Bank FSB, signed by Laurie Meder as Senior Vice President, made payable to Countrywide Home Loans Inc., being named as

payee.

c. This copy of the Carolyn S. Deaner Note also has an incomplete stamping on the Note itself from • Countrywide Home Loans Inc., signed by Michele Sjolander as Executive Vice President, made payable to an as of yet unnamed payee.

14. The multiple classes of the Fannie Mae REMIC Trust 2007-91 are not named in any way on the Carolyn S. Deaner Note.

    a. Bank of America N.A. is not named or referenced in any way on the Carolyn S. Deaner Note.

15. I have looked at a Mortgage of Carolyn S. Deaner, dated June 26, 2007 and filed in the Official Records of the Aiken County Register of Mesne Conveyance on July 16, 2007 as ins# 2007023608

    a. The multiple classes of the Fannie Mae REMIC Trust 2007-91 are not named in any way to the Carolyn S. Deaner Mortgage

    b. Bank of America, N.A., is not named or referenced in any way on the Carolyn S. Deaner Mortgage

16. I have looked at Complaint filed into District Court Aiken County South Carolina on March 19, 2012 in case # 2012-CP-02-00699.

17. I have looked at the Aiken County Record relating to the Carolyn S. Deaner Mortgage dated June 26, 2007. The Aiken County Record shows an "Assignment of Mortgage", dated April 29, 2011 and filed in the Official Records of the Aiken County Register of Mesne Conveyance on May 09, 2011 as ins# 2011010187, signed by Dominique Johnson as Assistant Secretary and notarized April 29, 2011 by Deborah L. Beard, California Notary Commission #1853913, where MERS grants, assigns, and transfers to BAC Home Loans

Servicing LP FKA Countrywide Home Loans Servicing LP.

18. I have looked at the Aiken County Record relating to the Carolyn S. Deaner Mortgage dated June 26, 2007. The Aiken County Record shows no record of a release of the Mortgage as required in covenant 23 of the Mortgage which states "**Release,** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void.. Borrower shall pay any recordation costs..." This has not happened.

19. I have looked at a copy of the MERS Procedures Manual, Release 19.0, dated June 14, 2010, and MERS Residential Marketing Kit, Terms And Conditions:

    a. It is stated in the MERS Procedures Manual, Release 19.0, dated June 14, 2010:

    Page 63 – Transfer of Beneficial Rights to Member Investors, Overview:

    "Although MERS tracks changes in ownership of the beneficial rights for loans registered on the MERS System, MERS cannot transfer the beneficial rights to the debt. The debt can only be transferred by properly endorsing the promissory note to the transferee." (emphasis added)

    It is stated in the MERS Residential Marketing Kit, Terms And Conditions:

    2. ...MERS shall serve as mortgagee of record with respect to all such mortgage loans solely as a nominee, in an administrative capacity, for the beneficial owner or owners thereof from time to time. **MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans. MERS agrees not to assert any rights** (other than rights specified in the Governing Documents) with respect to such mortgage loans or mortgaged properties. References herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and beneficiary under a deed of trust and any other form of security instrument under applicable state law. (emphasis added)

    6. **MERS and the Member agree that: (i) the MERS System is not a vehicle for creating or transferring beneficial interests in mortgage loans**... (emphasis added)

The above statements are affirmed by me under penalty of perjury under the laws of the State of Texas to be true and correct to the best of my knowledge and belief, are based on my own personal knowledge, and I am competent to make these statements.

FURTHER THE AFFIANT SAYETH NAUGHT

By Joseph R Esquivel Jr Executed on May 4, 2015

Joseph R Esquivel, Jr.

Private Investigator License # A18306

Mortgage Compliance Investigators

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

Subscribed and sworn before me, Lori M. Esquivel.

Notary Public, on this 4th day of May, 2015 by Joseph R. Esquivel Jr., Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me. WITNESS my hand and official seal.

Lori M. Esquivel
Notary Public

NOTARY PUBLIC STATE OF TEXAS
LORI M ESQUIVEL
My Commission Expires
March 25, 2019

EVIDENCE

1. MORTGAGE COMPLIANCE INVESTIGATORS (MCI)

   Chain of Title Analysis & Mortgage Fraud Investigation

2. Exhibit A...Note (submitted at trial) ✓ in Transcript
3. Exhibit B...Mortgage (submitted at trial) ✓ "
4. Exhibit C...Mers Assignment (submitted at trial) ✓ "

   Submit 2 from Florida/robo signing

5. Exhibit D... MERS Procedural Manual Terms and

   Conditions 1-13 and Transfer of Rights to

   Member Investors

6. Exhibit E...MERS Servicer ID
7. Exhibit F...Fannie Mae Trust REMIC Master Trust

   Agreement, Final Version (6 pages)

8. Exhibit G...Affidavit, Joseph R. Esquival, Jr. (to MCI Report)

   Fannie Mae REMIC Trust for Guaranteed REMIC

   Pass-through Certificates

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CLERK OF COURT

EXHIBIT "A"

NOTE

COPY
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MAY 06 2015
AIKEN COUNTY
CLERK OF COURT

EXHIBIT "B"

Mortgage

COPY
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MAY 06 2015
AIKEN COUNTY
CLERK OF COURT

EXHIBIT "C"

MERS ASSIGNMENT

COPY
ORIGINAL FILED
MAY 06 2015 22
AIKEN COUNTY
CLERK OF COURT

EXHIBIT "D"

Mens Procedural Manual

MERS®

Procedures Manual

Release 19.0
June 14, 2010

Transfer of Beneficial Rights to Member Investors

Overview

Although MERS tracks changes in ownership of the beneficial rights for loans registered on the MERS® System, MERS cannot transfer the beneficial rights to the debt. The debt can only be transferred by properly endorsing the promissory note to the transferee. As a MERS Member you have two options for registering a transfer of beneficial rights to another Member: Option 1 and Option 2. The determination of whether Option 1 or Option 2 is used is based on the Membership Profile of the purchasing investor.

Option 1

An Option 1 transfer can be created in either flat file/EDI X12 mode or online.

In an Option 1 transfer, the Investor transfers beneficial rights on a system other than MERS (example: MORNET) and that system then initiates the MERS transaction.

Loans in an Option 1 batch that have not been registered are automatically reprocessed ("cycled") until the loans have been registered, up to ten (10) calendar days from the Transfer Date. Option 1 investors receive notification when MIN cycling begins through the *Transfer of Beneficial Rights Reject Report.*

If you include MINs that are not registered in your agency transmission (e.g. MORNET), you will receive an abbreviated version of the *Transfer of Beneficial Rights Reject Report* listing these unregistered MINs. It is your responsibility to register these MINs immediately, entering your MERS Org ID in the Investor field. If you register them after the 10 day cycling process is over, you must name the Agency in the Investor field.

An Option 1 Transfer of Beneficial Rights will replace any Option 2 investor on the loan. The investor that was removed during the Option 1 process is notified of its removal by the *Investor Removed by Option 1 TOB report.* Additionally, Interim Funder and Warehouse Gestation Lender interests are released automatically in an Option 1 beneficial rights transfer. No confirmations are required for Option 1 transfers.

MERS®

TERMS AND CONDITIONS

1. MERS, which shall include MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc., and the Member shall abide by these Terms and Conditions, the Rules and Procedures (collectively, the "Governing Documents"), copies of which will be supplied upon request. The Governing Documents shall be a part of the terms and conditions of every transaction that the Member may make or have with MERS or the MERS® System either directly or through a third party. The Member shall be bound by any amendment to any of the Governing Documents.

2. The Member, at its own expense, shall promptly, or as soon as practicable, cause MERS to appear in the appropriate public records as the mortgagee of record with respect to each mortgage loan that the Member registers on the MERS® System. MERS shall serve as mortgagee of record with respect to all such mortgage loans solely as a nominee, in an administrative capacity, for the beneficial owner or owners thereof from time to time. MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans. MERS agrees not to assert any rights (other than rights specified in the Governing Documents) with respect to such mortgage loans or mortgaged properties. References herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and beneficiary under a deed of trust and any other form of security instrument under applicable state law.

3. MERS shall at all times comply with the instructions of the holder of mortgage loan promissory notes. In the absence of contrary instructions from the note holder, MERS shall comply with instructions from the Servicer shown on the MERS® System in accordance with the Rules and Procedures of MERS.

4. No rights or obligations of the Member with respect to any data or information supplied to MERS by or on behalf of the Member shall be altered or affected in any manner by the provision of such data or information to MERS (except as otherwise specifically provided in these Terms and Conditions or the Rules of Membership).

5. If the Member uses MERS as Original Mortgagee (MOM) on the security instrument, the loan must be registered on the MERS® System within 10 days of the Note Date.

6. MERS and the Member agree that: (i) the MERS® System is not a vehicle for creating or transferring beneficial interests in mortgage loans, (ii) transfers of servicing interests reflected on the MERS® System are subject to the consent of the beneficial owner of the mortgage loans, and (iii) membership in MERS or use of the MERS® System shall not modify or supersede any agreement between or among the Members having interests in mortgage loans registered on the MERS® System.

7. If the Member has a third-party register loans (the "Registrar") on the MERS® System on behalf of the Member, the Registrar shall not be deemed an agent of MERS. The Registrar shall be solely an agent for the Member, and MERS is only giving consent to the Member to use a Registrar to enter information on the MERS® System on behalf of the Member. The Member agrees that MERS is not liable to the Member for any errors and omissions, negligence, breach of confidentiality, breach of the Rules and Procedures, or willful misconduct of the Registrar, or any employee, director, officer, agent or affiliate of the Registrar in performing its services to the Member.

8. The Member shall promptly pay to MERS the compensation due it for transactions registered on the MERS® System and other services rendered to the Member based on the then current MERS fee schedules, which may change from time to time. The Member shall promptly pay to MERS any interest and penalties on delinquent fee payments at the rate set by MERS from time to time. MERS shall have the authority to impose reasonable penalties and fines on Members for breach of the Governing Documents, and the Member shall promptly pay such fines in accordance with the terms of their imposition.

9. MERS shall indemnify and hold harmless the Member, and any employee, director, officer, agent or affiliate of the Member ("Member Party"), from and against any and all third-party claims, losses, penalties, fines, forfeitures, reasonable attorney fees and related costs, judgments, and any other costs, fees and expenses ("indemnified Payments") that the Member Party may sustain directly from the negligence, errors and omissions, breach of confidentiality, breach of the Terms and Conditions, breach of the Rules and Procedures, or willful misconduct of MERS, or any employee, director, officer, agent or affiliate of MERS ("MERS Indemnified Claim"). Notwithstanding the foregoing, MERS shall not be liable or responsible under the terms of this Paragraph for any losses or claims

resulting from the actions or omissions of any person other than an employee, director, officer (who is also an employee of MERS), agent or affiliate of MERS.

The Member shall indemnify and hold harmless MERS, and any employee, director, officer, agent or affiliate of MERS ("MERS Party"), for any Indemnified Payments which do not result from a MERS Indemnified Claim and which such MERS Party incurs (i) from the negligence, errors and omissions, breach of confidentiality, breach of the Terms and Conditions, Rules and Procedures, or willful misconduct of a Member Party, (ii) with respect to a transaction on the MERS® System initiated by such Member, or (iii) as a result of compliance by MERS with instructions given by the Member, or its designee, as beneficial owner, servicer or secured party shown on the MERS® System ("Member Indemnified Claim").

MERS shall promptly notify the Member if a claim is made by a third party against either MERS or the Member with respect to any mortgage loan registered on the MERS® System in which the Member is shown on the MERS® System as beneficial owner, servicer or secured party in accordance with the Rules and Procedures. The Member shall promptly notify MERS if a claim is made against the Member that may be subject to the indemnification provisions of this Paragraph.

The obligations of MERS and the Member under this Paragraph shall survive the termination of the Member's use of the MERS® System.

10. MERS and the Member shall maintain appropriate insurance coverage that shall include an errors and omissions insurance policy and a fidelity bond. MERS shall not be required to maintain coverage for persons who may be appointed at the request of the Member as certifying officers of MERS. The Member's policies shall protect and insure MERS against losses in connection with the release or satisfaction of a mortgage loan without having obtained payment in full of the indebtedness secured thereby. Upon request, MERS or the Member shall cause to be delivered to the other a certified true copy of such errors and omissions insurance policy and fidelity bond.

    In the event of any loss of principal or interest on a mortgage loan or any Indemnified Payments for which reimbursement is received from a fidelity bond or any errors and omissions insurance policy or other insurance policy, the proceeds from any such bond or insurance shall be held in trust for and be promptly paid to the Member who is shown as the servicer on the MERS® System on behalf of the beneficial owner unless otherwise requested by the beneficial owner.

11. Any notice or other communication which is required or permitted to be given or made to MERS pursuant to any provision of the Governing Documents shall be given or made in writing and shall be sent by nationally recognized overnight courier, or facsimile followed by delivery of the original via first class mail, addressed as follows: MERS, Corporate Secretary, 1818 Library Street, Suite 300, Reston, Virginia, 20190.

12. These Terms and Conditions and all transactions effected by the Member with MERS shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its choice of law provisions.

13. Neither the Member nor MERS shall institute a proceeding before any tribunal to resolve any controversy or claim arising out of or relating to these Terms and Conditions, Rules and Procedures, or the breach, termination or invalidity thereof (a "Dispute), before such party has sought to resolve the Dispute through direct negotiation with the other party. If the Dispute is not resolved within thirty (30) days after a written demand for direct negotiation, the parties shall attempt to resolve the Dispute through mediation. If the parties do not promptly agree on a mediator, either party may request the then chief judge of the Circuit Court of Fairfax County, Virginia to appoint a mediator. All mediation proceedings hereunder shall be held in Washington, D.C. If the mediator is unable to facilitate a settlement of the Dispute within a reasonable period of time, as determined by the mediator, the mediator shall issue a written statement to the parties to that effect and the aggrieved party may then seek relief in accordance with the arbitration provisions of this Paragraph. The fees and expenses of the mediator shall be paid by the party initiating the Dispute.

    In the event that the Member and MERS are not able to resolve a Dispute in accordance with the mediation provisions of this Paragraph, such Dispute shall be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof; provided, however, that the place of arbitration shall be Washington, DC, and fees and expenses for the arbitration proceedings shall be paid by the party initiating arbitration.

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CLERK OF COURT

EXHIBIT "E"

MERS SERVICER ID

Select borrower type and enter borrower information to see Investor for MIN 1000390-3212186468-6.

Investor for Individual Borrower

Your entries may be either upper or lower case.
* Fields markedare required.
* Last Name: Deaner

* SSN: - -

By checking this box, the borrower or borrower's authorized representative is attesting to the fact that he or she is in fact the borrower or borrower's authorized representative for the loan in question. Additionally, borrowers wishing to learn the identity of their loan's investor must confirm their identity by entering their last name or corporation name as well as their SSN or TIN. If this information does not match the information contained in the MERS® System for the borrower of the loan, the investor information will not be displayed. Borrowers should verify the results with their loan servicer.

Submit

Investor for Corporation/Non-Person Entity Borrower

Your entries may be either upper or lower case.
* Fields markedare required.
Corporation/Non-Person Entity Name:

*

* Taxpayer Identification Number:

By checking this box, the borrower or borrower's authorized representative is attesting to the fact that he or she is in fact the borrower or borrower's authorized representative for the loan in question. Additionally, borrowers wishing to learn the identity of their loan's investor must confirm their identity by entering their last name or corporation name as well as their SSN or TIN. If this information does not match the information contained in the MERS® System for the borrower of the loan, the investor information will not be displayed. Borrowers should verify the results with their loan servicer.

Submit

Servicer: [illegible]
Simi Valley, CA

Phone: (800) 669-6607

Investor: Fannie Mae

Close Window

FILED 5.6.05

Lisa Godard
Clerk of Court

Anita Kraemer
Deputy Clerk

EXHIBIT "F"

e-mailed

Fannie Mae Trust
REMIC Master Trust Agreement
Final Version
(6 pages)

e-mailed

FEDERAL NATIONAL MORTGAGE ASSOCIATION

ISSUE SUPPLEMENT

Dated as of September 1, 2007

TO REMIC MASTER TRUST AGREEMENT
Dated as of August 1, 2007
for
GUARANTEED REMIC PASS-THROUGH CERTIFICATES

Series Designation	Issue Date
2007-91	September 1, 2007

THIS ISSUE SUPPLEMENT accompanies and supplements a certain REMIC Master Trust Agreement, dated as of August 1, 2007 (the "Trust Agreement"), published by the Federal National Mortgage Association ("Fannie Mae"). Unless otherwise specified, certain words and phrases appearing herein, characterized by initial capital letters, are defined in such Trust Agreement and will have the meanings so defined.

The collective terms of such Trust Agreement and this Issue Supplement will govern the composition of the Trust Fund, the beneficial ownership of which is evidenced by the Series of Certificates having the above designation, and have no applicability to any other trust fund. If any provision of this Issue Supplement conflicts with or contradicts a provision of the Trust Agreement, the provisions of this Issue Supplement will control.

By its publication of this Issue Supplement, Fannie Mae will be deemed to have declared its intent that the related Upper Tier REMIC and Lower Tier REMIC formed under the Trust Agreement and this Issue Supplement will constitute, and the affairs of such Upper Tier REMIC and Lower Tier REMIC will be conducted so as to qualify as, REMICs pursuant to Section 860D of Subchapter M of Chapter 1 of the Code. The date designated as the "startup day" of each such REMIC within the meaning of Section 860G(a)(9) of the Code will be the Settlement Date.

Applicable Trust Agreement Provisions.

The following terms defined in Section 1.01 of the Trust Agreement will have the following meanings for the Series of Certificates authorized hereby:

Issue Date: September 1, 2007.

Prospectus Supplement: The Prospectus Supplement dated September 21, 2007, relating to the Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 2007-91, as the same may be amended or supplemented from time to time.

Residual Certificate: The Class 91-R Certificate or the Class 91-RL Certificate, as the context requires.

Settlement Date: September 28, 2007.

Additional Provision

The initial annual Interest Rates for the Classes listed below will be as follows:

FE	5.43125%
FX	5.43125%
FY	5.43125%
MF	5.43125%
CF	5.43125%

EXHIBIT A
to Issue Supplement

MORTGAGE BACKED SECURITY SCHEDULE

EXHIBIT B
2007-91 LOWER TIER SCHEDULE

Lower Tier Interest Designation	Companion Classes	Original Class Balance	Interest Rate	Final Distribution Date
1	FA, SA	$103,096,104	7.000%	(1)
2	AF, AS	54,665,764	7.000%	(1)
3	DF, DS	45,334,236	7.000%	(1)
4	EF, ES	50,000,000	7.000%	(1)
5	JF, HS	5,704,000	7.000%	(1)
6	GF, HS	1,921,000	7.000%	(1)
7	HF, HS, HI	50,000,000	7.000%	(1)
8	MF	2,861,097	(2)	(1)
9	FY	7,261,623	(2)	(1)
10	FX	699,000	(2)	(1)
11	FE	69,289,000	(2)	(1)
Class RL		(3)	(3)	

(1) The Final Distribution Date for this Class will be the same as the Final Distribution Date for the related Companion Class(es); provided, however, that if this Class has two or more Companion Classes and their Final Distribution Dates are not the same, the Final Distribution Date for this Class will be the same as the Final Distribution Date for the Companion Class having the latest (or later, as the case may be) Final Distribution Date.

(2) This Class will bear interest at the same rate as the related Companion Class.

(3) The RL Certificate will not have a Class Balance and will not bear interest.

FEDERAL NATIONAL MORTGAGE ASSOCIATION

RCR ISSUE SUPPLEMENT

Dated as of September 1, 2007

TO RCR MASTER TRUST AGREEMENT
Dated as of August 1, 2007
for
GUARANTEED GRANTOR TRUST PASS-THROUGH CERTIFICATES

Series Designation	Issue Date
2007-91	September 1, 2007

THIS RCR ISSUE SUPPLEMENT accompanies and supplements a certain Trust Agreement, dated as of August 1, 2007, published by the Federal National Mortgage Association ("Fannie Mae"). Unless otherwise specified, certain words and phrases appearing herein, characterized by initial capital letters, are defined in such Trust Agreement and shall have the meanings so defined.

The collective terms of such Trust Agreement and this RCR Issue Supplement shall govern the composition of the Trust Fund, the beneficial ownership of which is evidenced by the Series of Certificates having the above designation, and have no applicability to any other trust fund. If any provision of this RCR Issue Supplement conflicts with or contradicts a provision of the Trust Agreement, the provisions of this RCR issue Supplement shall control.

With respect to the Series of Certificates having the above designation, Fannie Mae has deposited into the Trust Fund certificates evidencing the Classes of Fannie Mae Guaranteed REMIC Pass-Through Certificates specified in the related Prospectus Supplement and evidencing beneficial interests in the related REMIC Trust, and intends to issue hereunder the separate Combinable Classes and separate RCR Classes specified in the related Prospectus Supplement.

Applicable Trust Agreement Provisions

The following terms defined in Article I of the Trust Agreement have the following meanings for the Series of Certificates authorized hereby:

Issue Date: September 1, 2007.

Prospectus Supplement: The Prospectus Supplement dated September 21, 2007, relating to the Guaranteed REMIC Pass Through Certificates, Fannie Mae REMIC Trust 2007-91, as the same may be amended or supplemented from time to time.

REMIC Trust: Fannie Mae REMIC Trust 2007-91.

Settlement Date: September 28, 2007.

FILED 5-6-15
Clerk of Court
Deputy Clerk

EXHIBIT "~~F~~" G

5/6/2015

Included ① AFFADAVIT of Joseph R. Esquival, JR To MCI Report Chain of Title

e-mailed ② FANNIE MAE REMIC Trust for Guaranteed REMIC PASS-Through Certificates

After Recording Return to:
Carolyn S. Deaner
704 Kershaw Dr.
North Augusta, SC 29841

AFFIDAVIT OF JOSEPH R. ESQUIVEL JR.

I, Joseph R. Esquivel Jr, declare as follows:

1. I am over the age of 18 years and qualified to make this affidavit.

2. I am a licensed private investigator of in the State of Texas, License # A18306.

3. I make this affidavit based on my own personal knowledge.

4. I make this affidavit in support of *Mortgage Compliance Investigators'* Chain Of Title Analysis & Mortgage Fraud Investigation prepared for Carolyn S. Deaner regarding the Security Instrument and the real property located at 704 Kershaw Dr., North Augusta, SC 29841, as referenced in the Aiken County Record.

5. I have no direct or indirect interest in the outcome of the case at bar for which I am offering my observations.

6. I have personal knowledge and experience in the topic areas related to the securitization of mortgage loans, real property law, Uniform Commercial Code practices, predatory lending practices, assignment and assumption of securitized loans, creation of trusts under deeds of trust, pooling and servicing agreements, issuance of asset-backed securities and specifically mortgage-backed securities by special purpose vehicles in which an entity is named as trustee for holders of certificates of mortgage backed securities, the foreclosure process of securitized and non-securitized residential mortgages in both judicial and non-judicial states, and the various forms of foreclosure-related fraud.

7. I perform my research through the viewing of actual business records and Corporate/Trust Documents.

8. I use professional resources to view these records and documents.

9. I have the training, knowledge and experience to perform these searches and understand the meaning of these records and documents with very reliable accuracy.

10. I am available for court appearances, in person or via telephone for further clarification or explanation of the information provided herein, or for cross examination if necessary.

11. My research through professional services and the viewing of actual business records and Corporate/Trust Documents, determined that an interest in the Carolyn S. Deaner Mortgage Loan Instrument was sold sometime shortly after June 26, 2007 to multiple classes of the Fannie Mae REMIC Trust 2007-91.

12. The Fannie Mae website confirms that they have acquired an interest in the Carolyn S. Deaner Loan Instrument. This information is given at https://knowyouroptions.com/loanlookup

13. I have looked at a purported to be true and correct copy of a Tangible Promissory Note of Carolyn S. Deaner, dated June 26, 2007, regarding a loan for $97,600. The Original Lender of the June 26, 2007 Deaner loan is Quicken Loans Inc.:

    a. This copy of the Carolyn S. Deaner Note shows an indorsement, to the Note, from Quicken Loans Inc., signed by Scott Johnson as Capture Manager, made payable to Countrywide Bank FSB

    b. This copy of the Carolyn S. Deaner Note shows a second indorsement, on the Note itself, from • Countrywide Bank FSB, signed by Laurie Meder as Senior Vice President, made payable to Countrywide Home Loans Inc., being named as

payee.

c. This copy of the Carolyn S. Deaner Note also has an incomplete stamping on the Note itself from • Countrywide Home Loans Inc., signed by Michele Sjolander as Executive Vice President, made payable to an as of yet unnamed payee.

14. The multiple classes of the Fannie Mae REMIC Trust 2007-91 are not named in any way on the Carolyn S. Deaner Note.

    a. Bank of America N.A. is not named or referenced in any way on the Carolyn S. Deaner Note.

15. I have looked at a Mortgage of Carolyn S. Deaner, dated June 26, 2007 and filed in the Official Records of the Aiken County Register of Mesne Conveyance on July 16, 2007 as ins# 2007023608

    a. The multiple classes of the Fannie Mae REMIC Trust 2007-91 are not named in any way to the Carolyn S. Deaner Mortgage

    b. Bank of America, N.A., is not named or referenced in any way on the Carolyn S. Deaner Mortgage

16. I have looked at Complaint filed into District Court Aiken County South Carolina on March 19, 2012 in case # 2012-CP-02-00699.

17. I have looked at the Aiken County Record relating to the Carolyn S. Deaner Mortgage dated June 26, 2007. The Aiken County Record shows an "Assignment of Mortgage", dated April 29, 2011 and filed in the Official Records of the Aiken County Register of Mesne Conveyance on May 09, 2011 as ins# 2011010187, signed by Dominique Johnson as Assistant Secretary and notarized April 29, 2011 by Deborah L. Beard, California Notary Commission #1853913, where MERS grants, assigns, and transfers to BAC Home Loans

Servicing LP FKA Countrywide Home Loans Servicing LP.

18. I have looked at the Aiken County Record relating to the Carolyn S. Deaner Mortgage dated June 26, 2007. The Aiken County Record shows no record of a release of the Mortgage as required in covenant 23 of the Mortgage which states "**Release,** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void.. Borrower shall pay any recordation costs..." This has not happened.

19. I have looked at a copy of the MERS Procedures Manual, Release 19.0, dated June 14, 2010, and MERS Residential Marketing Kit, Terms And Conditions:

    a. It is stated in the MERS Procedures Manual, Release 19.0, dated June 14, 2010:

    Page 63 – Transfer of Beneficial Rights to Member Investors, Overview:

    "Although MERS tracks changes in ownership of the beneficial rights for loans registered on the MERS System, MERS cannot transfer the beneficial rights to the debt. The debt can only be transferred by properly endorsing the promissory note to the transferee." (emphasis added)

    It is stated in the MERS Residential Marketing Kit, Terms And Conditions:

    2. ...MERS shall serve as mortgagee of record with respect to all such mortgage loans solely as a nominee, in an administrative capacity, for the beneficial owner or owners thereof from time to time. **MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans. MERS agrees not to assert any rights** (other than rights specified in the Governing Documents) with respect to such mortgage loans or mortgaged properties. References herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and beneficiary under a deed of trust and any other form of security instrument under applicable state law. (emphasis added)

    6. **MERS and the Member agree that: (i) the MERS System is not a vehicle for creating or transferring beneficial interests in mortgage loans**... (emphasis added)

The above statements are affirmed by me under penalty of perjury under the laws of the State of Texas to be true and correct to the best of my knowledge and belief, are based on my own personal knowledge, and I am competent to make these statements.

FURTHER THE AFFIANT SAYETH NAUGHT

By Joseph R Esquivel Jr Executed on May 4, 2015

Joseph R Esquivel, Jr.

Private Investigator License # A18306

Mortgage Compliance Investigators

STATE OF TEXAS)

)

COUNTY OF TRAVIS)

Subscribed and sworn before me, Lori M. Esquivel.

Notary Public, on this 4th day of May, 2015 by Joseph R. Esquivel Jr., Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me. WITNESS my hand and official seal.

Lori M. Esquivel

Notary Public

NOTARY PUBLIC STATE OF TEXAS

LORI M ESQUIVEL
My Commission Expires
March 25, 2019

DESIGNATION: 37

37. Memorandum in Support of Defendant's Emergency Motion to Vacate Judgment and Reverse or Cancel Sale including Exhibits,

A (Memorandum of Law-Bank Fraud, partial pages 1-19)

B (Securitization/Keating , pages 1-10)

C (UCC 1 & UCC 3, pages 1-9)

D (Quicken Loans Letters and Note comparison, pages 1-13

...ALL filed 5/15/2015.

(contains pages 1-10 and Exhibit pages as designated above)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP

Plaintiff,

vs.

Carolyn S. Deaner

Defendant(s).

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

MEMORANDUM IN SUPPORT OF DEFENDANT'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE

DOCKET NO. 2012-CP-02-00699

THE DEFENDANT, Carolyn S. Deaner, submits the following Memorandum of Law in Support of her EMERGENCY MOTION TO VACATE JUDMENT AND REVERSE OR CANCEL SALE.

INTRODUCTION

This motion is made on the grounds that the Defendant intends to present new facts of merit to show that Defendant new evidence of a slandered title to her property by the Plaintiff and requests a declaratory judgment and dismissal of this case with prejudice and recoupment. In June 2007, Defendant took out a mortgage loan with Quicken Loans, Inc.. On March 19, 2012, a foreclosure Complaint Action was filed by Bank of America, N.A. seeking to foreclose on this alleged loan. For the reasons that follow, Defendant disputes Plaintiff's right to seek foreclosure and requests that this case be dismissed with prejudice pursuant to Rule 12 (b) SCRCP. This Civil R. 60 (B) motion contains allegations of operative facts which would warrant relief from judgment. (See Ohio Court of Appeals DCA ninth C.A.No 12CA0025-M, 12/3/2012, citing Ohio Supreme Court, Seidner, 76 Ohio St.3d at 151)

COPY
ORIGINAL FILED
MAY 15 2015 3:45pm
AIKEN COUNTY
CLERK OF COURT

FACTS OF MERIT AND MATTER OF LAW

1. PLAINTIFF HAS NOT sufficiently alleged that it has standing to bring this foreclosure action as REVEALED IN THE CHAIN OF TITLE REPORT. In addition, Plaintiff's allegation that Mortgage Electronic Systems, Inc. (herein MERS) assigned Defendant's Mortgage to Plaintiff is INSUFFICIENT as a MATTER of LAW because MERS does Not have interest in the Promissory Note (hereinafter "Note") and therefore cannot assign any interest in said Note to Plaintiff. As stated in the MCI CHAIN OF TITLE ANAYSIS ON PAGE 20 , THE DOCUMENT PURPORTING TO BE AN ASSIGNMENT OF MORTGAGE DATED APRIL 29, 2011 IS INVALID AS AN ASSIGNMENT OF MORTGAGE which DID NOT AND DOES NOT ASSIGN/CONVEY ANY "LEGAL RIGHTS' TO ENFORCE THE DEANER NOTE. Because Plaintiff DID NOT state that it is entitled to enforce the Note in the original Complaint or state it was the OWNER of the NOTE in the original Complaint, this Court lacks subject matter jurisdiction in this case. **"A Trial Court's misconception of a controlling principle of law can constitute grounds for a reversal"** (citing Applegate v. Barnett Bank of Tallahassee, 377 So.2d 1150 (Fla. 1979). Standing is a jurisdictional matter, and therefore, must be established at the TIME THE COMPLAINT IS FILED. (citing Fed. Home Loan Mtg. Corp. v. Schwartzwald, Ohio Supreme Court id at 24) Defendant requests this Court to find the Original Complaint "VOID AB INITIO" based on an invalid/illegal assignment. (citing, WM SPECIALITY MORTGAGE, LLC v. Salomon, 864 So.2d (Fla 4th DCA 2004) "Standing requires that a plaintiff show his or her claim is premised on his or her Own Legal Rights as opposed TO RIGHTS OF A THIRD PARTY. (citing Marcuzzo V. Bank of the West, CITE AS 290 Neb.809 App N.W. 2D 2015N0.S-14-367).

Standing is to be determined at the commencement of suit. Lujan vs. Defenders of Wildlife 504 US 555, 570-1 n.5 (1992) accord Young vs. People's Bank 163 SC 57, 161 SE 2nd 324, 329 (1931).

Plaintiff's right to recovery depended on its right at the inception of the lawsuit, and the non-existence of a cause of action when the suit started is a FATAL DEFECT, which cannot be cured by the accrual of a cause of action pending suit". Therefore, Plaintiff FAILED to show standing to bring this lawsuit at the time that the suit was filed and did not prove in court it was the OWNER AND HOLDER OF THE NOTE. (Carpenter v. Longan US Supreme Court 1872) If the Plaintiff did not have an endorsement at the time that they filed the suit, whether or not they are a servicer or not, they were not a PETE, a person entitled to enforce, per SC Code Ann. 36-3-301. SC code Ann. 36-3-412 states that a maker, Defendant Deaner here, has a duty only to pay a PETE, and the Plaintiff IS NOT. In Young v. People's Bank our SC Supreme Court adopted the holding of Carpenter v. Longan 83 US 271 16 Wall. 271, 21L. Ed. 313 (1872) which held that the Plaintiff must OWN THE NOTE AND MORTGAGE AT THE TIME OF FILING TO FORECLOSE. SC Judge Nicholson adopted this as the law of the case in Deutsche Bank National Trust Co. v. Heinrich, 2011-CP-10-1060 (July 31, 2013). Plaintiff has failed to show that it was a PETE at the time of the filing of this lawsuit. In South Carolina, the assignment of a mortgage alone does not carry with it an assignment of the Note. (Hahn v. smith, 157 S.C. 157, 164, 154 S.E. 112, 115 (1930) cited in Bank of American, et al v. Draper, No 2012-208806, Opinion No 5149 (Ct. app June 5, 2013) and citing SC Code sec. 36-3-203 (b). Therefore the Plaintiff has failed to show standing at the time the Original Complaint was filed on March 19, 2012.

In addition, Defendant's Original Motion to Dismiss in answer to Plaintiff's Original complaint was GRANTED by this Court, the Defendant's Legal Aid's Attorney, Mr. Protheroe's "Memorandum IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS", states FURTHER, "BECAUSE Plaintiff has not alleged that it is entitled to enforce the NOTE, Plaintiff lacks standing to bring this action and has failed to state a claim upon which relief can be granted. THE COURT may dismiss a claim where the Defendant shows that the Plaintiff has FAILED TO state facts sufficient to constitute a cause of action. HAMRICK V. GMAC Mortgage. Corp., 370 S.C. 118; 634 S.E. 2d 5 (Ct.App., 2006). The COURT must base its decision SOLEY ON THE ALLEGATIONS IN THE

COMPLAINT and all properly plead factual allegations are deemed admitted for the purpose of the motion. However, a Motion under Rule 12(b)(6) or 12(c) does not admit CONCLUSIONS OF LAW. Carolina Winds v. Joe Jarden Builder, 297 S.C. 74; 374 S.E. 2d 897 (Ct. App., 1988) In the original Complaint, the Plaintiff only states the Plaintiff "held" the note and mortgage with NO attached Evidence of either the note or mortgage being the ORIGINAL documents. Even in the Plaintiff's Amended Complaint, the Plaintiff identifies the note as the "said note", not the ORIGINAL NOTE AND STATES , IN # 11, THAT THE Plaintiff is the current holder of "said note, is in possession of the "original version" of "said note" WHICH SIGNIFIES THE NOTE IS AN E-NOTE OR REPLICA OR COPY , but NOT THE ORIGINAL NOTE. (Carpenter v. Longan, US Supreme Court 1872, must have Original Note to foreclose) and trumps the SC Draper case.

The Original Complaint contains no other allegations regarding the assignment, negotiation, or transfer of the Note or of any succession in interest between Plaintiff and Quicken Loans, Inc. Also, in the Plaintiff's Amended complaint there is no mention of the Note being endorsed to Fannie Mae or the Fannie Mae Trust. How is it that the Plaintiff can have a note not endorsed to Fannie Mae or the Fannie Mae Trust which would be in violation of the PSA Guidelines and security violations?

As a result, Plaintiff has FAILED to allege how it is that Plaintiff is entitled to enforce Defendant's Deaner's Note by foreclosing on her home.

"Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on the debt". Untied Stated Bank Trust Nat'l Assn v. Bell, S.C. 364, 375; 684 S.E. 2d 199, 205 (Ct. App. 2009). This would include proving by a PREPONDERANCE OF EVIDENCE THAT PLAINTIFF is the OWNER OF THE NOTE and MORTGAGE and that Defendant has defaulted on the Note. (See 385 S.C. at 375; 684 S.E.2d at 199 (citing, Franklin Credit Mgmt. Corp. v. Nicholas, 73 Conn. App. 830, 812 A.2d 51, 57-58 (Conn. App. Ct. 2002) Plaintiff is required to PLEAD AND PROVE that it has received RIGHTS in both the NOTE AND MORTGAGE because "the assignment of a mortgage as distinct from the debt it secures is nugatory

and confers NOT RIGHTS upon the transferee absent some indication that the parties also intended to transfer the debt." S.C. Nat'l Bank v. Halter, 293 S.C. 121, 128, 359 S.E.2d 74, 77 (Ct. App 1987). Because, plaintiff was not the original Lender and not the original payee on the NOTE, Plaintiff will need to show that it became ENTITLED TO ENFORCE THE NOTE. THIS DID NOT HAPPEN AT THE TRIAL. The IMPORTANT POINT is that Plaintiff HAS NOT alleged ANY RIGHT TO ENFORCE DEFENDANT'S NOTE either through the provisions of Article 3 or otherwise. This is more sufficiently detailed and explained in the MCI CHAIN OF TITLE ANALYSIS AND due to THE MULTIPLE CLASSES OF THE FANNIE MAE REMIC TRUST 2007-91 the Note IS NOT Enforceable and a legal impossibility to enforce.

IN ADDITION TO THE EXPLANATIONS OF MERS IN THE MCI CHAIN OF TITLE ANALYSIS and as explained by my previous South Carolina legal aid attorney in his Memorandum stated, the role of MERS has been much debated recently, but one thing that is CLEAR is that MERS has no ownership interest in promissory notes and has NO ABILITY to ASSIGN these notes. In MERS V. NEBRASK Dept. of Banking and Finance, MERS brought an action contesting the Nebraska Department of Finance's findings and in that case, MERS ARGUED THAT 'IT DOES NOT OWN THE PROMISSORY NOTES SECURED BY THE MORTGAGES AND HAS NO RIGHT TO PAYMENTS ON THESE NOTES. Since MERS argued and prevailed on this position , it would be estopped to deny that it has ownership of Defendant's Note now and could transfer that ownership to Plaintiff. Because MERS admits that it has no ownership interest in promissory notes, it is impossible for MERS to have assigned Plaintiff any interest in Defendant's Note by virtue of the Assignment of Mortgage dated April 29, 2011.

THEREFORE, the Plaintiff HAS NOT PROVEN any ENTITLEMENT TO ENFORCE THE ALLEGED NOTE AND HAS NOT PROVEN A DEFAULT BY THE Defendant AS THE DEBT HAS BEEN SEPARATED FROM THE MORTGAGE PROVING A "VOID NOTE" and nugatory.

2. DEFENDANT'S ORIGINAL NOTE wherever it may be can be signed over to other parties

multiple times, indebting the Defendant to parties unknown to the Defendant, without the Defendant's explicit consent. The Defendant has never authorized her Promissory note signed by her to be securitized by any Lender, successors or predecessors. No where in the Defendants Note or Mortgage does the Defendant authorize her Promissory note to be securitized and changed into a certificate which is in VIOLATION of the S.C. "CONVERSION LAWS".

In addition, the assigned note is invalid and no evidence was submitted at the trial that Michele Sjolander or Laurie Meder actually signed the note or knew of the rubber stamp on the notes as there is not a date on the endorsements or an endorsement to Fannie Mae, **a CLEAR DEFECT. See KEMP V. COUNTRYWIDE, Case 08-002448-JHW, P.11 and KIRBY V. BANK OF AMERICA, Case NO.2:09-CV-00182-DCB-JMR/Hattiesburg, MS. Again, as a result the Plaintiff has failed to allege how it is that the Plaintiff is ENTITLED TO ENFORCE DEFENDANT'S NOTE by foreclosing on her home.**

3. The Plaintiff is not the real party of interest or a party-in-party in the case and is only the Servicer and is not a nominee or mortgagee in any capacity and has NO LEGAL RIGHTS TO THE NOTE OR TO TITLE OF THE PROPERTY. THE Servicer is merely a bill collector, a bill collector for WHO the Defendant does not know as the debt is paid in full, and they have falsely represented themselves as the Lender/lien holder without proof in this Court, and did not reveal the true investor in the Original Complaint to foreclose.

Bank of America is not the Lender/lien holder of Record and cannot exercise any right or remedy, including without limitations, Lender's acceptance of payments and or judgments, because they ARE NOT a PARTY TO THE CONTRACT or PETE. The Plaintiff has introduced fraudulent, forged and intentionally altered documents in this Court. The Defendant, does not owe anything to Bank of America and is denying any and all default on the alleged NOTE. No where on the Note does the Defendant give Quicken Loans authority to sell (transfer does not mean sell) or SECURITIZE the Note and the Plaintiff is in violation of the TRUTH IN LENDING ACT. The Defendant WAS NOT

told at the loan closing her NOTE would be SECURITIZED and turned into a stock certificate and be UNDER THE SECURITIES LAWS. THIS IS A GROSS VIOLATION OF THE TRUTH IN LENDING ACT AND IN VIOLATION OF THE FIDUCIARY RESPONSIBILITY by the LENDER OF THE CONTRACTUAL AGREEMENT. If no meeting of the minds, then the contract is void and was rescinded to Korn Law Firm, Bank of America and Fannie Mae in March 2012.

Defendant requests damages for intentional fraud and CONSTRUCT FRAUD as the Lender has gained funds from the SECURITIZED investment. Plaintiff comes to Court with UNCLEAN HANDS if the Plaintiff is giving falsified evidence or concealing disclosures and pay offs.

4. Defendant has paid Bank of America in full on 3/31/2015 with an International Promissory Note (IPN) which is legal tender in the United States and pays off the debt and judgment in full. A decline from Bank of America discharges the debt. In addition, Bank of America, has NOT RETURNED THE IPN to the Defendant to this date which is 'UNJUST ENRICHMENT' by the Plaintiff. The Plaintiff knows they can just deposit the Promissory note for cash as they did the Defendant's Original Promissory Note. The debt is discharged according the UCC 3-603 TENDER OF PAYMENT and this court must discharge the debt as the debt has been paid in full by legal tender. A detailed package with all the legal Titles and U.S. Federal laws supporting the legal tender was given to this court on April 31, 2013 hand delivered. No legal reasons of any kind have been given the Defendant at any time by the Plaintiff or this Court for not accepting the legal tender payment, therefore, the alleged debt is discharges/paid. The alleged debt was also paid off as explained in the MCI CHAIN OF TITLE ANALSIS.

5. In addition, THE Defendant's promissory note was deposited for cash following the closing, so no loan was ever made as it was an exchange or swap of currency. A loan by the Lender was not made to the Defendant. The Defendant was not told at the loan closing a Promissory Note is a cash item and deception is a violation of the TRUTH IN LENDING Act. See Exhibit "A" attached

MEMORANDUM OF LAW – BANK FRAUD, 39 pages of cases and explanations. Also attached is a letter to Quicken Loans, Inc. and the reply giving evidence concerning the Promissory Note Deposit and the banks deception and unwillingness to reveal the truth to the Defendant.

TITLE 12 USC 1813 (L)(1) AND 31 USC 5103 MATTER OF LAW, In order for any contract to be valid, there must be "full disclosure", good faith", valuable consideration, and clean hands". Black Letter Law, "consent is invalid if induced by fraud or duress". THE DEFENDANT IS REQUESTING A SETOFF AND RECOUPMENT IN THIS CASE AS MORE THOROUGHLY EXPLAINED IN THE ATTACHED KEATING SECURITIZATION REPORT. This court has Defendant's UCC Financial Statement for the offset. I have the Promissory note registered which trumps the invalid note held by the Plaintiff. Defendant Deaner is the highest level creditor on the property as registered in the UCC Financial Statement submitted to this court on April 31, 2015 in the IPN package. The IPN is also registered on the Defendant's UCC 3 and is Defendant's property and Bank of America has not returned the Defendant's registered Note (IPN) and Defendant claims $147,000 in recoupment in this hearing as well as recoupment on the registered Promissory Note in the amount of $97,600 and applies the setoff to get back what Defendant Deaner gave and is ENTITLED to.

6. A DISPUTE of the debt which constitutes the subject matter contained in the Complaint is to be validated pursuant to the F. D. C. P. A. 15 U.S.C. 1692-1692 P. A South Carolina Judge in Walterboro (Colleton County) ordered the production of numerous documents requested by the homeowner to which the foreclosing plaintiff objected. The court issued a narrative order which compels the production of all documents as to the Chain of Title and money transfer between the original lender and SunTrust as to and for the life of the loan, documents showing the servicing relationship between Freddie Mac and SunTrust, documents showing the authority of MERS to act on behalf of Freddie Mac and SunTrust, documents regarding SunTrust's application of funds from TARP or any other program regarding payments made toward and in connection with the claimed default on the loan, and documents demonstrating the authority of SunTrust to modify the loan

or otherwise complete foreclosure intervention as required by South Carolina Administrative Order. DUE TO THE MCI CHAIN OF TITLE ANALYSIS AND THE PAID OFF DEBT, THE DEFENDANT IS REQUESTING THIS COURT TO DEMAND PRODUCTION OF ALL THE ABOVE MENTIONED DOCUMENTS FROM BANK OF AMERICA IN COMPLIANCE TO THE TRUTH AND LENDING ACT, THE OCC FORECLOSURE ACT, AND ANY AND ALL OTHER UNITED STATES ACTS, FEDERAL AND STATE ACTS PERTAINING TO FORECLOSURES. IN REGARDS TO THE DEFENDANT'S PRESENT SLANDERED CHAIN OF TITLE AND DAMAGES. Defendant claims a defense in recoupment under UCC 3-305 & a claim under 3-306.

7. Plaintiff has failed to provide evidence as to the reliability of the bank records as admissible evidence. Although the Plaintiff showed alleged bank records at the trial, the Plaintiff failed to provide any proof of the authenticity of the records, where they originated or who originated the computerized documents. **NO EVIDENCE was given by the Bank of America witness as to where the computerized sheets originated from, who originated the documents or that the documents were correct. NO PROOF was provided at trial by a witness from any records department of the original Lender to verify the origination of the computerized documents, and the Defendant in this case denies the computerized sheets as admissible evidence and further DENIES A DEFAULT of any kind. THEREFORE, DATA FROM A COMPUTER SYSTEM IS HEARSAY. (Glarum v. LaSalle Bank Nat'l Ass'n (Sept 7, 2011 Fla App 4th district).**

8. **CONSEQUENTLY, the Defendant REQUEST THIS COURT TO VACATE JUDGMENT ORDER, CANCEL SALE AND WAIVE BOND IN ENTIRETY, emphasis # 7, #9 abuse of discretion concerning the OCC Foreclosure Act, #12, only those entitled to receive payments, not a servicer, only agreed to a Lender Relationship, #13, #14 #15, the Plaintiff clearly does not have legal rights to enforce and is not a real party if interest, assignment was recorded after the acceleration letter a clear defect in the acceleration letter to be mailed by the Lender which Plaintiff was not the Lender in 2010. Plaintiff admits in original complaint and in amended**

Complaint they only held a VERSION of the ORIGINAL NOTE, and did not present the original Note at trial, but only a copy. The Defendant declares the note and mortgage contract ultra vires. "When a contract is once declared ultra vires, the fact that it is executed does not validate it, nor can it be ratified, so as to make it the basis of action, nor does the doctrine of estoppel apply. "F & PR v. Richmond, 133 SE 898; 151 Va 195.

Plaintiff is not OWNER OF THE NOTE, NOR A MORTGAGEE AS THE Plaintiff is not named on the Note as required by CARPENTER V. LONGAN, U.S. Supreme Court and SC Young v. People's Bank upholding Carpenter V. Longan which trumps SC Draper case and any averse State laws, #17, denies a default by the borrower, #19 Denies as hearsay calculations, #23, #24, #25 debt is discharged and paid, #26 debt is discharged/paid, #27 debt is discharged/paid.

The Defendant claims 42 U.S. C. 1983 (Constitutional Injury), 1985 (Conspiracy), 1986 ("Knowledge" and "Neglect to prevent" a U.S. Constitutional Wrong).

WHEREFORE DEFENDANT REQUEST THE JUDGMENT TO BE VACATED AND THE SALE CANCELLED, THE BOND WAIVED AND ANY OTHER RELIEF DEEMED JUST AND EQUITABLE BY THIS COURT INCLUDING, BUT NOT LIMITED TO, RECOUPMENT AND ATTORNEY FEES.

Respectfully Submitted,

Date: May 15, 2015
North Augusta, SC
Aiken County

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

MEMORANDUM OF LAW – BANK FRAUD

I have, through research, learned the following to be true and most likely applies to me, which is the reason I have requested and demanded "the bank" to validate their claims and produce pursuant to applicable law. This MEMORANDUM serves to support my suspicions and identify criminal facts. The "bank" allegedly "loaned me their money" when in reality they deposited (credited) my promissory note and used that deposit to "pay my seller". Source and reasoning after reviewing the original file clearly shows this fact, which is the reason for the "bank" refusing and failing to validate and to produce as stipulated by law. However, the truth is out and there is plenty of law backing up the fact that the bank is criminal.

FORECLOSURE ACTIONS AND CASES LAWFULLY DISMISSED (NOT LETTING BANK FORECLOSE WITHOUT LAWFUL VALIDATION AND PRODUCTION) BY THE COURTS DUE TO BANK'S FAILURE TO VALIDATE & PRODUCE AS STIPULATED BY LAW AND COMMITTED "BANK FRAUD" AGAINST THE BORROWER

FROM THE BAR ASSOCIATION'S OFFICIAL WEB SITE :... *"this Court has the responsibility to assure itself that the foreclosure plaintiffs have standing and that subject matter jurisdiction requirements are met at the time the complaint is filed. Even without the concerns raised by the documents the plaintiffs have filed, there is reason to question the existence of standing and the jurisdictional amount". Over 30 cases are covered by the BAR at:* http://www.abanet.org/rpte/publications/ereport/2008/3/Ohioforeclosures.pdf

1. "A national bank has no power to lend its credit to any person or corporation . . . Bowen v. Needles Nat. Bank, 94 F 925 36 CCA 553, certiorari denied in 20 S.Ct 1024, 176 US 682, 44 LED 637.

2. Countrywide Home Loans, Inc. v Taylor - Mayer, J., Supreme Court, Suffolk County / 9/07

3. American Brokers Conduit v. ZAMALLOA - Judge SCHACK 28Jan2008
   Aurora Loan Services v. MACPHERSON - Judge FARNETI 1 1Mar2008

4. "A bank may not lend its credit to another even though such a transaction turns out to have been of benefit to the bank, and in support of this a list of cases might be cited, which-would *look like a catalog of ships*." [Emphasis added] Norton Grocery Co. v. Peoples Nat. Bank, 144 SE 505. 151 Va 195.

5. "In the federal courts, it is well established that a national bank has not power to lend its credit to another by becoming surety, indorser, or guarantor for him."" Farmers and Miners Bank v. Bluefield Nat 'l Bank, 11 F 2d 83, 271 U.S. 669.

6. Bank of New York v. SINGH - Judge KURTZ 14Dec2007

7. Bank of New York v. TORRES - Judge COSTELLO 11Mar2008

8. Bank of New York v. OROSCO - Judge SCHACK 19Nov2007
   Citi Mortgage Inc. v. BROWN - Judge FARNETI 13Mar2008

9. "The doctrine of ultra vires is a most powerful weapon to keep private corporations within their legitimate spheres and to punish them for violations of their corporate charters, and it probably is not invoked too often.... Zinc Carbonate Co. v. First National Bank, 103 Wis 125, 79 NW 229. American Express Co. v. Citizens State Bank, 194 NW 430.

   "It has been settled beyond controversy that a national bank, under federal Law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires . . ." Howard & Foster Co. v. Citizens Nat'l Bank of Union, 133 SC 202, 130 SE 759(1926).

10. ". . . checks, drafts, money orders, and bank notes are not lawful money of the United States ..." State v. Neilon, 73 Pac 324, 43 Ore 168.

11. American Brokers Conduit v. ZAMALLOA - Judge SCHACK 11 Sep2007
    Countrywide Mortgage v. BERLIUK - Judge COSTELLO 1 3Mar2008

12. Deutsche Bank v. Barnes-Judgment Entry

13. Deutsche Bank v. Barnes-Withdrawal of Objections and Motion to Dismiss
    Deutsche Bank v. ALEMANY Judge COSTELLO 07Jan2008
    Deutsche Bank v. Benjamin CRUZ – Judge KURTZ 21May2008
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    Deutsche Bank v. CABAROY - Judge COSTELLO 02Apr2008
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14. Deutsche Bank v. CASTELLANOS/ 2008NYSlipOp50033U/ - Judge SCHACK 14Jan 2008

15. HSBC v. Valentin - Judge SCHACK calls them liars and dismisses WITH prejudice **

16. Deutsche Bank v. CLOUDEN / 2007NYSlipOp5 1 767U/ Judge SCHACK 1 8Sep2007

17. Deutsche Bank v. EZAGUI - Judge SCHACK 21Dec2007
    Deutsche Bank v. GRANT - Judge SCHACK 25Apr2008
    Deutsche Bank v. HARRIS - Judge SCHACK 05Feb2008

18. Deutsche Bank v. LaCrosse, Cede, DTC Complaint

19. Deutsche Bank v. NICHOLLS - Judge KURTZ 21May2008
    Deutsche Bank v. RYAN - Judge KURTZ 29Jan2008
    Deutsche Bank v. SAMPSON - Judge KURTZ 16Jan2008

20. Deutsche v. Marche - Order to Show Cause to VACATE Judgment of Foreclosure – 11 June2009

21. GMAC Mortgage LLC v. MATTHEWS - Judge KURTZ 10Jan2008
GMAC Mortgage LLC v. SERAFINE - Judge COSTELLO 08Jan2008
HSBC Bank USA NA v. CIPRIANI Judge COSTELLO 08Jan2008
HSBC Bank USA NA v. JACK - Judge COSTELLO 02Apr2008
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LaSalleBank NA v. CHARLEUS - Judge KURTZ 03Jan2008
LaSalleBank NA v. SMALLS - Judge KURTZ 03Jan2008
PHH Mortgage Corp v. BARBER - Judge KURTZ 15Jan2008
Property Asset Management v. HUAYTA 05Dec2007

22. Rivera, In Re Services LLC v. SATTAR / 2007NYSlipOp5 1 895U/ - Judge SCHACK 09Oct2007

23. USBank NA v. AUGUSTE - Judge KURTZ 27Nov2007
USBank NA v. GRANT - Judge KURTZ 14Dec2007
USBank NA v. ROUNDTREE - Judge BURKE 11Oct2007
USBank NA v. VILLARUEL - Judge KURTZ 01Feb2008

24. Wells Fargo Bank NA v. HAMPTON - Judge KURTZ 03 Jan2008

25. Wells Fargo, Litton Loan v. Farmer WITH PREJUDICE Judge Schack June2008

26. Wells Fargo v. Reyes WITH PREJUDICE, Fraud on Court & Sanctions Judge Schack June2008

27. Deutsche Bank v. Peabody Judge Nolan (Regulation Z)
Indymac Bank,FSB v. Boyd - Schack J. January 2009

28. Indymac Bank, FSB v. Bethley - Schack, J. February 2009 (The tale of many hats)

29. LaSalle Bank Natl. Assn. v Ahearn - Appellate Division, Third Department (Pro Se)

30. NEW JERSEY COURT DISMISSES FORECLOSURE FILED BY DEUTSCHE BANK FOR FAILURE TO PRODUCE THE NOTE

31. Whittiker v. Deutsche (MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS) Whittiker (PLAINTIFFS' OBJECTIONS TO REPORT AND RECOMMENDATION) Whittiker (DEFENDANT WELTMAN, WEINBERG & REIS CO., LPA'S RESPONSE TO PLAINTIFFS' OBJECTIONS TO REPORT AND RECOMMENDATION) Whittiker (RESPONSE TO PLAINTIFFS' OBJECTIONS TO MAGISTRATE JUDGE PEARSON'S REPORT AND RECOMMENDATION TO GRANT ITS MOTION TO DISMISS)

32. Novastar v. Snyder * *(lack of standing)* Snyder *(motion to amend w/prejudice)* Snyder *(response to amend)*

33. Washington Mutual v. City of Cleveland *(WAMU's motion to dismiss)*

34. 2008-Ohio-1177; DLJ Mtge. Capital, Inc. v. Parsons (*SJ Reversed for lack of standing*)

35. Everhome v. Rowland

36. Deutsche - Class Action (RICO) Bank of New York v. TORRES - Judge

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37. Deutsche Bank Answer Whittiker
38. Manley Answer Whittiker
39. Justice Arthur M. Schack
40. Judge Holschuh- Show cause
41. Judge Holschuh- Dismissals
42. Judge Boyko's Deutsche Bank Foreclosures
43. Rose Complaint for Foreclosure | Rose Dismissals
44. O'Malley Dismissals
45. City Of Cleveland v. Banks
46. Dowd Dismissal
47. EMC can't find the note
48. Ocwen can't find the note
49. US Bank can't find the Note
50. US Bank - No Note
51. Key Bank - No Note
52. Wells Fargo - Defective pleading
53. Complaint in Jack v. MERS, Citi, Deutsche
54. GMAC v. Marsh
55. Massachusetts : Robin Hayes v. Deutsche Bank
56. Florida: Deutsche Bank's Summary Judgment Denied
57. Texas: MERS v. Young / 2nd Circuit Court of Appeals - PANEL: LIVINGSTON, DAUPHINOT, and MCCOY, JJ.
58. Nevada: MERS crushed: In re Mitchell
59. "Neither, as included in its powers not incidental to them, is it a part of a bank's business to lend its credit. If a bank could lend its credit as well as its money, it might, if it received compensation and was careful to put its name only to solid paper, make a great deal more than any lawful interest on its money would amount to. If not careful, the power would be the mother of panics, . . . Indeed, lending credit is the exact opposite of lending money, which is the real business of a bank, for while the latter creates a liability in favor of the bank, the former gives rise to a liability of the bank to another. *I Morse. Banks and Banking* 5th Ed. Sec 65; *Magee, Banks and Banking*, 3rd Ed. Sec 248." American Express Co. v. Citizens State Bank, 194 NW 429.

60. "It is not within those statutory powers for a national bank, even though solvent, to lend its credit to another in any of the various ways in which that might be done." Federal Intermediate Credit Bank v. L 'Herrison, 33 F 2d 841, 842 (1929).

61. "There is no doubt but what the law is that a national bank cannot lend its credit or become an accommodation endorser." National Bank of Commerce v. Atkinson, 55 E 471.

62. "A bank can lend its money, but not its credit." First Nat'l Bank of Tallapoosa v. Monroe . 135 Ga 614, 69 SE 1124, 32 LRA (NS) 550.

63. ".. . the bank is allowed to hold money upon personal security; but it must be money that it loans, not its credit." Seligman v. Charlottesville Nat. Bank, 3 Hughes 647, Fed Case No.12, 642, 1039.

64. "A loan may be defined as the delivery by one party to, and the receipt by another party of, a sum of money upon an agreement, express or implied, to repay the sum with or without interest." Parsons v. Fox 179 Ga 605, 176 SE 644. Also see Kirkland v. Bailey, 155 SE 2d 701 and United States v. Neifert White Co., 247 Fed Supp 878, 879.

65. "The word 'money' in its usual and ordinary acceptation means gold, silver, or paper money used as a circulating medium of exchange . . ." Lane v. Railey 280 Ky 319, 133 SW 2d 75.

66. "A promise to pay cannot, by argument, however ingenious, be made the equivalent of actual payment ..." Christensen v. Beebe, 91 P 133, 32 Utah 406.

67. "A bank is not the holder in due course upon merely crediting the depositors account." Bankers Trust v. Nagler, 229 NYS 2d 142, 143.

68. "A check is merely an order on a bank to pay money." Young v. Hembree, 73 P2d 393

69. "Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud,' and entitles party deceived to avoid contract or recover damages." Barnsdall Refining Corn. v. Birnam Wood Oil Co. 92 F 26 817.

70. "Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." Leonard v. Springer 197 Ill 532. 64 NE 301.

71. "If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." Menominee River Co. v. Augustus Spies L & C Co.,147 Wis 559-572; 132 NW 1122.

72. "The contract is void if it is only in part connected with the illegal transaction and the promise single or entire." Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis 550, 279 NW 83.

73. "It is not necessary for recision of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations." Whipp v. Iverson, 43 Wis 2d 166.

74. "Each Federal Reserve bank is a separate corporation owned by commercial banks in its region ..." Lewis v. United States, 680 F 20 1239 (1982).

HOW AND WHY THE BANKS SECRETLY AND QUICKLY "SWITCH CURRENCY"

NOT FULFILL THE "LOAN AGREEMENT "(THE CONTRACT)

OBTAIN YOUR MORTGAGE NOTE WITHOUT INVESTING ONE CENT

TO FORCE YOU TO LABOR TO PAY INTEREST ON "THE CONTRACT "

TO REFUSE TO FULFILL "THE CONTRACT "

TO MAKE YOU A DEPOSITOR (NOT A BORROWER)

The oldest scheme throughout History is the changing of currency. Remember the moneychangers in the temple (BIBLE)? ***"If you lend money to My people, to the poor among you, you are not to act as a creditor to him; you shall not charge him interest" Exodus 22:25.*** They changed currency as a business. You would have to convert to Temple currency in order to buy an animal for sacrifice. The Temple Merchants made money by the exchange. The Bible calls it unjust weights and measures, and judges it to be an abomination. Jesus cleared the Temple of these abominations. Our Christian Founding Fathers did the same. Ben Franklin said in his autobiography, "... the inability of the colonists to get the power to issue their own money permanently out of the hands of King George III and the international bankers was the prime reason for the revolutionary war." The year 1913 was the third attempt by the European bankers to get their system back in place within the United States of America. President Andrew Jackson ended the second attempt in 1836. What they could not win militarily in the Revolutionary War they attempted to accomplish by a banking money scheme which allowed the European Banks to own the mortgages on nearly every home, car, farm, ranch, and business at no cost to the bank. Requiring "We the People" to pay interest on the equity we lost and the bank got free.

Today people believe that cash and coins back up the all checks. If you deposit $100 of cash, the bank records the cash as a bank asset (debit) and credits a Demand Deposit

Account (DDA), saying that the bank owes you $100. For the $100 liability the bank owes you, you may receive cash or write a check. If you write a $100 check, the $100 liability your bank owes you is transferred to another bank and that bank owes $100 to the person you wrote the check to. That person can write a $100 check or receive cash. So far there is no problem.

Remember one thing however, for the check to be valid there must first be a deposit of money to the banks **ASSETS**, to make the check (liability) good. The liability is like a **HOLDING ACCOUNT** claiming that money was deposited to make the check good.

Here then, is how the switch in currency takes place

The bank advertises it loans' money. The bank says, "sign here". However the bank never signs because they know they are not going to lend you theirs, or other depositor's money. Under the law of bankruptcy of a nation, the mortgage note acts like money. The bank makes it look like a loan but it is not. **It is an exchange.**

The bank receives the equity in the home you are buying, for free, in exchange for an unpaid bank liability that the bank cannot pay, without returning the mortgage note. If the bank had fulfilled its end of the contract, the bank could not have received the equity in your home for free.

The bank receives your mortgage note without investing or risking one-cent.

The bank sells the mortgage note, receives cash or an asset that can then be converted to cash and still refuses to loan you their or other depositors' money or pay the liability it owes you. On a $100,000 loan the bank does not give up $100,000. The bank receives $100,000 in cash or an asset and issues a $100,000 liability (check) the bank has no intention of paying. The $100,000 the bank received in the alleged loan is the equity (lien on property) the bank received without investment, and it is the $100,000 the individual lost in equity to the bank. The $100,000 equity the individual lost to the bank, which demands he/she repay plus interest.

The loan agreement the bank told you to sign said LOAN. The bank broke that agreement. The bank now owns the mortgage note without loaning anything. The bank then deposited the mortgage note in an account they opened under your name without your authorization or knowledge. The bank withdrew the money without your authorization or knowledge using a forged signature. The bank then claimed the money was the banks' property, which is a fraudulent conversion.

The mortgage note was deposited or debited (asset) and credited to a Direct Deposit Account, (DDA) (liability). The credit to Direct Deposit Account (liability) was used from which to issue the check. The bank just switched the currency. The bank demands that you cannot use the same currency, which the bank deposited (promissory notes or

mortgage notes) to discharge your mortgage note. The bank refuses to loan you other depositors' money, or pay the liability it owes you for having deposited your mortgage note.

To pay this liability the bank must return the mortgage note to you. However instead of the bank paying the liability it owes you, the bank demands you use these unpaid bank liabilities, created in the alleged loan process, as the new currency. Now you must labor to earn the bank currency (unpaid liabilities created in the alleged loan process) to pay back the bank. What the bank received for free, the individual lost in equity.

If you tried to repay the bank in like kind currency, (which the bank deposited without your authorization to create the check they issued you), then the bank claims the promissory note is not money. They want payment to be in legal tender (check book money).

The mortgage note is the money the bank uses to buy your property in the foreclosure. They get your real property at no cost. If they accept your promissory note to discharge the mortgage note, the bank can use the promissory note to buy your home if you sell it. Their problem is, the promissory note stops the interest and there is no lien on the property. If you sell the home before the bank can find out and use the promissory note to buy the home, the bank lost. The bank claims they have not bought the home at no cost. Question is, what right does the bank have to receive the mortgage note at no cost in direct violation of the contract they wrote and refused to sign or fulfill.

By demanding that the bank fulfill the contract and not change the currency, the bank must deposit your second promissory note to create check book money to end the fraud, putting everyone back in the same position they where, prior to the fraud, in the first place. Then all the homes, farms, ranches, cars and businesses in this country would be redeemed and the equity returned to the rightful owners (the people). If not, every time the homes are refinanced the banks get the equity for free. You and I must labor 20 to 30 years full time as the bankers sit behind their desks, laughing at us because we are too stupid to figure it out or to force them to fulfill their contract.

The $100,000 created inflation and this increases the equity value of the homes. On an average homes are refinanced every 7 1/2 years. When the home is refinanced the bank again receives the equity for free. What the bank receives for free the alleged borrower loses to the bank.

According to the Federal Reserve Banks' own book of Richmond, Va. titled "YOUR MONEY" page seven, **"...demand deposit accounts are not legal tender..."** If a promissory note is legal tender, the bank must accept it to discharge the mortgage note. The bank changed the currency from the money deposited, (mortgage note) to check book money (liability the bank owes for the mortgage note deposited) forcing us to labor to pay interest on the equity, in real property (real estate) the bank received for free. This cost was not disclosed in **NOTICE TO CUSTOMER REQUIRED BY FEDERAL LAW, Federal Reserve Regulation Z.**

When a bank says they gave you credit, they mean they credited your transaction account, leaving you with the presumption that they deposited other depositors money in the account. The fact is they deposited your money (mortgage note). The bank cannot

claim they own the mortgage note until they loan you their money. If bank deposits your money, they are to credit a Demand Deposit Account under your name, so you can write checks and spend your money. In this case they claim your money is their money. Ask a criminal attorney what happens in a fraudulent conversion of your funds to the bank's use and benefit, without your signature or authorization.

What the banks could not win voluntarily, through deception they received for free. Several presidents, John Adams, Thomas Jefferson, and Abraham Lincoln believed that banker capitalism was more dangerous to our liberties than standing armies. U.S. President James A. Garfield said, "Whoever controls the money in any country is absolute master of industry and commerce."

The Chicago Federal Reserve Bank's book,"Modern Money Mechanics", explains exactly how the banks expand and contract the checkbook money supply forcing people into foreclosure. This could never happen if contracts were not violated and if we received equal protection under the law of Contract.

HOW THE BANK SWITCHES THE CURRENCY

This is a repeat worded differently to be sure you understand it.

You must understand the currency switch.

The bank does not loan money. The bank merely switches the currency. The alleged borrower created money or currency by simply signing the mortgage note. The bank does not sign the mortgage note because they know they will not loan you their money. The mortgage note acts like money. To make it look like the bank loaned you money the bank deposits your mortgage note (lien on property) as money from which to issue a check. No money was loaned to legally fulfill the contract for the bank to own the mortgage note. By doing this, the bank received the lien on the property without risking or using one cent. The people lost the equity in their homes and farms to the bank and now they must labor to pay interest on the property, which the bank got for free and they lost.

The check is not money, the check merely transfers money and by transferring money the check acts LIKE money. The money deposited is the mortgage note. *If the bank never fulfills the contract to loan money, then the bank does not own the mortgage note.* The deposited mortgage note is still your money and the checking account they set up in your name, which they credited, from which to issue the check, is still your money. They only returned your money in the form of a check. Why do you have to fulfill your end of the agreement if the bank refuses to fulfill their end of the agreement? If the bank does not loan you their money they have not fulfilled the agreement, the contract is void.

You created currency by simply signing the mortgage note. The mortgage note has value because of the lien on the property and because of the fact that you are to repay the loan. The bank deposits the mortgage note (currency) to create a check (currency, bank money). Both currencies cost nothing to create. By law the bank cannot create currency (bank money, a check) without first depositing currency, (mortgage note) or legal tender.

For the check to be valid there must be mortgage note or bank money **as legal tender**, but the bank accepted currency (mortgage note) as a deposit without telling you and without your authorization.

The bank withdrew your money, which they deposited without telling you and withdrew it without your signature, in a fraudulent conversion scheme, which can land the bankers in jail but is played out in every City and Town in this nation on a daily basis. **Without loaning you money, the bank deposits your money (mortgage note), withdraws it and claims it is the bank's money and that it is their money they loaned you.**

It is not a loan, it is merely an exchange of one currency for another, they'll owe you the money, which they claimed they were to loan you. If they do not loan the money and merely exchange one currency for another, the bank receives the lien on your property for free. What they get for free you lost and must labor to pay back at interest.
If the banks loaned you legal tender, they could not receive the liens on nearly every home, car, farm, and business for free. The people would still own the value of their homes. The bank must sell your currency (mortgage note) for legal tender so if you use the bank's currency (bank money), and want to convert currency (bank money) to legal tender they will be able to make it appear that the currency (bank money) is backed by legal tender. The bank's currency (bank money) has no value without your currency (mortgage note). The bank cannot sell your currency (mortgage note) without fulfilling the contract by loaning you their money. They never loaned money, they merely exchanged one currency for another. The bank received your currency for free, without making any loan or fulfilling the contract, changing the cost and the risk of the contract wherein they refused to sign, knowing that it is a change of currency and not a loan.

If you use currency (mortgage note), the same currency the bank deposited to create currency (bank money), to pay the loan, the bank rejects it and says you must use currency (bank money) or legal tender. The bank received your currency (mortgage note) and the bank's currency (bank money) for free without using legal tender and without loaning money thereby refusing to fulfill the contract. Now the bank switches the currency without loaning money and demands to receive your labor to pay what was not loaned or the bank will use your currency (mortgage note) to buy your home in foreclosure, The Revolutionary war was fought to stop these bank schemes. The bank has a written policy to expand and contract the currency (bank money), creating recessions, forcing people out of work, allowing the banks to obtain your property for free.

If the banks loaned legal tender, this would never happen and the home would cost much less. If you allow someone to obtain liens for free and create a new currency, which is not legal tender and you must use legal tender to repay. This changes the cost and the risk.

Under this bank scheme, even if everyone in the nation owned their homes and farms debt free, the banks would soon receive the liens on the property in the loan process. The liens the banks receive for free, are what the people lost in property, and now must labor to pay interest on. The interest would not be paid if the banks fulfilled the contract they wrote. If there is equal protection under the law and contract, you could get the mortgage note back without further labor. Why should the bank get your mortgage note and your

labor for free when they refuse to fulfill the contract they wrote and told you to sign?

Sorry for the redundancy, but it is important for you to know by heart their "shell game", I will continue in that redundancy as it is imperative that you understand the principle. The following material is case law on the subject and other related legal issues as well as a summary.

LOGIC AS EVIDENCE

The check was written without deducting funds from Savings Account or Certificate of Deposit allowing the mortgage note to become the new pool of money owed to Demand Deposit Account, Savings Account, Certificate of Deposit with Demand Deposit, Savings Account, and/or Certificate of Deposit increasing by the amount of the mortgage note. In this case the bankers sell the mortgage note for Federal Reserve Bank Notes or other assets while still owing the liability for the mortgage note sold and without the bank giving up any- Federal Reserve Bank Notes.

If the bank had to part with Federal Reserve Bank Notes, and without the benefit of checks to hide the fraudulent conversion of the mortgage note from which it issues the check, the bank fraud would be exposed.

Federal Reserve Bank Notes are the only money called legal tender. If only Federal Reserve Bank Notes are deposited for the credit to Demand Deposit Account- Savings Account, Certificate of Deposit, and if the bank wrote a check for the mortgage note, the check then transfers Federal Reserve Bank Notes and the bank gives the borrower a bank asset. There is no increase in the check book money supply that exists in the loan process.

The bank policy is to increase bank liabilities; Demand Deposit Account, Savings Account, Certificate of Deposit, by the mortgage note. If the mortgage note is money, then the bank never gave up a bank asset. The bank simply used fraudulent conversion of ownership of the mortgage note. The bank cannot own the mortgage note until the bank fulfills the contract.

The check is not the money; the money is the deposit that makes the check good. In this case, the mortgage note is the money from which the check is issued. Who owns the mortgage note when the mortgage note is deposited? The borrower owns the mortgage note because the bank never paid money for the mortgage note and never loaned money (bank asset). The bank simply claimed the bank owned the mortgage note without paying for it and deposited the mortgage note from which the check was issued. This is fraudulent conversion. The bank risked nothing! Not even one penny was invested. They never took money out of any account, in order to own the mortgage note, as proven by the bookkeeping entries, financial ratios, the balance sheet, and of course the bank's literature. The bank simply never complied with the contract.

If the mortgage note is not money, then the check is check kiting and the bank is insolvent and the bank still never paid. If the mortgage note is money, the bank took our money without showing the deposit, and without paying for it, which is fraudulent conversion. The bank claimed it owned the mortgage note without paying for it, then sold

the mortgage note, took the cash and never used the cash to pay the liability it owed for the check the bank issued. The liability means that the bank still owes the money. The bank must return the mortgage note or the cash it received in the sale, in order to pay the liability. Even if the bank did this, the bank still never loaned us the bank's money, which is what 'loan' means. The check is not money but merely an order to pay money. If the mortgage note is money then the bank must pay the check by returning the mortgage note.

The only way the bank can pay Federal Reserve Bank Notes for the check issued is to sell the mortgage note for Federal Reserve Bank Notes. Federal Reserve Bank Notes are non-redeemable in violation of the UCC. The bank forces us to trade in non-redeemable private bank notes of which the bank refuses to pay the liability owed. When we present the Federal Reserve Bank Notes for payment the bank just gives us back another Federal Reserve Bank Note which the bank paid 2 1/2 cents for per bill regardless of denomination.

What a profit for the bank!

The check issued can only be redeemed in Federal Reserve Bank Notes, which the bank obtained by selling the mortgage note that they paid nothing for.

The bank forces us to trade in bank liabilities, which they never redeem in an asset. We the people are forced to give up our assets to the bank for free, and without cost to the bank. This is fraudulent conversion making the contract, which the bank created with their policy of bookkeeping entries, illegal and the alleged contract null and void.

The bank has no right to the mortgage note or to a lien on the property, until the bank performs under the contract. The bank had less than ten percent of Federal Reserve Bank Notes to back up the bank liabilities in Demand Deposit Account, Savings Account, or Certificate of Deposit's. A bank liability to pay money is not money. When we try and repay the bank in like funds (such as is the banks policy to deposit from which to issue checks) they claim it is not money. The bank's confusing and deceptive trade practices and their alleged contracts are unconscionable.

SUMMARY OF DAMAGES

The bank made the alleged borrower a depositor by depositing a $100,000 negotiable instrument, which the bank sold or had available to sell for approximately $100,000 in legal tender. The bank did not credit the borrower's transaction account showing that the bank owed the borrower the $100,000. Rather the bank claimed that the alleged borrower owed the bank the $100,000, then placed a lien on the borrower's real property for $100,000 and demanded loan payments or the bank would foreclose.

The bank deposited a non-legal tender negotiable instrument and exchanged it for another non legal tender check, which traded like money, using the deposited negotiable instrument as the money deposited. The bank changed the currency without the borrower's authorization. First by depositing non legal tender from which to issue a check (which is non-legal tender) and using the negotiable instrument (your mortgage note), to exchange for legal tender, the bank needed to make the check appear to be backed by

legal tender. No loan ever took place. **Which shell hides the little pea?**

The transaction that took place was merely a change of currency (without authorization), a negotiable instrument for a check. The negotiable instrument is the money, which can be exchanged for legal tender to make the check good. An exchange is not a loan. The bank exchanged $100,000 for $100,000. There was no need to go to the bank for any money. The customer (alleged borrower) did not receive a loan, the alleged borrower lost $100,000 in value to the bank, which the bank kept and recorded as a bank asset and never loaned any of the bank's money.

In this example, the damages are $100,000 plus interest payments, which the bank demanded by mail. The bank illegally placed a lien on the property and then threatened to foreclose, further damaging the alleged borrower, if the payments were not made. A depositor is owed money for the deposit and the alleged borrower is owed money for the loan the bank never made and yet placed a lien on the real property demanding payment.

Damages exist in that the bank refuses to loan their money. The bank denies the alleged borrower equal protection under the law and contract, by merely exchanging one currency for another and refusing repayment in the same type of currency deposited. The bank refused to fulfill the contract by not loaning the money, and by the bank refusing to be repaid in the same currency, which they deposited as an exchange for another currency. A debt tender offered and refused is a debt paid to the extent of the offer. The bank has no authorization to alter the alleged contract and to refuse to perform by not loaning money, by changing the currency and then refusing repayment in what the bank has a written policy to deposit.

The seller of the home received a check. The money deposited for the check issued came from the borrower not the bank. The bank has no right to the mortgage note until the bank performs by loaning the money.

In the transaction the bank was to loan legal tender to the borrower, in order for the bank to secure a lien. The bank never made the loan, but kept the mortgage note the alleged borrower signed. This allowed the bank to obtain the equity in the property (by a lien) and transfer the wealth of the property to the bank without the bank's investment, loan, or risk of money. Then the bank receives the alleged borrower's labor to pay principal and Usury interest. What the people owned or should have owned debt free, the bank obtained ownership in, and for free, in exchange for the people receiving a debt, paying interest to the bank, all because the bank refused to loan money and merely exchanged one currency for another. This places you in perpetual slavery to the bank because the bank refuses to perform under the contract. The lien forces payment by threat of foreclosure. The mail is used to extort payment on a contract the bank never fulfilled.

If the bank refuses to perform, then they must return the mortgage note. If the bank wishes to perform, then they must make the loan. The past payments must be returned because the bank had no right to lien the property and extort interest payments. The bank has no right to sell a mortgage note for two reasons. The mortgage note was deposited and the money withdrawn without authorization by using a forged signature and; two, the contract was never fulfilled. The bank acted without authorization and is involved in a

fraud thereby damaging the alleged borrower.

Excerpts From "Modem Money Mechanics" Pages 3 & 6

What Makes Money Valuable? In the United States neither paper currency nor deposits have value as commodities. Intrinsically, a dollar bill is just a piece of paper, deposits merely book entries. Coins do have some intrinsic value as metal, but generally far less than face value.

Then, bankers discovered that they could make loans merely by giving their promises to pay, or bank notes, to borrowers, in this way, banks began to create money. More notes could be issued than the gold and coin on hand because only a portion of the notes outstanding would be presented for payment at any one time. Enough metallic money had to be kept on hand, of course, to redeem whatever volume of notes was presented for payment.

Transaction deposits are the modem counterpart of bank notes. It was a small step from printing notes to making book entries crediting deposits of borrowers, which the borrowers in turn could "spend" by writing checks, thereby "printing" their own money.

Notes, exchange just like checks.

How do open market purchases add to bank reserves and deposits? Suppose the Federal Reserve System, through its trading desk at the Federal Reserve Bank of New York, buys $10,000 of Treasury bills from a dealer in U.S. government securities. In today's world of Computer financial transactions, the Federal Reserve Bank pays for the securities with an "electronic" check drawn on itself. Via its "Fedwire" transfer network, the Federal Reserve notifies the dealer's designated bank (Bank A) that payment for the securities should be credited to (deposited in) the dealer's account at Bank A. At the same time, Bank A's reserve account at the Federal Reserve is credited for the amount of the securities purchased. The Federal Reserve System has added $10,000 of securities to its assets, which it has paid for, in effect, by creating a liability on itself in the form of bank reserve balances. These reserves on Bank A's books are matched by $10,000 of the dealer's deposits that did not exist before.

If business is active, the banks with excess reserves probably will have opportunities to loan the $9,000. Of course, they do not really pay out loans from money they receive as deposits. If they did this, no additional money would be created. What they do when they make loans is to accept promissory notes in exchange for credits to tile borrower's transaction accounts. Loans (assets) and deposits (liabilities) both rise by $9,000. Reserves are unchanged by the loan transactions. But the deposit credits constitute new additions to the total deposits of the banking system.

PROOF BANKS DEPOSIT NOTES AND ISSUE BANK CHECKS. THE CHECKS ARE ONLY AS GOOD AS THE PROMISSORY NOTE. NEARLY ALL BANK CHECKS ARE CREATED FROM PRIVATE NOTES. FEDERAL RESERVE BANK NOTES ARE A PRIVATE CORPORATE NOTE (Chapter 48, 48 Stat 112) WE USE NOTES TO DISCHARGE NOTES.

Excerpt from booklet Your Money, page 7: Other M1 Money

While demand deposits, traveler's checks, and interest-bearing accounts with unlimited checking authority are not legal tender, they are usually acceptable in payment for purchases of goods and services.

The booklet, "Your Money", is distributed free of charge. Additional copies may be obtained by writing to: **Federal Reserve Bank of Richmond Public Services Department P.O. Box 27622 Richmond, Virginia 23261**

CREDIT LOANS AND VOID CONTRACTS: CASE LAW

75. "In the federal courts, it is well established that a national bank has not power to lend its credit to another by becoming surety, indorser, or guarantor for him."' Farmers and Miners Bank v. Bluefield Nat 'l Bank, 11 F 2d 83, 271 U.S. 669.

76. "A national bank has no power to lend its credit to any person or corporation . . . Bowen v. Needles Nat. Bank, 94 F 925 36 CCA 553, certiorari denied in 20 S.Ct 1024, 176 US 682, 44 LED 637.

77. "The doctrine of ultra vires is a most powerful weapon to keep private corporations within their legitimate spheres and to punish them for violations of their corporate charters, and it probably is not invoked too often .. ." Zinc Carbonate Co. v. First National Bank, 103 Wis 125, 79 NW 229. American Express Co. v. Citizens State Bank, 194 NW 430.

78. "A bank may not lend its credit to another even though such a transaction turns out to have been of benefit to the bank, and in support of this a list of cases might be cited, which-would *look like a catalog of ships*." [Emphasis added] Norton Grocery Co. v. Peoples Nat. Bank, 144 SE 505. 151 Va 195.

79. "It has been settled beyond controversy that a national bank, under federal Law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires . . ." Howard & Foster Co. v. Citizens Nat'l Bank of Union, 133 SC 202, 130 SE 759(1926).

80. ". . . checks, drafts, money orders, and bank notes are not lawful money of the United States ..." State v. Neilon, 73 Pac 324, 43 Ore 168.

81. "Neither, as included in its powers not incidental to them, is it a part of a bank's business to lend its credit. If a bank could lend its credit as well as its money, it might, if it received compensation and was careful to put its name only to solid paper, make a great deal more than any lawful interest on its money would amount to. If not careful, the power would be the mother of panics . . . Indeed, lending credit is the exact opposite of lending money, which is the real business of a bank, for while the latter creates a liability in favor of the bank, the former gives rise to a liability of the bank to another. *I Morse. Banks and Banking* 5th Ed. Sec 65; *Magee,*

Banks and Banking, 3rd Ed. Sec 248." American Express Co. v. Citizens State Bank, 194 NW 429.

82. "It is not within those statutory powers for a national bank, even though solvent, to lend its credit to another in any of the various ways in which that might be done." Federal Intermediate Credit Bank v. L 'Herrison, 33 F 2d 841, 842 (1929).

83. "There is no doubt but what the law is that a national bank cannot lend its credit or become an accommodation endorser." National Bank of Commerce v. Atkinson, 55 E 471.

84. "A bank can lend its money, but not its credit." First Nat'l Bank of Tallapoosa v. Monroe . 135 Ga 614, 69 SE 1124, 32 LRA (NS) 550.

85. ".. . the bank is allowed to hold money upon personal security; but it must be money that it loans, not its credit." Seligman v. Charlottesville Nat. Bank, 3 Hughes 647, Fed Case No.12, 642, 1039.

86. "A loan may be defined as the delivery by one party to, and the receipt by another party of, a sum of money upon an agreement, express or implied, to repay the sum with or without interest." Parsons v. Fox 179 Ga 605, 176 SE 644. Also see Kirkland v. Bailey, 155 SE 2d 701 and United States v. Neifert White Co., 247 Fed Supp 878, 879.

87. "The word 'money' in its usual and ordinary acceptation means gold, silver, or paper money used as a circulating medium of exchange . . ." Lane v. Railey 280 Ky 319, 133 SW 2d 75.

88. "A promise to pay cannot, by argument, however ingenious, be made the equivalent of actual payment ..." Christensen v. Beebe, 91 P 133, 32 Utah 406.

89. "A bank is not the holder in due course upon merely crediting the depositors account." Bankers Trust v. Nagler, 229 NYS 2d 142, 143.

90. "A check is merely an order on a bank to pay money." Young v. Hembree, 73 P2d 393.

91. "Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud,' and entitles party deceived to avoid contract or recover damages." Barnsdall Refining Corn. v. Birnam Wood Oil Co., 92 F 26 817.

92. "Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." Leonard v. Springer 197 Ill 532. 64 NE 301.

93. "If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which

one of the considerations induced the promise." Menominee River Co. v. Augustus Spies L & C Co., 147 Wis 559. 572; 132 NW 1122.

94. "The contract is void if it is only in part connected with the illegal transaction and the promise single or entire." Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis 550, 279 NW 83.

95. "It is not necessary for rescission of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations." Whipp v. Iverson, 43 Wis 2d 166.

96. "Each Federal Reserve bank is a separate corporation owned by commercial banks in its region ..." Lewis v. United States, 680 F 20 1239 (1982).

97. In a Debtor's RICO action against its creditor, alleging that the creditor had collected an unlawful debt, an interest rate (where all loan charges were added together) that exceeded, in the language of the RICO Statute, "twice the enforceable rate." The Court found no reason to impose a requirement that the Plaintiff show that the Defendant had been convicted of collecting an unlawful debt, running a "loan sharking" operation. The debt included the fact that exaction of a usurious interest rate rendered the debt unlawful and that is all that is necessary to support the Civil RICO action. Durante Bros. & Sons, Inc. v. Flushing Nat 'l Bank. 755 F2d 239, Cert. denied, 473 US 906 (1985).

98. The Supreme Court found that the Plaintiff in a civil RICO action need establish only a criminal "violation" and not a criminal conviction. Further, the Court held that the Defendant need only have caused harm to the Plaintiff by the commission of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the Plaintiff need not demonstrate that the Defendant is an organized crime figure, a mobster in the popular sense, or that the Plaintiff has suffered some type of special Racketeering injury; all that the Plaintiff must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation are to be liberally construed to effect the congressional purpose as broadly formulated in the Statute. Sedima, SPRL v. Imrex Co., 473 US 479 (1985).

DEFINITIONS TO KNOW WHEN EXAMINING A BANK CONTRACT

BANK ACCOUNT: A sum of money placed with a bank or banker, on deposit, by a customer, and subject to be drawn out on the latter's check.

BANK: whose business it is to receive money on deposit, cash checks or drafts, discount commercial paper, make loans and issue promissory notes payable to bearer, known as bank notes.

courts, while refusing to maintain any action upon the unlawful contract, have always striven to do justice between the parties, so far as could be done consistently with adherence to law, by permitting property or money, parted with on the faith of the unlawful contract, to be recovered back, or compensation to be made for it. In such case, however, the action is not maintained upon the unlawful contract, nor according to its terms; but on an implied contract of the defendant to return, or, failing to do that, to make compensation for, property or money which it has no right to retain. To maintain such an action is not to affirm, but to disaffirm, the unlawful contract."

"When a contract is once declared ultra vires, the fact that it is executed · does not validate it, nor can it be ratified, so as to make it the basis of suitor action, nor does the doctrine of estoppel apply." *F& PR v. Richmond*, 133 SE 898; 151 Va 195.

"A national bank ... cannot lend its credit to another by becoming surety, indorser, or guarantor for him, such an act ; is ultra vires . . ." *Merchants' Bank v. Baird* 160 F 642.

THE QUESTION OF LAWFUL CONSIDERATION

The issue of whether the lender who writes and passes a "bad" check or makes a "credit" loan has a claim for relief against the borrower is easy to answer, providing the lender can prove that he gave a lawful consideration, based upon lawful acts. But did the lender give a lawful consideration? **To give a lawful consideration, the lender must prove that he gave the borrower lawful money such as coins or currency. Failing that, he can have no claim for relief in a court at law against the borrower as the lender's actions were ultra vires or void from the beginning of the transaction.**

It can be argued that "bad" checks or "credit" loans that pass as money are valuable; but so are counterfeit coins and currency that pass as money. It seems unconscionable that a bank would ask homeowners to put up a homestead as collateral for a "credit loan" that the bank created out of thin air. Would this court of law or equity allow a counterfeiter to foreclose against a person's home because the borrower was late in payments on an unlawful loan of counterfeit money? Were the court to do so, it would be contrary to all principles of law.

The question of valuable consideration in the case at bar, does not depend on any value imparted by the lender, but the false confidence instilled in the "bad" check or "credit" loan by the lender. In a court at law or equity, the lender has no claim for relief. The argument that because the borrower received property for the lender's "bad" check or "credit" loan gives the lender a claim for relief is not valid, unless the lender can prove that he gave lawful value. The seller in some cases who may be holding the "bad" check or "Credit" loan has a claim for relief against the lender or the borrower or both, but the lender has no such claim.

BORROWER RELIEF

Since we have established that the lender of unlawful or counterfeit money has no claim for relief under a void contract, the last question should be, does the borrower have a claim for relief against the lender? First, if it is established that the borrower has made no payments to the lender, then the borrower has no claim for relief 'against the lender for

money damages. But the borrower has a claim for relief to void the debt he owes the lender for notes or obligations unlawfully created by an ultra vires contract for lending "credit" money.

The borrower, the Courts have long held, has a claim for relief against the lender to have the note, security agreement, or mortgage note the borrower signed declared null and void.

The borrower may also have claims for relief for breach of contract by the lender for not lending "lawful money" and for "usury" for charging an interest rate several times greater than the amount agreed to in the contract for any lawful money actually risked by the lender. For example, if on a $100,000 loan it can be established that the lender actually risked only $5,000 (5% Federal Reserve ratio) with a contract interest rate of 10%, the lender has then loaned $95,000 of "credit" and $5,000 of "lawful money". However, while charging 10% interest ($10,000) on the entire $100,000. The true interest rate on the $5,000 of "lawful money" actually risked by the lender is 200% which **violates Usury laws of this state.**

If no "lawful money" was loaned, then the interest rate is an infinite percentage. Such techniques the bankers say were learned from the trade secrets of the Goldsmiths. The Courts have repeatedly ruled that such contracts with borrowers are wholly void from the beginning of the transaction, because banks are not granted powers to enter into such contracts by either state or national charters.

ADDITIONAL BORROWER RELIEF

In Federal District Court the borrower may have additional claims for relief under "Civil RICO" Federal Racketeering laws (18 U.S.C. § 1964). The lender may have established a "pattern of racketeering activity" by using the U.S. Mail more than twice to collect an unlawful debt and the lender may be in violation of 18 U.S.C. §1341, 1343, 1961 and 1962.

The borrower has other claims for relief if he can prove there was or is a conspiracy to deprive him of property without due process of law under. (42 U.S.C. §1983 (Constitutional Injury), 1985 (Conspiracy) and 1986 ("Knowledge" and "Neglect to Prevent" a U.S. Constitutional Wrong), Under 18 U.S.C.A.§ 241 (Conspiracy) violators, "shall be fined not more than $10,000 or imprisoned not more than ten (10) years or both."

In a Debtor's RICO action against its creditor, alleging that the creditor had collected an unlawful debt, an interest rate (where all loan charges were added together) that exceeded, in the language of the RICO Statute, "twice the enforceable rate". The Court found no reason to impose a requirement that the Plaintiff show that the Defendant had been convicted of collecting an unlawful debt, running a "loan sharking" operation. The debt included the fact that exaction of a usurious interest rate rendered the debt unlawful and that is all that is necessary to support the Civil RICO action. Durante Bros. & Sons, Inc. v. Flushing Nat 'l Bank. 755 F2d 239, Cert. denied, 473 US 906 (1985).

The Supreme Court found that the Plaintiff in a civil RICO action, need establish only a

Securitization 1

Jean Keating Transcript – not for re-sale

"Securitization is Illegal", 30pg, by Michael Magugu, CPA, www.ssrn.com/abstract=hh3300 - It is only illegal for private corporations.

Securitization: The process of homogenizing financial instruments into fungible securities, so that they are sellable on the securities market.

When you sign a mortgage note it comes under UCC Article 3. After securitization, it comes under Article 8. Under US law securitization is illegal because it is fraudulent. Instruments such as loans, credit cards and receivables, are securitized. Enron was involved in securitization and someone brought charges against them. But almost all large corporations are doing it as usual business. However, the banking system and the government are also doing it.

Jean Keating brought a RICO suit against a bank, but it was thrown out. But he would have done better now that he knows more about it.

It is all accounting, whether it is banking, civil or criminal court. I submitted the FASB regulations – FAS125 securitization accounting, FAS140 **Offsetting** of financial assets and liabilities, FAS133 derivatives on hedge accounts, FAS5, FAS95. These are the resource materials for understanding this process. The note is not under a negotiable instrument any more, it is a security. All the banks follow these standards. They set up GAAP, generally accepted accounting principles. The banks are mandated by Title 12 USC to follow GAAP and GAAS. They have a local FASB and an international IFASB. They also cover derivatives. FAS 140 relates to UCC 3-305, 306. If you want to instruct them on how to do offsets, you have to refer them to FAS 133. If you don't know the accounting regulations, you can't give them the proper instructions for settling and closing. **What you really want is recoupment.**

Recoupment – (1) The recovery or regaining of expenses **Applying the setoff** so you can get back what you gave and what you are entitled to. (2) The withholding for the equitable part or all of something that is due. This is all equitable action in admiralty style instruments.

> Blacks:
> IOU – a memorandum acknowledging a debt. See also a due bill.
> DUE BILL – See IOU
> SIGHT DRAFT – A draft that is due on the bearers demand; or on proper presentment to the drawer. Also termed a demand draft. A draft is an unconditional order signed by one person, the drawer directing another person, the drawee, to pay a certain sum of money on demand or at a definite time to a person, the payee, or to bearer.

This is colorable. Who is holding the debt? A due bill is like a sight draft. They are not saying from which perspective it is a debt, from theirs or yours. The party receiving the IOU is the debtor, because the IOU is an asset. It is an instrument, and you are the originator. You have

monetized their system with your signature. An IOU is an asset instrument, not a liability instrument. This is one of the places where you have your perspective changed.

Under the constitution, the government was not given authority to create money. It is a **power reserved by the people**. Article I, section 10 restricted the states from making gold coins. So the corporate government **has to rely on the deception of people to create money**. So the way money is created is to have people sign an IOU, or promissory note. **It is not a debt instrument to the one who created it; it is actually an asset**. The creator can pass it on for someone else to use. It is negotiable unless it includes terms and conditions as part of a contract. The property belongs to the creator, and the holder is merely using it and any proceeds that come from it should be restored to the creator.

That is the power we have if we realize we have the authority to do this. The intent is to understand the regulations and to see how they are trying to deceive us to believe we are the debtor and the slave and they are the creditor at all times. This is not true.

We are looking for recoupment. Once we, the creator of the promissory note have signed it and others are using it, recoupment means **we want our property back** or have the account set off. Recoupment in practice is a counterclaim in a civil procedure. That is how one does a recoupment. We did a counterclaim on the grounds that; with the county, you can do a setoff. You can use the financial liability of the accounting ledger to offset the financial asset if you have the right to do that. But you have the right to do that if you are the creditor on the liability side and the bank or lending institution is the debtor on the liability side.

There is a duality here. The bank is the creditor on the receivable side or their asset side that is the receivable. You are the creditor on the liability side or the accounts payable. **You can use your accounts payable as an offset or counterclaim to the financial asset side** that is the receivable. The bank or the court is using the receivable side of the accounting ledger. That is what they are charging you with. On the receivable side, you have to pay the debt, because that is where the charge is coming from since they are claiming to be the creditor like a bank collecting the mortgage. The mortgage side of the bank ledger is the banks asset and their receivable. But on the liability side, because they sold our gold...

We have the actual gold contract where they did this. This is not my opinion, we have eleven $50 million gold bonds sold from the DeBeers Diamond Company. They sold America's gold under contract to the Bank of China. This is not my opinion. The U.S. did not go bankrupt in 1933. **What they did was sell all the gold under a gold contract to the Chinese government**. So the U.S. had to give us an account payable as a cash receipt. FAS 95 tells us that when they do a credit to a transactional account, which is a liability account, on which we are the creditor, they give a cash receipt to the customer and a cash payment to the bank, because it is cash proceeds. In intermediate accounting, when you give them a promissory note.

I gave a promissory note to a publisher for $1700. They accepted it because I gave them the proper accounting instructions. I did another one to another publisher for over $3000. They accepted initially, and then hired a collection attorney in one of the biggest collection agencies in the state of Ohio. They didn't send the note back because a payment tendered and refused is

discharged. Also, **any form of viable payment must be accepted**. Almost anyone that you send a note to is going to be making a mistake if they send it back. There is someone here that sent a transaction to the IRS on a closed checking account. He got the cancelled check back from the IRS. They said the check is no good because it is a closed account. But the transactional marks on the back of the check say otherwise.

If it is a note put into a bank, it is a **cash receipt to the depositor** and a **cash payment** to the Bank. So when the bank processed that closed check, the IRS got a cash receipt and the bank got cash payment. Then the IRS sent it back, so it is **evidence** that the transaction is accepted, but then colorably and publicly claim it is no good.

The publisher accepted the note and hired an attorney. I sent them a letter and they dropped the matter since they know that I know what the accounting is. Under FAS 140, you get your setoff. When you make a deposit, it is a cash receipt, a cash proceed. Everything becomes a cash proceed in commercial law under Article 9. They show it as a cash proceed. They give you a credit to your account that is actually a cash receipt to you the customer or the borrower. Then they do a cash payment to the bank. The bank they sell the note. They do a HELOC, home equity line of credit, and sell it to warehouse lending institution. This is the same as a credit card. Even on a **mortgage loan**...

A HELOC is different than warehouse lending. I got this from their mortgage department. They take the proceeds from the promissory note and pay off the warehouse lender. So the debt on the real estate is extinguished from the books (is that why they call it closing). They are required to file an FR 2046. This is a balance sheet. Under 12 USC 248 and 347 they are required to file a balance sheet. They are required on a quarterly or weekly basis. They file these balance sheets with the Federal Reserve Board. I talked to the head of the FRB. They file a balance sheet with the board. The balance sheet shows the assets and liabilities that they use in the accounting. The liabilities would be your promissory note. It is a liability because it is an asset to you.

Securitization is the process of transferring all the liabilities off the balance sheet. They can do this because you never ask for them. They have everybody conned into believing we are debtors instead of creditors and do not know to ask for our assets. We never ask for recoupment. So why carry the payables on the books if they have been abandoned. Why not write them off and sell them for more cash.

The government has such complicated books it is impossible to figure out what is going on.

If you give a bank a promissory note, they are required to give you a cash receipt. They owe you that money under a recoupment or asset. If you take the receipt back, they should give you some money. They call it an offset in accounting, but in the UCC it is called a recoupment. Unless you do ask or do a defense in recoupment under UCC 3-305, and a claim under 3-306, you have a possessory and property claim against the cash proceeds under the liability side of the ledger. UCC 3-306, there cannot be a holder in due course on a promissory note after they deposit it. They do an off balance sheet entry. This means they take your note after they sell it, instead of showing it on their balance sheet, they move over to some other entities balance sheet. It is no longer on the banks books. This is called **off balance sheet bookkeeping**. The head of

the FASB said that I was correct. They are not showing the liability side of the ledger or the accounts payable because it has **been moved** over to someone else's balance sheet.

The IRS does the same thing when you tender them a negotiable instrument. They accept it and never return it. **But** don't adjust the account. They pretend like nothing happened. They move them off the books that the collection agent is looking at. He is only looking at the accounts receivable ledger.

You tender a note to the bank to stop a foreclosure, and they ignore it. The agent at the bank claims she never got any payment. The agent only sees the receivable side of the books. He is being honest. It is up to us to make a claim for them to look at their other set of books. You have to learn how the system works so you can explain it to them. We need to know how to get them to produce the missing documents. They are only going to produce the documents that support their claim. The American and English litigation system is adversarial. They only have to present the evidence that supports their claim.

When a strawman is charged with speeding, he is given a charging instrument. It is the same as a claim by the bank that shows that someone has failed to make mortgage payment. It is a commercial entry from a corporation showing that there is a liability on your part that is an account receivable and **they are in the capacity of a creditor and making you appear in the capacity as a debtor.** So the clerk has an accounting charge against the strawman but you are operating the account. It is your responsibility to bring in recoupment in behalf of the real party of interest which is you because you are the ultimate creditor if you raise that claim against the liability side of the account.

People have a right to travel. So they have the right of recoupment to offset any charges against the strawman in an attempt to restrict the right of travel of living people. Civil and criminal court procedure operates the same as the bank.

What is the substantive principal involved in this that allows them to avoid fraud? The government does everything correctly. They never make a mistake. The government is involved in securitization that appears to be a fraud. There is immunity for people who understand the procedure. Only the unlearned are fooled into voluntarily entering into fraudulent contracts. It does not work if you get frustrated and angry at the fraudulent results of your own ignorance.

When you sign a promissory note to create the mortgage with a bank to buy your house, at closing, they have already sold your note to the warehousing institution. The warehousing institution brought money into the bank when they bought the note. At closing, they take the money and closes out the account on one side. The bank forgot to tell you that you don't have a liability on their receivable side any more.

Why do they keep taking your money? They have become the servicer for the account; they are not paying principal and interest. The payments are profit to the holder of the note. This is not stealing if we knew how to make a claim for recoupment. **They are using the note to expand the money supply.**

Under Title 12 USC 1813(L)(1) when you deposit a promissory note, it becomes a cash item. It becomes the equivalent of cash because I have a cash receipt. I talked to Walker Todd, one the heads of the Cleveland FRB. He has been a government witness in court cases regarding BOE. He said that I am correct that we are the creditor on the payables side of the ledger. The bank owes you the money. No one is bringing up recoupment as a defense. You waive the defense and they go to collection on the receivables.

Under civil rule 13, you fail to bring **a mandatory counterclaim**, which is based on the same transaction. Under the rules you have waived it because you were ignorant of the rules of procedure.

I just filed a motion in a court case. I took portions of Statement 95 incorporated it into a memorandum. These reports are filed on OMB forms in which the public has a right to disclosure under the privacy act. If they shift the assets off the books, they have to report to the FRB where it went, so you can follow it. In the memorandum, it shows that they are mandated to give a cash receipt on any deposit. It is a demand deposit account. They are required to show it on their books, but they are not doing that. They are doing an **offset entry**. This is not going to trial because we are going to subpoena the auditor. Auditors keep track of where the assets went. These are special auditors.

We have asked for all this information in discovery under **civil rule 36** if they don't answer, they have admitted them. This is so powerful in this foreclosure that the banks attorney is saying that discovery and records from auditors do not constitute admissions. Ha! Are you telling the court that the banks records kept in the due course of business are not admissions? They are hurting.

So in our motion for summary judgment I put in admissions that they admitted by non-response. So now we have them in a dilemma. The other side is scrambling. **They have come out with an affidavit of a lost note or destroyed instrument.**

Under UCC 3-309 you have to show four elements to claim a lost instrument:
1) you were in possession at the time it was lost; |
2) you have the right of enforcement of the note;
3) you have to show that the obligor on the note is indemnified by you against and future claims;
4) the loss was not due to a transfer.

They are trying to maintain the allusion that they are still holding your paperwork because you are still paying them. The allusion is that there is a debt that is due.

I've got the S3 registration statement. That is the form the bank filed that they sold the note that is a transfer. The attorney lied when he put in a claim that the instrument was lost.

We have the 424(b)(5) prospectus. The bank we are dealing with is Bank One that is owned by JP Morgan and Chase. They sold it in 1997 right after they got our loan they sold it. They are doing a HELOC. Most banks do **warehouse lending**. As soon as they get the note, they borrow the money from a warehouse lender. They bank does not give you the money or credit. They get

it from a warehouse lender. Then they pay off the warehouse lender with the note that they sell to them. Then they make derivatives out of this note by a bookkeeping entry.

The balance sheet, a 2046, 2049, and 2099, have OMB numbers on them that are subject to disclosure under the privacy act, Title 5 USC 552(b)(4). They have to give it to you if you ask for it. At closing and settlement, the reason they actually call it closing is because they pay off the loan in its entirety. The debt is actually extinguished.

Patriots say they didn't lend any money. But that doesn't rebut the receivable. There is no money. But we loaned them the note. So we started the process, so we have to help resolved the problem.

They do the accounting appropriately, but there is two sets of books. **But if you don't ask to see the books, it is your problem.** This is also what they are doing in the courtroom. The clerk has the receivable side for the corporation and the judge has the payables. **The judge is holding accounts payable under HJR 192 for all the people that come before him if he has the SSN.** on IPN The judge is not required to be a witness or bring pleadings to the court. He is a referee. The receivables are the charges against the strawman. The party aware of the payables is not the same party handling the receivables. People don't bring in an offsetting claim under the rules of procedure.

The judge does not have to do the setoff unless you raise the issue or defense. We have the right to waive it. So the judge is the priest receiving the sacrifice for the corporation.

Victoria gave a note to the county do discharge her criminal case. The county likely deposited it in a bank and received a cash receipt. The bank likely sold it as an unregistered security. This provides Victoria with another remedy. But she needs to register it on a UCC3 before it can be used as a claim.

END OF SEPTEMBER 18 MEETING

Securitization 3

Banks securitize mortgages by selling them to a SPV (a special purpose vehicle, a trust). Then they create bonds of trust assets to sell to DTC. The bank cannot foreclose on the note, because they are not a holder and lack standing. However, the mortgage contract requires payments. This makes the note non-negotiable. They are foreclosing on the contract under common law, not the note. The bank claims to be holder in due course, but that is not possible for there to be a holder in due course of a non negotiable instrument. Non-negotiable instruments are governed by common law, not the UCC.

SPV- A special purpose vehicle, an organization constructed for a limited purpose and life. Frequently these SPV's serve as conduits or pass through organizations or corporation in relation to securitization. The entity that hold the legal rights over the asset transferred by the originator.

The originator of a mortgage is the living man. If he is the originator, the SPV becomes the legal holder when the deed is signed. The bank is acting in the capacity as a servicer. When you are involved in a foreclosure case, the strawman creates an allusion. No party is real. So the real parties in interest are not involved in the court. The bank may be named as the plaintiff on the foreclosure is the servicer. The real party in interest is the SPV.

Patriots usually ask the plaintiff to produce the note. The note is not a negotiable note because it has terms and conditions associated with the instrument which could lead to a question as to whether the terms and conditions have been met. A negotiable instrument can have no restrictions, terms or conditions.

One, the note is non-negotiable. Two, it is never registered in the public. These instruments cannot appear in a court. If it was brought into court, the judge would see that it is not registered, and would claim he has no subject matter jurisdiction over your claim. Secondly, it is not negotiable, so it does not come under the UCC negotiable instruments act. Consequently it comes under contract obligations, so the appearance of the note is immaterial and irrelevant. Especially since it was never registered in the public.

The next problem is, since the note is not registered, what standing does the plaintiff, bank, have to be there. Under the UCC, the plaintiff has no standing if he is not a holder in due course. The plaintiff is not there on the note for several reasons. It is also shows that the bank is liable and the originator is the creditor. The note is an asset to the defendant, which is a counterclaim for recoupment. It does not support the banks case.

Before closing the note goes into an SPV which now has legal title to these issues and it creates a new instrument in the place of the note. They create securities and bonds, which are registered. The plaintiff is representing the registered security and bond at closing. They are hiding the pea under several shells so you don't know where it is. This keeps the patriots from making the proper claims.

Jean Keating

The statute says you have a right to restitution and rescission if they sell an unregistered security, Ohio statute 1707-261. Is the note an unregistered security? It is a non-negotiable instrument. When they convert it into a security, it takes it out of UCC Article 3. It could be under UCC article 4 because it is deposited in a bank. But eventually, after it has gone into the SPV, and been securitized, it is moved to UCC Article 8 and Article 9 is applicable to the remedy. They have to give you the right to rescission because it is unregistered. So, they ledger that you no longer have a liability by giving you the setoff. So they are following the law. But they are keeping the records in two different sets of books like the Mafia.

We are following the letter of the law and showing them what they are doing. We have a right to rescind and restitution, which is also part of recoupment. We can go to the NASD, the national association of securities dealers, they have an arbitration and resolution board located in NYC. They have tribunals in each state for hearings. You can go to arbitration and have the contract rescinded and get restitution because they are selling unregistered securities. I have examples of four recent cases from 2005 and 2006. People have purchased promissory notes and found out they were unregistered securities. There is case law on this. This is money laundering or RICO.

But there is a statute protecting us. Since, as soon as they sell the unregistered security, we are entitled to setoff to settle the claim. We are raising this claim; we have not waived it. They have not addressed our claims or defenses, so we have grounds for appeal. The law requires them to do this because they have raised it. One can stop any mortgage on this basis.

They would be better off if the judge gave you a remedy on other grounds. We have given them several grounds for rescission. They can also allow rescission because the property is in a flood plain. Their attorney said that if what we are saying is true, it would destroy the mortgage market. We had an attorney say the same in her pleadings fifteen years ago, and then she was taken off the case. I don't think they like attorneys saying those things in public.

Federal court through out our RICO complaint initially. I brought up the FASB and IASB standards and regulations in appellate court. I corrected them from stating that the bank is the creditor. That is only true on the receivable side of the ledger. We are the creditor and they are the debtors on the liability ledger. That provides a remedy. The G7 has endorsed it. Now we are getting into international law, with the IASB standards that they have adopted. These standards say we have a right to setoff.

So, like the Mafia, they always have a second set of books that are not available to the public. They only use the public books when they make a claim against us to determine how much we know about our claims available on the other side of the accounting. It is up to us to bring this

claim or waive our remedy. Most CPA's are not familiar with these issues, because they don't have to deal with them.

Bank One uses KPMG to audit their books; others use Price Waterhouse. They are international auditing services. They are expert at auditing off balance sheet accounts. There is off balance sheet financing, payables and receivables. These auditors are the only ones that are aware of these issues. Scott Taub is the chief accountant for the SEC and his assistant. They confirmed my information. The SEC is also the enforcement agent for this practice, because it involves securities. He admitted that this is their practice. He wanted to know who I was, but I did not tell him.

One bank auditor wanted to know why I was asking these questions. What does why I am asking have to do with question. "Are going to tell me what you are going to do with my note? Don't I have a right to know what you are doing with my note if I go into business with you? " Everybody thinks a note is a liability, but it is not. Under UCC 4(a), 104(c), it says that the originator is the sender of the first fund transfer. We are the first funds transferor. UCC 3-105(a)(c), subsection (a) talks about issue and (c) talks about issuer. It defines the issuer as the transferor of the first fund transfer, which is the drawer and the maker.

UCC 8-102 (12), (15) and (9) that defined what an entitlement holder is. UCC 8-105 that says we are identified as the person with securities and entitlement right on the books of a banking intermediary. They call them intermediaries under Article 8. This practice is all under Article 8 because it involves securities. That is how they are hiding their practices. They are treating these notes as securities and not Article 3 paper. Under Article 8 we are the holders of entitlement and possessory rights to the proceeds of the transaction because we are the originator of the first funds transfer on the accounts payable side of the ledger. We are entitled to the funds.

A promissory note is an asset to us. When we give it to a beneficiary and he deposits it, it becomes a cash item to the bank. They issue a cash receipt to the depositor. The bank gets a cash receipt that is the equivalent of money. It is what passes for money in the society. They will tell us that our note is not cash. But after it is deposited it looks as if we deposited money in an account.

This is a cash proceed under Title 12 of the USC. We are the creditor and we are not bringing this up as a defense. This is why there cannot be a holder in due course.

UCC 3-302 defines a holder in due course. It says in the first paragraph that this section a holder in due course is subject to 3-106(d). That says that where an instrument is involved, there cannot be a holder in due course. The reason they can't is because they are taking it subject to the defenses and claims that the drawer and maker as the originator of the first funds transfer can bring against the payee, which is the bank. The reason there can't be a holder in due course is because we are the creditor and we can trump any claim that a holder might have on that instrument.

The claim that the originator and maker can make is setoff because they sold an unregistered note. They cannot be a holder in due course because they are taking it subject to administrative

and commercial claims, every time there is a clause in the instrument. They create a mortgage purchase loan (16 CFR 433.1). This whole process is not about mortgages at all, because they sold the note and received the funds and closed the account by assuming they have repaid the originator on the loan. If they already repaid the originator on the loan, the living man who signed the note, then the whole thing is closed. We got our money back.

We did not receive the money or ask for the note back. So the bank transaction on the payables side shows that we brought the money in, they credited it our account so they paid it back, we don' have a claim against the bank. It stayed in the account, because we didn't claim it. So they assume it has been abandoned. A trustee of abandoned assets would normally invest these assets to make money on them. They are expecting rent for this property from us. We are not paying monthly payments of principal and interest, is because the loan has been paid off.

We are paying rent for the asset we failed to collect. The SPV is taking all the payments as profit. It is under contract and has nothing to do with notes and contracts it ends when the original contract is finished.

If you stop making payments, no one has been damaged. The only reason the banks continue to collect for 30 years is because you are a fool. We are responsible for agreeing to this contract. We don't have a claim for fraud.

We did the first funds transfer that they transferred to the receivables as an asset to the bank. When they didn't give the note back, the bank sold it or deposited it as a cash item. UCC 1-204 says we are considered as merchants at law, who know what we are doing. We act as though we are experts at negotiable instruments. That is how they get around the defense of fraud in the inducement.

To prove fraud in the inducement, one has to prove he didn't know what they were doing, and didn't have sufficient time to find out. But in order to prove that, you have to learn how to do it right first.

They call their process de-recognition. But most of the time that is not true. If they pass the reward and the risk, a complete sale of the asset, it is de-recognition. De-recognition is defined in accounting as not recognizing it on their books any more, or removed it of the balance sheet. This means they extinguished the loan from the books. We are asking for the balance sheet in discovery. The balance sheet will show that the loan has been extinguished. They are trying to collect on a note that they have no right title or interest in.

Pimpco on Bonds, using the real estate is not the mortgage loan. It is used to securitize the commodities and securities exchange. They are not using mortgages to attach property, because it only appears that they got an interest to attach the property. We have the priority. Their real intent is to create derivatives to create a security and bond market to finance all commercial and corporate activity. Tying up the land is a profitable by product, because nobody understands that they don't have a claim for it. They are called beneficial interest holders (BIHS). Those are the organizations with an account with the DTC to buy the mortgage-backed bonds, which are the pooled assets from the HELOC or trust.

it from a warehouse lender. Then they pay off the warehouse lender with the note that they sell to them. Then they make derivatives out of this note by a bookkeeping entry.

Production

The balance sheet, a 2046, 2049, and 2099, have OMB numbers on them that are subject to disclosure under the privacy act, Title 5 USC 552(b)(4). They have to give it to you if you ask for it. At closing and settlement, the reason they actually call it closing is because they pay off the loan in its entirety. The debt is actually extinguished.

Patriots say they didn't lend any money. But that doesn't rebut the receivable. There is no money. But we loaned them the note. So we started the process, so we have to help resolved the problem.

Production

They do the accounting appropriately, but there is two sets of books. **But if you don't ask to see the books, it is your problem.** This is also what they are doing in the courtroom. The clerk has the receivable side for the corporation and the judge has the payables. **The judge is holding accounts payable under HJR 192 for all the people that come before him if he has the SSN.** The judge is not required to be a witness or bring pleadings to the court. He is a referee. The receivables are the charges against the strawman. The party aware of the payables is not the same party handling the receivables. People don't bring in an offsetting claim under the rules of procedure.

Have Requested Form. Ref. Harve

The judge does not have to do the setoff unless you raise the issue or defense. We have the right to waive it. So the judge is the priest receiving the sacrifice for the corporation.

Securitization 2

Levy on Paycheck
Employer filed Form 1096 to pay Corp income tax with employee's salary and using accounts payable Direct Treasury Account.

Use Form 1099-OID, corrected box checked, Form 1096 and 1040, for refund.

Keating's letter to bill collector law firm

Dear Mr. Doe,

I am writing regarding your recent letter in regard to your client XYZ CORP, being the alleged creditor in the amount of $1100. Your alleged client has waived their status as a creditor when they accepted my tender of payment under UCC §§3-409(a)&(b) and UCC §3-604(a). They did not adjust their accounting ledger to reflect settlement and closure of the accounts receivable side of the accounting ledger.

By way of review, I sent the woman in the credit department of the creditor, a negotiable instrument on April 24th in the form of a commercial note draft, as an order to pay under UCC 3-

UCC-1

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
CAROLYN S. DEANER (706) 399-5496

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

CAROLYN S. DEANER
P. O. BOX 485
AUGUSTA, GA 30903-0485

SC Secretary of State
File ID: 130628-1304331
Lapse Date: 06/28/2018

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: QUICKEN LOANS, INC.

OR

1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

1c. MAILING ADDRESS: P. O. BOX 553154 | CITY: DETROIT | STATE: MI | POSTAL CODE: 48255-3154 | COUNTRY: USA

1d. TAX ID# (Organizations): DO NOT PROVIDE | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION: INC. | 1f. JURISDICTION OF ORGANIZATION: MICHIGAN | 1g. ORGANIZATIONAL ID #, if any

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names ☐ NONE

2a. ORGANIZATION'S NAME: BANK OF AMERICA, N. A.

OR

2b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

2c. MAILING ADDRESS: P. O. BOX 5170 | CITY: SEMI VALLEY | STATE: CA | POSTAL CODE: 93062-5170 | COUNTRY: USA

2d. TAX ID# (Organizations): DO NOT PROVIDE | ADD'L INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION: INC. | 2f. JURISDICTION OF ORGANIZATION: CALIFORNIA | 2g. ORGANIZATIONAL ID #, if any

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b) ☐ NONE

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME: DEANER | FIRST NAME: CAROLYN | MIDDLE NAME: SUE | SUFFIX

3c. MAILING ADDRESS: P. O. BOX 485 | CITY: AUGUSTA | STATE: GA | POSTAL CODE: 30903-0485 | COUNTRY: USA

4. This FINANCING STATEMENT covers the following collateral:

NOTE
3212186468
JUNE 26, 2007
$97,600

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☒ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)

7. REQUEST SEARCH REPORT(S) ON UCC-11 FORM: NOT USED

8. OPTIONAL FILER REFERENCE DATA

[redacted]

UCC FINANCING STATEMENT ADDENDUM (UCC-1Ad)

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME: QUICKEN LOANS, INC.

OR

9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

SC Secretary of State
File ID: 130628-1304331
Lapse Date: 06/28/2018

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME: BAC HOME LOANS SERVICING, LP

OR

11b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

11c. MAILING ADDRESS: P. O. BOX 5170 | CITY: SIMI VALLEY | STATE: CA | POSTAL CODE: 93062-517 | COUNTRY: USA

11d. TAX ID #: SSN OR EIN: DO NOT PROVIDE | ADD'L INFO RE ORGANIZATION DEBTOR | 11e. TYPE OF ORGANIZATION: LP | 11f. JURISDICTION OF ORGANIZATION: CALIFORNIA | 11g. ORGANIZATIONAL ID #, if any

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b) ☐ NONE

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

12c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years

☐ Filed in connection with a Public-Finance Transaction — effective 30 years

UCC FINANCING STATEMENT ADDENDUM (UCC-1Ad)

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME: QUICKEN LOANS, INC.

OR

9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

SC Secretary of State
File ID: 130628-1304331
Lapse Date: 06/28/2018

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME: FEDERAL NATIONAL MORTGAGE ASSOCIATION & TRUST

OR

11b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

11c. MAILING ADDRESS: 3900 WISCONSIN AVENUE | CITY: WASHINGTON | STATE: DC | POSTAL CODE: 20016-2892 | COUNTRY: USA

11d. TAX ID #: SSN OR EIN: DO NOT PROVIDE | ADD'L INFO RE ORGANIZATION DEBTOR | 11e. TYPE OF ORGANIZATION: INC. | 11f. JURISDICTION OF ORGANIZATION: DISTRICT OF COLUMBIA | 11g. ORGANIZATIONAL ID #, if any

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b) ☐ NONE

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

12c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

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Debtor is a ☒ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years

☐ Filed in connection with a Public-Finance Transaction — effective 30 years

MERS MIN: 100039032121864686

3212186468
Deaner, Carolyn

NOTE

June 26, 2007
[Date]

North Augusta
[City]

SC
[State]

704 Kershaw Dr
North Augusta, SC 29841
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 97,600.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Quicken Loans Inc.

SC Secretary of State
File ID: 130628-1304331
Lapse Date: 06/28/2018

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 7.000%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(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 1st day of each month beginning on September 1, 2007. 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 August 1, 2037, 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 P.O. Box 553154, Detroit, MI 48255-3154 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 649.34

4. 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 date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

SC Secretary of State
File ID: 130628-1304331
Lapse Date: 06/28/2016

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % 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.

7. 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.

8. 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.

9. 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.

10. 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. 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.

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.

Recorded Copy of Record
Loan # 0000000000
Lapse Date: 06/28/2018
Acknowledgment Copy

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

Carolyn S. Deaner 06/26/2007 (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

[Sign Original Only]

q0321186468 0140 173 0303

UCC-3

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
Carolyn Sue Deaner 7063995496

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)
Carolyn Sue Deaner
PO BOX 485
AUGUSTA, GA 30903 0485

SC SECRETARY OF STATE
150410-0311349 NS
Date: 4/10/2015
Time: 3:11 AM
Page Count: 3 Pg
Debtor Count:
Filing Fees: $10.00
Electronic Records Access: $8.00
Total: $18.00
Order ID# 33572316

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER
130628-1304331

1b. [X] This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. [ ] TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. [ ] ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. [ ] CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. [ ] PARTY INFORMATION CHANGE:
Check one of these two boxes: AND Check one of these three boxes to:
This Change affects [ ] Debtor or [X] Secured Party of record
[ ] CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c
[ ] ADD name: Complete item 7a or 7b, and item 7c
[ ] DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)
6a. ORGANIZATION'S NAME
OR
6b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)
7a. ORGANIZATION'S NAME
OR
7b. INDIVIDUAL'S SURNAME
INDIVIDUAL'S FIRST PERSONAL NAME
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX
7c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

8. [X] COLLATERAL CHANGE: Also check one of these four boxes: [X] ADD collateral [ ] DELETE collateral [ ] RESTATE covered collateral [ ] ASSIGN collateral
Indicate collateral:
The following described real property,to wit. ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, SITUATE, LYING AND BEING IN BELVEDERE, AIKEN COUNTY, SOUTH CAROLINA, DESIGNATED AS LOT 10, BLOCK B, ON A PLAT OF SURVEY OF PINECREST SUBDIVISION, SECTION 1, MADE BY CRANSTON & ASSOCIATES, DATED OCTOBER 3, 1966, REVISED UNDER DATE OF MARCH 29, 1968, AND RECORDED IN PLAT BOOK 3, AT PAGE 151, RECORDS OF AIKEN COUNTY, AND ACCORDING TO SAID PLAT, BEING BOUNDED, NOW OR FORMERLY, AND MEASURING MORE OR LESS, AS FOLLOWS:
NORTH BY KERSHAW DRIVE ON TWO LINES , MEASURING RESPECTIVELY 43.0 FEET AND 78.0 FEET, EAST BY LOT 9, SAID BLOCK, 153.0 FEET, SOUTH BY LANDS OF TROTTER REALTY COMPANY, 71.22 FEET, AND WEST BY LOT 11 SAID BLOCK 149.03 FEET. REFERENCE IS HEREBY MADE TO SAID PLAT FOR A MORE COMPLETE AND ACCURATE DESCRIPTION OF THE SUBJECT PROPERTY. PARCEL/TAX I.D.#:10-078-0-08-004. COMMONLY KNOWN AS: 704 KERSHAW DRIVE, BELVEDERE, SC 29841.

See additional.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here [ ] and provide name of authorizing Debtor
9a. ORGANIZATION'S NAME
OR
9b. INDIVIDUAL'S SURNAME: DEANER | FIRST PERSONAL NAME: CAROLYN | ADDITIONAL NAME(S)/INITIAL(S): SUE | SUFFIX

10. OPTIONAL FILER REFERENCE DATA:
Carolyn S. Deaner

UCC-3

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form
130628-1304331

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME
DEANER

FIRST PERSONAL NAME
CAROLYN

ADDITIONAL NAME(S)/INITIAL(S)
SUE

SUFFIX

SC SECRETARY OF STATE
150410-031349 NS
Date: 4/10/2015
Time: 3:11 AM
Page Count:
Debtor Count:
Filing Fees: $10.00
Electronic Records Access: $8.00
Total: $18.00
Order ID# 33572316

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):
INTERNATIONAL PROMISSORY NOTE, IPN-PRIVATE SET OFF ACCOUNT NUMBER:250-72-0646, CUSIP #: 250720646

15. This FINANCING STATEMENT AMENDMENT:
☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17
(if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:

UCC-3

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form
130628-1304331

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME
DEANER

FIRST PERSONAL NAME
CAROLYN

ADDITIONAL NAME(S)/INITIAL(S)
SUE

SUFFIX

SC SECRETARY OF STATE
150410-0311349 NS
Date: 4/10/2015
Time: 3:11 AM
Page Count:
Debtor Count:
Filing Fees: $10.00
Electronic
Records Access: $6.00
Total: $16.00
Order ID# 33572316

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):

15. This FINANCING STATEMENT AMENDMENT:
☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17
(if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:

MAY 28, 2013

TO: QUICKEN LOANS, INC.
ATTN: ACCOUNTING
1050 WOODWARD AVENUE
DETROIT, MI 48226

RE: LOAN NUMBER:
3212186468

I have been referred to you by Mr. Scott King of Quicken Loans to answer the following questions and obtain vital information concerning the loan with Quicken dated 6/26/2007 as referenced above.

Please supply the following:

1. The specific date my loan was sold to Countrywide.
2. The cash amount the Note was purchased for by Countrywide.
3. The Demand Deposit account name and number the Note was deposited in by Quicken Loans, Inc. and the date of deposit.
4. Copy of the Cash Deposit Slip
5. Copy of the Bank Ledger/Balance Sheet showing the deposit credited and debited and asset and liability which is for public information and have OMB numbers. Also, FAS140 and FR246 as all these requests are subject to disclosure under TITLE 5 USC 552 (B) (4).

Auditors require specific information, and I look forward to your assistance in this matter. Also, please respond with a name and number of a direct contact person.

Cordially,

Carolyn S. Deaner
P.O. Box 485
Augusta, GA 30903-0485
(706) 399-5496

Quicken Loans
Engineered to Amaze

1050 Woodward Avenue | Detroit, MI 48226 | www.quickenloans.com

June 26, 2013

Carolyn Deaner
P.O. Box 485
Augusta, GA 30903-0485

Loan Number: 3212186468
Property Address: 704 Kershaw Dr, North Augusta, SC 29841

Dear Ms. Deaner:

We are in receipt of your correspondence dated May 28, 2013. I've enclosed a copy the Notice of Assignment, Sale or Transfer of Servicing Rights we sent you dated July 30, 2007. The letter states, *"The servicing or your mortgage loan, that is the right to collect payments from you, is being transferred from Quicken Loans Inc. to Countrywide Home Loans, Inc. beginning 08/19/2007"*.

Your requested items #2-5 are confidential, and we will not release such information to you. As we transferred servicing of your loan over one year ago, we are not obligated to respond to any of your requests. You should direct your concerns to your current servicer.

Respectfully,

Jeff Szerdi
Client Relations / Executive Office

EQUAL HOUSING LENDER

Quicken Loans
Engineered to Amaze

1050 Woodward Avenue | Detroit, MI 48226 | www.quickenloans.com

May 14, 2013

Carolyn Deaner
704 Kershaw Dr.
North Augusta, SC 29841
Loan# 3212186468

Dear Ms. Deaner,

On June 26, 2007 you closed a thirty year refinanced with Quicken Loans. One of the documents you signed at closing was the Note. This document was provided to you on legal sized white paper. On July 30, 2007 you were provided a Notice of Assignment, Sale or Transfer of Servicing Rights stating that your mortgage loan will be transferred from Quicken Loans to Countrywide Home Loans, Inc. Per your Note, it does state that you understand that the lender may transfer this Note.

If you have any additional questions or concerns, please feel free to contact me at 800-863-4332 ext. 36451.

Sincerely,

Kelly Burek
Resolution Advocate

Carolyn Deaner

From: "Carolyn Deaner" <cdeaner@bellsouth.net>
To: <KellyBurek@quickenloans.com>
Sent: Tuesday, May 14, 2013 11:01 PM
Attach: [Untitled].pdf
Subject: Fw: Loan# 3212186468 Deaner, Carolyn

Kelly:

Thank you for your Letter and clarification of the ORIGINAL NOTE being on legal sized paper.

However, please forward the Letter Document concerning the NOTE being transferred to Countrywide as I did not receive that document and return to me the ORIGINAL NOTE along with the cash deposit slip and verification of the DEMAND DEPOSIT ACCOUNT with the account number set up in my name following the closing on June 26, 2007. This is for my auditor.

Thank you, and I very much appreciate your time in this matter.

Carolyn

---- Original Message ----
From: Burek, Kelly
To: Carolyn Deaner
Sent: Tuesday, May 14, 2013 4:53 PM
Subject: RE: Loan# 3212186468 Deaner, Carolyn

Good Morning Ms. Deaner,

Attached is one of the items you need which is a letter stating your Note was on legal paper.

Let me know if this is what you need.

May you have a wonderful day,

Kelly Burek
Quicken Loans Resolution Advocate
1-800-863-4332 ext. 36451
Fax: 855-961-6293
Email: KellyBurek@quickenloans.com
Every client. Every time. No exceptions. No excuses.

From: Carolyn Deaner [mailto:cdeaner@bellsouth.net]
Sent: Tuesday, May 14, 2013 2:54 PM
To: Burek, Kelly

Carolyn Deaner

From: "Davis, John" <JohnDavis@quickenloans.com>
To: "Carolyn Deaner" <cdeaner@bellsouth.net>
Sent: Monday, May 06, 2013 5:21 PM
Subject: RE: note

Correct.:)

-JD

John Davis

Client Advocate, Client Relations
Quicken Loans
Ph: 800-863-4332 Ext. 33425
Fax: (855) 879-0530
johndavis@quickenloans.com

Every client. Every time. No exceptions. No excuses.

From: Carolyn Deaner [mailto:cdeaner@bellsouth.net]
Sent: Monday, May 06, 2013 6:21 PM
To: Davis, John
Subject: Fw: note

JOHN:

YES, this must mean the original NOTE was on legal size paper when I signed it correct?

Carolyn

----- Original Message -----
From: Davis, John
To: Carolyn Deaner
Sent: Monday, May 06, 2013 6:02 PM
Subject: RE: note

The size that it was scanned in is how it was received. So if it is longer on the document I sent you then it was a longer document.

Let me know if that helps.

-JD

MERS MIN: 100039032121864686

[redacted]
Deaner, Carolyn

NOTE

June 26, 2007 [Date] | North Augusta [City] | SC [State]

704 Kershaw Dr
North Augusta, SC 29841
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $97,600.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Quicken Loans Inc.

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 7.000%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(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 1st day of each month beginning on September 1, 2007. 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 August 1, 2037, 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 P.O. Box 553154, Detroit, MI 48255-3154 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $649.34

4. 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 date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

PLAINTIFF'S EXHIBIT
1 BANK OF AMERIC
2/4/15 aa
PENGAD 800-631-6989

610 172231076 N 001 001

Not an legal size paper

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % 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.

7. 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.

~~8. 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.

9. 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.

10. 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. 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.

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.

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

Carolyn S. Deaner 06/26/2007 (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

WITHOUT RECOURSE
Pay To the Order of
Countrywide Bank, FSB
QUICKEN LOANS, INC.
By _____
SCOTT JOHNSON
CAPTURE MANAGER

_____ (Seal) -Borrower

NO DATE

_____ (Seal) -Borrower

_____ (Seal) -Borrower

PAY TO THE ORDER OF
Countrywide Home Loans, Inc
WITHOUT RECOURSE
COUNTRYWIDE BANK, FSB
BY _____
LAURIE MEDER
SENIOR VICE PRESIDENT

_____ (Seal) -Borrower

NO DATE

[Sign Original Only]

PAY TO THE ORDER OF

WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC

No DATE

BY: Michele Sjolander

MICHELE SJOLANDER
EXECUTIVE VICE PRESIDENT

Copy of original NOTE

MERS MIN: 100039032121864686

3212186468
Deaner, Carolyn

NOTE

June 26, 2007
[Date]

North Augusta
[City]

SC
[State]

704 Kershaw Dr
North Augusta, SC 29841
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 97,600.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Quicken Loans Inc.

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 7.000%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(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 1st day of each month beginning on September 1, 2007. 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 August 1, 2037, 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 P.O. Box 553154, Detroit, MI 48255-3154 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 649.34

4. 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 date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % 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.

7. 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.

8. 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.

9. 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.

q03212186468 0140 173 0203

Initials: 12/26/07

10. 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. 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.

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.

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

Carolyn S. Deaner 06/26/2007 (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

[Sign Original Only]

Q0321218646B 0140 173 0303

VMP -5N (0006).01

Form 3200 1/01

DESIGNATION: 38

38. Defendant's TRANSCRIPT for Motion To Vacate Judgment Order And Reverse Or Cancel Sale...hearing, 5/19/15, and received on or about 6/8/15. ...filed 10/30/2015

(contains pages 1-11, condensed sized version)

(original contained pages 1- 41 and is on file)

STATE OF SOUTH CAROLINA)COURT OF COMMON PLEAS
)
COUNTY OF AIKEN)C/A No. 12-CP-02-00699

Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

Plaintiff,

v.

Carolyn S. Deaner,

Defendant.

ORIGINAL

FILED 10.30 2015
Liz Godard
C.C.C.P. & G.S.
Anita Knowles 410
Deputy Clerk

HEARING

****

Tuesday, May 19, 2015
11:09 a.m. - 12:12 p.m.

The hearing before J. Martin Harvey, Esquire, Special Referee for Aiken County, was taken at HARVEY AND KULMALA, 110 Main Street, Barnwell, South Carolina on the 19th day of May, 2015 before Carla S. Dominick, Court Reporter and Notary Public in and for the State of South Carolina.

STATE OF SOUTH CAROLINA)COURT OF COMMON PLEAS
)
COUNTY OF AIKEN)C/A No. 12-CP-02-00699

Bank of America, N.A.,)
successor by merger to BAC)
Home Loan Servicing, LP)
f/k/a Countrywide Home Loans)
Servicing, LP,)
)
Plaintiff,)
)
v.)
)
Carolyn S. Deaner,)
)
Defendant.)
)

ORIGINAL

COPY
ORIGINAL FILED
OCT 30 2015 4:10 am
AIKEN COUNTY
CLERK OF COURT

HEARING

****

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Transcript of the Testimony of
BANK OF AMERICA V. CAROLYN DEANER

Date: May 19, 2015

CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index

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APPEARANCES

Charles S. Gwynne, Jr., Esquire
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Attorney for the Plaintiff
CHARLIE.GWYNNE@RTT-LAW.COM

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EXHIBITS

(There were no exhibits marked in this hearing)

THE COURT: All right, this is a -- we're here for a motion that Ms. Deaner has filed pro se pursuant to rule 60 of the South Carolina Civil -- Rules of Civil Procedure asking for a motion to vacate and/or reverse or cancel the sale. Ms. Deaner has provided me with a considerable amount of information that I -- in support of her motion that I have reviewed. I -- I believe the record will reflect that Mr. Gwynne has been served with copies, ---
MR. GWYNNE: Yes, sir.
THE COURT: --- is that correct?
MR. GWYNNE: Yes, sir.
THE COURT: Okay. Ms. Deaner, I'll be glad to hear from you.
MS. DEANER: Well, let me just start off with -- with this -- I -- I want to -- I don't know if I'm supposed to like enter any -- anything into evidence today, but I -- I would like to put in the chain of title and the -- the report.
THE COURT: All right. I'll -- Mr. -- Mr. Gwynne?
MR. GWYNNE: Is that already filed, Ms. Deaner?
MS. DEANER: I -- and that's what I was going to ask if -- if it's already filed in the courthouse, do I need to ---

THE COURT: If you filed it with the clerk, there's no need to put it into -- into evidence.
MS. DEANER: Okay. So that -- that's -- that's already in.
THE COURT: Okay.
MS. DEANER: The -- the first -- there's several things I would just like to address today and the first one is, back when this first order of judgment happened, I sent up a -- an international promissary note as legal tender to pay off this debt under extreme emotional distress and duress, I would say that, and then I received a letter from Bank of America, one of their attorney firms that they were refusing to accept it. Now, according to the UCC, if you tender and they refuse, the debt is discharged. Then, I went back and in, you know, just good faith, if y'all are going to discharge it because after all of my intense research about promissary notes, their legal tender, their cash, you deposit them and the federal reserve covers it. I asked for it back and they have not returned it.
THE COURT: Okay.
MR. DEANER: Okay. So it's my understanding if they

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1 don't return it, then the debt is discharged.
2 The next thing is, the original promissary note
3 deposited when I first took this loan out, I
4 did not know that promissary notes were cash
5 items and that was not told to me when I took
6 this loan out basically whenever a loan, it was
7 an exchange or a swap, one currency for
8 another, so I'm -- I'm just saying two things,
9 there's no debt. There -- there's no debt for
10 me to pay off. Now the original note -- when
11 we first started this, the first complaint that
12 Bank of America put in was that they just held
13 the note. They gave no evidence at that time
14 that they even had the note. It wasn't with
15 the complaint. The second amended complaint,
16 they said that they had a -- a version of the
17 original note. That's in the complaint. So I
18 don't know how we went from the held to the
19 version to in the last order they had the
20 original. Well, there's no way they could have
21 the original because the original would've had
22 to have been endorsed by Fannie Mae and the
23 trust, which is not on the note. How could
24 they be holding an original note? In addition,
25 there was never any authorization by me as a

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1 borrower to the lender in the mortgage or the
2 note to securitize my note. That's changing
3 your note to a stock certificate. That's
4 against the conversion laws in my understanding
5 in South Carolina. There was no meeting of the
6 minds there. I didn't know they were going to
7 take my note and turn it into a REMIC and do
8 all this high finance stuff and go out on Wall
9 Street and make all this money. No -- no one
10 ever told me that. Let me go through each one
11 of these notes that I've put in here. The --
12 it's my understanding that the imperfect
13 securitization of the note that is all pert of
14 this. Bank of America has no entitlement to my
15 property in this case and they've unlawfully
16 sold, assigned, and transferred their ownership
17 and security interest in the promissary note
18 and mortgage related to the property and they
19 don't have lawful security interest in my real
20 property. Now, I'm claiming causes of action
21 against the Plaintiff for fraud, intentional
22 inflection of emotional distress in this case
23 and I furthermore in this whole chain of title,
24 there is absolutely really no chain. I went
25 down just to verify everything with the county.

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1 There -- there -- there's no recording to the
2 Fannie Mae Trust. There -- there's nothing.
3 Anyway, Bank of America cannot establish
4 possession and proper transfer or endorsement
5 of the promissary note and proper assignment of
6 the mortgage, therefore, none of the Plaintiffs
7 have perfect -- perfected any claim of title or
8 security interest in the property. The
9 Plaintiff does not have the ability to
10 establish that the mortgage that secures the
11 indebtedness or note were legally or properly
12 transfer -- acquired. As the Defendant, I'm
13 seeking redress from the Plaintiff for damages,
14 removal of the bond, and relief for an invalid
15 and unperfected security interest in the
16 Defendant's home property. I'm asking that
17 this Court void the judgment, cancel and
18 reverse the sale for violating the express
19 terms of the pooling and servicing agreement,
20 which is the PSA governing the securitization
21 of the Defendant's mortgage and an incomplete
22 and ineffectual perfection of a security
23 interest in the Defendant's home. My loan was
24 securitized with the note not being properly
25 transferred to the Fannie Mae Trust and the

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1 Plaintiff, Bank of America. The Defendant's
2 PSA guidelines requires that her note mortgage
3 had to be endorsed and assigned respectively to
4 the Trust and executed by multiple intervening
5 parties in the chain of assignment before it
6 reached the REMIC trustee. None of that was
7 done, therefore, neither the note or the
8 mortgage was assigned to the securitized trust
9 by the closing date because it's not on the
10 note. There's no dates on the note anywhere.
11 Therefore, under the PSA, any assignment of the
12 mortgage beyond the specified closing date for
13 the trust are void and even if that had
14 happened, you know, properly, the transaction
15 is still void as the note would've had to have
16 been transferred according to the requirements
17 of the PSA guidelines. My whole loan is under
18 the PSA guidelines. It's no longer -- it's no
19 longer a note, per se, it's a securitized stock
20 certificate. The PSA guideline requires a
21 complete and unbroken chain of transfers,
22 assignments to and from each intervening party,
23 which, you know, is not done. Now I'm claiming
24 that the Plaintiff is not beholder and owner
25 nor the mortgagee, nor the beneficiary because

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1 the note and the mortgage identify the
2 mortgagee and the note holder as the original
3 lending institution or mortgage originator,
4 which was Quicken Loans. No documents or
5 evidence have been presented by the Plaintiff
6 to prove proper assignments prior to the trust
7 closing date and any assignments after the
8 trust closing dates are void as a matter of law
9 pursuant to trust laws, federal laws, and
10 relevant portions of the PSA any security
11 interest in the property was never perfected.
12 Of course that's all in the -- the MCI chain of
13 title and it's more in depth than what I'm just
14 spurting over the top here and putting it a
15 little more in layman terms and then I'll get
16 over there to the -- to the actual report. Now
17 the alleged holder of the note is not the
18 beneficiary of the mortgage. The alleged
19 beneficiary of the Defendant's mortgage does
20 not have the requisite title perfected security
21 interest or standing to proceed in a
22 foreclosure and/or is not the real party in
23 interest with regard to any action taken or to
24 be taken against the Defendant's property.
25 There is no proof of a perfected security

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1 interest in Defendant's home by the Plaintiff
2 as there's no proof the note was assigned to
3 the Fannie Mae Trust by the closing date
4 because there are no any dates on the
5 endorsements or any assignment to Fannie Mae or
6 the Fannie Mae Trust. In addition, I'll just
7 add this, there's no agency relationship
8 between the Plaintiff and Fannie Mae to
9 foreclose at all because it's in a trust with
10 hundreds of people, therefore, the Plaintiff
11 and each intervening party, each of them, did
12 not hold and possess the note on or before the
13 closing date of the trust as specified more in
14 depth in the chain of title report, then
15 they're all estopped and precluded from
16 asserting any secured or unsecured claim in
17 this case. Since no true sales were made, then
18 the Plaintiff is estopped, the trustee is
19 estopped, and the mortgage originator and
20 depositor, they're all estopped from claiming
21 any interest in the note that is alleged
22 secured by the mortgage on my home. Therefore,
23 due to the Plaintiffs, successors, possessor's
24 violations of the pertinent terms of the PSA
25 guidelines, then none of the parties to neither

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1 the securitization transaction nor any
2 Plaintiff holds a perfected secured claim in
3 the property and the Plaintiff is estopped and
4 precluded from asserting an unsecured claim
5 against the Defendant's home due to the
6 Defendant's bankruptcy back in, what, 2011.
7 Therefore, the Plaintiff has no standing. MERS
8 cannot be a real party of interest in a
9 securitized mortgage. So there's fraud in the
10 concealment. Okay. And I -- I was never told
11 any of this. I was never told my loan was
12 going to be securitized, you know, turned into
13 this high finance vehicle. They make millions
14 of dollars on it. None of that was told to me
15 nor was it told to me that when they took my
16 promissary note, it was a cash item, so there
17 was not a loan, it was a swap, an exchange.
18 Now the Plaintiff concealed the fact that the
19 loan was securitized as well as the terms of
20 the securitization agreement including
21 financial incentives paid, and existence of
22 acquisition provisions. By concealing the
23 securitization, the Plaintiff concealed the
24 fact that the borrower's loan changed in
25 character in as much as no single party would

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1 hold the note, but rather the notes would be
2 included in a pool with other notes splint into
3 tranches and multiple investors would effect --
4 effectively buy shares of the income stream of
5 the loans. That's nice. I'd like to know how
6 much money they made from all this. Now the
7 Plaintiff was aware of the misrepresentations
8 and violations and profited from them on a note
9 that I made and originated and I'm the maker of
10 the note and the originator of the note. Now
11 the Defendant, which is me, has been damaged
12 including but not limited to the cost of the
13 loan, damage to financial security, emotional
14 distress, and Defendant has incurred costs and
15 attorney fees. It is my deep opinion that the
16 Plaintiffs are guilty of malice, fraud, and
17 oppression. The Plaintiff's actions have been
18 malicious and done willfully and conscious
19 disregard the rights and safety of the
20 Defendant and that the actions were calculated
21 to injure the Defendant, take my home. As
22 such, the Defendant is entitled to recover in
23 addition to actual damages, punitive damages,
24 to deter the Defendants from engaging in future
25 conduct, frauding the inducement. The

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1 Plaintiff has intentionally misrepresented to
2 the Defendant in this Court that the Plaintiff
3 successors and predecessors were entitled to
4 exercise the power of sale provision contained
5 in the mortgage. In fact, the Plaintiff was
6 not entitled to do so and has no legal
7 equitable or beneficial interest whatsoever in
8 the property. The Plaintiff misrepresented
9 that they are holder and owner of the note and
10 beneficiary of the mortgage, however, this is
11 not true and a misrepresentation of material
12 fact. The Plaintiff is attempting to collect
13 on a debt to which they have no legal,
14 equitable interest in. Plaintiff is
15 fraudulently foreclosing on the property. They
16 have no monetary interest in. This type of
17 conduct is really outrageous. The
18 misrepresentations were made to induce the
19 Defendant into a loan to sell her note into
20 pools and profit from it on Wall Street and the
21 Plaintiff was aware of the misrepresentation
22 and profited from it right from the very
23 beginning when Quicken Loans did the loan and
24 I don't think another thing that Quicken Loans
25 was even incorporated in South Carolina back

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1 when they did this loan. As a result, the
2 Defendant has been damaged by the concealment
3 of this high finance scheme and has caused
4 Defendant intense emotional distress, damage to
5 Defendant's financial security and damage to
6 her business from all the time and countless
7 hours of research done to save her home and
8 attorney fees. Now I'd like to just bring to
9 the attention of this Court because this has
10 been going on for three years, a -- concerning
11 the emotional distress. The actions of the
12 Plaintiff as set forth have resulted in the
13 Defendant being threatened with the loss of her
14 home and property for three years solid. This
15 outcome has been created by the Plaintiff
16 without any right or privilege on the part of
17 the Plaintiff to do so. The Plaintiff's
18 successors and predecessors intentionally,
19 knowingly, and recklessly misrepresented to the
20 Defendant that the Plaintiffs were entitled to
21 exercise the power of sale provision in the
22 mortgage. In fact, the Plaintiff was not
23 entitled to do so and they have no legal,
24 equitable, or actual beneficiary interest
25 whatsoever in my property. This conduct is

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1 unbelievable to me and extreme. I believe that
2 such conduct was undertaken with the specific
3 intent of inflicting emotional distress on me,
4 such that the Defendant, me, would be so
5 emotionally distressed and dehabilitated that I
6 wouldn't be able to exercise legal rights to
7 the property nor does the normal layperson know
8 anything about what's really going on, the
9 right to the title of the property, the right
10 to cure the alleged default. Due to the
11 Plaintiff's actions and conduct, the Defendant
12 has suffered severe emotional distress
13 including, but not limited to, lack of sleep,
14 anxiety, depression, suffered and experience
15 many sleepless nights, severe depression, lack
16 of appetite, loss of productivity in my
17 business. The Defendant was hardest hit with
18 the economic crisis virtually destroyed by the
19 big bank's collapse and bailout, which caused
20 the Defendant's personal bankruptcy and now
21 through fraud and gross misrepresentation, the
22 Bank of America continues to torment the
23 Defendant with this fraudulent foreclosure even
24 after tender of payment has been made and the
25 debt discharged. The Plaintiff continues to

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1 cause the Defendant to live under the emotional
2 nightmare of losing her home and property. I
3 won't say what the rest of this says, but it's
4 pretty contemptible. The slander of the
5 property and the title, my title down at the
6 recording office has been slandered, which is
7 abuse of process, I believe. The Plaintiff
8 knew due to all the laws and the suits brought
9 against them by the government and the states
10 which has been going on since 2008 throughout
11 the United States if anybody is doing their
12 homework or should have known that such
13 documents were improper in that at the time of
14 execution and delivery of said documents, the
15 Plaintiff had no right or title or interest in
16 the property when they went down and filed
17 these assignments and whatever. These
18 documents were intended to cast doubt upon the
19 Defendant's legal title to the property and as
20 a result these actions by the Plaintiff,
21 there's a cloud on the Defendant's title and
22 the Defendant has suffered and continued to
23 suffer at the unclean hands of the Plaintiff.
24 At the time that these false and disparaging
25 documents were created and published by the

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1 Plaintiff, the Plaintiff knew the documents
2 were false and created and published them with
3 malicious intent to injure the Defendant and
4 deprive the Defendant of her exclusive right,
5 title, and interest to her property and to
6 obtain the property for their own use by
7 unlawful means. This unconscionable conduct is
8 punitive in nature and the Defendant is
9 entitled to damages according -- accordingly
10 and equitable relief and recoupment not limited
11 to Defendant's original note and the IPN note.
12 That's the first part. Of course, I -- I'm
13 requesting a determination today on vacating
14 the judgment and the sale, reversing and
15 canceling, waiving the bond due to all this.
16 I believe there's been violations in RESPA in
17 all this because this loan was a federally
18 regulated loan. The interest income -- and
19 income the Plaintiff has gained in fees is
20 disproportionate to the situation the Defendant
21 finds herself in due directly to the
22 Plaintiff's failure to disclose that they would
23 gain a financial benefit with the high finance,
24 securitized loan sold on Wall Street as an
25 investment while Defendant suffers financially

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1 as a result of the loan product sold to the
2 Defendant and the Plaintiff concealed this
3 information from the Defendant at the closing
4 and throughout this loan. I'm going to request
5 that all the documents -- well, I guess they're
6 already entered that I filed.
7 THE COURT: Yes, ma'am.
8 MS. DEANER: Okay. Over in a case in Florida, the
9 Eighteenth Judicial Circuit, the Court found
10 that -- that the -- Quicken Loans was my
11 original lender, okay, who they were
12 specifically named in the mortgage, they didn't
13 file this action, they did not appear at the
14 trial and they did not assign any of the
15 interest in the mortgage. In addition, they
16 weren't -- in this particular one, they weren't
17 even incorporated in -- in the state. I -- I
18 would like to bring to this Court to find out,
19 you know, if -- I don't think Quicken Loans is
20 incorporated, from my conversation with the
21 recordings office, in the State of South
22 Carolina either. In this case, was Bank of
23 America versus Nash, the Plaintiff and its
24 predecessors and interest had no right to
25 receive payment on the mortgage loan because

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1 the loan was invalid and therefore void because
2 the corporate mortgagee named therein was
3 nonexistent and no valid mortgage loan was ever
4 held by the Plaintiff or his predecessors and
5 interest and then it goes on to MERS had no
6 authority to assign the ownership interest of
7 said mortgage because MERS was not the owner of
8 the subject mortgage and was not a nominee for
9 America's -- this was America's Wholesaler, so
10 the assignment was without authority and
11 therefore invalid. I don't know in the trial
12 and I can't remember if we got into whether the
13 Plaintiff's witness had knowledge or who or
14 what entity might have instructed MERS as a
15 nominee to attempt to assign or transfer any
16 interest in the mortgage. Anyway, Bank of
17 America had no standing to bring the action in
18 Bank of America versus Nash either. Now I'm
19 going to go over to -- because I know
20 everybody's hanging their hat on the Draper
21 case. I'd like to touch on that for just a
22 minute. You know in the Draper case, they
23 didn't deny the default. I'm denying the
24 default totally, absolutely. I do not owe Bank
25 of America anything. The loan is not there.

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1 It's not there now. Three things, the
2 international promissary note is discharged.
3 The second thing is, my promissary note, there
4 was never a loan at all. The third thing is,
5 it is my understanding that in the Fannie Mae
6 Trust, if any loan -- alleged loan defaults,
7 it's paid off by the insurance. Show me the
8 loan owed. It's not there. Now in the Draper
9 case, the MERS was not even challenged as an
10 invalid assignment. I'm -- I'm challenging
11 that. They never held the note. The minute
12 that you -- that -- that MERS assigned the note
13 -- assigned the mortgage and the note to Bank
14 of America, it voided it simply because it
15 split the note. They never had the note. MERS
16 does not hold notes. So when Mae assigned the
17 mortgage to the Plaintiff, Bank of America,
18 they split the note from the mortgage right
19 there. That makes it all a nullity. At the
20 trial, the witness could not evidence a debt.
21 The computerized sheets are just hearsay. I --
22 I could go and make some computerized sheets up
23 and show where I paid it all. Witness didn't
24 know who did them, where they came from or when
25 -- when they were done. There's no debt or

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1 default established at the trial. Now the
2 Appeals Court in Draper says they quoted a
3 Connecticut Appeals Court and -- and they also
4 in -- in that case was identifying as giving
5 legal rights to Bank of America, but in my
6 case, Bank of America does not have any legal
7 rights to -- to foreclose and the -- and -- and
8 as the Defendant here, I'm challenging here and
9 denying Bank of America has any legal rights to
10 foreclose, which is -- I'll cover a little more
11 in depth in a minute in the MCI -- MCI chain of
12 title report. Now I'm establishing a defense
13 to foreclosure with the MCI chain of title,
14 which includes lack of consideration payment
15 and there's no satisfaction listed, which is in
16 violation of the South Carolina laws and again,
17 the -- the case that they used in Connecticut
18 about legal claim, I guess Draper's didn't say
19 anything, but I'm saying they have no legal
20 claim. As a Defendant, I deny that the
21 Plaintiff is a real party in interest and does
22 not have the right sought to be enforced and
23 have violated South Carolina recording laws,
24 statutory laws, and has unclean hands. Now
25 another thing that the Draper case said was

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1 that, you know, the servicer can file proofs of
2 claim on the owner's behalf, but Bank of
3 America did not establish it was acting on
4 behalf of the owner of the note, Fannie Mae or
5 the Fannie Mae Trust, at the trial and in fact
6 the witness did not even know who they were
7 representing at the trial or what went on
8 behind the scenes, as she put it, on money
9 payments or where they went. Now they did say
10 -- the Appeal Court did say that under South
11 Carolina law, the Plaintiff in a foreclosure
12 suit should be real -- the real beneficial
13 owner of the mortgage debt. There is
14 absolutely no proof anywhere that Bank of
15 America is a real beneficial owner of the
16 mortgage debt, which doesn't even exist. As
17 the Defendant, I'm adamantly denying there is
18 a debt as explained in the MCI chain of title
19 and hearsay as far as the computerized sheets
20 are hearsay, fabricated for the foreclosure and
21 falsely submitted to this Court and are no
22 legal evidence in the Court. And again, I can
23 do the same thing and there's a case. I'll --
24 I'll have to look it up where in Florida
25 computerized sheets were considered to be

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1 hearsay. I -- I can't remember right off the
2 top of my head what, you know, what the case
3 was, but it's somewhere in my -- midst of all
4 this. Okay. They used some codes in the
5 Draper case, which have been overcome by the
6 explanations in the MCI chain of title that
7 Bank of America is not the person entitled to
8 enforce the deed or note and not is the -- and
9 nor is it the sole party of interest. Now I'm
10 claiming that I am the true owner, maker, and
11 transferor of the note -- the first transferor
12 of the note and the first transferor of the
13 note is not obligated to pay the note, so I'm
14 claiming recoupment from the Plaintiff, Bank of
15 America, today. The Defendant is not obligated
16 to pay the instrument. It's already been paid.
17 Plaintiff, Bank of America, is not the person
18 entitled to enforce the interest -- instrument
19 as established in the MCI chain of title and
20 then -- then in the Draper case, the rule 1003,
21 they said it would be unfair to admit the
22 duplicate in lieu of the original. They don't
23 have the original note. And I just want to add
24 one last thing about at the trial that the
25 witness had no personal knowledge of the debt

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1 computerized sheets and -- and I want to
2 continue to deny the debt and expenses
3 submitted by the Plaintiff. Had Plaintiff not
4 filed the foreclosure, the Defendant would have
5 paid the taxes and insurance on her property.
6 In addition, due to the foreclosure, the
7 Defendant has not been able to do any necessary
8 repairs on the property in over three years
9 where additional damages are created by the
10 Plaintiff. Okay. Now let me go over to the
11 MCI report. One other thing I want to put into
12 the Court is that making out of time
13 assignments is a void act under the New York
14 Trust Laws and the mortgage securitization
15 trust organized as New York Trust. My
16 securitized loan with -- with Fannie Mae is in
17 New York and because they did not get the note
18 into the trust within that first, I think, 90
19 days, it's null and void. All right. I'm --
20 I'm going to just add one other thing because
21 I had mentioned a minute ago, but the Bellitri
22 versus Bank of America case also it says a --
23 as a matter of law, the right to foreclose goes
24 -- goes away when the promissary note is split
25 from the deed of trust that it's supposed to

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1 secure and again, I'm going to say that when
2 MERS assigned the note and mortgage to Bank of
3 America, it was split at that moment. When
4 MERS assigned the note to Bank of America, the
5 note becomes unsecured because it was split
6 from the mortgage. Now that's in the Lenski --
7 Bellitri this is in actually in Florida and
8 they found that, that -- that it was null and
9 void. Okay. Now let me go over here to the --
10 to the MCI. I've gone through this stuff at
11 times. All right. To allow for the power of
12 sale to be available for a party to have
13 standing, the chain of endorsements appearing
14 on the face of the note instrument must be in
15 tandem match the recordation of the chain of
16 assignments of security instrument in the
17 public records. That has not happened. The
18 only thing that's on the back of the note is
19 Quicken Loans to Countrywide. It's not even to
20 Bank of America nor Fannie Mae nor the Fannie
21 Mae Trust back to Bank of America. Failure to
22 properly record assignments of the security
23 instrument language would minimalize a note's
24 negotiation where without endorsements that it
25 pertains to the transfer of beneficial and

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1 secure -- security interest in real property
2 can render the security instrument a nullity by
3 operation of law. As the note is unenforceable
4 under UCC 3201, 3204, 32 -- 302D. A security
5 interest cannot exist independent of the
6 obligation is secures. Well, has everyone read
7 this so I don't have to go through the whole
8 thing?
9 THE COURT: Yes, ma'am. I've read everything you
10 provided.
11 MS. DEANER: Okay. Great. All right. I -- I just
12 want to say that this is -- in this meeting --
13 in this hearing because it goes through and
14 just shows everywhere where there's no -- one
15 other thing just I do want to make this point
16 because I keep saying that there's no debt.
17 Over in number six, when it said that Fannie
18 Mae has purchased an interest in the Deaner
19 mortgage loan and delivered the interest in the
20 Deaner mortgage loan in the FNMA2 -- 2007-91
21 trust and claims to have control of the Deaner
22 note and the Deaner mortgage, well, -- well,
23 right there in number six, it says we remit
24 cash proceeds to the lender in payment of the
25 purchase price of these mortgages. It's paid.

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1 I -- I'm not going to read every single thing
2 in here since everyone has read it. That was
3 one of the main things I wanted to -- to bring
4 out, though. Let me see if there's anything
5 else. The other main thing that I wanted to
6 have here in this hearing was the fact that
7 this note was never transferred and if it
8 wasn't transferred within the 90 days, which is
9 evident that it wasn't because it's -- there's
10 no endorsement on the back of the note, then
11 it's null and void. There's no evidence
12 whatsoever and just to reiterate the fact that
13 I went down to the recording department, there
14 is no absolutely and I -- I'm verifying this,
15 chain of title not being recorded properly down
16 there. I went down there to look myself even
17 though I have this in my hands and it's
18 excellent, I went down to find out absolutely
19 and -- and the only thing that they handed was
20 the assignment and the mortgage. That's all
21 that's down there. There's nothing whatsoever
22 down there recorded to Fannie Mae at all.
23 Okay. That's paid. Okay. In number 10, it
24 says that the assignment of the deed or
25 mortgage is a conveyance of an instrument

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1 concerning real property, which must be
2 recorded to be acted upon. United States Code
3 considers that anyone certifying that a real
4 estate instrument has been assigned when in
5 fact it has not, is guilty of a felonious
6 criminal act. That's in Title 18, USC Chapter
7 47-1022. Well, there's no recording at the
8 office to Fannie Mae, so how can an assignment
9 be from MERS to Bank of America without Fannie
10 Mae involvement or the trust? That is an
11 incomplete transaction. The negotiation of the
12 deed or note to Fannie Mae is required both by
13 Fannie Mae's own requirements and South
14 Carolina State Law. Fannie Mae states in its
15 own December 2010 Fannie Mae Requirement that
16 the document custodian must receive the
17 original mortgage and deed of trust note for
18 each mortgage listed on the schedule of
19 mortgage -- mortgages form 2005. Well, that
20 didn't happen. Then it goes on to say that
21 under the Consumer Credit Protection Act, Title
22 15, USC Chapter 41, any transfers of deed or
23 mortgage loan for multiple classes of which,
24 you know, is the trust, would be in violation
25 of federal statute if these transfers had not

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1 been recorded in the official records of the
2 Aiken County Registrar Conveyance within 30
3 days along with notification of Carolyn S.
4 Deaner that the transfer had occurred. I never
5 received anything and I know there was some
6 question about the acceleration note. I never
7 received that and I have to object in this
8 meeting about Bank of America pretending to be
9 the lender in 2010 and sending out the
10 acceleration letter. They're not the lender.
11 Bank of America is not the lender. So
12 according to my mortgage, they cannot send out
13 the acceleration letter in 2010 and they
14 weren't even assigned the assignment until,
15 what, 2012. Whew. Well, I don't believe that
16 Bank of America is representing Fannie Mae
17 because Countrywide did not convey or record
18 properly. Bank of America has not established
19 any entitlement rights from Countrywide either.
20 I -- I've never seen any of that. By the way,
21 there's a -- a -- a in case anybody doesn't,
22 you know, believe all this, there was a case in
23 Walterboro, South Carolina where the judge
24 ordered the Plaintiff, I think it was Bank of
25 America, to give the Court all of these

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1 documents from the time of origination all the
2 way to -- all the transfers and everything,
3 bring it to Court, and I'd like to -- to
4 request that if someone doesn't believe what
5 I'm saying today. Then, I want Bank of America
6 to bring to the Court all the documents that we
7 asked for in discovery and they refused to do.
8 Okay.
9 THE COURT: Your request is noted.
10 MS. DEANER: Thank you. Anyway, there's codes and
11 everything in here. Somewhere in here it says
12 because of all this that the note becomes
13 unsecured. I think it's on page 19 and if that
14 being true, all unsecured debts were bankrupted
15 in my bankruptcy. Now I know that in number
16 22, it says that the claim that the mortgage
17 note follows the -- the mortgage follows the
18 note is incorrect because under South Carolina
19 Law, the lien follows the secured party of
20 record. That equitable right must be proven
21 with evidence of a delivery. Intention does
22 not override the requirement of law. That's
23 the reason, you know, show me the assignments,
24 transfers, and everything because they're not -
25 - we don't have them. Well, and this of course

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1 says that the assignment is invalid and gives
2 you all the reasons for that and there's
3 multiple reasons. First and foremost, in
4 number 26, it says the filing of this document
5 purported to be an assignment of the mortgage,
6 did not and does not assign convey any legal
7 rights to enforce the Deaner note. The purpose
8 of the assignment of mortgage document is to
9 simply memorialize the purported sale of the
10 deed or tangible promissary note and the
11 acquiring of rights, it does not cause the sale
12 nor the acquiring of rights and then it goes on
13 to sale -- to say that the sale has to be a
14 statutory requirement of law codes 1976,
15 367501, which has not happened. And then it
16 says with no negotiating transfer and delivery
17 of the Deaner tangible promissary note
18 evidenced through proper endorsement with
19 Countrywide Home Loans, Inc., being named for
20 the Deaner tangible promissary note, a true
21 assignment of mortgage could not take place, so
22 that didn't take place. And then they
23 question, in number 31, about the original
24 lender, Quicken Loans, may not be paid good and
25 valuable consideration for its beneficial

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1 interest and the value that was paid to MERS is
2 certainly not the full and complete value of
3 the Deaner mortgage, so there was no
4 consideration, and then they went into all the
5 MERS. We -- we know about MERS. The
6 beneficial interest of Quicken Loans, Inc., did
7 not include the rights to the Deaner intangible
8 obligation on or before the trust closing date
9 of September 28, 2007, as they had been
10 transferred to the Fannie Mae Trust, 200791.
11 MERS can only as a nominee for Quicken Loans
12 can only assign the beneficial interest of
13 Quicken Loans, Inc., and no more. So Quicken
14 Loans is not anywhere in the assignment. Now
15 number 46 and then I think I'll wrap this up.
16 MERS even says so in its procedural manual, it
17 says MERS cannot transfer the beneficial right
18 to the debt. The debt can only be transferred
19 by properly endorsing the promissary note to
20 the transferee, which that hasn't happened.
21 It's solely a nominee in an administrative
22 capacity, so it couldn't assign, that being
23 true, the note at all. And it seems like going
24 back to the original complaint, it's just void
25 and no one based on this can even enforce the

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1 Deaner note because it doesn't exist. And then
2 it goes on to say that there were only
3 contractual rights transferred anyway, not any
4 legal rights and -- and it has not been
5 perfected. Okay. I think that's all that I'm
6 going to do on that. Just a -- I -- when I
7 first got this, I was wondering why they put in
8 page 32, the section applicable to the New York
9 Trust and that's because the Fannie Mae Trust
10 is in New York, so it has to -- it has to
11 follow all the trust laws in New York. Over on
12 the Defendant's emergency motion to vacate
13 judgment and reverse or cancel the sale,
14 there's something that I -- I want to just
15 clarify again. When I took out this alleged
16 loan, there is nowhere in my mortgage and I --
17 I'm talking contract law. There's nowhere in
18 my mortgage where I authorized Quicken Loans or
19 anybody else to securitize my loan or to take
20 my note and change it into a stock certificate
21 and sell it on Wall Street in that little
22 scheme. There -- there's nowhere in there that
23 I authorized anybody to do that, so I'm -- I'm
24 saying this, that there were no meeting of the
25 minds about this, that it was concealed from me

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1 that they were going to do it, now back when I
2 was growing up, you would take a note -- you'd
3 go down to the bank and you would take out a
4 loan and they would give you money for the note
5 -- for the loan, and then if ABC Bank wanted to
6 sell the note, so per se, they sold it to FGH
7 Bank, and then if FGH Bank wanted to sell it,
8 they put it to another bank, they didn't
9 securitize it, put it under the securities
10 laws, and sell it on the stock market. In my
11 mortgage -- first of all, in my note, it only
12 says transfer, it doesn't even say sale. The
13 mortgage says sale. There's nowhere in my
14 mortgage where I have given any authorization
15 to securitize my loan in the lender
16 relationship forever, I don't have a lender
17 relationship at all. It's been destroyed by
18 the securitization of this loan. I don't even
19 know -- without this, I didn't know anything,
20 where it was, who's involved, or anything, so
21 I'm saying that, that was not authorized by me
22 and again, I'm saying that when they did this,
23 it's my understanding and certainly someone can
24 address it, but when -- when they took my note
25 and changed it into a stock certificate, that's

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1 in violation of the South Carolina Conversion
2 Laws. You cannot alter, change, or make
3 different a note. Well, they certainly have
4 done that. The rest of this is just going over
5 what I just mostly went over and you said
6 you've read all that.
7 THE COURT: Yes, ma'am.
8 MS. DEANER: Okay. Let me see if there's anything
9 else I have. Now the other memorandum that I
10 -- that I sent in about the -- to this
11 concerning some matters of law and facts,
12 merits, I -- I went back over and went back to
13 the first complaint that -- that -- that was
14 done and then I had a -- I did because I was
15 pro se back then, unfortunately, I hate being
16 pro se, but the legal aide attorney at that
17 time put in an argument and of course I'm not
18 here arguing today. I'm just stating some
19 things that needs to be in the record. He
20 already had covered all of this about MERS and
21 no entitlement, and everything, so I put that
22 in there and the -- the thing that keeps -- I
23 keep missing or -- or not understanding is the
24 fact that the Carpenter versus Longan US
25 Supreme Court said that the person brining a

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1 foreclosure has to be the owner of the note and
2 Bank of America is not the owner of my note at
3 all in any way shape or form. I don't know why
4 that hasn't been the conclusion of this whole
5 case. And then in South Carolina, People's --
6 Young versus People's Bank, they concurred with
7 the Carpenter versus Longan US Supreme Court.
8 It -- it's my understanding of Supreme Court
9 Law trumps other laws under it. Am I incorrect
10 or correct?
11 THE COURT: You're correct.
12 MS. DEANER: Okay. If -- if I'm correct, the
13 Carpenter versus Longan US Supreme Court ruling
14 overcomes Draper, trumps Draper because Bank of
15 America does not own my note, the Fannie Mae
16 Trust 200791 and who they are, who knows. We
17 don't know or I don't know. There could be 100
18 people in that REMIC, there could be 200, there
19 could be 1000. I don't know, but I know Bank
20 of America doesn't. So I wanted to put those
21 two cases in because -- simply because of what
22 my first legal aide attorney said from the very
23 beginning that Bank of America did not have
24 entitlement to close -- I mean to foreclose.
25 I think that's all that -- that I can think of,

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1 but I would like to be able to redress it -- I
2 -- I think I put all that in on the last page,
3 page 10, yeah, I -- I put all that on page 10.
4 THE COURT: Ms. Deaner, did you contact the CTI
5 people that did this title search for you?
6 MS. DEANER: I don't -- I don't remember when I
7 found out about it. It was after the trial.
8 THE COURT: That's all I need to know. Okay.
9 MS. DEANER: Okay.
10 THE COURT: All right. I'd be glad to hear from
11 you, Mr. Gwynne.
12 MS. DEANER: In fact, they actually sent me an e --
13 email.
14 THE COURT: Okay.
15 MR. GWYNNE: Yes, Your Honor. Charlie Gwynne here
16 on behalf of the Plaintiff. Without going into
17 the merits of Ms. Deaner's arguments, its
18 Plaintiff's position that the -- the arguments
19 raised by Ms. Deaner are not grounds for relief
20 under rule 60B, so we just ask that her motion
21 be denied. The arguments raised by Ms. Deaner
22 were in fact either raised directly or
23 indirectly at trial or should have been raised
24 at trial and they're not grounds for relief.
25 She's essentially arguing standing, a rule 60B

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1 motion should not be a substitute for an
2 appeal. I think the proper avenue for Ms.
3 Deaner is to appeal the -- the foreclosure
4 judgment and she can raise these issues at the
5 Appellate Court. Ms. Deaner can't raise new
6 issues in a 60B motion that she could've raised
7 at trial and in looking at the particular
8 sections of rule 60B, the 60B1, a mistake,
9 inadvertence or excusable neglect, that's a
10 very high standard and there's no evidence that
11 Ms. Deaner or her counsel committed a mistake
12 or some sort of neglect that would warrant
13 vacating the foreclosure judgment. We had a
14 full trial. All these issues could've been
15 raised or should've been raised during the
16 trial. Under rule 60(b)(2), regarding newly
17 discovered evidence, Ms. Deaner must show that
18 the new evidence was discoverable after trial
19 -- was discovered after trial and could not
20 have been discovered before trial and that's
21 just not the case here. All of the documents
22 she's talking about were -- were at their
23 disposal before trial. They could've raised
24 these issues at trial and under rule 60(b)(3),
25 regarding the fraud, it sounds like Ms. Deaner

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1 is essentially arguing what's known as
2 intrinsic fraud, which refers to fraud in any
3 manner presented or considered by the Court
4 when rendering the judgment, such as perjury or
5 forged documents, or claims that a party
6 withheld documents and relief should be denied
7 based on intrinsic fraud under rule 60B3
8 because these deceptive acts should've been
9 discovered during litigation and argued at the
10 trial. So we'd argue that under rule 60(b)(3),
11 it should be denied and 60(b)(4) and (5) are
12 simply not applicable to this case regarding
13 avoiding a judgment or that the actual judgment
14 is void or that it was satisfactorily released
15 or discharged in some way, so we'd argue those
16 aren't even applicable here.
17 THE COURT: Okay.
18 MR. GWYNNE: Thank you.
19 THE COURT: Brief reply?
20 MS. DEANER: Yes, the -- these -- this document that
21 I have was not available prior to trial to my
22 knowledge. Okay. I didn't even know that it
23 existed or ---
24 THE COURT: Which document are you referring to,
25 ma'am?

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1 MS. DEANER: The -- the chain of title mortgage
2 compliant investigation. I -- I did not have
3 that knowledge. Then he says that we could've
4 brought up all this at the trial, but in -- in
5 Mr. Sloan's document and -- and claims that he
6 handed. I think he handed you a document at
7 trial, all of the securitization and things
8 were in there. It just wasn't as in depth, so
9 ---
10 THE COURT: That's why he -- Mr. Gwynne says you
11 should've -- that should've been something that
12 should've been part of the rule 59 motion that
13 Mr. Sloan made and may have been made, but
14 which was denied. Ms. Deaner, I -- the rules
15 very often are hurtles that cannot be overcome
16 sometimes even when someone has a good case.
17 We have to abide by the rules. That's why the
18 South Carolina Supreme Court promulgates them.
19 I find that what you have argued today is not
20 subject to rule 60. I deny your -- your
21 motion. Mr. Gwynne will prepare an order and
22 you should -- will be able to appeal the matter
23 should you so desire. The case -- the sale ---
24 MS. DEANER: Can ---
25 THE COURT: --- is not being advertized right now?

1 MR. GWYNNE: No, Your Honor, it's -- the last
2 information I had was that some additional
3 documents were being requested from Ms. Deaner.
4 THE COURT: Right.
5 MR. GWYNNE: And so the loan mod is still under
6 review.
7 THE COURT: Okay. So it's ...
8 MS. DEANER: In -- in -- in my request today, due to
9 this new evidence, I've asked for the bond to
10 be waived so that I can do that.
11 THE COURT: No, ma'am. I'm not waiving the bond.
12 (There being nothing further, the hearing was
13 adjourned at 12:12 p.m.)

DESIGNATION: 39

39. DEFENDANTS MOTION TO DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER OF JUDGMENT, including Exhibits,

A (Legal Presentment of International Promissory Note to Mr. Bruce R. Thompson, Chief financial Officer of Bank of America, pages1-14,

B (Letters, Mr. Agaton of Bank of America and Mrs. Bowes of BlankRome, pages 1-4),

C (UCC1 & UCC 3, pages 1-6 and Registered NOTE, pages 1-3),

D (Notice of Memorandum of Law for Tender of Payment, pages 1-15)

E (Securitization I, pages 1-6)

... ALL filed 5/22/2015.

(contains Motion, pages 1-5 and pages in Exhibits as indicated above)

FACSIMILE TRANSMITTAL SHEET

TO:
CHARLIE GWYNNE, ESQ
Attorney at Law
SHAREHOLDER

FROM:
CAROLYN S. DEANER
Cell: (706) 399-5496
Fax: (706) 736-3558
cdeaner@bellsouth.net

FAX NUMBER: (803) 343-7017 **DATE: 5/22/15**

COMPANY: ROGERS&TOWNSEND,PC **PAGES INCLUDING COVER: (7)**
+ Motion Form
Clocked

PHONE NUMBER: (803) 744-1933

RE: SUPPORTING DOCUMENTS FOR
(Motion to DISCHARGE DEBT)

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS: (Notification also e-mailed 5/22/2015)

CHARLIE:

AM FAXING "THE MOTION TO DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER JUDGMENT", plus EXHIBIT A (18 PAGES), B (4 pages), C (9 pages), D (10 pages), and, E (6 pages).

CORDIALLY,
Carolyn S. Deaner

704 Kershaw Drive

North Augusta, SC 29841

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP

Plaintiff,

vs.

Carolyn S. Deaner

Defendant(s).

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

DEFENDANT'S MOTION TO DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER OF JUDGMENT

DOCKET NO. 2012-CP-02-00699

COPY
ORIGINAL FILED
MAY 22 2015 4:10 Tash
AIKEN COUNTY
CLERK OF COURT

TO: PLAINTIFF, Bank of America, N.A., successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P.

YOU WILL PLEASE TAKE NOTICE that CAROLYN S. DEANER, Defendant, Pro Se, will on or about MAY 28, 2015 and as soon thereafter as Defendant may be heard, move before the Court, pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, for an order granting DEFENDANT'S MOTION TO DISCHARGE DEBT AND CANCEL BOND, pursuant TO South Carolina Rules of Civil Procedure in RULE 60 (b)(1-5) AND request this matter BE RULED UPON PRIOR TO ANY POTENTIAL APPEAL HEARING as Defendant believes this vital matter was overlooked by the Court in the previous hearing on May 19, 2015.

This motion is made on the grounds that the Defendant intends to SHOW FORTH EVIDENCE AND UNJUST ENRICHMENT BY THE PLAINTIFF IN DEFENDANT'S CASE as more accurately described and defined in the FOLLOWING WITH EVIDENCE PREVIOUSLY MAILED TO THE PLAINTIFF AND THIS HONORABLE COURT and request made and incorporated herein respectively.

Pursuant to Rule 11 of the South Carolina Rules of Civil procedure, the undersigned hereby certifies that prior to filing this Motion she and her PREVIOUS legal attorneys

communicated with opposing counsel and attempted in "Good Faith" to resolve this matter with a cash offer of a reverse mortgage with no response from opposing council. In addition, the Defendant paid a legal tender payment on March 31, 2015 and a decline from Plaintiff was received on April 22, 2015 creating a discharge to the extent of the amount of the tender of the obligation of an endorser which was the full amount of the judgment and alleged debt obligation.

1. **On motion and upon such terms as are just, the court may relieve a party or a party's legal representation from a final judgment, decree order or proceedings for the following reasons, Rule 60 (1-5) with special emphasis on: (3) fraud, misrepresentation, or other misconduct of an adverse party such as "unjust enrichment" in this matter.**

2. On March 30, 2015, a legal tender of PAYMENT, an International Promissory Note (hereafter, IPN), was sent Fed X to Mr. Bruce R. Thompson, Chief Financial Officer and received by Bank of America on March 31, 2015 for $147,000 in payment in honor of the Order of Judgment by Referee James Martin Harvey issued and signed on February 25, 2015. The UCC CODE 3-603 REQUIRES PAYMENT TO BE MADE TO A PERSON ENTITLED TO ENFORCE who is Mr. Bruce R. Thompson, Chief Financial Officer of Bank of America.

3. The Defendant in knowledge and belief has tendered legal payment in accepted currency deposited daily by National Banks throughout the United States as payment of debts as promissory notes are cash items and backed by the Federal Reserve.

4. The Defendant did receive a letter from legal counsel from Bank of America, Blank Rome, LLP on April 22, 2015 declining the payment due to the payment not being in "certified funds", however, the IPN is a cash item which IS certified funds. The Defendant's original promissory note states, it can be paid in the form of cash. A PROMISSORY NOTE IS CASH AND DEPOSITED DAILY BY NATIONAL BANKS AS CASH. And most importantly, the letter DID NOT have enclosed the original International Promissory Note which is the legal property of the Defendant, Carolyn S. Deaner as indicated on the enclosed UCC 3 attached and must be returned if refused as stated at the bottom of the IPN in blue ink.

5. The Defendant is requesting this honorable court to issue an order for the Defendant's legal property of the ORIGINAL INTERNATIONAL PROMISSORY NOTE to be returned to

her within 10 to 30 days of the court's order, otherwise, the debt is discharged according to UCC 3-603. As the IPN is a cash item and can be deposited by the Plaintiff at any time and receive cash on their books, the Defendant has reason to believe this has been done since the legal property of the Defendant has not been returned and indicates, "bad faith" toward the Defendant for the Plaintiff to KEEP THE DEFENDANT'S LEGAL PROPERTY which is a CASH ITEM AND NOT DISCHARGE THE DEBT. This ACTION is construed as "THEFT BY TAKING" and is an UNCONSCIONABLE ACT, since the Defendant has requested the return of the IPN.

6. The Defendant in "Good Faith" sent the IPN to the Plaintiff as pay off for this alleged debt in compliance and honor to the Order of Judgment even though Defendant has learned and now knows the original promissory note was also a cash item and no loan was ever accomplished as it was an exchange or a currency swap. Since it was not a loan and the original promissory note was a cash item and used as such, then Bank of America must accept like terms OF CASH.

7. The Plaintiff's legal counsel in this case in South Carolina has been sent by first class mail as well as this Court all the materials pertaining to this pay off, and the Defendant has not received a response of the discharge. In addition, Mr. Jason Agaton, Customer Advocate, of Bank of America was faxed a letter ON APRIL 28, 2015 requesting the return of the DEFENDANT'S LEGAL PROPERTY, the International Promissory Note (IPN). Defendant now requests this honorable Court to discharge the debt as legal tender of payment refused discharges a debt, and there is discharge, to the extent of the amount of the tender according to UCC 3-603. The amount tendered was $147,000.00.

8. This Motion is filed because the Defendant verily believes she will and should prevail on the merits, that now the Plaintiff has been paid, that the holder in due course has been paid, the trustee and depositor has been paid and all successors and predecessors have been paid in full. Further, the Defendant believes this VITAL topic was overlooked in the previous hearing.

9. Further, a complete legal presentation stating the legal reasons the International Promissory Note is legal and an acceptable tender of payment was faxed directly to Bank of America, and for reasons unknown to the Defendant, she has not received a discharge from the Plaintiff nor any legal reasons or laws for refusal.

10. Therefore, The Defendant requests this honorable Court give the Defendant any and all legal, State, Federal, U.S. Laws, Constitutional Laws or otherwise, why the Defendant's tender of payment is not acceptable to this court as TENDER OF PAYMENT and why the Defendant has not received a DISCHARGE ON THE COURT'S ORDER JUDGMENT.

11. As it is certainly the Plaintiff's right to refuse the Tender of Payment, it was not the legal right of the Plaintiff to keep the legal property of the Defendant without acknowledging the discharge. It is 'UNJUST ENRICHMENT" by the Plaintiff if DEFENDANT DEANER'S LEGAL PROPERTY OF A CASH ITEM IS KEPT and NOT RETURNED AS REQUIRED. Also, without statutory definitions and a statutory reason for refusal, the Plaintiff is in violation of 12CFR229.3 and is open to civil liabilities and damages for violation of its customer agreement, federal, state law and Federal Reserve Bank regulations (see 12CFR229.21 Civil liability, as noted above and UCC 3-307, 103 and 4-106.

12. Defendant requests should the Plaintiff continue to refuse to return the Defendant's legal and registered property for reasons unknown to the Defendant, then the legal tender must stand for the bond in the Defendant's case. In addition the DEFENDANT CLAIMS RECOUPMENT for THE ORIGINAL PROMISSORY NOTE and the INTERNATIONAL PROMISSORY NOTE WITH THIS MOTION. The Defendant is the creditor on the liability side of the accounting ledger and is requesting her set off recoupment as the maker and originator of the promissory notes, and requests claim Under Civil Rules of RECOUPMENT under UCC 3-305 and a CLAIM under 3-306. Defendant requests balance sheets 2046, 2049 and 2099 with OMB numbers subject to disclosure under the privacy act, Title USC 552(b)(4) from Plaintiff and requests the Referee/Judge of this honorable court who is holding the accounts payable under HJR 192 for all the people that come before him if he has the SSN, and Defendant's social security number is on the enclosed IPN, Exhibit "A" of this motion and the IPN was presented to honorable Referee/Judge on 4/31/205 hand delivered to his office in the document package which included the SSN number at that time. Defendant's registered original promissory note trumps any unregistered note held by Plaintiff in this case/ UCC 1 & 3 .

WHEREFORE, DEFENDANT REQUESTS THIS HONORABLE COURT

1. GRANT THE DISCHARGE OF THE ALLEGED DEBT IN THE DEFENDANT'S CASE, SINCE THE IPN WAS NOT RETURNED TO DEFENDANT BY THE PLAINTIFF IN "GOOD FAITH".
2. GRANT THE TENDER OF PAYMENT STAND FOR THE BOND IN THE DEFENDANT'S CASE SINCE IPN WAS NOT RETURNED TO THE DEFENDANT BY THE PLAINTIFF AS REQUESTED AND REQUIRED.
3. AWARD RECOUPMENT AND ANY OTHER RELIEF THIS COURT DEEMS JUST AND EQUITABLE IN THE DEFENDANT'S CASE IN THIS MATTER,
4. AND DISMISS THE DEFENDANT'S CASE WITH PREJUDICE BY ANY AND ALL AUTHORITY AVAILABLE TO THIS HONORABLE COURT.

Respectfully Submitted,

Date: MAY 22, 2015
North Augusta,, SC
Aiken County

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

BANK OF AMERICA, N.A.
Plaintiff,
vs.
CAROLYN S. DEANER
Defendant.

IN THE COURT OF COMMON PLEAS
2nd JUDICIAL CIRCUIT

CASE NO.: 2012_-CP-02_-00699

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
CHARLIE GWYNNE, Bar No. _____ Address: P. O. BOX 100200, Columbia, SC 29202 Phone: (803) 774-1933Fax (803) 343-7017 E-mail: charlie.gwynne@rtt-law.comOther:	CAROLYN S. DEANER, PRO SE, Bar No. _____ Address: 704 KERSHAW DRIVE, North Augusta, SC 29841 Phone: (706)399-5496 Fax_____ E-mail: cdeaner@bellsouth.netOther: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: DISCHARGE DEBT
Estimated Time Needed: 1 Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant 5/22/2015 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	JUDGE CODE _____
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

COPY
ORIGINAL FILED
MAY 22 2015
AIKEN COUNTY
CLERK OF COURT

SCCA 233 (11/2003)

FACSIMILE TRANSMITTAL SHEET

TO:
CHARLIE GWYNNE, ESQ
Attorney at Law
SHAREHOLDER

FROM:
CAROLYN S. DEANER
Cell: (706) 399-5496
Fax: (706) 736-3558
cdeaner@bellsouth.net

FAX NUMBER: (803) 343-7017 **DATE: 5/22/15**

COMPANY: ROGERS&TOWNSEND,PC **PAGES INCLUDING COVER: (19)**

+ Exhibit A Sheet

PHONE NUMBER: (803) 744-1933

RE: SUPPORTING DOCUMENTS FOR
(Motion to DISCHARGE DEBT)

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS: (Notification also e-mailed 5/22/2015)

CHARLIE:

AM FAXING "THE MOTION TO DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER JUDGMENT", plus EXHIBIT A (18 PAGES), B (4 pages), C (9 pages), D (10 pages), and, E (6 pages).

CORDIALLY,
Carolyn

Carolyn S. Deaner

704 Kershaw Drive

North Augusta, SC 29841

Carolyn S. Deaner
706-736-3558
Apr 15 2015 4:42PM

Last Transaction

Date	Time	Type	Station ID	Duration	Pages	Result
Apr 15	4:30PM	Fax Sent	18666034755	11:44	16	OK

COPY
ORIGINAL FILED
MAY 2 2 2015 40
AIKEN COUNTY
CLERK OF COURT

EXHIBIT: A

RE: IPN & PRESENTMENT DOCUMENTS
BENEFICIARY / SS

NEGOTIABLE INTERNATIONAL PROMISSORY NOTE (UNCITRAL CONVENTION) NEGOTIABLE

Note Number: [ACCT# 7500] Date: March 27, 2015
Pay to the Order
[BANK OF AMERICA, NA
ONE HUNDRED FORTY SEVEN THOUSAND NO /100 **** DOLLARS

$ 147,000.00 USD

For Private Offset Account #(PRIMARY 250720646)

This instrument is an UNCONDITIONAL INTERNATIONAL PROMISSORY NOTE (UNCITRAL CONVENTION) tendered by the Undersigned Respondent, [CAROLYN SUE DEANER) ©, Authorized Representative, hereinafter "Maker," in good faith, and in accordance with law, as codified at Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Article 47-4(c). and Public Policy at House Joint Resolution 192 of June 5, 1933, as full satisfaction of a alleged debt claimed and allegedly owed in favor of Payee herein, i.e. [BANK OF AMERICA, NA), d.b.a. a debt collector, as per Payee's/Debt Collector's Presentment:

On this 27th day of MARCH 2015, I, [CAROLYN SUE DEANER] ©, By this negotiable instrument governed by UNCITRAL CONVENTION, promise to Pay to [BANK OF AMERICA, NA] [ONE HUNDRED FORTY SEVEN THOUSAND AND NO/100] USD without interest or other charges, Payable on demand upon presentment of this original instrument properly endorsed on or after MARCH 27, 2015, at [900 WEST TRADE STREET, SUITE 650] , [CHARLOTTE, NORTH CAROLINA, 28255] Alleged Creditor: [BANK OF AMERICA, NA]; Alleged Account No.: [172231076]; Alleged Amount Due: [ONE HUNDRED FORTY SEVEN THOUSAND AND NO/100]. A true and correct copy of Presentment is attached hereto, made fully part hereof, and included herein by reference. This statement constitutes Maker's promise for paying this instrument upon presentment and Endorsement, at Maker's location.

As an operation of law, Payee/Debt Collector tacitly consents and agrees that there is accord and satisfaction by use of this instrument for satisfying Payee's/Debt Collector's claim and Maker is hereby discharged from liability on this alleged account and the obligation is suspended in pursuant to UNCITRAL CONVENTION codified at Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Article 47-4(c).

[CAROLYN SUE DEANER]©TRUST

..... DATED MARCH 27, 2015

By, [CAROLYN SUE DEANER]
"As good as Aval" Authorized Representative Secured Party, Without Recourse UCC 1-308
CUSIP # [250720646] : For Private Set off Account Number: [CAROLYN SUE DEANER] © [250-72-0646]

Witness ..... Witness .....

Authorized person indorsing below. Print name and official title when presenting this Instrument for payment. Government-issued ID with photograph required, i.e. only the following types of ID accepted: state-issued Drivers License; state-issued Identification Card; Passport.

PARTY RECEIVING PAYMENT*

Printed Name of Endorser — Form of Photo Identification

Official Title of Endorser — Form of Official Identification

Date of Presentment and Endorsement — Signature of Endorser

Right Thumb Print (red)

Date endorser received document: _____, 20___

Respondent's Private International Administrative Remedy Demand No. [ACCT# 7500]

*Upon delivery of this payment to receiving party, that receiving party has 72 hours (3 business days) to deny or accept this payment or return to provider of this payment. Failure to deny and return by that time constitutes acceptance of this payment in full without recourse, with full credit for payment due to the account of [CAROLYN SUE DEANER]. This settles the payment of the above stated debt in full up to the amount indicated.

VOID WHERE PROHIBITED BY LAW – WITHOUT RECOURSE TO PROVIDER IF NOT ACCEPTED

Date of Notice: MARCH 27, 2015

Notice served by: [250720646]., acting as agent for
[CAROLYN SUE DEANER]©TRUST
c/o [704 KERSHAW DRIVE]
[BELVEDERE, SOUTH CAROLINA 29841-2738]
All rights in commerce are explicitly under reserve and without recourse

Notice served on: [BANK OF AMERICA, NA]
Respondent: c/o [BRIAN THOMAS MOYNIHAN, CEO/PRESIDENT/OFFICER]
[900 WEST TRADE STREET, SUITE 650], [CHARLOTTE, NORTH CAROLINA 28255]

Reference: NOTICE OF FORECLOSURE Case/Account No. **2013-CP-02-00699**

Pursuant to DEMAND letter issued instructing [CAROLYN SUE DEANER]©TRUST to pay a debt in the amount of $[147,000], and in accord with current UNCITRAL CONVENTION, with said CONVENTION having never been repealed and still being in full force and effect, and in accord **with my private exemption authorized therein for the discharge of debts,** I, [CAROLYN SUE DEANER], Sovereign, acting in good faith, with clean hands and at arm's length, hereby and herein tender payment for a debt in the amount of [$147,000] in full compliance and full satisfaction of said Order, issued by [BANK OF AMERICA, NA], c/o [BRIAN THOMAS MOYNIHAN, CEO/PRESIDENT/OFFICER], instructing [CAROLYN SUE DEANER] to pay a debt.

In as much as no lawful money of account exists in circulation, and pursuant of current "UNCITRAL CONVENTION", [CAROLYN SUE DEANER]©TRUST has no money with which to pay a debt. Because [CAROLYN SUE DEANER]© TRUST has no money with which to pay a debt, he has had to resort to tendering a negotiable instrument, pursuant, to the UNCITRAL CONVENTION Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Article 47-4(c). Statement, issued instructing [CAROLYN SUE DEANER)]©TRUST to pay a debt.

As you will note, pursuant to UNCITRAL CONVENTION Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Article 47-4(c), the attached International Promissory Note is an instrument and clearly satisfies the requirements of [BANK OF AMERICA, NA], issued on MARCH 27, 2015 instructing [CAROLYN SUE DEANER]©TRUST to pay a debt. Said International Promissory Note is being issued in good faith, with clean hands and at arm's length, and is not a dishonor of saic Demand. *Upon delivery of this payment to receiving party, that receiving party has 72 hours (3 business days) to deny or accept this payment or return to provider of this payment. Failure to deny and return by that time constitutes acceptance of thi payment in full without recourse, with full credit for payment due to the account of [CAROLYN SUE DEANER]. This settl the payment of the above stated debt in full up to the amount indicated.

Please send me a signed receipt acknowledging receipt of my payment to the above address.

Verification: I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on MARCH 27, 2015 AD.

Attachment: Copy of Negotiable Instrument in the form of an International Promissory Note, Signed in red ink, dated MARCH 27, 2015 in the amount of **[$147,000]**, issued to [BANK OF AMERICA, NA].

Respectfully served, [CAROLYN SUE DEANER]©TRUST

X

By [CAROLYN SUE DEANER], Authorized Representative, Without Recourse, All Rights Reserved, Without Prejudice
CUSIP # [250720646] Private Set off Account Number [CAROLYN SUE DEANER] [250-72-0646]

APRIL 10, 2015

TO: MR. BRUCE R. THOMPSON,

CHIEF CFO

BANK OF AMERICA

JASON AGATON

PAYMENT RESOLUTION

ACCOUNT #: 172231076

RE: NEGOTIABLE INTERNATION PROMISSORY NOTE(UNCITRALCONVENTION)

RECEIVED BY BANK OF AMERICA 3/31/15

CAROLYN S. DEANER

4/10/2015

704 KERSHAW DRIVE

BELVEDERE, SC 29841 NOTICE OF ACCEPTANCE OF PRESENTMENT

AIKEN COUNTY

1. I, Carolyn Sue Deaner, herein after "PRINCIPAL", am competent to state to the matters included in this agreement, have knowledge of the facts, and declare that the statements made herein are true and correct to the best of my knowledge and not meant to mislead.

STATEMENT OF FACTS

2. Principal has accepted for value the charging presentment and statement of account # 172231076, (NEGOTIABLE INTERNATIONAL PROMISSORY NOTE UNCITRAL CONVENTION)

dated MARCH 27, 2015

with all related endorsements, front and back

from BANK OF AMERICA, NA

(herein Respondent) in the amount of $147,000.00 (see copy attached)

3. The tender in discharge of this obligation accompanying this Notice dated MARCH 27, 2015 in the amount

of $147,000.00, the original of which is hereby tendered by Principal to:

BANK OF AMERICA, NA,

Respondent, in discharge of the accepted for value presentment of account, as stated in the instrument, is:

"Issued under the Authority of, and in Accordance with the official definition of

the United States Code, [legal tender], 31 USC 392, 31 USC 5103.

[Except as voided, precluded, excluded, prohibited, or disqualified as a legal tender obligation of The United States by federal or state statute or regulation]. And Issued in Accordance with 31 USC 3123, HJR-192(1933) and successor enactments, as "Public Policy", without expansion of credit, debt or obligation upon THE UNITED STATES, for the discharge of "every obligation", "for all debts, public charges, taxes and dues" "TO THE UNITED STATES" and/or its sub-corporate chartered entities as remedy for equity interest recovery upon "the full faith and credit of THE UNITED STATES" for Obligation OF THE UNITED STATES and sub-corporate chartered entities to the discharge and recovery of the public debt, "dollar for dollar", to the Principals, Prime-Creditors, and Holders in Equity over THE UNITED STATES as Sureties for its obligations, currency and credit. [12 USC 411, 18 USC 8, 12 USC; ch. 6, 38 Stat. 251 Sect 14(a), 31 USC 5118, 3123. with rights protected under the 14th Amendment of the United States Constitution, by the U.S. Supreme Court in United States v. Russell (13 Wall, 623, 627), Pearlman v. Reliance Ins. Co., 371 U.S. 132,136,137 (1962), The United States v. Hooe, 3 Cranch (U.S.)73(1805), and in conformity with the U.S. Supreme Court 79 U.S. 287 (1870), 172 U.S.48 (1898), and as confirmed at 307 U.S. 247(1939).]

This instrument makes no claims except as supported by law.

In accordance with that stated above, of legal necessity, Principal will withdraw this tender in discharge of this obligation upon the citing of any verifiable law or federal regulation that precludes, excludes, prohibits, or disqualifies this presentment as a legal tender obligation of The United States.

4. Please note the following:

"Currency is defined as-- coined money and such other banknotes or other paper money as are authorized by law and do in fact circulate from hand to hand as the medium of exchange." Blacks, 5th.

Title 31 United States Code, Section 392) provides, in part:

"All coins and currencies of the United States, regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties and dues."

TITLE 31 , SUBTITLE IV, CHAPTER 51 , SUBCHAPTER I , Sec. 5103.

Legal tender - United States coins and currency (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. (emphasis added)

[USC Title 12.221 Definitions -- "The terms "national bank" and "national banking association"....shall be held to be synonymous and interchangeable."]

This official definition for 'legal tender' was first established in HJR-192 (1933). This, the same act that suspended the gold standard for our currency and abrogated the right to demand payment in gold, also made federal reserve notes and notes of national banks legal tender, both backed by "the credit of the nation".

Public Policy HJR-192

JOINT RESOLUTION TO SUSPEND THE GOLD

STANDARD AND ABROGATE THE GOLD CLAUSE,

JUNE 5, 1933

H.J. Res. 192, 73rd Cong., 1st Session

Joint resolution to assure uniform value to the coins and currencies of the United States.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, for public and private, public charges, taxes, duties, and dues,"

"notes of national banks" or "national banking associations" have continuously been maintained in the official definition of legal tender since June 5, 1933 to the present day, when the term had never been used to define "currency" or "legal tender" before that.

Prior to 1933 the forms of currency in use that were legal tender were many and varied:

-United States Gold Certificates – United States Notes – Treasury Notes – Interest bearing notes –Gold Coins of United States – Standard silver dollars – Subsidiary silver coins – minor coins

-Commemorative coins –

but the list did not include notes of national banks or national banking associations despite the fact such notes were a common medium of exchange or "currency" and had been, almost since the founding of our banking system, and were backed by United States bonds or other securities on deposit for the bank with the US Treasury.

Further, from the time of their inclusion in the definition, they have been phased out until presently all provisions in the United States Code pertaining to incorporated National Banking institutions issuing, redeeming, replacing and circulating notes have all been repealed:

USC TITLE 12 > CHAPTER 2 - NATIONAL BANKS

SUBCHAPTER V - OBTAINING AND ISSUING CIRCULATING NOTES

• Sec. 101 to 110. Repealed. Pub. L. 103-325, title VI, Sec. 602e5-11, f2-4A, g9, Sept. 23, 1994, 108 Stat. 2292, 2294

SUBCHAPTER VI - REDEMPTION AND REPLACEMENT OF CIRCULATING NOTES

• Sec. 121. Repealed. Pub. L. 103-325, title VI, Sec. 602f4B, Sept. 23, 1994, 108 Stat. 2292

• Sec. 121a. Redemption of notes unidentifiable as to bank of issue

• Sec. 122. Repealed. Pub. L. 97-258, Sec. 5b, Sept. 13, 1982, 96 Stat. 1068

• Sec. 122a. Redeemed notes of unidentifiable issue; funds charged against

• Sec. 123 to 126. Repealed. Pub. L. 103-325, title VI, Sec. 602e12, 13, f4C, 6, Sept. 23, 1994, 108 Stat. 2292, 2293

• Sec. 127. Repealed. Pub. L. 89-554, Sec. 8a, Sept. 6, 1966, 80 Stat. 633

As stated in 'Money and Banking", 4th edition, by David H. Friedman, publ. by the American Bankers Association, page 78, "Today commercial banks no longer issue currency, ..."

It is clear, federally incorporated banking institutions subject to the restrictions and repealed provisions of Title 12, are not those primarily referred to in the current definition of "legal tender".

The legal statutory and professional definitions of "bank", "banking" and "banker" in the United States Code and Code of Federal Regulations are not those commonly understood, for these terms have made the statutory definition of "Bank" to be:

UCC 4-105 PART 1 "Bank" means a person engaged in the business of banking,"

12CFRSec. 229.2 Definitions (e) Bank—"the term bank also includes any person engaged in the business of banking,"

12CFR Sec. 210.2 Definitions. (d) "Bank means any person engaged in the business of banking."

USC Title 12 Sec. 1813. –Definitions of Bank and Related Terms. – (1) Bank. - The term "bank" – (A) "means any national bank, State bank, District bank, and any Federal branch and insured branch;"

Black's Law Dictionary, 5th Edition, page 133, defines a "Banker" as,

"In general sense, a person that engages in business of banking. In narrower meaning, a private person.....; who is engaged in the business of banking without being incorporated. Under some statutes, an individual banker, as distinguished from a "private banker", is a person who, having complied with the statutory requirements, has received authority from the state to engage in the business of banking, while a private banker is a person engaged in banking without having any special privileges or authority from the state. "

"Banking"- is partly and optionally defined as "The business of issuing notes for circulation....., negotiating bills."

Black's Law Dictionary, 5th Edition, page 133, defines "Banking":

"The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money.....

And defines a "Banker's Note" as:

"A commercial instrument resembling a bank note in every particular except that it is given by a private banker or unincorporated banking institution."

Federal Statute does not specifically define "national bank" and "national banking association" in those sections where these uses are legislated on to exclude a private banker or unincorporated banking institution.

It does define these terms to the exclusion of such persons in the chapters and sections where the issue and circulation of notes by national banks has been repealed or forbidden.

"In the absence of a statutory definition, courts give terms their ordinary meaning. "Bass, Terri L. v. Stolper, Koritzinsky, 111 F.3d 1325,7thCir. Apps. (1996).

As the U.S. Supreme Court noted, "We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." See, e.g., United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241 -242 (1989); United States v. Goldenberg,168 U.S. 95, 102 -103 (1897);

"The legislative purpose is expressed by the ordinary meaning of the words used. "Richards v. United States, 369 U.S.1 (1962).

Therefore, as noted above, the legal definitions relating to 'legal tender' have been written by Congress and maintained as such to be both exclusive, where necessary, and inclusive, where appropriate, to provide for the inclusion of the Principals, Sureties, Prime-Creditors and Holders in Equity over THE UNITED STATES, who, since 1933, have collectively and nationally constituted, by such statutory definitions, a "national bank" or "national banking association" with the right to issue, as legal tender, notes... "upon "the full faith and credit of THE UNITED STATES" for Obligation OF THE UNITED STATES and sub-corporate chartered entities to the

discharge and recovery of the public debt,... to the Principals, Prime-Creditors, and Holders in Equity over THE UNITED STATES as Sureties for its obligations, currency and credit.', as remedy for equity interest recovery over US Corporate public debt due them.

A brief review of the historical events that led up to the authorization and use of this type of instrument, which is not familiar to most or in common use today, is important:

During the financial crisis of the depression, in 1933 substance of gold, silver and real money was removed as a foundation for our financial system.

In its place the substance of the American citizenry: their real property, wealth, assets and productivity that belongs to them was, in effect, 'pledged' by the government and placed at risk as the collateral for US debt, credit and currency for commerce to function.

This is well documented in the actions of Congress and the President at that time and in the Congressional debates that preceded the adoption of the reorganization measures:

Senate Document No. 43, 73rd Congress, 1st Session, stated,

"Under the new law the money is issued to the banks in return for Government obligations, bills of exchange, drafts, notes, trade acceptances, and banker's acceptances. The money will be worth 100 cents on the dollar, because it is backed by the credit of the nation. It will represent a mortgage on all the homes and other propert of all the people in the Nation."

Which of course lawfully belongs to these private citizens.

The National Debt is defined as "mortgages on the wealth and income of the people of a country." (Encycloped Britannica, 1959.) Their wealth, ... their income.

On December 23, 1913, Congress had passed "An Act to provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford a means of rediscounting commercial paper, to establish a mor effective supervision of banking in the United States, and for other purposes". The Act is commonly known as the "Federal Reserve Act".

One of the purposes for enacting the Federal Reserve Act was :

(3) to authorize "hypothecation" of obligations including "United States bonds or other securities which Federa reserve Banks are authorized to hold" under Section 14(a);

12 USC; ch. 6, 38 Stat. 251 Sect 14(a)

"Every Federal reserve bank shall have power:

(a) To deal in gold coin and bullion at home or abroad, to make loans thereon, exchange Federal reserve note for gold, gold coin, or gold certificates, and to contract for loans of gold coin or bullion, giving therefore, when necessary, acceptable security, including the hypothecation of United States bonds or other securities which Federal reserve banks are authorized to hold;"

the term "hypothecation" as stated in Section 14(a) of the Act is defined:

"1. Banking. Offer of stocks, bonds, or other assets owned by a party other than the borrower as collateral for a loan, without transferring title. If the borrower turns the property over to the lender who holds it for safekeeping the action is referred to as a pledge. If the borrower retains possession but gives the lender the right to sell th property in event of default, it is a true hypothecation.

2. Securities. The pledging of negotiable securities to collateralize a broker's margin loan. If the broker pledge the same securities to a bank as collateral for a broker's loan, the process is referred to as rehypothecation."

[Dictionary Of Banking Terms, Fitch, pg. 228 (1997)

As seen from the definitions, in hypothecation there is equitable risk to the actual owner.

Section 16 of the current Federal Reserve Act, which is codified at 12 USC 411, and 18 USC 8 declares that "Federal Reserve Notes" are "obligations of the United States".

TITLE 12 > CHAPTER 3 > SUBCHAPTER XII > Sec. 411.

Sec. 411. - Issuance to reserve banks; nature of obligation; redemption

Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues.

TITLE 18 > PART I > CHAPTER 1 > Sec. 1. > Sec. 8.

Sec. 8. - Obligation or other security of the United States defined

The term "obligation or other security of the United States" includes all bonds, certificates of indebtedness, national bank currency, Federal Reserve notes, Federal Reserve bank notes, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, issued under any Act of Congress, and canceled United States stamps

The "full faith and credit" of the United States: which is the substance of the American citizenry: their real property, wealth, assets and productivity that belongs to them, was thereby hypothecated by the United States to its obligations, as well as re-hypothecated by the Federal Reserve Banks for the issuance and emission of 'bills of credit' (Federal Reserve Notes) as legal tender "for all taxes, customs, and other public dues".

The commerce and credit of the nation continues on today under bankruptcy reorganization or financial reorganization, as it has since 1933, still backed by the assets and wealth of the American citizenry: at risk for the government's obligations and currency.

Constitutionally and in the laws of equity, the United States could not borrow or pledge the property and wealth of its private citizens, put at risk as collateral for its currency and credit, without legally providing them an equitable and orderly remedy for recovery of what is due them on their assets and wealth that are at risk.

This principle is well established in English common law and in the history of American jurisprudence.

The 14th amendment provides: "no person shall be deprived of...property without due process of law".

And Courts have long ruled to have one's property legally held as collateral or surety for a debt even when he still owns it and still has it is to deprive him of it since it is at risk and could be lost for the debt at any time.

The rights of a surety to recovery on his risk or loss when standing for the debts of another was reaffirmed again as late as 1962 in Pearlman v. Reliance Ins.Co., 371 U.S. 132 when the Supreme Court said:

..."sureties compelled to pay debts for their principal have been deemed entitled to reimbursement, even without a contractual promise ...And probably there are few doctrines better established....."

Black's Law Dictionary, 5th edition, defines "surety":

"One who undertakes to pay or to do any other act in event that his principal fails therein. Everyone who incurs a liability in person or estate for the benefit of another, without sharing in the consideration, stands in the position of a "surety."

So these obligations for recovery due the Principals, Prime-Creditors, and Holders in Equity over THE UNITED STATES as Sureties for its obligations, currency and credit are part of the public debt

TITLE 31 > SUBTITLE IV > CHAPTER 51 > SUBCHAPTER II > Sec. 5118

(2) "public debt obligation" means a domestic obligation issued or guaranteed by the United States Government to repay money or interest.

Title 31 USC 3123 makes a statutory pledge of the United States government to:

TITLE 31 , SUBTITLE III , CHAPTER 31 , SUBCHAPTER II , Sec. 3123.

- Payment of obligations and interest on the public debt

- (a) The faith of the United States Government is pledged to pay, in legal tender, principal and interest on the obligations of the Government issued under this chapter.

As we see, in the laws of equity, Constitutionally and statutorily, the United States can not borrow or pledge the property and wealth of its private citizens, put at risk as collateral for its currency and credit, without legally giving them remedy for recovery of what is due them on their risk.

The government is able to do this with our implied consent, because it has provided us such a remedy.

The provisions for this are found in the same act of "Public Policy" HJR-192, public law 73-10, that suspended the gold standard for our currency, abrogated the right to demand payment in gold, and then redefined the terms "coin or currency" and "legal tender" to include federal reserve notes and "notes of national banking associations", both backed by the same thing: the credit of the nation, i.e., the real substance of the American citizenry.

Since the institution of these events, for practical purposes of commercial exchange, there has been no actual money in circulation by which debt owed from one party to another can actually be repaid.

All US currency since that time is only credit against the real property, wealth and assets belonging to the private soverign American people, taken and/or 'pledged' by THE UNITED STATES to its secondary creditors as security.

Federal Reserve Notes, although made legal tender for all debts public and private in the reorganization, can only discharge a debt. Debt must be "paid" with value or substance (i.e. gold, silver, barter or a commodity). For this reason HJR-192 (1933), which established the "public policy" of our current monetary system, repeatedly uses the technical term of "discharge" in conjunction with "payment" in laying out public policy for the new system. A debt currency system cannot pay debt.

So from that time to the present, commerce in the corporate UNITED STATES and among sub-corporate subject entities has had only bank notes and other debt note instruments by which debt can be discharged and transferred in different forms. The unpaid debt, created and/or expanded on by the plan now carries a public liability for collection in that when debt is discharged with debt instruments, (Federal Reserve Notes included), by our commerce, debt is inadvertently being expanded instead of being cancelled, thus increasing the public debt. A situation such as this is potentially fatal to any economy.

The Congress and government officials who orchestrated the public laws and regulations that made the financial reorganization anticipated the long term effect of a debt based financial system which many in government feared, and which we face today in servicing the interest on trillions upon trillions of dollars in US Corporate public debt and in this same act made provision in the recovery remedy provided to its Prime-creditors to simultaneously resolve this problem as well.

As has been said, all US currency since that time is only credit against the real property, wealth and assets belonging to the private soveriegn American people, taken and/or 'pledged' by THE UNITED STATES to its secondary creditors as security for its obligations. Those backing the nation's credit and currency could not recover what was due them by anything drawn on Federal Reserve notes without expanding their risk and obligation to their own selves. Any recovery payments backed by this currency would only increase the public debt its citizens were collateral for, which an equitable remedy was intended to reduce, and in equity would not satisfy anything. And there was no longer actual money of substance to pay anybody.

Since it is, in fact, the real property, wealth and assets of the sovereign American citizenry that is the substance backing all the other obligations, currency and credit of THE UNITED STATES and such currencies could not be used to reduce its obligations for equity interest recovery to its Principals and Sureties, HJR-192 made the notes of such a "national banking association" of the Principals, Sureties, Prime-Creditors and Holders in Equity over THE UNITED STATES on a par with its other currency and legal tender obligations and declared, ..."every provision....which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency.... is declared to be against Public Policy; and no such provision shall be ....made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any such coin or currency which at the time of payment is legal tender for public and private debts."

And thus provided as "Public Policy" the means for discharge and recovery on US Corporate public debt due the Principals, and Holders of THE UNITED STATES without expansion of credit, debt or obligation on THE UNITED STATES or these its prime-creditors in the discharge of "every obligation", "including every obligation OF and TO THE UNITED STATES", allowing those backing the US financial reorganization to recover on it by discharging an obligation they owed TO THE UNITED STATES or its sub-corporate entities, against that same amount of obligation OF THE UNITED STATES owed to them; by the right to issue, as legal tender, notes....."upon "the full faith and credit of THE UNITED STATES" for Obligation OF THE UNITED STATES and sub-corporate chartered entities to the discharge and recovery of the public debt, "dollar for dollar", to the Principals, Prime-Creditors, and Holders in Equity over THE UNITED STATES as Sureties for its obligations, currency and credit." This, as remedy provided by Congress, for the orderly recovery of equity interest on US Corporate public debt due the Sureties, Principals, and Holders of THE UNITED STATES, discharging that portion of the public debt without expansion of credit, debt or obligation on these, its prime-creditors, was intended to satisfy equitable remedy, gaining for each bearer of such note, discharge of obligation equivalent in value 'dollar for dollar' to any and all "lawful money of the United States".

And when tendered in the discharge and recovery of the public debt to its Principals, discharging those obligations OF THE UNITED STATES and sub-corporate chartered entities to its Holders against the obligations of its Holders in Equity to them, without expansion of credit, debt or obligation on THE UNITED STATES or these its prime-creditors, in accordance with "Public Policy" established in HJR-192 and 31 USC 5103, such instruments are, of necessity, "legal tender for all debts, public charges, taxes, and dues."

Further, Title 18 Sect. 8 also defines "obligation of the United States" to include

such "national bank currency".

TITLE 18 > PART I > CHAPTER 1 > Sec. 1. > Sec. 8.

Obligation or other security of the United States defined --

The term "obligation or other security of the United States" includes all bonds, certificates of indebtedness, national bank currency, Federal Reserve notes, Federal Reserve bank notes, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, issued under any Act of Congress, and canceled United States stamps.

As stated, there presently is no "national bank currency" of federally incorporated banking institutions.

The Banking Act of 1935 retired national bank currency in favor of Federal Reserve notes.

As quoted in 'Money and Banking" by Friedman, ..." Today commercial banks no longer issue currency, ..." Yet "national bank currency" is still included in the official definition for Obligation of the United States.

It could be argued that it is retained to honor those notes yet unredeemed and technically still in circulation. While this may be true, it is also true the definition includes not only "obligation of the United States" "drawn by" authorized officers of the United States", issued, therefore, by the government; but also includes..... "all bonds, certificates of indebtedness, and national bank currency,.....drawn upon authorized officers of the United States,"

Include in this is the Secretary of the Treasury in his duty as keeper of the public debt:

Title 31 USC 3123 - Payment of obligations and interest on the public debt

"The Secretary of the Treasury shall pay interest due or accrued on the public debt."

And includes any such notes or currency drawn upon him as an "authorized officer of the United States," by whomever may have the right and power to do so ....."issued under any Act of Congress."

This includes the rights established under "public policy" by HJR-192 (public law 73-10) and 31 USC 5103 to the prime-creditors and holders in equity of US Corporate public debt to issue as legal tender, notes.....'upon "the full faith and credit of THE UNITED STATES" for Obligation OF THE UNITED STATES and sub-corporate chartered entities to the discharge and recovery of the public debt, "dollar for dollar", to the Principals, Prime-Creditors, and Holders in Equity over THE UNITED STATES as Sureties for its obligations, currency and credit.'

By these statutory provisions, such notes, issued by the Principals, Sureties, and prime-Holders of US Corporate public debt as legal tender obligations of THE UNITED STATES for recovery of equity interest due, are the "national bank currency", backed as "obligations of THE UNITED STATES", primarily allowed for in these statutes.

Although this has been public policy as a remedy for the discharge of debt in conjunction with removal of gold, silver and real money as legal tender currency by the same act of public policy in 1933, we acknowledge it has been a difficult concept to communicate and for others to accept and understand what to do under it, so it has never gained common use, and for obvious reasons the government has discouraged public understanding of the remedy and recovery under it and therefore it is little known and not generally accessed by the public. But it is just as much public policy today for the discharge and recovery of the public debt to those to whom it is due as it was in 1933, and is still there as a remedy for those who need to access it.

And, as noted above, in accordance with "Public Policy" established in HJR-192, respondent, as obligee, may not require of the Principal a tender of any particular kind of coin or currency in place of it.

We state again, this instrument makes no claims except such claims as are supported by law.

Principal will withdraw this tender in discharge of this obligation upon the verifiable citing of any law or federal regulation that precludes, excludes, prohibits, or disqualifies this presentment as a legal tender obligation of The United States, and is of full belief that none exists.

You may wish to consult with your attorneys on these points of law. Please be advised that their lack of familiarity with this matter does not constitute evidence or documentation in law that what is presented here is not true or binding on all parties. To expedite the final settling of this account, any legal corrections or clarifications of what is here stated must be supported by the appropriate state or federal law(s) and/or regulations on which it is based.

This bankers acceptance note may now be used in the discharge of your obligations, "for all debts, public charges, taxes, and dues", negotiated and exchanged in the course of business with other obligations of the United States or commercial paper of private corporations as bonds, certificates, notes, or other security instruments commonly traded, exchanged and tendered in this way by yourself, or received by your bank as an asset on deposit from you, held as an obligation OF THE UNTED STATES to your bank, to be exchanged and negotiated in these ways or by whomever may become the bearer of it.

Under this remedy for discharge of the public debt and recovery to its Principals and Holders, TWO debts that would have been discharged in Federal Reserve debt note instruments or checks drawn on the same, equally expanding the public debt by those transactions, are discharged against a single public debt of the Corporate UNITED STATES and its sub-corporate entities to a prime-creditor without the expansion and use of Federal Reserve debt note instruments as currency and credit without the expansion of debt and debt instruments in the monetary system and the expansion of the public debt as burden upon the entire financial system and its Principals and Holders in Equity the recovery remedy was intended to relieve.

However used, if or when negotiated, it is our knowledge and belief that the original accepted for value presentment of debt attached to the instrument needs to remain attached in any transfer to another party.

As a statutory legal tender obligation of THE UNITED STATES, it does not require endorsement for negotiation to another party, but due to its being unfamiliar in public commerce, space is provided for such endorsement to make applicable certain laws regarding negotiable instruments for your protection and to facilitate your ability to negotiate it, as it is also negotiable by definition. However, this does not change its status as a statutory legal tender obligation of THE UNITED STATES.

If tendered to a bank, prepare a deposit slip. Make a copy of the entire package for your records, and deliver all the original documents with the deposit slip and the incorporated "MEMORANDUM TO DEPOSITING INSTITUTION" to your bank. Your bank should credit your account immediately upon your deposit of this instrument. If your bank informs you that they have dishonored this banker's acceptance note, please notify me immediately. If your bank does not send you a notice of dishonor but fails to credit your account, notify me immediately.

Please note with regard to your bank:

12CFR229.21 Availability of Funds and Disclosure of Funds Availability Policies

Sec. 229.21 Civil liability.

(a) Civil liability. A bank that fails to comply with any requirement imposed under subpart B, and in connection therewith, subpart A, of this part or any provision of state law that supersedes any provision of subpart B, and in connection therewith, subpart A, with respect to any person is liable to that person in an amount equal to the sum of–

(1) Any actual damage sustained by that person as a result of the failure;

(2) Such additional amount as the court may allow, except that–

(i) In the case of an individual action, liability under this paragraph shall not be less than $100 nor greater than $1,000.

It is your responsibility, as a bank customer, to establish with your bank the points of banking law requiring them to do this.

This instrument is tendered in good faith in discharge and settlement of this obligation to our mutual benefit.

5.Caveat. In the absence of a clear written contract between us as to the manner of discharge of this debt; my statement of facts and its addendums will result in a clear understanding and meeting of the minds of the parties clearly identified and will stand as truth in commerce.

6. Statement of Account: By authority of law and federal regulation herein noted the tender in discharge of this obligation you have received is a statutory legal tender obligation of THE UNITED STATES and upon proof of receipt constitutes immediate discharge of this debt up to its face amount unless you or your banking institution can show you have cause to dispute this with verifiable Federal or state statute or regulation.

Therefore, as of this date, upon tender to you the Respondent, the amount of unpaid obligations for account #172231076 for all transactions with Respondent is zero.

Statement of Account date: MARCH 27, 2015

Balance of Charges thru $ 147,000.00

Tender in Discharge of this Obligation $ 147,000.00

Certified Registration # RR449 331 264 US – (EIN #_____)

Ending Balance of Charges: $0

The balance shown above reflects my good faith Statement of this Account. Any over payment may be refunded. Your Account Representative or his designee may correct the statement. If you determine the balance is differen than as shown above, your documented correction must be returned to me within the two weeks time allowed for holding and settlement of this instrument by your banking institution or other parties to whom you may tender it in discharge of obligation or within thirty (30) days of your receipt of this Statement of Account.

(UCC § 9-210. MS CODE 75-9-210 REQUEST FOR ACCOUNTING; OR STATEMENT OF ACCOUNT.

(a)Subject to subsections (c), (d), (e), and (f), a secured party .....shall comply with a request within 14 days after receipt:(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction,

including records of evidence or documentation in law authenticating that in fact the bankers acceptance note tendered to you in settlement of this account has been dishonored by your banking institution or other obligee o endorser on the authority of Federal or state statute or regulation as being precluded, excluded, prohibited, or

disqualified as a legal tender obligation of The United States.

Please send these documents along with a short letter signed in blue ink by a title-identified party asserting your claim if you would wish to dispute my statement of account. Any unsigned, anonymous letter will have to be ignored

by me as a matter of law, since someone must take responsibility for asserting the validity of your claim that the tender of this presentment has not legally discharged this obligation by the citing of any such law or federal regulation that precludes or disqualifies this presentment as a legal tender obligation of The United States.

Note: the Uniform Commercial Code in its entirety is also codified as state law in all 50 states and as such is included here by reference for any state under whose jurisdiction you are registered.

In the event you need additional information or instruction in processing the instrument please do not hesitate to contact me by mail, phone or email: cdeaner@bellsouth.net (706) 399-5496

MAIL:
704 KERSHAW DRIVE
BELVEDERE, SC 29841

Thank you for your prompt handling of this matter.

Respectfully submitted,

CAROLYN SUE DEANER, Agent

NAME IN ALL CAPS

Caution to Obligees, please be advised:

By authority of law and federal regulation noted in the accompanying "Notice of Acceptance of Presentment" the tender in discharge of this obligation you have received is a statutory legal tender obligation of THE UNITED STATES and upon proof of receipt constitutes immediate discharge of this debt up to its face amount and/or the amount shown on attached presentment unless you or your banking institution can show you have cause to dispute this by verifiable Federal or state statute or regulation.

This instrument makes no claims except such claims as are supported by law.

Accordingly, this tender in discharge of this obligation will be withdrawn upon the verifiable citing of any Federal or state law or regulation that precludes, excludes, prohibits, or disqualifies this presentment as a legal tender obligation of The United States.

If you return or otherwise dishonor your obligor's tender in discharge of this obligation, WITHOUT establishing a basis in law, the obligation of your obligor as endorser of this instrument to make good the instrument to you "may not be enforced," and "the liability" to you of your obligor as endorser for the face value of the instrument is discharged":

MS Code 75-3-503.NOTICE OF DISHONOR- The obligation of an indorser stated in Section 3-415(a) and the obligation of a drawer stated in Section 3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section...

MS Code 75- 3-415. OBLIGATION OF INDORSER

(c) If notice of dishonor of an instrument is required by Section 3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged."

FURTHER, If you reject or refuse this presentment by your obligor in tender of discharge of an obligation, "there is discharge" of the obligation to you "of the amount of the tender,"

MS Code 75§ 3-501- PRESENTMENT:

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse .....acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

MS Code 75 § 3-603. TENDER OF PAYMENT (b)" If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation".

When such as a Bankers Acceptance Note is tendered in discharge, negotiation or exchange of an obligation, an obligee, such as yourself, may not require of the bearer tender of other particular kind of coin or currency in place of it:

HJR-192(public law 73-10) states: "every provision....which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency.... is declared to be against Public Policy; the term 'coin or currency' means coin or currency of the United States, including....notes of .....national banking associations".

(see also 31 USC 5103 – legal tender)

Refusal or wrongful dishonor of this presentment in exchange or discharge of obligation may result in your loss of recourse against the endorser of the instrument to you.

MEMORANDUM TO DEPOSITING INSTITUTION

Please take the time to first carefully read the accompanying Notice of Acceptance of Presentment and its detailed discussion we have provided your banking customer.

By authority of law and federal regulation here noted in the accompanying Notice of Acceptance of Presentment this Bankers Acceptance Note presented by your customer for deposit is a statutory legal tender obligation of THE UNITED STATES. And in accordance with "Public Policy" established in HJR-192, and in accordance with 31 USC 5103 and 18 USC 8, such instruments are "national bank currency" and thereby 'coin or currency of the United States' by statutory definition (see again the accompanying Notice of Acceptance of Presentment). And further, by the terms of state law, The Uniform Commercial Code and the Code of Federal Regulations, are fully negotiable as "legal tender for all debts, public charges, taxes, and dues.", and must so be received by your institution for deposit in accordance with your customer agreement unless your banking institution can show you have cause to dispute this from Federal or state statute or regulation.

This instrument makes no claims except such claims as are supported by law or any such claim as may be voided, precluded, excluded, prohibited, or that disqualifies this presentment as a legal tender obligation of The United States by federal or state statute or regulation.

Accordingly, this presentment will be withdrawn only upon the citing of any verifiable law or federal regulation that precludes, excludes, prohibits, or disqualifies this presentment as a legal tender obligation of The United States.

MS Code 75§ 3-501. PRESENTMENT.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse .....acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

You may negotiate this Bankers Acceptance Note in the Federal Reserve Bank Open Market Window, or via the pass through account at the treasury window or it may be retained by your bank as a cash asset on deposit from your customer, held as an obligation OF THE UNITED STATES for collateralization and fractional reserve purposes to your bank. Each month your bank prepares and sends a statement for the IRS Treasury Tax and loan Account and is authorized to ledger a credit and a debit to the TT&L account in the amount of this Bankers Acceptance Note.

Further options are explored in:

IV TFM Part 1 CHAPTER 2300: TREASURY INVESTMENT PROGRAM (T/L 6)TFM Volume IV

Part 1-Chapter 2300

TREASURY INVESTMENT PROGRAM

(T/L 6)

PDF Version

This chapter guides depositaries participating in the Treasury Investment

Program (TIP).

" Each business day, EFTPS provides summary files of ACH tax deposit or payment activity for financial institutions and depositaries to the NCSA. The NCSA processes this information through TIP. For a Retainer or Investor depositary, NCSA credits the reserve account (or the designated TT&L correspondent's reserve account) and posts the funds to the depositary's TIP main account balance in the amount of the ACH tax deposit or payment. This offsets the resulting debit to the reserve account balance for the same ACH transaction.

These funds remain invested in the TIP main account balance until Treasury initiates a withdrawal. In addition, the NCSA automatically will withdraw all funds in excess of a depositary's capacity."

"All pledged collateral must be:

Deemed acceptable by the Federal Reserve System to secure borrowings from an FRB for its BIC collateral program. Held by the pledging depositary institution that retains possession of the collateral on its own premises under an OPC arrangement.

Contact the local FRB's Credit Discount Department or the NCSA for specific

information on the acceptability of collateral pledged to secure SDI account

balances. (See paragraph 2355.)"

"The local FRB's Credit Discount Department provides information on the acceptability of specific collateral within the acceptable classes. Information regarding acceptable collateral for the TT&L program is distributed periodically and posted to the BPD's website (www.publicdebt.treas.gov) and the Federal Reserve's Financial Services website (www.frbservices.org). Unless specified otherwise by Treasury, the following are classes of acceptable collateral:

Obligations issued and fully insured or guaranteed by the U.S. Government."

Or it may be exchanged, converted or monetized into other more common forms of currency in any other way you choose.

CFR Sec. 229.21 Civil liability.

(a) Civil liability. A bank that fails to comply with any requirement imposed under subpart B, and in connection therewith, subpart A, of this part or any provision of state law that supersedes any provision of subpart B, and in connection therewith, subpart A, with respect to any person is liable to that person in an amount equal to the sum of--

(1) Any actual damage sustained by that person as a result of the failure;

(2) Such additional amount as the court may allow, except that--

(i) In the case of an individual action, liability under this paragraph shall not be less than $100 nor greater than $1,000.

UCC§ 4-103. VARIATION BY AGREEMENT; MEASURE OF DAMAGES; ACTION CONSTITUTING ORDINARY CARE. (a) The effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable. (b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a), whether or not specifically assented to by all parties interested in items handled (e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

The above citations are provided for your review. Again this item must be received by your institution for deposit in accordance with your customer agreement unless your banking institution can show you have cause to dispute it from Federal or state statute or regulation.

Please be advised if you cannot provide your customer in writing with statutory basis requiring you to refuse this item for deposit as a legal tender obligation of THE UNITED STATES and thereby 'coin or currency of the United States' by statutory definition in accordance with your customer agreement, your refusal may result in disciplinary action by appropriate investigatory agencies and commissions of the Federal Reserve Board of Governors (see 12CFR229.3 Administrative Enforcement) and may leave the bank and its responsible employees open to serious civil liabilities and damages for violation of its customer agreement, federal, state law and Federal Reserve Bank regulations.(see 12CFR229.21 Civil liability, as noted above and UCC-3-307,103, and 4-106).

The Bankruptcy of The United States

Publish a Proclamation and Instructions of HOW TO Discharge Our Debts As Per HJR 192:
http://sturly.com/6w1 (http://sturly.com/6w1)

The Federal Government took our lawful money out of circulation in 1933 but Congress had to provide the people a remedy. Public Law: "Chap. 48, 48 Stat. 112" under HJR 192 is that remedy and in part states that the Federal Government will discharge all of our debts, public and private, dollar for dollar. This has been one of the best kept secrets in this Bankrupt Nation.

They took everything including all property and titles to property and left us onhly w/ an ability to discharge debt and create money through our signature and they never bothered to tell us.

We create money when we apply for bank loans with our signature. It is our signature and credit in our ability to work that creates the money of account and this has been the case since 1933. The banks have a monopoly to our credit and for this "service" they charge principal and interest on non existent money all the time giving the impression they lent us their money and this is fraud because they never revealed where the money came from. This is true for Credit Card accounts and Mortgages.

Note Number: [ACCT# 7500] Date: March 27, 2015

Pay to the Order

[BANK OF AMERICA, NA

ONE HUNDRED FORTY SEVEN THOUSAND NO /100 **** DOLLARS

$ 147,000.00 USD

This instrument is an UNCONDITIONAL INTERNATIONAL PROMISSORY NOTE (UNCITRAL CONVENTION) tendered by the Undersigned Respondent, [CAROLYN SUE DEANER) ©, Authorized Representative, hereinafter "Maker," in good faith, and in accordance with law, as codified at Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Article 47-4(c). and Public Policy at House Joint Resolution 192 of June 5, 1933, as full satisfaction of a alleged debt claimed and allegedly owed in favor of Payee herein, i.e. [BANK OF AMERICA, [illegible], d.b.a. a debt collector, as per Payee's/Debt Collector's Presentment:

On this 27th day of MARCH 2015, I, [CAROLYN SUE DEANER] ©, By this negotiable instrument governed by UNCITRAL CONVENTION, promise to Pay to [BANK OF AMERICA, NA] [ONE HUNDRED FORTY SEVEN THOUSAND AND [illegible] USD without interest or other charges, Payable on demand upon presentment of this original instrument properly endorsed on or after [illegible] 2015, at [900 WEST TRADE STREET, SUITE 650] , [CHARLOTTE, NORTH CAROLINA, 28255] Alleged Creditor: [B[illegible] AMERICA, NA]; Alleged Account No.: [172231076]; Alleged Amount Due: [ONE HUNDRED FORTY SEVEN THOUSAND [illegible]. A true and correct copy of Presentment is attached hereto, made fully part hereof, and included herein by reference. This statement constitutes Maker's promise for paying this instrument upon presentment and Endorsement, at Maker's location.

As an operation of law, Payee/Debt Collector tacitly consents and agrees that there is accord and satisfaction by use of this instrument for satisfying Payee's/Debt Collector's claim and Maker is hereby discharged from liability on this alleged account and the obligation is suspended in pursuant to UNCITRAL CONVENTION codified at Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Article 47-4(c).

[CAROLYN SUE DEANER]©TRUST

DATED MARCH 27, 2015

By: [CAROLYN SUE DEANER]

"As good as Aval" Authorized Representative Secured Party, Without Recourse UCC 1-308

Witness ..... Witness .....

Authorized person indorsing below. Print name and official title when presenting this Instrument for payment. Government-issued ID with photograph required, i.e. only the following types of ID accepted: state-issued Drivers License; state-issued Identification Card; Passport.

PARTY RECEIVING PAYMENT*

Printed Name of Endorser _____ Form of Photo Identification _____

Official Title of Endorser _____ Form of Official Identification _____

Date of Presentment and Endorsement _____ Signature of Endorser _____

Right Thumb Print

Date endorser received document: _____, 20___

Respondent's Private International Administrative Remedy Demand No. [ACCT# 7500]

Date of Notice: MARCH 27, 2015

Notice served by: _, acting as agent for
[CAROLYN SUE DEANER]©TRUST
c/o [704 KERSHAW DRIVE]
[BELVEDERE, SOUTH CAROLINA 29841-2738]
All rights in commerce are explicitly under reserve and without recourse

Notice served on: [BANK OF AMERICA, NA]
Respondent: c/o [BRIAN THOMAS MOYNIHAN, CEO/PRESIDENT/OFFICER]
[900 WEST TRADE STREET, SUITE 650], [CHARLOTTE, NORTH CAROLIN

Reference: NOTICE OF FORECLOSURE Case/Account No. 2013-CP-02-00699

Pursuant to DEMAND letter issued instructing [CAROLYN SUE DEANER]©TRUST to pay a debt in the amount of $[147,000], and in accord with current UNCITRAL CONVENTION, with said CONVENTION having never been repealed and still being in full force and effect, and in accord **with my private exemption authorized therein for the discharge of debts,** I, [CAROLYN SUE DEANER], Sovereign, acting in good faith, with clean hands and at arm's length, hereby and herein tender payment for a debt in the amount of [$147,000] in full compliance and full satisfaction of said Order, issued by [BANK OF AMERICA, NA], c/o [BRIAN THOMAS MOYNIHAN, CEO/PRESIDENT/OFFICER], instructing [CAROLYN SUE DEANER] to pay a debt.

In as much as no lawful money of account exists in circulation, and pursuant of current "UNCITRAL CONVENTION", [CAROLYN SUE DEANER]©TRUST has no money with which to pay a debt. Because [CAROLYN ©TRUST has no money with which to pay a debt, he has had to resort to tendering a negotiable instrument, pursuant, to the UNCITRAL CONVENTION Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Article 47-4(c). Statement, issued instructing [CAROLYN SUE DEANER)]©TRUST to pay a debt.

As you will note, pursuant to UNCITRAL CONVENTION Articles 1-7, Articles 11, 12, 13, 14(1), Articles 46(3) and Artic 47-4(c), the attached International Promissory Note is an instrument and clearly satisfies the requirements of [AMERICA, NA], issued on MARCH 27, 2015 instructing [CAROLYN SUE DEANER]©TRUST to pay a debt. Said International Promissory Note is being issued in good faith, with clean hands and at arm's length, and is not a dishonor of s Demand. [illegible]

Please send me a signed receipt acknowledging receipt of my payment to the above address.

Verification: I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on MARCH 27, 2015 AD.

Attachment: Copy of Negotiable Instrument in the form of an International Promissory Note, Signed in , dated MARCH 27, 2015 in the amount of **[$147,000]**, issued to [BANK OF AMERICA, NA].

Respectfully served, [CAROLYN SUE DEANER]©TRUST

X_____
By [CAROLYN SUE DEANER], Authorized Representative, Without Recourse, All Rights Reserved, Without Prejudice
CUSIP # [250720646] Private Set off Account Number [CAROLYN SUE DEANER] [250-72-0646]

FACSIMILE TRANSMITTAL SHEET

TO:
CHARLIE GWYNNE, ESQ
Attorney at Law
SHAREHOLDER

FROM:
CAROLYN S. DEANER
Cell: (706) 399-5496
Fax: (706) 736-3558
cdeaner@bellsouth.net

FAX NUMBER: (803) 343-7017 **DATE: 5/22/15**

COMPANY: ROGERS&TOWNSEND,PC **PAGES INCLUDING COVER: (6)** & Exhibit B Sheet

PHONE NUMBER: (803) 744-1933

RE: SUPPORTING DOCUMENTS FOR
(Motion to DISCHARGE DEBT)

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS: (Notification also e-mailed 5/22/2015)

CHARLIE:

AM FAXING "THE MOTION TO DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER JUDGMENT", plus EXHIBIT A (18 PAGES), B (4 pages), C (9 pages), D (10 pages), and, E (6 pages).

CORDIALLY,
Carolyn
Carolyn S. Deaner

704 Kershaw Drive

North Augusta, SC 29841

FACSIMILE TRANSMITTAL SHEET

TO:
KIM MOORE
ASSISTANT TO
J. MARTIN HARVEY
Attorney at Law
REFEREE

FROM:
CAROLYN S. DEANER
Cell: (706) 399-5496
Fax: (706) 736-3558
cdeaner@bellsouth.net

FAX NUMBER: (803) 259-5414 **DATE: 5/22/15**

COMPANY: HARVEY&KULMALA,LLC **PAGES INCLUDING COVER: (6)** & Exhibit B sheet

PHONE NUMBER: (803) 259-5531

RE: SUPPORTING DOCUMENTS FOR
(Motion to DISCHARGE DEBT)

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS: (Notification also e-mailed 5/15/2015)

DEAR KIM:

AM FAXING "THE MOTION TO DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER OF JUDGMENT, plus EXHIBIT A (18 pages), B (4 pages), C (9pages), D (15pages),, and E (6 pages). Please give to Referee Harvey for upcoming hearing.

CORDIALLY,

Carolyn S. Deaner

704 Kershaw Drive

North Augusta, SC 29841

COPY
ORIGINAL FILED
MAY 2 2 2015 4:10 pm
AIKEN COUNTY
CLERK OF COURT

EXHIBIT: B

RE: AGATON Letter & BLANK ROME Letter
Certified RECEIPT Sheet

FACSIMILE TRANSMITTAL SHEET

TO: **JASON AGATON**
CUSTOMER ADVOCATE
PAYMENT RESOLUTIONS &
MR. BRUCE R. THOMPSON

FROM:
CAROLYN S. DEANER
(706) 399-5496
cdeaner@bellsouth.net

FAX NUMBER: (866) 603-4755 **DATE: 4/15/15**

COMPANY: BANK OF AMERICA, NA **PAGES INCLUDING COVER: (17)**

PHONE NUMBER: (877) 471-4367

RE ACCOUNT: 17223107

RE: Negotiable International Promissory Note Uncitral Convention 7500

☑ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS: TO: MR. BRUCE R. THOMPSON, CHIEF CFO

DEAR JASON:

This is the LETTER AND ATTACHMENT FOR YOUR DEPARTMENT AND/OR LEGAL TEAM FOR ATTACHMENT TO THE NEGOTIABLE INTERNATIONAL PROMISSORY NOTE UNCITRAL CONVENTION. PLEASE SEND THE LETTER OF DISCHARGE OF THIS ACCOUNT NUMBER 172231076 WITHIN 7 DAYS.

CORDIALLY,

CAROLYN S. DEANER

P. O. BOX 485

AUGUSTA, GA 303903-0485

April 3, 2015

Contact Us:
1.800.669.6650

Loan Ending:
1076

Service Request Number:
1-545731086

Page 1 of 1

Ms. Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841

Correspondence received on: March 31, 2015

Dear Ms. Deaner:

Our Enterprise Customer Care Resolution team has received your correspondence addressed to Mr. Bruce Thompson, CFO of Bank of America.

My name is Jason Agaton and I am a Customer Advocate with Bank of America.

My goal is to respond to your correspondence in writing by April 15, 2015.

Thank you for the opportunity to respond to your inquiry.

Sincerely,

Jason Agaton
Customer Advocate
Enterprise Customer Care Resolution

For more information abou help for homeowners, visit bankofamerica.com/homeloanhelp or makinghomeaffordable.gov

To check on the status of a loan modification, go to bankofamerica.com/loanhelpstatus

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector. If you are currently in a bankruptcy proceeding or have previously obtained a discharge of this debt under bankruptcy law, this notice is for informational purposes only and is not an attempt to collect a debt, a demand for payment or an attempt to impose personal liability for a discharged debt.

Mortgages funded and administered by an Equal Housing Lender.
Protect your personal information before recycling this document.

BLANK ROME LLP
COUNSELORS AT LAW

Phone: (215) 569-5391
Fax: (215) 832-5391
Email: LBowes@BlankRome.com

April 22, 2015

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841

Re: Borrower: Carolyn S. Deaner (the "Borrower")
Property Address: 704 Kershaw Drive, North Augusta, SC 29841
Loan Number Ending In: 1076 (the "Loan")

Dear Ms. Deaner:

This firm represents Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP ("Bank of America"), for the sole purpose of responding to your correspondence dated March 27, 2015 (collectively, the "Letter"). Bank of America has reviewed the Letter and is writing in response to the inquiries and/or allegations in the Letter that contain a Notice of Error under 12 C.F.R. §1024.35, an Information Request under 12 C.F.R. §1024.36, or which otherwise require a response under state or federal law. The results of this review are set forth below and in the documents enclosed herewith.

The Letter makes certain vague and conclusory allegations relating to the Loan; however, Bank of America has reviewed the Letter and is unable to ascertain any specific error alleged by the Letter. As you may be aware, 12 C.F.R. §1024.35 does not require a servicer to respond to overbroad allegations that do not allow the servicer to reasonably determine the specific error(s) alleged. Therefore, it is Bank of America's position that the Letter does not contain a Notice of Error under 12 C.F.R. §1024.35.

Enclosed is a Payment History, which lists the transactions relating to the Loan during Bank of America's servicing. Please note this history provides pertinent information on payments received, tax and insurance payments disbursed, funds in the suspense/unapplied funds balance, and late charges assessed and paid. There are no codes used in the Payment History that require specific definitions.

The Letter, among other things, purports to pay off the Loan using a "Negotiable International Promissory Note." Please be advised that the "Negotiable International Promissory Note," is not an acceptable form of payment, and payments made in connection with a loan in foreclosure status must be in the form of certified funds. We have requested a payoff demand statement to be sent to you under separate cover, which will show all amounts necessary to pay off the Loan.

The Letter also appears to conclude that any failure to by Bank of America to take certain actions will confer certain rights upon the Borrower. Please be advised that Bank of America is under no duty or obligation to respond to the Letter in the manner demanded by the Borrower or to take any actions demanded therein. Please be further advised that notwithstanding anything contained in the Letter or any failure by Bank of America to respond to all or any portion of the Letter, the Loan documents remain enforceable as written and the respective rights and obligations of the parties remain unaffected. Your remaining claims and allegations are vague and conclusory, and are inconsistent with the enclosed documents. Based on the foregoing, Bank of America considers the issues raised in the Letter resolved.

It is Bank of America's position that no further response to the Letter is required. The remaining requests and/or allegations contained in the Letter do not require a substantive response under 12 C.F.R. §§1024.35-1024.36 (and/or the exceptions articulated therein), seek documentation or information beyond that which is available through a request for verification of debt made under 12 U.S.C. §1692g, or do not otherwise require a response under state or federal law.

Questions or concerns regarding the contents of this letter should be submitted to Bank of America in writing at P.O. Box 942019, Simi Valley, CA 93094-2019. If you have other questions or concerns regarding the Loan, please contact Customer Advocate Jason Agaton at (877) 471-4367, ext. 383243.

In providing the above response, Bank of America is not limiting or waiving any rights or remedies it may now have or hereafter have, whether arising under the Loan documents, at law or in equity, all of which rights and remedies are expressly reserved.

Sincerely,

Louise Bowes

Enclosures

FACSIMILE TRANSMITTAL SHEET

TO:
CHARLIE GWYNNE, ESQ
Attorney at Law
SHAREHOLDER

FROM:
CAROLYN S. DEANER
Cell: (706) 399-5496
Fax: (706) 736-3558
cdeaner@bellsouth.net

FAX NUMBER: (803) 343-7017 **DATE: 5/22/15**

COMPANY: ROGERS&TOWNSEND,PC **PAGES INCLUDING COVER: (11)** and Exhibit C sheet

PHONE NUMBER: (803) 744-1933

RE: SUPPORTING DOCUMENTS FOR
(Motion to DISCHARGE DEBT)

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS: (Notification also e-mailed 5/22/2015)

CHARLIE:

AM FAXING "THE MOTION TO DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER JUDGMENT", plus EXHIBIT A (18 PAGES), B (4 pages), C (9 pages), D (10 pages), and, E (6 pages).

CORDIALLY,

Carolyn S. Deaner

704 Kershaw Drive

North Augusta, SC 29841

COPY
ORIGINAL FILED
MAY 2 2 2015 4:10 pm
AIKEN COUNTY
CLERK OF COURT

EXHIBIT: C

RE: UCC 1 & UCC 3

UCC-1

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
CAROLYN S. DEANER (706) 399-5496

B. SEND ACKNOWLEDGMENT TO: (Name and Address)
CAROLYN S. DEANER
P. O. BOX 485
AUGUSTA, GA 30903-0485

SC Secretary of State
File ID: 130628-1304331
Lapse Date: 06/28/2018

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: QUICKEN LOANS, INC.

OR

1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

1c. MAILING ADDRESS: P. O. BOX 553154 | CITY: DETROIT | STATE: MI | POSTAL CODE: 48255-3154 | COUNTRY: USA

1d. TAX ID# (Organizations): DO NOT PROVIDE | ADDL INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION: INC. | 1f. JURISDICTION OF ORGANIZATION: MICHIGAN | 1g. ORGANIZATIONAL ID #, if any | ☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME: BANK OF AMERICA, N. A.

OR

2b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

2c. MAILING ADDRESS: P. O. BOX 5170 | CITY: SEMI VALLEY | STATE: CA | POSTAL CODE: 93062-5170 | COUNTRY: USA

2d. TAX ID# (Organizations): DO NOT PROVIDE | ADDL INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION: INC. | 2f. JURISDICTION OF ORGANIZATION: CALIFORNIA | 2g. ORGANIZATIONAL ID #, if any | ☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME: DEANER | FIRST NAME: CAROLYN | MIDDLE NAME: SUE | SUFFIX

3c. MAILING ADDRESS: P. O. BOX 485 | CITY: AUGUSTA | STATE: GA | POSTAL CODE: 30903-0485 | COUNTRY: USA

4. This FINANCING STATEMENT covers the following collateral:

NOTE
3212186468
JUNE 26, 2007
$97,600

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☒ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. REQUEST SEARCH REPORT(S) ON UCC-11 FORM: NOT USED

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT ADDENDUM (UCC-1Ad)

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME
QUICKEN LOANS, INC.

OR

9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

SC Secretary of State
File ID: 130628-1304331
Lapse Date: 06/28/2018

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME
BAC HOME LOANS SERVICING, LP

OR

11b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

11c. MAILING ADDRESS: P. O. BOX 5170
CITY: SIMI VALLEY
STATE: CA
POSTAL CODE: 93062-517
COUNTRY: USA

11d. TAX ID #: SSN OR EIN: DO NOT PROVIDE
ADDL INFO RE ORGANIZATION DEBTOR
11e. TYPE OF ORGANIZATION: LP
11f. JURISDICTION OF ORGANIZATION: CALIFORNIA
11g. ORGANIZATIONAL ID #, if any: ☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

12c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.
Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.
☐ Debtor is a TRANSMITTING UTILITY
☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years
☐ Filed in connection with a Public-Finance Transaction — effective 30 years

[redacted]

UCC FINANCING STATEMENT ADDENDUM (UCC-1Ad)

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME: QUICKEN LOANS, INC.

OR

9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME,SUFFIX

10. MISCELLANEOUS:

SC Secretary of State
File ID: 130628-1304331
Lapse Date: 06/28/2018

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME: FEDERAL NATIONAL MORTGAGE ASSOCIATION & TRUST

OR

11b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

11c. MAILING ADDRESS: 3900 WISCONSIN AVENUE | CITY: WASHINGTON | STATE: DC | POSTAL CODE: 20016-2892 | COUNTRY: USA

11d. TAX ID #: SSN OR EIN: DO NOT PROVIDE | ADDL INFO RE ORGANIZATION DEBTOR | 11e. TYPE OF ORGANIZATION: INC. | 11f. JURISDICTION OF ORGANIZATION: DISTRICT OF COLUMBIA | 11g. ORGANIZATIONAL ID #, if any: ☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

12c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a ☒ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years

☐ Filed in connection with a Public-Finance Transaction — effective 30 years

UCC-3

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
Carolyn Sue Deaner 7063995496

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)
Carolyn Sue Deaner
PO BOX 485
AUGUSTA, GA 30903 0485

SC SECRETARY OF STATE
150410-0311349 NS
Date: 4/10/2015
Time: 3:11 AM
Page Count: 3 Pg
Debtor Count:
Filing Fees: $10.00
Electronic Records Access: $8.00
Total: $18.00
Order ID# 33572316

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER
130628-1304331

1b. [X] This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. [ ] TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. [ ] ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. [ ] CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. [ ] PARTY INFORMATION CHANGE:
Check one of these two boxes: AND Check one of these three boxes to:
This Change affects [ ] Debtor or [X] Secured Party of record
[ ] CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c
[ ] ADD name: Complete item 7a or 7b, and item 7c
[ ] DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)
6a. ORGANIZATION'S NAME
OR
6b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)
7a. ORGANIZATION'S NAME
OR
7b. INDIVIDUAL'S SURNAME
INDIVIDUAL'S FIRST PERSONAL NAME
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX
7c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

8. [X] COLLATERAL CHANGE: Also check one of these four boxes: [X] ADD collateral [ ] DELETE collateral [ ] RESTATE covered collateral [ ] ASSIGN collateral

Indicate collateral:
The following described real property,to wit. ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, SITUATE, LYING AND BEING IN BELVEDERE, AIKEN COUNTY, SOUTH CAROLINA, DESIGNATED AS LOT 10, BLOCK B, ON A PLAT OF SURVEY OF PINECREST SUBDIVISION, SECTION 1, MADE BY CRANSTON & ASSOCIATES, DATED OCTOBER 3, 1966, REVISED UNDER DATE OF MARCH 29, 1968, AND RECORDED IN PLAT BOOK 3, AT PAGE 151, RECORDS OF AIKEN COUNTY, AND ACCORDING TO SAID PLAT, BEING BOUNDED, NOW OR FORMERLY, AND MEASURING MORE OR LESS, AS FOLLOWS:
NORTH BY KERSHAW DRIVE ON TWO LINES , MEASURING RESPECTIVELY 43.0 FEET AND 78.0 FEET, EAST BY LOT 9, SAID BLOCK, 153.0 FEET, SOUTH BY LANDS OF TROTTER REALTY COMPANY, 71.22 FEET, AND WEST BY LOT 11 SAID BLOCK 149.03 FEET. REFERENCE IS HEREBY MADE TO SAID PLAT FOR A MORE COMPLETE AND ACCURATE DESCRIPTION OF THE SUBJECT PROPERTY. PARCEL/TAX I.D.#:10-078-0-08-004. COMMONLY KNOWN AS: 704 KERSHAW DRIVE, BELVEDERE, SC 29841.

See additional.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here [ ] and provide name of authorizing Debtor
9a. ORGANIZATION'S NAME
OR
9b. INDIVIDUAL'S SURNAME: DEANER | FIRST PERSONAL NAME: CAROLYN | ADDITIONAL NAME(S)/INITIAL(S): SUE | SUFFIX

10. OPTIONAL FILER REFERENCE DATA:
Carolyn S. Deaner

UCC-3

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form
130628-1304331

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME
DEANER

FIRST PERSONAL NAME
CAROLYN

ADDITIONAL NAME(S)/INITIAL(S)
SUE

SUFFIX

SC SECRETARY OF STATE
150410-0311349 NS
Date: 4/10/2015
Time: 3:11 AM
Page Count:
Debtor Count:
Filing Fees: $10.00
Electronic Records Access: $8.00
Total: $18.00
Order ID# 33572316

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):
INTERNATIONAL PROMISSORY NOTE, IPN-PRIVATE SET OFF ACCOUNT NUMBER:250-72-0646, CUSIP #: 250720646

15. This FINANCING STATEMENT AMENDMENT:
☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17
(if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:

UCC-3

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form
130628-1304331

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME
DEANER

FIRST PERSONAL NAME
CAROLYN

ADDITIONAL NAME(S)/INITIAL(S)
SUE

SUFFIX

SC SECRETARY OF STATE
150410-0311349 NS
Date: 4/10/2015
Time: 3:11 AM
Page Count:
Debtor Count:
Filing Fees: $10.00
Electronic Records Access: $8.00
Total: $18.00
Order ID# 3357231G

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):

15. This FINANCING STATEMENT AMENDMENT:
☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17
(if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:

MERS MIN: 100039032121864686

3212186468
Deaner, Carolyn

NOTE

June 26, 2007 [Date] North Augusta [City] SC [State]

704 Kershaw Dr
North Augusta, SC 29841
[Property Address]

1. BORROWER'S PROMISE TO PAY

SC Secretary of State

In return for a loan that I have received, I promise to pay U.S. $ 97,600.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Quicken Loans Inc. File ID: 130628-1304331

Lapse Date: 06/28/2018

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 7.000%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(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 1st day of each month beginning on September 1, 2007. 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 August 1, 2037, 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 P.O. Box 553154, Detroit, MI 48255-3154 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 649.34

4. 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 date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

SC Secretary of State
File ID: 120628-1304331
Lapse Date: 06/28/2018

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % 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.

7. 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.

8. 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.

9. 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.

10. 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. 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.

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.

Lapse Date: 06/28/2018

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

Carolyn S. Deaner 06/26/2007 (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

[Sign Original Only]

FACSIMILE TRANSMITTAL SHEET

TO:
CHARLIE GWYNNE, ESQ
Attorney at Law
SHAREHOLDER

FROM:
CAROLYN S. DEANER
Cell: (706) 399-5496
Fax: (706) 736-3558
cdeaner@bellsouth.net

FAX NUMBER: (803) 343-7017 **DATE: 5/22/15**

COMPANY: ROGERS&TOWNSEND,PC **PAGES INCLUDING COVER: (16)**
and Exhibit D Sheet

PHONE NUMBER: (803) 744-1933

RE: SUPPORTING DOCUMENTS FOR
(Motion to DISCHARGE DEBT)

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS: (Notification also e-mailed 5/22/2015)

CHARLIE:

AM FAXING "THE MOTION TO DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER JUDGMENT", plus EXHIBIT A (18 PAGES), B (4 pages), C (9 pages), D (10 pages), and, E (6 pages).

CORDIALLY,

Carolyn S. Deaner

704 Kershaw Drive

North Augusta, SC 29841

COPY
ORIGINAL FILED
MAY 2 2 2015 4:10 pm
AIKEN COUNTY
CLERK OF COURT

EXHIBIT: D

RE: Notice of Memorandum of Law for Tender of Payment

NOTICE

NOTICE OF MEMORANDUM OF LAW-Points and Authorities in Support of International Bill of Exchange

> "Those who constitute an association nationwide of private, unincorporated persons engaged in the business of banking to issue notes **against** these obligations of the United States due them; whose **private** property is at risk to collateralize the government's debt and currency, by legal definitions, a **"national banking association"**; such notes, issued **against these obligations of the United States to that part of the public debt due its Principals and Sureties** ***are required by law to be accepted as "legal tender" of payment for all debts public and private*** and are defined in law as **"obligations of the United States"**, on the same par and category with Federal reserve notes and other currency and legal tender obligations." (Page 8)

RE: Item tendered for Discharge of Debt.

The instrument tendered to the bank and negotiated to the United States Treasury for settlement is an "Obligation of THE UNITED STATES," under **Title 18USC Sect.8,** representing as the definition provides a **"certificate of indebtedness ....drawn upon an authorized officer of the United States,"** (in this case the Secretary of the Treasury)**"issued under an Act of Congress"** (in this case **public law 73-10, HJR-192 of 1933** and **Title 31 USC 3123, and 31 USC 5103) and by treaty** (in this case **the UNITED NATIONS CONVENTION ON INTERNATIONAL BILLS OF EXCHANGE AND INTERNATIONAL PROMISSORY NOTES (UNCITRAL)** and **the Universal Postal Union headquartered in Bern, Switzerland).**

TITLE 18 > PART I > CHAPTER 1 > Sec. 1. > Sec. 8.

Sec. 8. - Obligation or other security of the United States defined

The term "obligation or other security of the United States" includes all bonds, **certificates of indebtedness, national bank currency**, Federal Reserve notes, Federal Reserve bank notes, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, **drawn** by or **upon authorized officers of the United States,** stamps and other representatives of value, of whatever denomination, **issued under any Act of Congress,** and canceled United States stamps.

The International Bill of Exchange is legal tender as a national bank note, or note of a National Banking Association, by legal and/or statutory definition **(UCC 4-105, 12CFRSec. 229.2, 210.2, 12 USC 1813)** , issued under Authority of the United States

Code **31 USC 392, 5103,** which officially defines this as a statutory legal tender obligation of THE UNITED STATES, and is issued in accordance with **31 USC 3123** and **HJR- 192(1933)** which establish and provide for its issuance as "Public Policy" in remedy for discharge of equity interest recovery on that portion of the public debt to its Principals, and Sureties bearing the Obligations of THE UNITED STATES.

This is a statutory remedy for equity interest recovery due the principles and sureties of the United States **for discharge of lawful debts in commerce in conjunction with US obligations to that portion of the public debt it is intended to reduce.**

During the financial crisis of the depression, in 1933 substance of gold, silver and real money was **removed** as a foundation for our financial system.
In it s place the **substance** of the American citizenry: **their** real property, wealth, assets and productivity **that belongs to them** was, in effect, **'pledged'** by the government and **placed at risk** as the **collateral** for **US debt, credit and currency** for commerce to function.

This is well documented in the actions of Congress and the President at that time and in the Congressional debates that preceded the adoption of the reorganizational measures:

Senate Document No. 43, 73rd Congress, 1st Session, stated,
"Under the new law the money is issued to the banks **in return** for **Government obligations, bills of exchange, drafts, notes, trade acceptances, and banker's acceptances. The money will be worth 100 cents on the dollar, because it is backed by the credit of the nation. It will represent a mortgage on all the homes and other property of all the people in the Nation."** (Which **lawfully belongs** to these private citizens.)

The National Debt is defined as "**mortgages on the wealth and income of the people of a country.**" (Encyclopedia Britannica, 1959.)
Their wealth, ... **their** income.

The reorganization is evidenced by:
the Emergency Banking Act, March 9, 1933,
House Joint Resolution 192, June 5, 1933 (public law 73-10)
And the Series of Executive Orders that surrounded them:
6073- Reopening of Banks. Embargo on Gold Payments and Exports, and Limitations on Foreign Exchange Transactions. March 10, 1933
6111-Transactions in foreign exchange are permitted under Governmental Supervision. April 20, 1933

6102 - Forbidding the hoarding of gold coin, gold bullion and gold certificates. April 5, 1933

On December 23, 1913, Congress had passed "An Act to provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford a means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and **for other purposes".** The Act is commonly known as **the "Federal Reserve Act".**

One of the purposes for enacting the Federal Reserve Act was :
(3) **to authorize "hypothecation" of obligations including "United States bonds or other securities which Federal reserve Banks are authorized to hold"** under Section 14(a);
12 USC; ch. 6, 38 Stat. 251 Sect 14(a)

The term **"hypothecation"** as stated in Section 14(a) of the Act is defined:

> "1. Banking. **Offer of** stocks, bonds, or other **assets owned by a party other than the borrower as collateral for a loan, without transferring title**. If the borrower turns the property over to the lender who holds it for safekeeping, the action is referred to as a **pledge. If the borrower retains possession, but gives the lender the right to sell the property in event of default, it is a true hypothecation.**
> 2. Securities. The pledging of negotiable securities to collateralize a broker's **margin** loan. The broker pledges the same securities to a bank as collateral for a broker's loan, the process is referred to as **rehypothecation.**"
> **[Dictionary Of Banking Terms, Fitch, pg. 228 (1997)]**

As seen from the definitions, in hypothecation there is **equitable** risk to the **actual** owner.

Section 16 of the current Federal Reserve Act, which is codified at 12 USC 411, declares that **"Federal Reserve Notes" are "obligations of the United States".**

So we see the **"full faith and credit" of the United States:** which is the **substance** of the American citizenry: **their** real property, wealth, assets and productivity that **belongs to them,** is thereby **hypothecated and rehypothecated** by the United States to **its** obligations as well as to the Federal Reserve **for the issuance and backing of Federal Reserve Notes as legal tender** "for all taxes, customs, and other public dues".

TITLE 12 > CHAPTER 3 > SUBCHAPTER XII > Sec. 411.

Sec. 411. - Issuance to reserve banks; nature of obligation; redemption

Federal Reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are authorized. **The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues.**

The commerce and credit of the nation continues on today under financial reorganization (Bankruptcy) as it has since 1933, **still** backed by the assets and wealth of the American citizenry: **at risk** for the **government's** obligations and currency.

Under the 14th amendment and numerous Supreme Court precedents, as well as in equity, **Private property can not be taken or pledged for public use without just compensation, or due process of law .** The United States **can not pledge or risk the property and wealth of its private citizens, for any government purpose without legally providing them remedy to recover what is due them on their risk.**

This principle is so well established in English common law and in the history of American jurisprudence.
The 14th amendment provides: **"no person shall be deprived of...property without due process of law".**
And Courts have long ruled to have one's property legally held as collateral or surety for a debt even when he still owns it and still has it is to **deprive** him of it since it is at risk and could be lost for the debt at any time.

The United States Supreme Court said, in United States v. Russell [13 Wall, 623, 627] **"Private property, the Constitution provides, shall not be taken for public use without just compensation."**
"The right of subrogation is not founded on contract. It is **a creature of equity**; is enforced solely for the purpose of accomplishing the ends of substantial justice; **and is independent of any contractual relations between the parties." Memphis & L. R. R. Co. v. Dow, 120 U.S. 287, 301-302 (1887).**

The rights of a surety to recovery on his risk or loss when standing for the debts of another was reaffirmed again as late as 1962 in Pearlman v. Reliance Ins.Co., 371 U.S. 132 when the Court said:
..."sureties compelled to pay debts for their principal have been deemed entitled to reimbursement, even without a contractual promise ...And probably there are few doctrines better established....."

Black's Law Dictionary , 5th edition, defines "surety":
"One who undertakes to pay **or to do any other act in event that his principal fails therein.** Everyone who incurs **a liability in person or estate for the benefit of another,** without sharing in the consideration, **stands in the position of a "surety."**

Constitutionally and in the laws of equity, the United States **could not borrow or pledge the property and wealth of its private citizens, put at risk as collateral for its currency and credit without legally providing them equitable remedy for recovery of what is due them.**

The United States government, of course, did **not** violate the law or the Constitution in this way, in order to collateralize its financial reorganization, but did, **in fact,** provide such a legal remedy so that it has been able to continue on since 1933 to hypothecate the

private wealth and assets of those classes of persons by whom it is owned, , **at risk backing the government's** obligations and currency, **by their implied consent,** through the government having provided such **remedy,** as defined and codified above, for recovery of what is due them on their assets and wealth at risk.

The provisions for this are found in the same act of "Public Policy" **HJR-192, public law 73-10** that suspended the gold standard for our currency, abrogated the right to demand payment in gold, and made Federal Reserve notes for the first time legal tender, "**backed by the substance or "credit of the nation"**.

All US currency since that time is only **credit** against the real property, wealth and assets belonging to the private soverign American people, **taken** and/or '**pledged**' by THE UNITED STATES to its **secondary** creditors as **security** for its obligations. Consequently, those **backing** the nation's credit and currency **could not** recover what was due them **by anything drawn on Federal Reserve notes without expanding their risk and obligation to themselves.** Any recovery payments backed by **this** currency would only **increase the public debt its citizens were collateral for, which an equitable remedy was intended to reduce**, and in equity would not satisfy anything. And there was no longer **actual money of substance to pay anybody.**

There are other serious limitations on our present system. **Since the institution of these events, for practical purposes of commercial exchange, there has been no actual money in circulation by which debt owed from one party to another can actually be repaid.**
Federal Reserve Notes, although made legal tender for all debts public and private in the reorganization, can only **discharge** a debt. Debt must be **"payed"** with **value or substance** (i.e. gold, silver, barter, labor, or a commodity). For this reason HJR-192 (1933), which established the "public policy" of our current monetary system, repeatedly uses the technical term of "discharge" in conjunction with "payment" in laying out public policy for the new system. A debt currency system cannot pay debt.
So from that time to the present, commerce in the corporate UNITED STATES and among sub-corporate subject entities has had only debt note instruments by which debt can be discharged and transferred in different forms. The unpaid debt, created and/or expanded by the plan now carries a **public liability** for collection in that when debt is discharged with debt instruments, (i.e. Federal Reserve Notes included), by our commerce, debt is inadvertently being **expanded** instead of being **cancelled,** thus **increasing the public debt. A situation potentially fatal to any economy.**

Congress and government officials who orchestrated the public laws and regulations that made the **financial reorganization** anticipated the long term effect of a debt based financial system which many in government feared, and which we face today in servicing the interest on trillions upon trillions of dollars in US Corporate public debt and in this same act made provision not only for the **recovery remedy to satisfy equity** to its Sureties, but **to simultaneously resolve this problem as well.**

Since it is, in fact, the real property, wealth and assets of that class of persons that is **the substance** backing **all** the other obligations, currency and credit of THE UNITED STATES **and such currencies could not be used to reduce its obligations for equity interest recovery to its Principals and Sureties,**

HJR-192 further made the **"notes of national banks** "and **"national banking associations"** on a par with its other currency and legal tender obligations,

Now TITLE 31 , SUBTITLE IV , CHAPTER 51 , SUBCHAPTER I , Sec. 5103. says,

Legal tender - United States coins and currency (including Federal reserve notes and circulating **notes of** Federal reserve banks and **national banks**) are **legal tender** for all debts, public charges, taxes, and dues. (emphasis added)

But this official definition for **'legal tender'** was first established in **HJR-192 (1933)** in the same act that made federal reserve notes **and notes of national banking associations** legal tender.

Public Policy HJR-192
JOINT RESOLUTION TO SUSPEND THE GOLD
STANDARD AND ABROGATE THE GOLD CLAUSE,
JUNE 5, 1933
H.J. Res. 192, 73rd Cong., 1st Session
Joint resolution to assure uniform value to the coins and currencies of the United States.

(b) As used in this resolution, **the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency)** payable in money of the United States; **and the term "coin or currency" means coin or currency of the United States, including** Federal Reserve notes and circulating **notes of** Federal Reserve banks and **national banking associations.**

"All coins and currencies of the United States (including Federal Reserve notes and circulating **notes of** Federal Reserve banks and **national banking associations)** heretofore or hereafter coined or issued, **shall be legal tender** for all debts, for public and private, public charges, taxes, duties, and dues,"

[**USC Title 12.221 Definitions** – "The terms **"national bank"** and **"national banking association"**....shall be held to be **synonymous and interchangeable."**]

"notes of national banks" or "national banking associations" have continuously been maintained in the official definition of legal tender since June 5, 1933 to the present day, when the term had never been used to define "currency "or "legal tender" before that.

Prior to 1933 the forms of currency in use that were legal tender were many and varied:
-United States Gold Certificates – United States Notes – Treasury Notes – Interest bearing notes –Gold Coins of United States – Standard silver dollars – Subsidiary silver coins – minor coins
-Commemorative coins –
but the list did not include federal reserve notes or notes of national banks or national banking associations despite the fact national bank notes were a common medium of exchange or "currency" and had been, almost since the founding of our banking system and were backed by United States bonds or other securities on deposit for the bank with the US Treasury.

Further, **from the time of their inclusion in the definition they have been phased out** until presently **all** provisions in the United States Code pertaining to **incorporated federally chartered National Banking institutions issuing, redeeming, replacing and circulating notes** have all been **repealed:**
USC TITLE 12 > CHAPTER 2 - NATIONAL BANKS

SUBCHAPTER V - OBTAINING AND ISSUING CIRCULATING NOTES

Sec. 101 to 110. Repealed. Pub. L. 103-325, title VI, Sec. 602e5-11, f2-4A, g9, Sept. 23, 1994, 108 Stat. 2292, 2294

SUBCHAPTER VI - REDEMPTION AND REPLACEMENT OF CIRCULATING NOTES

Sec. 121. Repealed. Pub. L. 103-325, title VI, Sec. 602f4B, Sept. 23, 1994, 108 Stat. 2292

Sec. 121a. Redemption of notes unidentifiable as to bank of issue

Sec. 122. Repealed. Pub. L. 97-258, Sec. 5b, Sept. 13, 1982, 96 Stat. 1068

Sec. 122a. Redeemed notes of unidentifiable issue; funds charged against

Sec. 123 to 126. Repealed. Pub. L. 103-325, title VI, Sec. 602e12, 13, f4C, 6, Sept. 23, 1994, 108 Stat. 2292, 2293

Sec. 127. Repealed. Pub. L. 89-554, Sec. 8a, Sept. 6, 1966, 80 Stat. 633

As stated in 'Money and Banking", 4th edition, by David H. Friedman, publ. by the American Bankers Association, page 78, "**Today commercial banks no longer issue currency, ...**"

It is clear, federally incorporated banking institutions subject to the restrictions and repealed provisions of Title 12, **are not those primarily referred to maintained in the current definition of "legal tender".**

The legal statutory and professional definitions of **"bank", "banking", and "banker"** used in the United States Code and Code of Federal Regulations are not those commonly understood for these terms and have made the statutory definition of **"Bank"** accordingly:
UCC 4-105 PART 1 **"Bank"** means **a person engaged in the business of banking,"**
12CFRSec. 229.2 Definitions (e) **Bank** means—"the term bank also includes **any person engaged in the business of banking,"**
12CFR Sec. 210.2 Definitions. (d)" **Bank means any person engaged in the business of banking."**
USC Title 12 Sec. 1813. –Definitions of Bank and Related Terms. – (1) Bank. - The term **"bank" – (A)** "means **any national bank**, State bank, and District bank, and any Federal branch and insured branch;"
Black's Law Dictionary, 5th Edition, page 133, defines a **"Banker"** as,
"**In general sense, person that engages in business of banking. In narrower meaning, a private person.....; who is engaged in the business of banking without being incorporated. Under some statutes, an individual banker, as distinguished from a "private banker", is a person who, having complied with the statutory requirements, has received authority from the state to engage in the business of banking, while a private banker is a person engaged in banking without having any special privileges or authority from the state.** "

"Banking"- Is partly and optionally defined as **"The business of issuing notes for circulation....., negotiating bills."**

Black's Law Dictionary, 5th Edition, page 133, defines "Banking":

"The business of banking, as defined by law and custom, consists in the issue of notes .....intended to circulate as money.....

And defines a "Banker's Note" as:

"A commercial instrument resembling a bank note in every particular except that it is **given by a private banker or unincorporated banking institution."**

Federal Statute does **not** specifically define **"national bank" and "national banking association"** in those sections **where these uses are legislated on** to **exclude a private banker or unincorporated banking institution.**

It does define these terms to the **exclusion** of such persons in the chapters and sections where the issue and circulation of notes by national banks has been **repealed or forbidden.**

"In the absence of a statutory definition, courts give terms their ordinary meaning. "Bass, Terri L. v. Stolper, Koritzinsky, 111 F.3d 1325,7th Cir. Apps. (1996).
As the U.S. Supreme Court noted, **"We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there."** See, e.g., United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241 -242 (1989); United States v. Goldenberg,168 U.S. 95, 102 -103 (1897);
"The legislative purpose is expressed by the ordinary meaning of the words used. "Richards v. United States, 369 U.S.1 (1962).

Therefore, as noted above, the legal definitions relating to **'legal tender'** have been written by Congress and maintained as such to be both **exclusive,** where necessary, and **inclusive,** where appropriate, to provide in its statutory definitions of **legal tender** for the **inclusion** of all those, who by definition of private, unincorporated persons engaged in the business of banking to issue notes **against** the obligation of the United States for recovery on their risk, whose **private** assets and property are being used to collateralize the obligations of the United States since 1933, as collectively and nationally constituting a legal class of persons being a **"national bank" or "national banking association" with the right to issue such notes against The Obligation of THE UNITED STATES for equity interest recovery due and accrued to these Principals and Sureties of the United States backing the obligations of US currency and credit; as a means for the legal tender discharge of lawful debts in commerce as remedy due them in conjunction with US obligations to the discharge of that portion of the public debt, which is provided for in the present financial reorganization still in effect and ongoing since 1933.** [12 USC 411, 18 USC 8, 12 USC; ch. 6, 38 Stat. 251 Sect 14(a), 31 USC 5118, 3123. with rights protected under the 14th Amendment of the United States Constitution, by the U.S. Supreme Court in United States v. Russell (13 Wall, 623, 627), Pearlman v. Reliance Ins. Co., 371 U.S. 132,136,137 (1962), The United States v. Hooe, 3 Cranch (U.S.)73(1805), and in conformity with the U.S. Supreme Court 79 U.S. 287 (1870), 172 U.S.48 (1898), and as confirmed at 307 U.S. 247(1939).]

HJR- 192 further declared ....."**every provision....which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency.... is declared to be against Public Policy; and no such provision shall be ....made with respect to any obligation hereafter incurred.**"
Making way for discharge and recovery on US Corporate public debt due the Principals and Sureties of THE UNITED STATES providing as **"public policy"** for the discharge of **"every obligation", "including every obligation OF and TO THE UNITED STATES", "dollar for dollar"**, allowing those backing the US financial reorganization to recover on it by **discharging** an obligation they owed **TO THE UNITED STATES** or its sub-corporate entities, **against that same amount of obligation OF THE UNITED STATES owed to them; thus providing the remedy for the discharge** and **orderly recovery** of equity interest on US Corporate public debt due the Sureties, Principals, and Holders of THE UNITED STATES, discharging **that** portion of the public debt **without expansion of credit, debt or obligation on THE UNITED STATES or these its prime-creditors** it was intended to satisfy equitable remedy to, **but** gaining for each bearer of such note, discharge of obligation equivalent in value 'dollar for dollar' to any and all **"lawful money of the United States"**.

Those who constitute an association nationwide of private, unincorporated persons engaged in the business of banking to issue notes **against** these obligations of the United States due them; whose **private** property is at risk to collateralize the government's debt and currency, by legal definitions, a **"national banking association"**; such notes, issued **against these obligations of the United States to that part of the public debt due its Principals and Sureties** are required by law to be accepted as "legal tender" of payment for all debts public and private, and, as we have seen, are defined in law as **"obligations of the United States"**, on the same par and category with Federal reserve notes and other currency and legal tender obligations.

This is what is asserted in the tender presented to the bank for deposit and the government has said nothing to the contrary.

Would we question that this is exactly what Congress has provided for in these statutes and codes on the public debt and obligations of the United States and that this is the remedy codified in statutory law and definition we have cited here? Even though it is never discussed.

Under this remedy for **discharge** of the public debt **and recovery** to its Principals and Sureties, **TWO debts** that would have been discharged in Federal Reserve debt note instruments or checks drawn on the same, equally **expanding** the public debt by those transactions, are discharged against **a SINGLE public debt of the Corporate UNITED STATES and its sub-corporate entities** to its prime-creditor **without the expansion and use of Federal Reserve debt note instruments as currency and credit**, and so, **without** the expansion of debt and debt instruments in the monetary system and the **expansion of the public debt** as burden upon the entire financial system and its Principals, and Sureties the recovery remedy was intended to relieve.

Apparently their use is for the discharge and **non-cash accrual reduction** of US Corporate public debt to the Principals, Prime Creditors and Holders of it as provided in law and the instruments will ultimately be settled by adjustment and set-off in discharge of a bearer's obligation TO THE UNITED STATES against the obligation OF THE UNITED STATES for the amount of the instrument to the original creditor it was tendered to or whomever or whatever institution may be the final bearer and holder in due course of it, again, thus discharging that portion of the public debt **without expansion of credit, debt or note on the prime-creditors of THE UNITED STATES** it was intended to satisfy equitable remedy to, but gaining for each endorsed bearer of it discharge of obligation equivalent in value 'dollar for dollar' of currency, measurable in **"lawful money of the United States"**.

Although this has been public policy as a remedy for the discharge of debt in conjunction with removal of gold, silver and real money as legal tender currency by the same act of public policy in 1933, it has been a **difficult** concept to communicate for others to accept and to know what to do with it, so its never gained common use and for obvious reasons the government has **discouraged** public understanding of the remedy and recovery under it and therefore it is **little known** and not generally accessed by the public. But it is still an obligation the United States has **bound** itself to and has provided for in statutory law and the United States still accepts these non-cash accrual exchanges today as a matter of law and equity. So is the experience of many who have attempted to access the remedy.

That the "public policies" of House Joint Resolution 192 of 1933 are still in effect is evidenced by the other provisions of "public policy" it established that we can see along with these discussed. No one would attempt to demand payment in gold or a particular kind of coin or currency in use or think to write such an obligation into a contract, **because the gold standard for currency is still suspended and the right to a 'gold clause' to require payment in gold is still abrogated. Both are also part of "public policy" established in HJR-192.**

The practical evidence and fact of the United States' financial reorganization (bankruptcy) is still ongoing today, visible all around us to see and understand. When Treasury notes come due, they're not paid. They are **refinanced** by **new** T-Bills and notes to back the currency and cover the debts. ..something that cannot be done with debt **.....unless,.... the debtor is protected from creditors in a bankruptcy reorganization** that is regularly being **restructured** to keep it going.

Every time the Federal debt ceiling is raised by Congress **they are restructuring the bankruptcy reorganization of the government's debt so commerce can continue on.**

For obvious reasons the United States government does not like having to recognize all this. It is a very sensitive and delicate matter. And few can speak or **will** speak authoritatively about it, as the bank has found out.

The recovery remedy is maintained in law because it has to be to satisfy equity to its prime creditors. At this late time, the United States is neither expecting nor intending it to

be generally accessed by the public. Regarding such instruments tendered to the Secretary, when public officials are put in a position to legally acknowledge or deny the authority or validity of the instruments, those in responsibility **will not deny or dishonor it, or an instrument of discharge properly submitted for that purpose.**

The issue is what has the government said about it **now?**
What is its policy **in practice**?
And how **does** it finally respond to such claims of which it receives thousands every day?

It is a fact: Title 31 USC 3123 makes a statutory pledge of the United States government to payment of obligations and interest on the public debt.

TITLE 31 , SUBTITLE III , CHAPTER 31 , SUBCHAPTER II , Sec. 3123. - **Payment of obligations and interest on the public debt**

(a) The faith of the United States Government is pledged to pay, in legal tender, principal and interest on the obligations of the Government issued under this chapter.

"**(b) The Secretary of the Treasury** shall pay interest due or accrued on the public debt."

It is a fact: Title 31 Section 3130 further delineates in its definitions a portion of the total public debt which is **held by the public** as the "Net public debt"

TITLE 31 > SUBTITLE III > CHAPTER 31 > SUBCHAPTER II > Sec. 3130.

Sec. 3130. - Annual public debt report

(e) Definitions. -

(2) Total public debt. - The term "total public debt" means the total amount of the obligations subject to the public debt limit established in section 3101 of this title.

(3) Net public debt. -

The term "net public debt" means the portion of the total public debt which is held by the public.

It is a fact: Section 3101 references **guaranteed obligations held by the Secretary of the Treasury** which are **excepted** and **exempted** from "the face amount of obligations whose principal and interest are guaranteed by the United States Government"

Sec. 3101. - Public debt limit

(b) The face amount of obligations issued under this chapter and the face amount of obligations whose principal and interest are guaranteed by the United States Government **(except guaranteed obligations held by the Secretary of the Treasury)** may not be more than $5,950,000,000,000, outstanding at one time, subject to changes periodically made in that amount as provided by law

It is a fact: Every day the United States Treasury department receives dozens or hundreds of such instruments making claims of this type. Obviously some are valid and some are not.

It is a fact: There are only 3 official government directives or alerts that address spurious, fraudulent, fictitious, or otherwise invalid, instruments sent to the US Treasury for payment, and **only one** that officially states what is to be **official US government policy** and treatment of them if they are received, this is ALERT 99-10: which is also published on the government website for the United States Treasury: www.publicdebt.treas.gov under Frauds and Phonies,

The Office of the Comptroller of the Currency, Enforcement & Compliance Division in ALERT 99-10
states:
"Type: Suspicious Transactions
TO: Chief Executive Officers of all National Banks; all State Banking Authorities; Chairman, Board of Governors of the Federal Reserve System; Chairman, Federal Deposit Insurance Corporation; Conference of State Bank Supervisors; Deputy Comptrollers (Districts); Assistant Deputy Comptrollers; District Counsel and Examining Personnel.

RE: Fictitious Sight Drafts payable through the U. STreasury

It has been brought to our attention that certain individuals have been making and executing worthless paper documents which are titled "Sight Draft" .These items state that they are payable through the U. S. Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. These instruments are being presented for payment at banks and other businesses throughout the United States. **Any of these instruments that are presented to the U. S. Treasury for payment will be returned to the sender** and copies will be provided to the appropriate law enforcement agencies." **Dishonored.**

This is in conformity with the Uniform Commercial Code that parties may rely on their presentment of obligations as settled unless given a Notice of Dishonor, whether directly applicable to Treasury Dept. officers or not.

UCC3-503. NOTICE OF DISHONOR

...(b) **Notice of dishonor may be given** by any person; **may be** given by any commercially reasonable means, including an oral, written, or electronic communication; **and is sufficient if it reasonably** identifies the instrument **and** indicates that the instrument has been dishonored or has not been **paid or** accepted. Return of an instrument **given to a bank for collection** is sufficient notice of dishonor.

c) Subject to Section 3-504(c), **with respect to an instrument taken for collection** notice of dishonor must be given.... **within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.**

These instruments are never returned from the Treasury dishonored.

It is a fact: There is no basis or reason or plausible explanation for such **unexplained silence** with regard to **these** particular instruments.
Every other branch of the Federal government including the Dept. of the Treasury has developed elaborate libraries of computer generated form letters of statements and replies dealing with almost every possible question or claim that could be made of any agency or department of the Federal government. The United States Treasury has an Office of Public Correspondence whose sole job it is to respond to communications from the general public. **THERE IS NO COMMUNICATION SENT TO THE UNITED STATES TREASURY THAT CAN NOT BE RESPONDED TO AS IT MAY REQUIRE.**

Many such categories of requests calling for response are **far greater** in number than claims in equity for recovery to a Prime-creditor over the United States and some categories are **far fewer** in number, and yet be the requests greater or smaller in number or in complexity of response required, **all these of a commercial nature are regularly and timely responded to.**

There is virtually no written response by the Federal government to this issue of recovery to the prime-creditors and holders in equity over the United States. The factually observable position of the Secretary of the Treasury and his department in response to THIS type of claim has been ABSOLUTE SILENCE be they from bank, business or private person:

Not denial, disavowal, dishonor, or repudiation of such claims OR their basis in law and fact if they are not true, which in every other case of correspondence to the Federal government or the Department of Treasury dealing with any question, request or claim: ANY SUCH FALSE CLAIM, MISCONCEPTION OR MISTAKEN UNDERSTANDING ON THE PART OF THE GENERAL PUBLIC IS TIMELY DEALT WITH IN EVERY CASE BY SUCH FORM LETTERS.

It is the **duty** of the United States Treasury to the commerce of the nation and in the interests of the general public whom it serves to **quickly** and **conclusively quash and repudiate any such false understandings or claims of remedy in equity on recovery of the public debt in the commercial realm and it is easily within their power to do so.**

This despite the fact the only official US government directive from the Department of the Treasury dealing with policy of the government toward fictitious or otherwise invalid instruments sent to the Treasury for collection states **clearly** **"they will be returned to the sender."**

There is, therefore, no basis or reason or plausible explanation for such **unexplained silence** with regard to **this** particular class of instrument **except** that **a remedy in equity for recovery to the prime-creditors over the United States IS true and factual and CANNOT BE DENIED or DISHONORED in equity, and that such Bills of Acceptance in discharge of mutually offsetting obligations between the United States and its holders in equity as secured parties ARE, in fact, being kept, held, and without return or dishonor, accepted as obligations of the United States in the discharge and recovery of the public debt as they make claim on their face to the Secretary of the Treasury to be.**

How they are to be recovered on is up to the parties involved holding such obligations and is provided for in law and regulation and administrative procedure a holder or its banking institution may use.

In Conclusion:

When a Commercial Bank sends the instrument to the Secretary for discharge of its own obligations and a problem arises concerning the instrument, a commercial response of some kind is required. There is a legal liability of the government to a negotiable legal tender obligation upon the United States government sent to them for acceptance by a member Federal Reserve Bank after they received it and became responsible for it.

The Treasury has an obligation as a department of government serving the public interest to the bank which as a member of the Federal Reserve System that has a commercial obligation to an account holder and a 3rd party who tendered the item in payment to tell them that its not any good or its not going to be honored, even if they wanted to keep it for prosecution or investigation. This is in effect what the directive says the government will do if its no good. **What does statutory law, regulation, or case law tells us about what that obligation is?**

They do not dishonor it in any way by return of the item or the sending of any notice to that effect, or make request for additional information or time for examination of the instrument, or given a statement of explanation indicating the time frame for its review and settlement if it would be an inordinately lengthy time as longer than 60 days to finish with it. The instruments are being kept, held, and without return or dishonor, are accepted as an obligation of the United States in the discharge and recovery of the public debt as it makes claim on its face to be.

Put another way: If the bank had had to pay the item to honor its customer agreement as if it had been a check, **what would or could the bank be trying to do with it to finally settle the account? The bank needs to treat the Instrument tendered as an obligation of the United States to the bank. . The tender of these instruments discharge the obligation of the debt for which they are delivered and the payee becomes the new holder in due course and collection agent on the instruments.**

FACSIMILE TRANSMITTAL SHEET

TO:
CHARLIE GWYNNE, ESQ
Attorney at Law
SHAREHOLDER

FROM:
CAROLYN S. DEANER
Cell: (706) 399-5496
Fax: (706) 736-3558
cdeaner@bellsouth.net

FAX NUMBER: (803) 343-7017 **DATE: 5/22/15**

COMPANY: ROGERS&TOWNSEND,PC **PAGES INCLUDING COVER: (7)** and Exhibit E sheet

PHONE NUMBER: (803) 744-1933

RE: SUPPORTING DOCUMENTS FOR
(Motion to DISCHARGE DEBT)

☐ URGENT ☑ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS: (Notification also e-mailed 5/22/2015)

CHARLIE:

AM FAXING "THE MOTION TO DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER JUDGMENT", plus EXHIBIT A (18 PAGES), B (4 pages), C (9 pages), D (10 pages), and, E (6 pages).

CORDIALLY,

Carolyn S. Deaner

704 Kershaw Drive

North Augusta, SC 29841

COPY
ORIGINAL FILED
MAY 2 2 2015
AIKEN COUNTY
CLERK OF COURT

EXHIBIT: E

RE: SECURITIZATION / RECOUPMENT ANALYSIS / GAAP

Securitization 1

Jean Keating Transcript – not for re-sale

"Securitization is Illegal", 30pg, by Michael Magugu, CPA, www.ssrn.com/abstract=hh3300 - It is only illegal for private corporations.

Securitization: The process of homogenizing financial instruments into fungible securities, so that they are sellable on the securities market.

When you sign a mortgage note it comes under UCC Article 3. After securitization, it comes under Article 8. Under US law securitization is illegal because it is fraudulent. Instruments such as loans, credit cards and receivables, are securitized. Enron was involved in securitization and someone brought charges against them. But almost all large corporations are doing it as usual business. However, the banking system and the government are also doing it.

Jean Keating brought a RICO suit against a bank, but it was thrown out. But he would have done better now that he knows more about it.

It is all accounting, whether it is banking, civil or criminal court. I submitted the FASB regulations – FAS125 securitization accounting, FAS140 **Offsetting** of financial assets and liabilities, FAS133 derivatives on hedge accounts, FAS5, FAS95. These are the resource materials for understanding this process. The note is not under a negotiable instrument any more, it is a security. All the banks follow these standards. They set up GAAP, generally accepted accounting principles. The banks are mandated by Title 12 USC to follow GAAP and GAAS. They have a local FASB and an international IFASB. They also cover derivatives. FAS 140 relates to UCC 3-305, 306. If you want to instruct them on how to do offsets, you have to refer them to FAS 133. If you don't know the accounting regulations, you can't give them the proper instructions for settling and closing. **What you really want is recoupment.**

Recoupment – (1) The recovery or regaining of expenses **Applying the setoff** so you can get back what you gave and what you are entitled to. (2) The withholding for the equitable part or all of something that is due. This is all equitable action in admiralty style instruments.

> Blacks:
> IOU – a memorandum acknowledging a debt. See also a due bill.
> DUE BILL – See IOU
> SIGHT DRAFT – A draft that is due on the bearers demand; or on proper presentment to the drawer. Also termed a demand draft. A draft is an unconditional order signed by one person, the drawer directing another person, the drawee, to pay a certain sum of money on demand or at a definite time to a person, the payee, or to bearer.

This is colorable. Who is holding the debt? A due bill is like a sight draft. They are not saying from which perspective it is a debt, from theirs or yours. The party receiving the IOU is the debtor, because the IOU is an asset. It is an instrument, and you are the originator. You have

monetized their system with your signature. An IOU is an asset instrument, not a liability instrument. This is one of the places where you have your perspective changed.

Under the constitution, the government was not given authority to create money. It is a **power reserved by the people**. Article I, section 10 restricted the states from making gold coins. So the corporate government **has to rely on the deception of people to create money**. So the way money is created is to have people sign an IOU, or promissory note. **It is not a debt instrument to the one who created it; it is actually an asset.** The creator can pass it on for someone else to use. It is negotiable unless it includes terms and conditions as part of a contract. The property belongs to the creator, and the holder is merely using it and any proceeds that come from it should be restored to the creator.

That is the power we have if we realize we have the authority to do this. The intent is to understand the regulations and to see how they are trying to deceive us to believe we are the debtor and the slave and they are the creditor at all times. This is not true.

We are looking for recoupment. Once we, the creator of the promissory note have signed it and others are using it, recoupment means **we want our property back** or have the account set off. Recoupment in practice is a counterclaim in a civil procedure. That is how one does a recoupment. We did a counterclaim on the grounds that; with the county, you can do a setoff. You can use the financial liability of the accounting ledger to offset the financial asset if you have the right to do that. But you have the right to do that if you are the creditor on the liability side and the bank or lending institution is the debtor on the liability side.

There is a duality here. The bank is the creditor on the receivable side or their asset side that is the receivable. You are the creditor on the liability side or the accounts payable. **You can use your accounts payable as an offset or counterclaim to the financial asset side** that is the receivable. The bank or the court is using the receivable side of the accounting ledger. That is what they are charging you with. On the receivable side, you have to pay the debt, because that is where the charge is coming from since they are claiming to be the creditor like a bank collecting the mortgage. The mortgage side of the bank ledger is the banks asset and their receivable. But on the liability side, because they sold our gold…

We have the actual gold contract where they did this. This is not my opinion, we have eleven $50 million gold bonds sold from the DeBeers Diamond Company. They sold America's gold under contract to the Bank of China. This is not my opinion. The U.S. did not go bankrupt in 1933. **What they did was sell all the gold under a gold contract to the Chinese government**. So the U.S. had to give us an account payable as a cash receipt. FAS 95 tells us that when they do a credit to a transactional account, which is a liability account, on which we are the creditor, they give a cash receipt to the customer and a cash payment to the bank, because it is cash proceeds. In intermediate accounting, when you give them a promissory note.

I gave a promissory note to a publisher for $1700. They accepted it because I gave them the proper accounting instructions. I did another one to another publisher for over $3000. They accepted initially, and then hired a collection attorney in one of the biggest collection agencies in the state of Ohio. They didn't send the note back because a payment tendered and refused is

discharged. Also, **any form of viable payment must be accepted**. Almost anyone that you send a note to is going to be making a mistake if they send it back. There is someone here that sent a transaction to the IRS on a closed checking account. He got the cancelled check back from the IRS. They said the check is no good because it is a closed account. But the transactional marks on the back of the check say otherwise.

If it is a note put into a bank, it is a **cash receipt to the depositor** and a **cash payment** to the Bank. So when the bank processed that closed check, the IRS got a cash receipt and the bank got cash payment. Then the IRS sent it back, so it is **evidence** that the transaction is accepted, but then colorably and publicly claim it is no good.

The publisher accepted the note and hired an attorney. I sent them a letter and they dropped the matter since they know that I know what the accounting is. Under FAS 140, you get your setoff. When you make a deposit, it is a cash receipt, a cash proceed. Everything becomes a cash proceed in commercial law under Article 9. They show it as a cash proceed. They give you a credit to your account that is actually a cash receipt to you the customer or the borrower. Then they do a cash payment to the bank. The bank they sell the note. They do a HELOC, home equity line of credit, and sell it to warehouse lending institution. This is the same as a credit card. Even on a **mortgage loan**...

A HELOC is different than warehouse lending. I got this from their mortgage department. They take the proceeds from the promissory note and pay off the warehouse lender. So the debt on the real estate is extinguished from the books (is that why they call it closing). They are required to file an FR 2046. This is a balance sheet. Under 12 USC 248 and 347 they are required to file a balance sheet. They are required on a quarterly or weekly basis. They file these balance sheets with the Federal Reserve Board. I talked to the head of the FRB. They file a balance sheet with the board. The balance sheet shows the assets and liabilities that they use in the accounting. The liabilities would be your promissory note. It is a liability because it is an asset to you.

Securitization is the process of transferring all the liabilities off the balance sheet. They can do this because you never ask for them. They have everybody conned into believing we are debtors instead of creditors and do not know to ask for our assets. We never ask for recoupment. So why carry the payables on the books if they have been abandoned. Why not write them off and sell them for more cash.

The government has such complicated books it is impossible to figure out what is going on.

If you give a bank a promissory note, they are required to give you a cash receipt. They owe you that money under a recoupment or asset. If you take the receipt back, they should give you some money. They call it an offset in accounting, but in the UCC it is called a recoupment. Unless you do ask or do a defense in recoupment under UCC 3-305, and a claim under 3-306, you have a possessory and property claim against the cash proceeds under the liability side of the ledger. UCC 3-306, there cannot be a holder in due course on a promissory note after they deposit it. They do an off balance sheet entry. This means they take your note after they sell it, instead of showing it on their balance sheet, they move over to some other entities balance sheet. It is no longer on the banks books. This is called **off balance sheet bookkeeping**. The head of

the FASB said that I was correct. They are not showing the liability side of the ledger or the accounts payable because it has **been moved** over to someone else's balance sheet.

The IRS does the same thing when you tender them a negotiable instrument. They accept it and never return it. **But** don't adjust the account. They pretend like nothing happened. They move them off the books that the collection agent is looking at. He is only looking at the accounts receivable ledger.

You tender a note to the bank to stop a foreclosure, and they ignore it. The agent at the bank claims she never got any payment. The agent only sees the receivable side of the books. He is being honest. It is up to us to make a claim for them to look at their other set of books. You have to learn how the system works so you can explain it to them. We need to know how to get them to produce the missing documents. They are only going to produce the documents that support their claim. The American and English litigation system is adversarial. They only have to present the evidence that supports their claim.

When a strawman is charged with speeding, he is given a charging instrument. It is the same as a claim by the bank that shows that someone has failed to make mortgage payment. It is a commercial entry from a corporation showing that there is a liability on your part that is an account receivable and **they are in the capacity of a creditor and making you appear in the capacity as a debtor.** So the clerk has an accounting charge against the strawman but you are operating the account. It is your responsibility to bring in recoupment in behalf of the real party of interest which is you because you are the ultimate creditor if you raise that claim against the liability side of the account.

People have a right to travel. So they have the right of recoupment to offset any charges against the strawman in an attempt to restrict the right of travel of living people. Civil and criminal court procedure operates the same as the bank.

What is the substantive principal involved in this that allows them to avoid fraud? The government does everything correctly. They never make a mistake. The government is involved in securitization that appears to be a fraud. There is immunity for people who understand the procedure. Only the unlearned are fooled into voluntarily entering into fraudulent contracts. It does not work if you get frustrated and angry at the fraudulent results of your own ignorance.

When you sign a promissory note to create the mortgage with a bank to buy your house, at closing, they have already sold your note to the warehousing institution. The warehousing institution brought money into the bank when they bought the note. At closing, they take the money and closes out the account on one side. The bank forgot to tell you that you don't have a liability on their receivable side any more.

Why do they keep taking your money? They have become the servicer for the account; they are not paying principal and interest. The payments are profit to the holder of the note. This is not stealing if we knew how to make a claim for recoupment. **They are using the note to expand the money supply.**

it from a warehouse lender. Then they pay off the warehouse lender with the note that they sell to them. Then they make derivatives out of this note by a bookkeeping entry.

The balance sheet, a 2046, 2049, and 2099, have OMB numbers on them that are subject to disclosure under the privacy act, Title 5 USC 552(b)(4). They have to give it to you if you ask for it. At closing and settlement, the reason they actually call it closing is because they pay off the loan in its entirety. The debt is actually extinguished.

Patriots say they didn't lend any money. But that doesn't rebut the receivable. There is no money. But we loaned them the note. So we started the process, so we have to help resolved the problem.

They do the accounting appropriately, but there is two sets of books. **But if you don't ask to see the books, it is your problem.** This is also what they are doing in the courtroom. The clerk has the receivable side for the corporation and the judge has the payables. **The judge is holding accounts payable under HJR 192 for all the people that come before him if he has the SSN.** The judge is not required to be a witness or bring pleadings to the court. He is a referee. The receivables are the charges against the strawman. The party aware of the payables is not the same party handling the receivables. People don't bring in an offsetting claim under the rules of procedure.

The judge does not have to do the setoff unless you raise the issue or defense. We have the right to waive it. So the judge is the priest receiving the sacrifice for the corporation.

Securitization 2

— Court has in previous filing —

DESIGNATION: 40

40. Referee Harvey's ORDER on Defendant's Emergency Motion To Vacate Judgement and Reverse or Cancel Sale and Defendant's Motion To Discharge Debt Due To Tender of Payment...filed 6/1/2015.

    (contains pages 1-5)

FORM 4

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

JUDGMENT IN A CIVIL CASE

DOCKET NO. 2012-CP-02-699

Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP
PLAINTIFF(S)

Carolyn S. Deaner
DEFENDANT(S)

Submitted by: Charles S. Gwynne Jr. (SC Bar#73844) 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	N/A	N/A

12312373

		$

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

All that certain piece, parcel or lot of land, situate, lying and being in Belvedere, Aiken County, South Carolina, designated as Lot 10, Block B, on a plat of survey of Pinecrest Subdivision, Section I, made by Cranston & Associates, dated October 3, 1966, revised under date of March 29, 1968, and recorded in Plat Book 3, at Page 151, records of Aiken County, and according to said Plat, being bounded, now or formerly, and measuring, more or less, as follows: North by Kershaw Drive on two lines, measuring respectively 43.0 feet and 78.0 feet; East by Lot No.9, said block, 153.0 feet; south by lands of Trotter Realty Company, 71.22 feet; and west by Lot 11, said Block 149.03 feet. Reference is hereby made to said Plat for a more complete and accurate description of the subject property.

This being the same property intended to be conveyed to Carolyn S. Deaner from Marolyn D. Spoores, individually and as trustee of the Velda K. Deaner Revocable Trust dated June 28, 2002, amended and restated October 11, 2002, and further amended on December 20, 2002 Donald D. Deaner, Jr., Michael A. Deaner, by deed dated October 4, 2004 and recorded October 13, 2004, in Book 2458 at Page 111.

Property Address: 704 Kershaw Drive
North Augusta, SC 29841

TMS# 012-14-06-051

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

Circuit Court Judge/Master in Equity/Special Referee **Judge Code** **Date** May 28 2015

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:

Charles S. Gwynne, Jr., Esq.
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202-3400
ATTORNEY(S) FOR THE PLAINTIFF(S)

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

12312373

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-02-699

Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP,

Plaintiff,

v.

Carolyn S. Deaner,

Defendant(s).

ORDER

FILED 6.1.15

C.C.C.P. & G.S.

Deputy Clerk

This foreclosure action was before me at a hearing on May 19, 2015, on Defendant Carolyn S. Deaner's ("Defendant") Emergency Motion to Vacate Judgment and Reverse or Cancel Sale under Rule 60(b), SCRCP ("Motion"). Subsequent to the hearing Defendant filed a "Motion to Discharge Debt Due to Tender of Payment Made on Order of Judgment". Defendant had submitted materials on the issue raised in her subsequent motion before May 19. As the latter motion seeks relief that could only be afforded under Rule 60(b)(5), I consider the issue of discharge of judgment as part of Defendant's Rule 60 Motion and address the issues raised therein without further argument.

Charles S. Gwynne Jr., Esquire, appeared on behalf of the Plaintiff at the hearing. Defendant appeared pro se. Prior to the hearing Defendant had presented extensive and detailed written materials for consideration prior to the hearing. Defendant was afforded more than 30 minutes to present her argument. For the reasons stated herein, the motion is denied.

Rule 60, South Carolina Rules of Civil Procedure provides, in pertinent part:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
1) mistake, inadvertence, surprise, or excusable neglect;
2) newly discovered evidence which by due diligence could not have been discovered in to move for a new trial under Rule 59(b);
(3) fraud, misrepresentation, or other misconduct of an adverse party;
(4) the judgment is void;
5) the judgment has been satisfied, released, or discharged, or a prior judgment upon it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JUN 01 2015

Liz Godard
C.C.C.P. & G.A., Aiken County, S.C.

Anita Kneeple
Deputy Clerk

12364284

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	DOCKET NO.: 2012-CP-02-699
Bank of America, N.A., successor by merger to BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Plaintiff, v. Carolyn S. Deaner, Defendant(s).	**ORDER**

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After a complete review of Defendant's Motion and exhibits, I conclude that Defendant's arguments are without merit. There is no evidence matching subsection (1). Subsection (2) affords Defendant no relief. Her stated grounds were all either raised during pretrial motions or could have been raised during the 3 years between the date this action was commenced and the date of trial on the merits. Some issues had been raised in her Answer and Counterclaim, which was dismissed by this Court's Order dated March 11, 2014.

Defendant's arguments of fraud, misrepresentation or other misconduct under subsection (3) are in the nature of intrinsic, rather than extrinsic fraud. In order to obtain equitable relief from a judgment based on fraud, the fraud must be extrinsic, sometimes referred to as "fraud upon the court." Raby Const., L.L.P. v. Orr, 358 S.C. 10, 594 S.E.2d 478 (2004). In addition, the failure to disclose to an adversary or court matters which would defeat one's own claim is intrinsic fraud. Chewning v. Ford Motor Co., 354 S.C. 72, 81, 579 S.E.2d 605, 610 (2003). There is no proof of extrinsic fraud on the part of the plaintiff or its legal counsel.

Last, Defendant argues that her tender of an "international negotiable promissory note" to Bank of America discharges the debt and the judgment should be vacated under Rule 60(b)(5). This argument is also without merit.

The Court of Appeals discussed the law of tender in Anderson v. Citizens Bank, 294 S.C. 387, 365 S.E.2d 26 (Ct. App. 1987):

> To constitute a good tender, the law requires payment to be in money, for the proper amount due, made to the proper person, at the proper place. *See Aldrach v. South Carolina Light, Power & Railways Co.*, 101 S.C. 32, 85 S.E. 164 (1915) (payment must be in money); *Tolbert v. Fouche*, 129 S.C. 338, 123 S.E. 859 (1924) (proper amount due); *Maryland Cas. Co. v. Hanson Dredging, Inc.*, 393 So.2d 595 (Fla.App.1981) (tender must be made to proper person); *McFarland v. Christoff*, 120 Ind.App. 416, 92 N.E.2d 555 (1950); *Waller v. Brooks*, 267 Cal.App.2d 389, 72 Cal.Rptr. 228 (1968) (tender must be made at proper place). A tender to be sufficient must be kept good. *Tolbert v. Fouche, supra.* A check is not tender. *Aldrach v. South Carolina Light, Power & Railways Co., supra.* Nor is payment offered to a person who is without authority from the creditor to accept it. *Rice v. Palmetto State Life Insurance Co.*, 196 S.C. 410, 13 S.E.2d 493 (1941). Likewise, payment offered at a place other than the creditor's place of business is not tender, unless the creditor agrees otherwise. *See Berley & Kyzer v. Columbia, Newberry & Laurens R Co.*, 82 S.C. 232, 64 S.E. 397 (1909); *Weyand v. Randall*, 131 A.D. 167, 115 N.Y.S. 279 (1909). The party alleging tender bears the burden of proving he has satisfied all the requirements for a good tender. *Moore v. Anchor Federal Savings and Loan Ass'n.*, 142 Ind.App. 681, 237 N.E.2d 114 (1968).

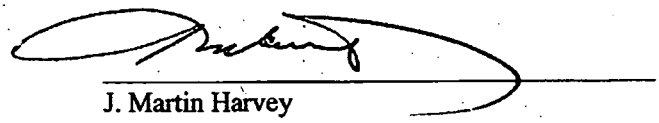
Id. at 395-96, 365 S.E.2d at 31.

A check and a promissory note are both negotiable instruments but neither is sufficient tender to discharge a judgment. They are evidence of debt – a promise to pay -- the underlying obligation for which is not discharged until payment is received through presentment. S.C. Code Ann. §36-3-501. By sending the plaintiff an international promissory note, Defendant is merely promising to pay. It is an attempt to substitute one evidence of indebtedness for another. Nothing is payment but that which produces payment, or is received as payment. Gibbes v. Greenville & C.R. Co., 13 S.C. 228, 253 (1880). It is clear that plaintiff did not receive the international promissory note as payment. The judgment debt is not discharged.

IT IS HEREBY ORDERED

1. Defendant's Motion to Vacate Judgment and Reverse or Cancel Sale under Rule 60(b) is DENIED.
2. Defendant's Motion to Discharge Debt Due to Tender of Payment Made on Order of Judgment under Rule 60(b)(5) is DENIED.

IT IS SO ORDERED.



J. Martin Harvey
Special Referee for Aiken County

May 28, 2015
Barnwell, South Carolina

12364284

DESIGNATION: 41

41. MOTIONT TO RECONSIDER DEFENDANT'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE...filed 9/2015.

(contains pages 1-13)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP

Plaintiff,

vs.

Carolyn S. Deaner

Defendant(s).

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

MOTION TO RECONSIDER DEFENDANT'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE

DOCKET NO. 2012-CP-02-00699

COPY
ORIGINAL FILED
JUN 09 2015 3:40
AIKEN COUNTY
CLERK OF COURT

TO: PLAINTIFF, Bank of America, N.A., successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P.

YOU WILL PLEASE TAKE NOTICE that CAROLYN S. DEANER, Defendant, Pro Se, will on or about JUNE 30, 2015 and as soon thereafter as Defendant may be heard, MOVE THE COURT, pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, for an ORDER GRANTING DEFENDANT'S MOTION TO RECONSIDER EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE, pursuant to South Carolina Rules of Civil Procedure in Rule 60 (b)(1) & RULE 60 (b)(3), **"Federal rule 60(b)(3), by express terms, permits judgments to be set aside for fraud, whether the fraud is intrinsic or extrinsic", Mr. G v. Mrs G, 320 S.C. 305, 465 S.E.2d 101 (Ct. App 1995), fn 2 (emphasis added). SOUTH CAROLINA RULES OF CIVIL PROCEDURE RULE 60(B)(3) INTRINSCI FRAUD MAY NOT BE USED TO SET ASIDE A JUDGMENT UNLESS THE INTRINSIC FRAUD WAS MISREPRESENTATION BY AN ATTORNEY.**

In addition, CR 59 (a)(4) and CR60 (b)(3) THIS MOTION WILL DEMONSTRATE that the evidence was material and potentially DETERMINITIVE, and not merely cumulative. Permitting the trial court to correct any mistakes serves the interest of judicial economy. The Reconsideration Rules fulfill this purpose and for the Defendant to command the full **TRUTH.**

THIS MOTION IS MADE ON THE GROUNDS THAT THE DEFENDANT INTENDS TO SHOW "EXTRINSIC FRAUD" IN THE DEFENDANT'S CASE BY THE PLAINTIFF ATTORNEYS IN ORDER FOR THE DEFENDANT TO OBTAIN "EQUITABLE RELIEF" AS FOLLOWS:

THE INFORMATION IS RELEVANT UNDER SCRE 402, "THE EVIDENCE HAS A TENDENCY TO MAKE THE MATERIAL FACTS MORE PROBABLE THAT IT WOULD BE WITHOUT THE EVIDENCE, THEN IT IS RELEVANT". TO JUSTIFY THE ADMISSION IS THE "TIME HONORED EQUITABLE MAXIM THAT ALL COURTS HAVE THE INHERENT POWER TO ALL THINGS REASONABLE NECESSARY TO "ENSURE THAT JUST RESULTS ARE REACHED TO THE FULLEST EXTENT POSSIBLE"

OUR SOUTH CAROLINA SUPREME COURT RELIED UPON THE PRINCIPLE OF "UNCLEAN HANDS" AND CITED, First Union National Bank of S.C. v. Soden, which held that the "DOCTRINE OF UNCLEAN HANDS" will PRECLUDE a litigant from RECOVERING in EQUITY if that litigant acted unfairly to the DETRIMENT OF THE OTHER PARTY. OUR SOUTH CAROLINA SUPREME COURT DOES NOT LOOK FAVORABLY UPON THOSE WHO ARE UNDESERVING AND WHO TRY TO USE THE COURT RULES TO OBTAIN A BENEFIT THEY DO NOT DESERVE.

1. The Plaintiff intentionally failed to join a necessary or indispensable party, the multiple classes of the FNMA-2007-91 TRUST (Fannie Mae) depriving the Defendant of the TRUTH in her case and of the violations of the PSA Agreement concerning her Note as an out of time assignment is a VOID ACT under NEW YORK TRUST LAW (and mortgage securitization trusts are organized as New York TRUSTS). The Plaintiff must prove the original mortgage assignment to the trust was done within the PSA guidelines and is not missing. Since the endorsements on the Notes are not dated and no endorsement to the Fannie Mae, FNMA-2007-91 Trust, the Plaintiff must prove the note was entered into the trust timely and answer the question as to how they can be holding the NOTE without the Fannie Mae endorsement? The case, **GLASKI V. BANK OF AMERICA**, (5th District Court of App No.F064556, Cal.

7/31/2013, challenged the validity of the transfer of his loan into the trust. The claim of late transfer into the Trust was established by facts presented that were as close to hard evidence as one would ever see in such a case. The overriding point is that this court, for a number of reasons including the **SPECIFICITY of the facts presented by Mr. Glaski, determined that borrowers ARE permitted to "pursue questions regarding the CHAIN OF OWNERSHIP." A position the court stated was supported by Herrera v. Deutsche Bank National Trust Co. supra, 196 Cal App. 4th 1366, in which Deutsche's motion for summary judgment was denied based on the failure of Deutsche, "to ESTABLISH it was the beneficiary under the deed of trust.". As a result, in that case, "the court concluded that TRIABLE ISSUES OF MATERIAL FACT EXISTED REGARDING ALLEGED BREAKS IN THE CHAIN OF OWNERSHIP OF THE DEED OF TRUST IN QUESTION." (Id. At p. 1378)...further stating, "In view of the limiting statements included in the Gomes, opinion, WE DO NOT interpret it as barring claims that challenge a foreclosure BASED ON ALLEGATIONS THAT AN ATTEMPT TO TRANSFER THE DEED OF TRUST WAS "VOID". AFTER A TRUST CLOSES OUT A POWER OF SALE IS VOID BY A SERVICER. Also, as stated by the Court in Glaski..."TENDER is not required where the foreclosure sale is VOID, rather than VOIDABLE, such as when a Plaintiff (Glaski) proves that the entity lacked the authority to foreclose on the property. (Lester v. J.P. Morgan Chase Bank, supra f. Supp 2d, (2013 WL 633333, p. 8); 4 Miller & Starr, Cal. Real Estate (3d ed. 2003) Deeds of Trust, 10:212 p. 686)" The Defendant now sufficiently allege that the Plaintiff ceded any interest upon which it might foreclose when the loan was sold to Fannie Mae in the FNMA-2007-91 Trust prior to any merger in 2008 with Countrywide who irrevocably sold all right, title and interest in the Defendant's mortgage loan, for value received, to the FNMA 2007-91 Trust. (See Burke v. JP Morgan Chase Bank, US Dis Ct Cal. 5/11/2015)**

THE DEFENDANT HAS INFORMED THIS COURT THAT THE NOTE HELD BY THE PLAINTIFF IS NOT EVEN ENDORSED TO FANNIE MAE OR THE FNMA-2007-91 TRUST. THIS IS HARD EVIDENCE BANK OF AMERICA IS THE **WRONG PARTY TO FORECLOSE AND IS A WRONGFUL FORECLOSURE COMPLAINT. The Plaintiff in the case, Bank of America is in VIOLATION OF THE CHAIN OF TITLE as the Bank of America witness at trial stated Fannie Mae was the investor. This FACT OF MERIT AND TRIABLE ISSUES OF MATERIAL FACT is relevant to the subsequent action. This is a**

misrepresentation by the Plaintiff's attorney and EXTRINSIC FRAUD. Failing to join necessary parties is EXTRINSIC FRAUD. No lawsuit should be permitted to go forward if someone with a vested interest in the outcome is not made a party and allowed to participate, and the defendant challenges this lawsuit as "unjust" as neither Fannie Mae, multiple classes of FNMA-2007-91 Trust, nor Quicken Loans, Inc. are joined. And since, "Wrongful Foreclosure" is considered a "tort", monetary damages would apply. Therefore, the Court in the Glaski case said, invalidating the trustee sale would not be the only remedy to Mr. Glaski. In addition, UCC3-501 requires a Servicer to show authority to make demand for payment which has not been done since Plaintiff became the Servicer.

2. Fabrication of evidence by an attorney as the Note submitted at trial is not endorsed to Fannie Mae or the FNMA-2007-91 TRUST, nor does the Note have any dates as when the note was negotiated, transferred or delivered to the FNMA-2007-91 TRUST. **This FACT OF MERIT AND TRIABLE ISSUES OF MATERIAL FACTS ARE relevant to the subsequent action. This is fraud by the Plaintiff attorney of misrepresentation which is extrinsic fraud. Chewning v. Ford Motor Company., 354 S.C. 72, 79 S.E. 2d 605 (2003), "Fraud upon the court by an attorney, whether or not intrinsic or extrinsic can be used to set aside a prior judgment"**

3. Misleading the Defendant and the Court at trial that they were the "Owners of the Note" when in the original Complaint they only stated they "held the Note", and then in the Amended Complaint that they held "a version of the original note", to claiming in the Order of Judgment that they were the owners of the Note when the Bank of America witness testified Fannie Mae was the owner/investor. **This FACT OF MERIT is relevant to the subsequent action. This is fraud upon the court and extrinsic fraud by the Plaintiff attorney. Chewing v. Ford Motor Co., 345 S.C. 28, 550 S.E. 2d 584 (Ct. App. 2001) "Fraud upon the court by an attorney, whether or not intrinsic or extrinsic, can be used to set aside a prior judgment and court declined to follow reasoning of Bankers Trust v. Braten, 317 S.C. 547, 455 S.E. 2d 199 (Ct. App 1995) .**

4. The Plaintiff, predecessors and successors, intentionally concealed to the Defendant that the loan was securitized and the note turned into a stock certificate, and lead the

Defendant to believe there is a debt with no proof to the trial court of such a debt, but that the loan was turned into a high finance **REMIC** vehicle without Defendant's knowledge with the Plaintiff predecessors and successors gaining an inappropriate financial gain and the Defendant gaining nothing. **This FACT OF MERIT is relevant to the subsequent action. This is willful misrepresentation by the Plaintiff attorney as the Plaintiff attorney knew the loan is securitized from the very beginning and is EXTRINSIC FRAUD.**

5. The Plaintiff intentionally mislead the Defendant to believe a debt is owed at trial to the Plaintiff when Fannie Mae admits to paying off the loan as revealed in the MCI Investigative and Chain of Title Report. In addition, the original promissory note is cash which was not revealed to the Defendant prior to signing the Note and Mortgage, so therefore, there was no meeting of the minds pertaining to the fact or to the fact the alleged loan was going to be securitized ending a Lender/Borrower relationship forever and converting the note into a stock certificate in violation of SC conversion laws which clearly states the note cannot be altered, changed or made different. This is willful misrepresentation as the Plaintiff knows the loan is securitized and the financial benefits of the securitization as well as the financial benefits of a foreclosure to the Plaintiff. **This FACT OF MERIT is relevant to the subsequent action. This is EXTRINSIC FRAUD by the Plaintiff attorney. The Plaintiff intentionally misrepresented a material fact that goes to the HEART OF THE CLAIM on which the Plaintiff brings his suit.**

6. The Plaintiff by not making its predecessor, Quicken Loans, Inc. a party to the suite caused the Defendant not to be able to obtain vital information to her case in the need to obtain the name on the account of the deposit of the promissory note, the account number and date of the deposit to prove there never was a loan, but an exchange or swap of currency. Quicken Loans had previously in a letter from Mr. Jeff Szerdi, Client Relations/Executive Offices, refused Defendant's letter of request in #2-5 and stated "your requested items #2-5 are confidential, and we will not release such information to you". Why would Quicken Loans conceal information of this nature to the Borrower when the Borrower needs to know all aspects of loan unless it is predatory lending and they never made a loan at all. **This is failure to join necessary parties and is EXTRINSIC FRAUD and RICO.**

7. During the Motion to Vacate JUDGMENT ORDER, the Defendant requested that the Plaintiff be ORDERED AND REQUIRED to produce to the Court PROOF OF A DEBT and produce all the negotiations, transfers and delivering of the NOTE, in other words, the CHAIN OF TITLE with proper endorsements and dates to prove the Plaintiff was the OWNER OF THE NOTE with the legal rights and title to foreclose and had AUTHORITY concerning the power of sale. The **COURT STATED "DULY NOTED"** as the Defendant explained to the Court of a Judge authorizing it in his court in Walterboro, (Colleton) SC. In Walterboro, the Judge ordered numerous documents requested by the homeowner as to the chain of title and money transfer between the original Lender and SunTrust. **THE DEFENDANT IS REQUESTING THESE SAME DOCUMENTS IN HER CASE AS THEY ARE VITAL TO HER FORECLOSURE CASE AND HAVE BEEN REFUSED BY THE PLAINTIFF FOR REASONS SPELLED OUT IN THE MOTION TO VACATE AND CANCEL THE SALE. Otherwise, the Plaintiff attorney is willfully misrepresenting a debt is owed and is EXTRINSIC FRAUD.**

AS A 'MATTER OF LAW, the right to foreclose goes away when the promissory note is "split" from the mortgage that it is supposed to secure. This happened 2 fold, one when the loan was securitized and the note was changed to a stock certificate violating the SC conversion law, and two, when MERS assigned the note to the Plaintiff. The NOTE THAT THE DEFENDANT DEANER SIGNED DID NOT MENTION MERS, so MERS has no right to assign the NOTE TO THE PLAINTIFF, BANK OF AMERICA. The ASSIGNMENT THAT MERS MADE TO BANK OF AMERICA CONVEYED ONLY THE MORTGAGE, SPLITTING IT FROM THE NOTE. WHEN MERS ASSIGNED THE NOTE TO BANK OF AMERICA, THE NOTE BECAME "UNSECURED" AND THE MORTGAGE WORTHLESS. (Missouri Supreme Court, Bellitri v. Ocwen). The opinion shows how an assignment of a loan to a servicing company for collection can actually make the loan uncollectible from the mortgaged property. There is no record of evidence or pleadings that MERS held the promissory note in Defendants case or that Quicken Loans gave MERS the authority to transfer the promissory note. MERS COULD NOT TRANSFER THE PROMISSORY NOTE, therefore the language in the assignment of the deed of trust (mortgage) purporting to transfer the promissory note is ineffective. Black v. Adrian, MO App. S.D 2002, 80 S.W. 3d 909, 914-15. "Assignee of a deed of trust

of a promissory note is vested with all interests, rights and powers possessed by the assignor in the mortgaged property" MERS NEVER HELD THE PROMISSORY NOTE, THUS its assignment of the deed of trust to Ocwen separate from the note had NO FORCE. See George, 76 S.W. 2d at 371. St. Louis Mutual Life Ins. Co., 46 S.W. 2d at 170. As Ocwen holds neither the Promissory note, nor the deed of trust, Ocwen lacks a legally cognizable interest and lacks standing to seek relief from the trial court. See Scott, 235 S.W. 2d at 374. The TRIAL COURT WAS WITHOUT JURISDICTION TO GRANT OCWEN ITS REQUESTED RELIEF. Bellistri v. Ocwen Loan Servicing, LLC (Missouri Court of Appeals, Eastern District March 3, 2009). Also, The trial court does not have jurisdiction to grant relief to the Plaintiff, Bank of America, in the Defendant's case.

An **INTENT has been ESTABLISHED as a 'MATTER OF LAW' OF EXTRINSIC FRAUD. ALSO as a "MATTER OF LAW", THE Plaintiff has, in fact, received full compensation amounting to a satisfaction from Fannie Mae as Fannie Mae has paid the Lender in full as the MCI Investigative Report verifies. (See Bowers v. South Carolina Dep't of Transp., 360 S.C. 149, 600 S. E. 2 d 543 (Ct App. 2004). Also, the Plaintiff is holding the Defendant's International Promissory Note (IPN), and has not returned it according to UCC3-501 (B) (3), without dishonoring the instrument, the party to whom presentment is made "MAY RETURN" the instrument for lack of necessary indorsement, OR REFUSE PAYMENT OR ACCEPTANCE. However, the IPN HAS NOT BEEN RETURNED TO THE DEFENDANT, AND UNTIL IT IS RETURNED, THE "DEBT IS DISCHARGED." Under U.C.C. 3-311, 673, 3111, the IPN Instrument can be tendered in full satisfaction of the claim regarding the alleged mortgage debt payments. The IPN presented for a special deposit is a STATUTORY LEGAL TENDER obligation of the United States and is in accordance with the "Public Policy" established in HJR-192 of June 5, 1933, Chapter 48, 48 Stat. 112-113, Public Law 73-10, US SUPREME COURT CASE, "Guaranty Trust Company of New York vs. Henwood et al., (7/13/1938) 307 U.S. 247 (FN3), 31 U.S.C. 5118 (d)(2) and in accordance with 31 U.S.C. 5103 and 18 USC 8, such instruments are "national bank currency" and thereby "coin currency of the United States" by statutory definition. If a bank refuses a properly rendered instrument, IPN, the debt is discharged pursuant to (U.C.C. 3-603 (b)), F.S. 673, 6031 and all other State's debt discharge statutes.**

The International Promissory Note, IPN, FOR MORTGAGE DEBT PAYMENTS, is also known as, "the Banker's Acceptance Note, and is the same method of payment as the FEDERAL RESERVE NOTE and has the SAME FORCE AS A FEDERAL RESERVE NOTE. IT HAS THE SAME AFFECT as a Bank check, cashier check, money order or MONEY. The IPN is not just A PROMISSORY NOTE that banks may not accept. The IPN is drawn in particular to the United Nations (UNCITRAL) Convention on International Bills of Exchange and International Promissory Notes, articles 2-10, 12, 13, 36, 39, 46, 47 and 55. The IPN constitutes Makers (the Defendant in this case) UNCONDITIONAL PROMISE TO PAY ON DEMAND/AT SIGHT. This instrument is redeemable in lawful currency of exchange in accordance with 12U.S.C. 411. The IPN is accepted by the BANK CFO as the legal tender that it truly is since 1933. Again, without the return of the original IPN, IT IS CLEAR the IPN has been deposited for PAYMENT IN FULL by BANK OF AMERICA, the Plaintiff in this case.

THE **BURDEN OF PROOF IS ON THE PLAINTIFF**, NOT THE DEFENDANT and the **PLAINTIFF HAS NOT PROVED A DEBT IS OWED.** THE DEFENDANT DENIED A DEFAULT AT THE TRIAL AND THE DEFENDANT DENIED OWING A DEBT TO BANK OF AMERICA AT THE TRIAL. The computer records (payment sheets) shown at the trial are incorrect and do not show the Fannie Mae paid amount, nor the original promissory note deposit. Computer records are "inadmissible hearsay". Glarum v. Lasalle Bank National Association, (Fla 4th District Ct of App. Sept.7, 2011) The DEFENDANT CLAIMS "LACK OF "TRUSTWORTHINESS" of the computerized sheets shown at trial, therefore **NO DEBT IS ESTABLISHED by the Plaintiff. SC RULE 803(6) Assignments do have to be effectuated, (See Mass Supreme Judicial Court, U.S. Bank v. Ibanez), and Lenders Must Prove Ownership when they foreclose, and you need to own the mortgage before you foreclose There was carelessness with which the Plaintiff banks documented the titles to their assets. Lenders must produce admissible evidence they held the mortgage and PRODUCE SECURITIZATION DOCUMENTS. The Plaintiff has refused to do so in discovery.**

THE above FACTS OF MERIT involve **"EXTRINSIC FRAUD"** and IS FORCING THE DEFENDANT INTO THE LOSS OF HER HOME DUE TO THE EXTRINSIC FRAUD MISREPRESENTATIONS, CONCEALMENTS AND UNFAIRNESS IN HER CASE.

Extrinsic fraud has been defined as ACTUAL FRAUD such that there is ON THE PART OF THE PERSON CHARGEABLE with it "mala sens" acting to take **UNDUE ADVANTAGE** of someone else for the purpose of **DEFRAUDING him. THIS IS A "SHAM" BY THE PLAINTIFF and on this Court. In the Fourth Judicial circuit court in Duval county Florida in a court case of JP Mortgage Chase Bank versus 2 homeowners willing to defend their position, the Court found JP Mortgage chase, Washington Mutual Bank and their attorneys guilty of presenting false assignments of mortgage so they could foreclose on the property (Case NO:16-2008-CA-3989, division CV-D) The courts found clear and convincing evidence WAMU, Chase and their attorneys committed fraud in the Court as WAMU presented THEMSELVES as HOLDERS OF THE NOTE AND MORTGAGE rather than just SERVICERS. WaMu had already sold the loan before it "sold" the loan to a Trust or anyone else, then the ENTIRE CHAIN IS NOT JUST DEFECTIVE, OR CORRUPTED, IT IS "VOID". In the Defendant's case the loan had already been sold to the FNMA-2207-91 TRUST prior to the Countrywide and Bank of America "MERGER" in 2008, therefore all attorneys involved in this case have committed GROSS MISREPRESENTATIONS AND EXTRINSIC FRAUD FROM THE BEGINNING OF THE ORIGINAL COMPLAINT and a fraudulent denial of a modification by Korn Law Firm when they could have granted the "hardest hit program" which pays off the first lien for the Defendant in "Good Faith", since they were not the OWNERS OF THE NOTE and NO DEBT WAS OWED.**

ALL LAWS WHICH ARE REPUGNANT TO THE CONSTITUTION ARE NULL AND VOID, Marbury v. Madison, 1803. Not allowing the Defendant DUE PROCESS OF LAW and her **CONSTITUTIONAL RIGHTS** by requiring the Defendant to post a BOND, and denying the Motion to Vacate Judgment Order due to a lack of knowledge of an Investigative Company or existence of the complexity of the investigation process at the time of trial would be INEQUITABLE due to the PLAINTIFF'S NOT being the OWNERS OF THE NOTE, and sending the ACCELERATION LETTER IN 2010 when THEY WERE NOT THE LENDER THEN OR NOW, A CLEAR FATAL DEFECT AND BREACH OF THE MORTGAGE CONTRACT #22. The Plaintiff was not the Lender in 2010 AND SENDING THE ACCELERATION NOTICE IN PRETENSE OF BEING THE LENDER IS PLAINTIFF MISREPRESENTAION AND **EXTRINSIC FRAUD.** The Plaintiff is only the Servicer and

DOES NOT HAVE LEGAL RIGHTS OR TITLE RIGHTS TO FORECLOSE ON THE DEFENDANTS PROPERTY. THE PLAINTIFF HAS NOT PROVED TO THE TRIAL COURT THE ALLEGED LIEN IS PERFECTED, OR THEY HOLD A VALID OR ORIGINAL NOTE, OR THE PLAINTIFF HAS ANY LEGAL RIGHTS TO A POWER OF SALE OF THE DEFENDANT'S PROPERTY.

In addition, to place a BOND on the DEFENDANT to pay would be **INEQUITABLE** with all the facts of merit, matter of law, **EXTRINSIC FRAUD** and other proof the Defendant has presented to this COURT TO OBTAIN **JUSTICE, TRUTH AND EQUITY** IN THIS MATTER. **THEREFORE, the Defendant requests the BOND TO BE WAIVED AS THE ACTS OF THE PLAINTIFF IS CONTRIBUTORY NEGLIGENCE, but for the Plaintiff's own actions Plaintiff would have suffered NO DAMAGES.** UNDER **COMMON LAW DOCTRINE of "CONTRIBUTORY NEGLIGENCE" a Plaintiff whose own wrong was the proximate cause of his injury is barred from recovering, even if Defendant was partially negligent. The Plaintiff has incurred costs by filing a wrongful foreclosure COMPLAINT IN THIS COURT as the Defendant would have paid her own taxes and insurance otherwise.**

In Federal Home Loan Mtge. V. Schwartzwald, No 2012–Ohio Supreme Court-5017, 28, the Court held that a party that failed to establish an interest in the mortgage or the note at the time it filed suit had NO STANDING TO INVOKE THE JURISDICTION OF THE COURT. Moreover, a litigant cannot cure a lack of standing after the commencement of the suit by later obtaining an interest in the subject litigation. Id at 39. The PLAINTIFF was not the OWNER OF THE NOTE AT THE TIME THE ORIGINAL COMPLAINT WAS FILED, NOR IS THE PLAINTIFF THE OWNER OF THE NOTE AT PRESENT. **(CARPENTER V. LONGAN, U.S. SUPREME COURT, 1871) and (YOUNG V. PEOPLE'S BANK, S.C. SUPREME COURT, 1933).** THIS COURT ADMITTED IN THE HEARING during the Motion to Vacate Judgment, THE CASE, CARPENTER V. LONGAN, TRUMPED THE DRAPER CASE IN SOUTH CAROLINA. Again Defendant Deaner is claiming Carpenter v. Longan in her case and upheld in SC Supreme Court, Young v. People's Bank 1933.

The **MOTION TO RECONSIDER** IS BASED ON ALL THE **FACTS OF MERIT AND MATTER OF LAW FACTS OF MERIT** IN THE PREVIOUS MOTION TO VACATE JUDGMENT AND CANCEL SALE as well as this **MOTION TO RECONSIDER** which is extensive and goes to the **HEART AND TRUTH** of the Defendant's case. The **Defendant has plead her case with "specificity and "particularity" in the Motion to Vacate the Judgement with the facts of MERIT, matter of law, statutes and titles in the MCI Chain of Title and Investigative Report as well as her Claims and Defenses and this Motion To Reconsider.**

Defendant asks the Court to RECONSIDER ALL THE EXTRINSIC FRAUD AS LISTED ABOVE and again review 1-14 on the previous MOTION TO VACATE JUDGMENT and **ESTABLISH THE TRUTH IN HER CASE.**

The Defendant did not have knowledge of MORTGAGE COMPLIANCE INVESTIGATORS or knowledge of the comprehensive fraud information supplied by the Investigation prior to the trial and was not contacted until after the trial of such investigations or the opportunity to engage the INVESTIGATION. Equity should favor the DEFENDANT HOMEOWNER as foreclosure is a grave matter, and the Defendant has justifiable and equitable CLAIMS in this case AND HAS PROVEN MERIT in this Motion To Reconsider.

FIRST AND FOREMOST, THE MCI REPORT REVEALS THE DEBT IS PAID AS ADMITTED BY FANNIE MAE in the MORTGAGE COMPLIANCE INVESTIGATION (MCI) REPORT WHICH IS **VITAL TO THE DEFENDANT'S CASE AND PROVES THERE IS NOT A DEBT AS THE DEBT IS PAID IN FULL BY FANNIE MAE.** COURTS IN EQUITY SHOULD NOT ENFORCE AN **UNCONSCIONABLE FORECLOSURE, INVOLVING AN INVALID NOTE, INVALID ASSIGNMENT, NO RELEASE OF DEBT AND SATISFACTION RECORDED, NO CHAIN OF TITLE WITH PROPER NEGOTIATIONS ASSIGNMENTS AND DELIVERIES RECORDED, WITHOUT AN ORDER FROM THIS COURT FOR THE PLAINTIFF TO PRODUCE THE NEGOTIATIONS, ASSIGNMENTS AND RECORDING OF THE CHAIN OF TITLE AS WELL AS ALL MONIES PAID, THE DATES PAID, AND TO WHOM IT**

WAS PAID. THESE DOCUMENTS HAVE BEEN REFUSED BY THE PLAINTIFF PRIOR TO THE TRIAL.

LASTLY, In BULLOCK V. United States, 763 F.2d, 115, 1121 (10th Cir 1985), "Fraud upon the Court" makes VOID the orders and judgments of that Court. In The People of the State of Illinois v. Fred E. Sterling, 357 Ill.354; 192 N.E. 229 (1934) , the maxim that fraud vitiates every transaction into which it enters. In Village of Willowbrook, 37 Ill. App. 2d 393 (1962), "it is axiomatic that fraud vitiates everything." Also, Dunham v. Dunham, 57 Ill App. 475 (1894) affirmed.

The Defendant is claiming causes and grounds for the RECONSIDERATION for (1) Irregularity in the proceedings of the court by the Plaintiff. (2) Misconduct of the Plaintiff by not revealing to the trial court the debt is paid by Fannie Mae (3) newly discovered evidence in the MCI Chain of Title and lack of legal recordings at the Aiken County Conveyance Records (4) abuse of discretion in Damages awarded to the Plaintiff who has not established a debt or power to sell the Defendant's property. (5) error in assessment of the amount of recovery when the action is upon a contract as Lender did not send the acceleration letter or give the Defendant 30 days to comply. The computer sheets did not show the paid in full amount by Fannie Mae, CR 59 (A)(6). (6) There is no evidence or reasonable inference from the evidence to justify the decision and is CONTRARY TO LAW. (7) SUBSTANTIAL JUSTICE HAS NOT BEEN DONE. CR 59 (a) (7), trial court erred, made a mistake and misperceived the evidence.

FINALLY, THE DEFENDANT MOVES ON THIS COURT TO ORDER THE PLAINTIFF TO PRODUCE ALL SECURITIZATION DOCUMENTS INCLUDING THE PSA, NEGOTIATIONS, ENDORSEMENTS, ASSIGNMENTS, AND DELIVERIES INCLUDING RECORDINGS OF THE DEFENDANT'S NOTE AND MORTGAGE WITH "MONIES PAID" AND DATES TO VERIFY THE CHAIN OF TITLE OF THE DEFENDANT'S PROPERTY, ANY DEBT OWED TO THE PLAINTIFF AND TITLE AND LEGAL AUTHORITY TO FORECLOSE ON THE DEFENDANT'S PROPERTY AND POWER OF SALE OF THE DEFENDANT'S PROPERTY.

WHEREFORE, THE DEFENDANT MOVES ON THE COURT TO GRANT THE MOTION TO RECONSIDER THE EMERGENCY MOTION TO VACATE THE JUDGMENT ORDER AND CANCEL THE SALE, RELIEF, RECOUPMENT, ATTORNEY FEES AND EXPENSES, WAIVE THE BOND, DISMISS THIS CASE WITH PREJUDICE, DECLARATORY OR OTHERWISE, AND ALL OTHER RELIEF THE COURT DEEMS JUST AND EQUITABLE IN THIS CASE.

Respectfully Submitted,

Date: June 8, 2015
North Augusta,, SC
Aiken County

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

DESIGNATION: 42

42. DEFENDANT'S MOTION TO ORDER RETURN OF THE IPN OR DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER OF JUDGMENT and Exhibit "A"(Letter to Mr. Bruce R. Thompson, Chief Financial Officer (CFO) of Bank of America, dated May 25, 2015....filed 6/9/2015.

    (Motion contains pages 1-12)

    and Exhibit "A" Letter (contains 1 page)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **DEFENDANT'S MOTION TO ORDER RETURN OF THE IPN OR DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER OF JUDGMENT** **DOCKET NO. 2012-CP-02-00699**

COPY
ORIGINAL FILED
JUN 09 2015 3:40
AIKEN COUNTY
CLERK OF COURT

TO: PLAINTIFF, Bank of America, N.A., successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P.

YOU WILL PLEASE TAKE NOTICE that CAROLYN S. DEANER, Defendant, Pro Se, will on or about JUNE 19, 2015 and as soon thereafter as Defendant may be heard, **MOVE ON THE COURT**, pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, for an **ORDER** granting DEFENDANT'S **MOTION TO ORDER RETURN OF THE INTERNATIONAL PROMISSORY NOTE (IPN)** FROM THE PLAINTIFF OR DISCHARGE DEBT, and CANCEL SALE AND BOND, pursuant TO South Carolina Rules of Civil Procedure in RULE 60 (b)(1-5) AND request this matter BE RULED UPON PRIOR TO ANY POTENTIAL APPEAL HEARING as Defendant believes this vital matter was overlooked by the Court in the previous hearing on May 19, 2015 AND RULING OF May 28, 2015 which was filed June 1, 2015. FURTHER, THE DEFENDANT BELIEVES IT IS VERY CLEAR THE THE PLAINTIFF HAS DEPOSITED THE IPN FOR THE $147,000, SINCE THE IPN HAS NOT BEEN RETURNED AND REQUESTS TO RETURN THE IPN ARE BEING IGNORED.

This motion is made on the grounds that the Defendant intends to SHOW FORTH EVIDENCE AND UNJUST ENRICHMENT BY THE PLAINTIFF IN DEFENDANT'S CASE as more accurately described and defined in the FOLLOWING WITH EVIDENCE

PREVIOUSLY MAILED TO THE PLAINTIFF AND THIS HONORABLE COURT and request made and incorporated herein respectively.

Pursuant to Rule 11 of the South Carolina Rules of Civil procedure, the undersigned hereby certifies that prior to filing this Motion she and her PREVIOUS legal attorneys communicated with opposing counsel and attempted in "Good Faith" to resolve this matter with a cash offer of a reverse mortgage with no response from opposing council. In addition, the Defendant paid a legal tender payment on March 31, 2015 and a decline from Plaintiff was received on April 22, 2015 creating a discharge to the extent of the amount of the tender of the obligation of an endorser which was the full amount of the judgment and alleged debt obligation AS THE **PLAINTIFF HAS THE IPN VALUED AT $147,000 IN HAND.**

1. **On motion and upon such terms as are just, the court may relieve a party or a party's legal representation from a final judgment, decree order or proceedings for the following reasons, Rule 60 (1-5) with special emphasis on: (3) fraud, misrepresentation, or other misconduct of an adverse party such as "unjust enrichment" in this matter. THE PLAINTIFF HAS STILL NOT RETURNED THE ORIGINAL INTERNATIONAL PROMISSORY NOTE (IPN) WHICH IS A CASH ITEM IN THE UNITED STATES.**

2. On March 30, 2015, a legal tender of PAYMENT, an International Promissory Note (hereafter, IPN), was sent Fed X to Mr. Bruce R. Thompson, Chief Financial Officer and received by Bank of America on March 31, 2015 for $147,000 in payment in honor of the Order of Judgment by Referee James Martin Harvey issued and signed on February 25, 2015. The UCC CODE 3-603 REQUIRES PAYMENT TO BE MADE TO A PERSON ENTITLED TO ENFORCE who is Mr. Bruce R. Thompson, Chief Financial Officer of Bank of America.

3. The Defendant in knowledge and belief has tendered legal payment in accepted currency deposited daily by National Banks throughout the United States as payment of debts as promissory notes are cash items and backed by the Federal Reserve.

4. The Defendant did receive a letter from legal counsel from Bank of America, Blank Rome, LLP on April 22, 2015 declining the payment due to the payment not being in "certified funds", however, the IPN is a cash item which IS certified funds and MONEY in the United

States. The Defendant's original promissory note states, it can be paid in the form of cash. A PROMISSORY NOTE IS CASH AND DEPOSITED DAILY BY NATIONAL BANKS AS CASH. And most importantly, the letter DID NOT have enclosed the original International Promissory Note which is the LEGAL PROPERTY OF THE DEFENDANT, Carolyn S. Deaner, as indicated on the PREVIOUS enclosed UCC 3 and must be returned if refused as stated at the bottom of the IPN in blue ink.

5. The Defendant is **MOVING ON** this honorable court to **ISSUE AN ORDER FOR THE DEFENDANT'S LEGAL PROPERTY OF THE ORIGINAL INTERNATIONAL PROMISSORY NOTE TO BE RETURNEDTO HER WITHIN 10 DAYS OF THE COURT'S ORDER**, and the DEBT IS DISCHARGED UNTIL THE INTERNATIONAL PROMISSORY NOTE IS RETURNED TO THE DEFENDANT IN THIS CASE AND IS DISCHARGED according to UCC 3-603. As the **IPN** is a **CASH ITEM** and can be deposited by the Plaintiff at any time and receive cash on their books, the Defendant has reason to believe this has been done since the legal property of the Defendant has not been returned and indicates, "bad faith" actions by the Plaintiff to KEEP THE DEFENDANT'S LEGAL PROPERTY which is a CASH ITEM AND NOT DISCHARGE THE DEBT. This ACTION is an UNCONSCIONABLE ACT AND UNCLEAN HANDS, since the Defendant has requested the return of the IPN 3 TIMES now.

6. The Defendant in "Good Faith" sent the IPN to the Plaintiff as pay off for this alleged debt in compliance and honor to the Order of Judgment even though Defendant has learned and now knows the original promissory note was also a cash item and no loan was ever accomplished as it was an exchange or a currency swap. Since it was not a loan and the original promissory note was a cash item and used as such, then Bank of America must accept like terms OF CASH MONEY. **SEE,** Guaranty Trust Co. of New York v. Henwood et al (1938) as explained more in detail later in this Motion.

7. The Plaintiff's legal counsel in this case in South Carolina has been sent by first class mail as well as this Court all the materials pertaining to this pay off, and the Defendant has not received a response of the discharge. In addition, Mr. Jason Agaton, Customer Advocate, of Bank of America was faxed a letter ON APRIL 28, 2015 requesting the return of the

DEFENDANT'S LEGAL PROPERTY, the International Promissory Note (IPN). Defendant now requests this honorable Court to discharge the debt as legal tender of payment refused discharges a debt, and there is discharge, to the extent of the amount of the tender according to UCC 3-603. The amount tendered was $147,000.00. AGAIN, **THE PLAINTIFF IN THIS CASE IS STILL HOLDING OR HAS ALREADY DEPOSITED THE IPN VALUED AT $147,000 AND THE DEBT IS PAID IN FULL.**

8. This Motion is filed because the Defendant verily believes she will and should prevail on the **MERITS**, that now the Plaintiff has been paid, that the holder in due course has been paid, the trustee and depositor has been paid and all successors and predecessors have been paid in full. Further, the Defendant believes this VITAL "**MATERIAL FACT**" MUST BE ADDRESSED BY THE COURT DEMANDING RETURN OF THE ORIGINAL PROMISSORY NOTE as a **MATTER OF LAW**.

9. Further, a complete LEGAL PRESENTATION stating the legal reasons the International Promissory Note is legal and an acceptable "tender of payment" was faxed directly to Bank of America, and for reasons unknown to the Defendant, she has not received a discharge from the Plaintiff nor any legal reasons or laws for refusal. AGAIN, THE DEFENDANT SENT ANOTHER LETTER BY FED-X TO MR. BRUCE R. THOMPSON, the Chief Financial Officer of Bank of America, on MAY 28, 2015 to be delivered JUNE 1, 2015, THE LETTER REQUESTED THE RETURN OF THE IPN AS IT IS A CASH DEPOSIT ITEM AND IS "MONEY" AUTHORIZED BY THE UNITED STATES AND IS THE SAME AS A FEDERAL RESERVE NOTE. In addition, a copy of the letter was faxed to Mr. Jason Agaton, Customer Advocate, on 6/3/2015 which was a 3rd request to him, and was e-mailed to Mrs. Louise Bowes of Blank Rome, LLP, on 6/3/2015 also. IT IS VERY CLEAR THAT THE PLAINTIFF HAS DEPOSITED THE IPN FOR THE FULL PAYMENT OF $147,000 ON THE ALLEGED DEBT AND IS REFUSING TO DISCHARGE THE DEBT, OTHERWISE THE IPN WOULD HAVE BEEN RETURNED BY NOW. THIS IS **"UNJUST ENRICHMENT"** BY THE PLAINTIFF, **"BAD FAITH"**AND **"UCLEAN HANDS"**.

10. Therefore, The Defendant requests this honorable Court give the Defendant any and all legal, State, Federal, U.S. Laws, Constitutional Laws or otherwise, why the Defendant's tender

of payment is not acceptable to this court as "TENDER OF PAYMENT" SINCE THIS PAYMENT HAS NOT BEEN RETURNED TO ITS RIGHTFUL OWNER, THE DEFENDANT, OR DISCHARGED IN "Good Faith" by the Plaintiff.

11. As it is certainly the Plaintiff's right to refuse the Tender of Payment, it was not the legal right of the Plaintiff to keep the legal property of the Defendant without acknowledging the discharge. Again, it is 'UNJUST ENRICHMENT" by the Plaintiff if DEFENDANT DEANER'S LEGAL PROPERTY OF A CASH ITEM IS KEPT and NOT RETURNED AS REQUIRED. Also, without statutory definitions and a statutory reason for refusal, the Plaintiff is in violation of 12CFR229.3 and is open to civil liabilities and damages for violation of its customer agreement, federal, state law and Federal Reserve Bank regulations (see 12CFR229.21 Civil liability, as noted above and UCC 3-307, 103 and 4-106.

12. Defendant requests should the Plaintiff continue to refuse to return the Defendant's legal and registered property for reasons unknown to the Defendant, then the legal tender must stand for the 'DISCHARGE OF THE ALLEGED DEBT' and BOND in the Defendant's case. In addition the DEFENDANT CLAIMS RECOUPMENT for THE ORIGINAL PROMISSORY NOTE and the INTERNATIONAL PROMISSORY NOTE WITH THIS MOTION TO ORDER THE RETURN OF THE CASH MONEY OF THE INTERNATIONAL PROMISSORY NOTE.. The Defendant is the creditor on the liability side of the accounting ledger and is requesting her set off recoupment as the maker and originator of the promissory notes, and requests claim Under Civil Rules of RECOUPMENT under UCC 3-305 and a CLAIM under 3-306. Defendant requests balance sheets 2046, 2049 and 2099 with OMB numbers subject to disclosure under the privacy act, Title USC 552(b)(4) from Plaintiff and requests the Referee/Judge of this honorable court who is holding the accounts payable under HJR 192 for all the people that come before him if he has the SSN, and Defendant's social security number is on the enclosed IPN, Exhibit "A" of this motion and the IPN was presented to honorable Referee/Judge on 4/31/205 hand delivered to his office in the document package which included the SSN number at that time. Defendant's registered original promissory note trumps any unregistered note held by Plaintiff in this case in the Defendant's/ UCC 1 & 3 .

THE COURT OF APPEALS DISCUSSED THE LAW OF TENDER IN ANDERSON V. CITIZENS BANK, 294 S.C. 387, 365 S.E.2D 26 (Ct. App 1987):

1. TO CONSTITUTE A GOOD TENDER, THE LAW REQUIRES PAYMENT TO BE MONEY, FOR THE PROPER AMOUNT DUE, MADE TO THE PROPER PERSON AT THE PROPER PLACE (See Aldrach v. South Carolina Light, power & Railways Co., 101 S.C. 32, 85 S.E. 164 (1915) (payment must be money)

ANSWER: THE INTERNATIONAL PROMISSORY NOTE (IPN) IS MONEY AND IS ACCEPTED BY THE UNITED STATES, A CORPORATION, AS MONEY. HOWEVER, THE IPN HAS NOT BEEN RETURNED TO THE DEFENDANT AND UNTIL THE IPN IS RETURNED, THE DEBT MUST BE DISCHARGED as a 'MATTER OF LAW". Under UCC 3-311, 673, 3111, the IPN Instrument can be tendered in full satisfaction of the claim regarding the alleged mortgage debt payments. The IPN presented for a special deposit is a STATUTORY LEGAL TENDER obligation of the Untied States and is in accordance with the "Public Policy" established in HJR-192 of June 5, 1933, Chapter 48, 48 Stat. 112-113, Public Law 73-10, US SUPREME COURT CASE, 'Guaranty Trust Company of New York vs. Henwood et al., (7/13/1938) 307 U.S. 247 (FN3), 31 U.S.C. 5118 (d)(2) and in accordance with 31 U.S. C. 5103 and 18 USC 8, SUCH INSTRUMENTS ARE "NATIONAL BANK CURRENCY" AND THEREBY "COIN CURRENCY OF THE UNITED STATES" by STATUTORY DEFINITIION. If a bank REFUSES a properly rendered instrument, IPN, the DEBT IS DISCHARGES PURSUANT TO (UCC 3-603 (B), F.S., 673, 6031 and all other State's debt discharge statues.

The **IPN was for the** amount of $147,000 which included interest and expenses. The **IPN** was paid to Mr. Bruce R. Thompson, the Chief Financial Officer of Bank of America, who is the correct person to make payment to. The **IPN was sent Fed-X to the Bank of America headquarters BEING THE PROPER PLACE in Charlotte, N.C. which is where the pay off department is also located.**

2. Tolbert v. Fouche, 129 S.C. 338, 123 S.E. 859 (1924) (proper amount due).

ANSWER: The proper amount due was $147,000 which included interest and expenses.

3. Maryland Cas. Co. v, Hanson Dredging, Inc. 393 So.2d 595 (Fla App.1981) (tender must be made to the proper person)

ANSWER: The payment was made to the proper person, Mr. Bruce R. Thompson, CFO of Bank of America, and to the headquarters in Charlotte, N.C where the pay off department is located.

4. McFarland v. Christoff, 120 Ind. App(1950 and Waller v. Brooks, 267 Cal. App.(1968), (tender must be made a proper place)

ANSWER: The payment was made in proper place as indicated above.

5. Tolbert v. Fouche, spra A check is not tender.

ANSWER: The payment was made with an International Promissory Note (IPN) which was CASH upon deposit. IT WAS A CASH LEGAL " tender of payment."

6. Aldrach v. South Carolina Light, Power & Railways Co., supra, Nor is payment offered to a person who is without authority from the creditor to accept it.

ANSWER: The payment was made to a person who has FULL authority to accept it, Mr. Bruce R. Thompson, the Chief Financial Officer of Bank of America.

7. Rice v. Palmetto State Life Insurance Co., 196 S.C.410 (1941). Likewise, payment offered at a place other than the creditor's place of business is not tender, unless the creditor agrees otherwise.

ANSWER: The payment was made at the creditor's place of business and the city the CFO is located as well as the PAY OFF DEPARTMENT at BANK OF AMERICA.

8. Berley & Kyzer v. Columbia, Newberry & Laurens R Co., 82 S.C. 232 (1909) and Weyand v. Randall, 131 A.D. 167, 115 N.Y.S. (1909) and Moore v. Anchor Federal Savings and Loan Ass'n, 142 Ind. App (1968) The party alleging tender bears the burden of proving he has satisfied all the requirements for a good tender.

ANSWER: The Defendant has previously proven to the court as well as now that the IPN is legal tender in the United States, a corporation, as with Bank of America, a corporation, with listing of all the Statues and Titles as well as now the Supreme Court case, "Guaranty Trust Company of New York v. Henwood et al, (7/13/1938 307 U.S. 247 (FN3), 31 U.S.C. 5118 (d)(2) and in accordance with 31 U.S.C. 5103 and 18 USC 8, such instruments are "national bank currency" and thereby "coin currency of the United States" by statutory definition. If a bank refuses a properly rendered instrument, IPN, the debt is discharged pursuant to (UCC 3-603 (b)), F.S. 673, 6031 and all other States's debt discharge statutes.

The International Promissory Note (IPN), for alleged MORTGAGE DEBT PAYMENTS, is also known as, "the Banker's Acceptance Note, and is the same method of payment as the FEDERAL RESERVE NOTE and has the SAME FORCE AS A FEDERAL RESERVE NOTE. It has the SAME EFFECT as a BANK CHECK, CASHIER'S CHECK, MONEY ORDER OR MONEY. The IPN is not just a Promissory Note that banks may not accept. The IPN is drawn in particular to the United Nations (UNCITRAL) Convention on International Bills of Exchange and International Promissory Notes, Articles 2-10, 12, 13, 36, 39, 46, 47 and 55. The IPN constitutes Makers, the Defendant in this case, UNCONDITIONAL PROMISE TO PAY ON DEMAND/AT SIGHT. This instrument is redeemable in lawful currency of exchange in accordance with 12 U.S.C. 411. The IPN is accepted by the BANK CFO as the legal tender that it truly is since 1933.

WITHOUT THE RETURN of the ORIGINAL IPN, IT IS AGAIN VERY CLEAR the IPN has been DEPOSITED for PAYMENT IN FULL by the PLAINTIFF, BANK OF AMERICA, in the Defendant's case.

IN THE JOINT RESOLUTION OF CONGRESS, APPROVED June 5, 1933 (48 Stat. 112, 31 U.S.C.A. 463, and concerning the ruling: In the case, "GUARANTY TRUST CO OF NEW YORK V. HENWOOD, et al, July 13, 1938, is a matter of the construction of the Joint Resolution. The particular language of the Resolution involved here is Section 1, 31 U.S.C.A. 463, reading as follows:

"(a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, IS DECLARED TO BE "AGAINST PUBLIC POLICY"; and NO SUCH PROVISION SHALL BE CONTAINED IN OR MADE WITH RESPECT TO ANY OBLIGATION HEREAFTER INCURRED. EVERY OBLIGATION, HEREFORE OR HEREAFTER INCURRED, WHETHER OR NOT ANY SUCH PROVISION IS CONTAINED THERIN OR MADE WITH RESPECT THERETO, "SHALL BE DISCHARGED UPON PAYMENT", DOLLAR FOR DOLLAR, IN ANY COIN OR CURRENCY WHICH AT THE TIME OF PAYMENT IS LEGAL TENDER FOR PUBLIC AND PRIVATE DEBTS..."

"(b) As used in this resolution (section), the term "obligation means an obligation (including every obligation of and to the United States), payable in MONEY of the United States; and the term "coin or currency" means coin or currency of the United States, INCLUDING FEDERAL RESERVE NOTES AND CIRCULATING NOTES AND CIRCULATING NOTES OF FEDERAL RESERVE BANKS AND NATIONAL BANKING ASSOCIATIONS." THE Plaintiff, Bank of America, in this case is a National Bank under FDIC.

In the **HOLYOKE WATER POWER COMPOANY CASE SUPRA, the great purpose of the Resolution was expressed in the title: To assure UNIFORM VALUE to the coins and CURRENCIES of the United States. The chief Justice has expressed the purpose as an undertaking, "to establish a uniform currency, and partly between kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts. A dollar bill is a FEDERAL RESERVE NOTE. The IPN IS CASH WHEN DEPOSITED DOLLAR FOR DOLLAR BY THE FEDERAL RESERVE.**

The Preamble further declared that such purpose was obstructed by existing contract containing provisions "which purport to give the oblige a right to require payment in gold or a particular kind of coin or CURRENCY of the United States, or in an amount in money of the United States measured thereby. To REMOVE SUCH OBSTRUCTION, such

provisions were nullified to the extent that they went beyond the requirement of payment "dollar for dollar, in any coin or CURRENCY (of the United States) which at the time of payment is LEGAL TENDER FOR PUBLIC AND PRIVATE DEBTS." SECTION 1 (a), In short, the evil struck at by the Resolution was CONTRACT PROVISIONS purporting "to give the obligee a right to require payment in gold or a particular kind of coin or CURRENCY of the United States or in an amount of MONEY of the United States measured thereby".....as defined in paragraph (b), payable in money of the United States." 31 U.S. C. A. 463, the reason why this is an evil and the reason for PREVENTING IT being to PREVENT OBSTRUCTION OF THE MAINTENANCE OF THE EQUAL VALUE OF THE VARIOUS UNITED STATES MONIES "IN THE MARKETS AND IN THE PAYMENT OF DEBTS." The Joint RESOLUTION (expressed in its TITLE), "TO ASSURE UNIFORM VALUE TO THE COINS AND CURRENCIES OF THE UNITED STATES" which was to be accomplished through enforcement of "the declared policy of the Congress" by STRIKING DOWN ALL OBLIGATIONS REQUIRING PAYMENT IN A PARTICULAR KIND OF COIN OR CURRENCY. (U. S SUPREME COURT, GUARANTY TRUST COMPANY OF NEW YORK V. HENWOOD (1938).

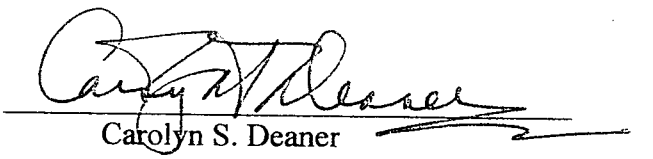
THEREFORE, **SUPREME COURT RULINGS trump State rulings and the DEBT IS DISCHARGED AS THE DECLARED POLICY OF CONGRESS IN THE JOINT RESOLUTION STRIKES DOWN ALL OBLIGATIONS REQUIRING PAYMENBT IN A PARTICULAR KIND OF COIN AND CURRENCY. THE IPN IS A LEGAL CURRENCY IN THE UNITED STATES AND IS CASH MONEY AND IF REFUSED THE DEBT IS TRULY DISCHARGED.**

For this honorable Court not to discharge the debt would be prejudicial in the sight of an objective viewer and the Defendant claims full EQUITY in this case. **THE DEFENDANT CONTINUES TO HOLD THE IPN WITH THE VALUE OF $147,000, "LEGAL TENDER OF CASH MONEY" FROM THE DEFENDANT PAID IN "GOOD FAITH".**

WHEREFORE, **THE DEFENDANT MOVES ON THIS HONORABLE COURT TO:**

1. GRANT THE DISCHARGE OF THE ALLEGED DEBT IN THE DEFENDANT'S CASE, SINCE THE IPN HAS NOT BEEN RETURNED TO DEFENDANT BY THE PLAINTIFF IN "GOOD FAITH".
2. GRANT THE TENDER OF PAYMENT STAND FOR THE BOND IN THE DEFENDANT'S CASE SINCE IPN HAS NOT BEEN RETURNED TO THE DEFENDANT BY THE PLAINTIFF AS REQUESTED AND REQUIRED.
3. AWARD RECOUPMENT AND ANY OTHER RELIEF THIS COURT DEEMS JUST AND EQUITABLE IN THE DEFENDANT'S CASE IN THIS MATTER FOR PLAINTIFF "UNCLEAN HANDS".
4. AND DISMISS THE DEFENDANT'S CASE WITH PREJUDICE BY ANY AND ALL AUTHORITY OR DECLARATORY RELIEF AVAILABLE TO THIS HONORABLE COURT.
5. COMMAND THE RETURN OF THE "ORIGINAL IPN" WITHIN 10 DAYS OF THE DATE OF THIS FILING OR RULING IF ANY FURTHER DISCHARGE IS REFUSED OR IGNORED BY THE PLAINTIFF.

Respectfully Submitted,



Date: JUNE 8, 2015
North Augusta,, SC
Aiken County

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

COPY
ORIGINAL FILED
JUN 09 2015
AIKEN COUNTY
CLERK OF COURT

AIKEN COUNTY
CLERK OF COURT

EXHIBIT: A

RE: Letter dated May 25, 2015
To Mr. Bruce R. Thompson
Mr. Jason Acorton
Mrs. Louise Bowers

MAY 25, 2015

TO: MR. BRUCE R. THOMPSON, CHIEF FINANCIAL OFFICER, (SENT FED-X on 5/28/2015)

MR JASON AGATON, CUSTOMER ADVOCATE (FAXED AS DO NOT HAVE ADDRESS)

MRS. LOUISE BOWES, BLANK ROME LLP (E-MAILED AS NO ADDRESS ON LETTER OR FAX NUMBER)

RE: TENDER OF PAYMENT, DEBT DISCHARGED, UCC 3-603

DEAR MR. BRUCE R. THOMPSON:

ON MARCH 31, 2015, MY INTERNATIONAL PROMISSORY NOTE (HERAFTER, IPN) IN THE AMOUNT OF $147,000 WAS RECEIVED AT YOUR HEADQUARTERS ADDRESS DELIVERED BY FED-X AND VERIFIED BY MR. JASON AGATON IN HIS LETTER DATED APRIL 3, 2015 AS WELL AS LOUISE BOWES OF BLANK ROME, LLP IN HER LETTER DATED APRIL 22, 2015 WITH BOTH VERIFICATIONS ATTACHED.

I HAVE MADE 2 REQUESTS TO MR. AGATON TO RETURN MY INTERNATIONAL PROMISSORY NOTE AS IT IS A CASH ITEM IN THE UNITED STATES AS WELL AS MY LEGAL PROPERTY, AND I HAVE NOT BEEN GIVEN AN EQUITABLE RESPONSE. ALSO, IT IS MY UNDERSTANDING AND BELIEF, MR. AGATON OR YOUR INTERMEDIATE ACCOUNTING DEPARTMENT HAS DEPOSITED IT, SINCE HE HAS CHOSEN NOT TO RETURN IT TO ME OR SEND ME A DISCHARGE LETTER IN COMPLIANCE WITH MY REQUESTS. IN ADDITION, MRS. BOWES STATES YOU ONLY ACCEPT CERTIFIED FUNDS, HOWEVER, AN INTERNATIONAL PROMISSORY NOTE IS CERTIFIED FUNDS AND CASH WHEN DEPOSITED, THEREFORE, IT IS CERTIFIED FUNDS AND IS BACKED BY THE U.S.TREASURY AND FEDERAL RESERVE. MRS. BOWES DID NOT GIVE ME ANY OTHER LEGAL REASONS FOR NOT ACCEPTING THE LEGAL INTERNATIONAL PROMISSORY NOTE FOR PAYMENT.

ACCORDING TO UUC 3-603, WHEN TENDER OF PAYMENT IS MADE, THE DEBT IS DISCHARGED. AND MOST ASSUREDLY, WHEN THE LEGAL PROPERTY (IPN) OF THE TENDER OF PAYMENT IS NOT RETURNED TO ITS RIGHTFUL OWNER, THEN THE DEBT IS SURELY DISCHARGED. MR. AGATON HAS THE PRESENTMENT WHICH GIVES THE LEGALITY OF THE INTERNATIONAL PROMISSORY NOTE.

THEREFORE, IN "GOOD FAITH" AS THE PAYMENT WAS MADE IN "GOOD FAITH", I AM REQUESTING BANK OF AMERICA DISCHARGE THE DEBT OF THE $147,000 ON ACCOUNT NUMBER, 172231076, WHICH INCLUDES INTEREST AND EXPENSES. PLEASE SEND ME A LETTER IN COMPLIANCE WITH MY "GOOD FAITH" TENDER OF PAYMENT FOR THIS ALLEGED DEBT STATING THE DEBT IS DISCHARGED OR HAVE THE ORIGINAL INTERNATIONAL PROMISSORY NOTE (IPN) RETURNED TO ME WITHIN 10 DAYS OF THE DATE OF THIS LETTER, OTHERWISE THE DEBT IS DISCHARGED, UCC3-603 . IT WOULD BE UNCONSCIONABLE TO KEEP THE CASH ITEM, THE INTERNATIONAL PROMISSORY NOTE, AND NOT DISCHARGE THE DEBT.

THANK YOU, AND YOU MAY CALL ME DIRECTLY ON MY CELL PHONE, (706) 399-5496 IF YOU NEED ANY FURTHER INFORMATION. COPIES OF THIS LETTER HAVE BEEN SENT TO MR. AGATON & MRS. BOWES.

CORDIALLY,

CAROLYN S. DEANER

DESIGNATION: 43

43. DEFENDANT'S MOTION AND AFFIDAVIT TO PROCEED IN FORMA PAUPERIS...filed 6/9/2015.

(contains pages 1-2)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **DEFENDANT'S MOTION AND AFFIDAVIT TO PROCEED IN FORMA PAUPERIS** **DOCKET NO. 2012-CP-02-00699**

COPY
ORIGINAL FILED
JUN 09 2015 3:00 PM
AIKEN COUNTY
CLERK OF COURT

TO: PLAINTIFF, Bank of America, N.A., successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P.

YOU WILL PLEASE TAKE NOTICE that CAROLYN S. DEANER, Defendant, Pro Se, being duly sworn, state that I am the Defendant, and I do not have the funds available to pay the costs of a bond in the amount of $23,400.00 in order to appeal my case to the SOUTH CAROLINA COURT OF APPEALS. Inasmuch as the Defendant is a SENIOR CITIZEN on a small Social Security income only due to being the hardest hit during the economic crisis with the loss of her business income and forced personal bankruptcy in December 2011, a recovery has not taken place and is unlikely to happen for years. The Defendant's cost of living far exceeds her social security check and was previously declined for a loan modification due to insufficient income.

In case Martin v. State, 321 S.C. (1995) the Supreme Court went on to state : "Further, where certain fundamental rights are involved, the CONSTITUTION requires that an indigent be allowed access to the courts. Id at 535, 471 S.E. 2d at 135 (citing as an example Boddie v. Connecticut, 401 U.S. 371 91 S. Ct. 780, 28 L.Ed.2d 113 (1971). The UNITED STATES SUPREME COURT stated in BODDIE: "DUE PROCESS requires at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of

right and duty through the judicial process must be given a meaningful opportunity to be heard." The facts of this case indicate Defendant is indigent and seeks access to the Court of Appeal .

. The Defendant has put in a Motion to Reconsider Defendant's Emergency Motion to Vacate Judgment and Reverse and Cancel Sale as well as a Motion to Order Return of Defendant's International Promissory Note or Debt is Discharged as the IPN is legal cash when deposited.

WHEREFORE, WITH A FAVORABLE GRANTING OF THESE MOTIONS AN APPEAL WILL NOT BE NECESSARY DUE TO FACTS OF MERIT, MATTERS OF LAW, AND MATERIAL FACTS, OTHERWISE, THE DEFENDANT MOVES ON THIS COURT TO GRANT AN ORDER ALLOWING THE DEFENDANT TO PROCEED IN FORMA PAUPERIS. (28 U.S.C 1915 (a)(1)).

Respectfully Submitted,

Date: JUNE 9, 2015
North Augusta,, SC
Aiken County

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

Sworn to before me this
9 day of June, 2015

Notary Public of South Carolina
My commission expires: 11.4.18

MONEKE T. JOHNSON NOTARY PUBLIC SOUTH CAROLINA My Comm. Expires November 4, 2018
Seal

DESIGNATION: 44

44. MEMORANDUM TO DEFENDANT'S EMERGENCY MOTION TO RECONSIDER DEFENDANT'S MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE AND NOTICE TO RULE SCRCP 59 (E).....filed July 17, 2015.

    (contains pages 1-12)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP

Plaintiff,

vs.

Carolyn S. Deaner

Defendant(s).

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

MEMORANDUM TO DEFENDANT'S EMERGENCY MOTION TO RECONSIDER DEFENDANT'S MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE AND NOTICE FOR MOTION TO RULE SCRCP 59(e)

DOCKET NO. 2012-CP-02-00699

COPY
ORIGINAL FILED
JUL 17 2015
3:50pm
AIKEN COUNTY
CLERK OF COUR

TO: PLAINTIFF, Bank of America, N.A., successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P.

YOU WILL PLEASE TAKE NOTICE that CAROLYN S. DEANER, Defendant, Pro Se, will on JULY 23, 2015 move before the Court, pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, for an order granting DEFENDANT'S MOTION TO RECONSIDER DEFENDANT'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE, pursuant TO South Carolina Rules of Civil Procedure in RULE 60 (b)(1-5):

This Memorandum to the Motion is made on the grounds that the Defendant intends to request official rulings to SHOW FORTH the NEW EVIDENCE AND FRAUD IN THE DEFENDANT'S CASE as more accurately described and defined in the previously ATTACHED filing of the MORTGAGE COMPLIANCE INVESTIGATORS, CHAIN OF TITLE ANALYSIS & MORTGAGE FRAUD INVESTIGATION REPORT. **The Full Faith and Credit Clause of the United States Constitution provides that "Full Faith and Credit shall be given in each state to the judicial proceedings of every other state." U.S. CONST. art. IV, 1.** The Defendant's EVIDENCE was previously attached, filed and incorporated herein respectful. Pursuant to Rule 11 of the South Carolina Rules of Civil procedure, the undersigned hereby certifies that prior to filing this Motion she and her legal attorney communicated with

opposing counsel and attempted in "Good Faith" to resolve this matter with a cash offer of a reverse mortgage with no response from opposing council. In addition, the Defendant paid a legal tender payment on March 31, 2015 of $147,000 including interest and a decline from Plaintiff was received on April 22, 2015 creating a discharge of the extent of the amount of the tender of the obligation of an endorser which was the full amount of the judgment and alleged debt obligation, and in accordance with UCC 3-603. A Tender of payment made and declined is DISCHARGED. Also, Tender of payment destroys a lien. Section 31 U.S.C 5103 "Legal Tender.

DEFENDANT requests **JUDICIAL NOTICE** and requests EACH ITEM TO BE RULED UPON INDIVIDUALLY IN THE FOLLOWING filings according to **SCRCP 59 (e)**:

I. FILINGS TO BE RULED ON ACCORDING TO SCRCP 59 (e)

A. ATTORNEY SLOAN'S TRIAL CLOSING SUMMARY LETTER, **(rule on each item)**

I. Damages to Plaintiff, II. Assignment of Mortgage,

III. Deficiencies With The Right To Cure Letter, A, B, C & D,

IV. Plaintiff has failed to show standing to bring this lawsuit at the time that the suit was filed, **(Standing is to be determined at the commencement of suit. Lujan vs. Defenders of Wildlife, 504 US 555, 570-1 n. 5 (1992) accord Young vs. People's Bank 163 SC 57, 161 SE 2nd 324, 329 (1931). "Plaintiff's right to recovery depended on its right at the inception of the lawsuit, and the non-existence of a cause of action when the suit was started is a fatal defect, which cannot be cured by the accrual of a cause of action pending suit."**

In **YOUNG, our SOUTH CAROLINA SUPREME COURT** adopted the holding of **CARPENTER vs. LONGAN 83, US 271 16 Wall. 271,21 L.Ed.313 (1872)**

which held that a Plaintiff must OWN the NOTE and MORTGAGE at the time of the filing to foreclose. Judge Nicholson adopted this as law of the case in Deutsche Bank National Trust Co. v Heinrich, SC 2011.) (In the Trial Transcript, on page 5 and page 28 the Bank of America witness testified Fannie Mae was the Investor and OWNER of the NOTE). (Also, the Defendant's Mortgage Compliance Investigator, Chain of Title and Mortgage Fraud Investigation Report proves likewise as the true Investors are the multiple classes of the Fannie Mae REMIC Trust 2007-91))

and his SUMMARY. (e-mailed and mailed to Ref. Harvey 2/24/15 as requested)

(See. Elam v. South Carolina Dept. of Transportation, 361 S.C. at 24-25 and n. 1, 602 S.E.2d at 780-781 and n.1).

The Defendant MOVES ON THIS COURT TO DISMISS THIS CASE WITH PREJUDICE as Bank of America is only the Servicer and does not OWN the NOTE and mortgage in this case and DID NOT OWN THE NOTE AND MORTGAGE AT THE FILING OF THE ORIGINAL COMPLAINT IN THIS CASE. In addition, this COURT ADMITTED and agreed in the last hearing and in the transcript on page 36, 5-11 that Supreme Court Law trumps the laws under it, therefore, Carpenter v. Longan , the United States Supreme Court ruling trumped the SC DRAPER case, and the Defendant MOVES ON THIS COURT TO DISMISS with prejudice this wrongful FORECLOSURE.

B. DEFENDANT'S DEFENSES AND COUNTER CLAIMS: **(rule on each item)**

I. #5, 7, 11, 12, 14, 15, 18, 20, 21, 22.

II. #24, III. #26, IV. #28, V. #30, VI. #31, VII. #33, VIII. #35, IX. #37, X. #39, 40, XI. #42, 43, XII. #45, 46, XIII. #48, XIV. #50, XV. #52, 53, and XVI. #55, **Defendant reserves all Defenses and/or Counterclaims that may come to light at a later date not known now,** and pages 1-8. (given to Ref. Harvey at the trial by Mr. Sloan) (See Elam v. South Carolina Dept. of Transportation, (same as in A)

C. DEFENDANT'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE, IN ITS ENTIRETY, Pages 1-14 with #14 having A, B, C, D, E, F, & G which includes PAGES 1-12. **(rule on each item)**

(Elam v. S.C. Dept. of Transportation...same as in A and B)

D. MORTGAGE COMPLIANCE INVESTIGATORS, CHAIN OF TITLE ANALYSIS AND MORTGAGE FRAUD INVESTIGATION REPORT, with rulings on Pages 1-34. (hereafter, MCI REPORT) **(rule on each item)**

(Elam v. S. C. Dept. of Transportation...same as in A, B and C)

E. MEMORANDUM IN SUPPORT OF DEFENDANT'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE, Pages 2-10 (Elam)

F. DEFENDANT'S MOTION TO RECONSIDER DEF'S EMERGENCY MOTION TO VACATE JUDGMENT AND REVERSE OR CANCEL SALE. **(rule on each item)**

(Elam v. S. C. Dept. of Transportation...same as A, B, C, D and E))

II. MCI REPORT FACTS AND MATTER OF LAW

EXCERPTS FROM Defendant's Motion to Vacate Judgment Order and Cancel Sale from the MCI Investigative Report beginning with #2. **(rule on each item, I, II, III, pages 2-12 of this document).**

(1) **On motion and upon such terms as are just, the court may relieve a party or a party's legal representation from a final judgment, decree order or proceedings for the following reasons, Rule 60 (1-5) with special emphasis on: (3) fraud, misrepresentation, or other misconduct of an adverse party.**

(2) In #28, with Quicken Loans Inc. selling only the Deaner Intangible Obligation to Countrywide Home Loans Inc., the Deaner Tangible Promissory Note is no longer eligible for negotiation per Code 1976 36-3-203 (d), as it is now less than full value. In order to claim the full value of the Deaner Tangible Promissory Note, a party would need to both be named as payee to the Deaner Tangible Promissory Note and have sole claim to the Deaner Intangible Obligation. With **NO NEGOTIATION, TRANSFER, AND DELIVERY of the Deaner Tangible Promissory Note evidenced through proper endorsement with Countrywide Home Loans, Inc. being named to the Deaner Tangible Promissory Note, a true "Assignment of Mortgage" could not take place....Code 1976 36-3-203.** "Transfer of instrument; rights acquired by transfer (d) if a transferor purports to transfer less that the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee."

(3) In #36, Under the Consumer Credit Protection Act Title 15 USC Chapter 41 1641 (f) any treatment of the SERVICER of the Deaner Intangible Obligation as an OWNER of the Deaner Intangible Obligation would be in violation of Federal Statute. The assignment is either a fraudulent claim or BAC Home Loans Servicing LP FKA Countrywide home Loans Servicing LP's actions under the claim of ownership are in violation of Federal Law.

(4) In #37-47, MERS, other misrepresentations and violations, as in #43, any electronic transfers of the Deaner Mortgage that may have been executed without recording within the Official Records of the Aiken County Register of Mesne Conveyance are void under Uniform Electronic Transactions Act (UETA) USC 15-96-1-7003 and $44, the assignment of the Deaner Mortgage is a conveyance of an instrument concerning real property which must be recorded to be acted upon. **United States code considers that anyone certifying that a real estate instrument has been assigned when in fact it has not is guilty of a felonious criminal act, Title 18 USC Chapter 47 1021.** In #45-47, is MERS statements on its own agreements.

(5) In #48-58, **NO ONE CAN CLAIM THE RIGHT TO ENFORCE THE DEANER NOTE.** In #48-50, only **contractual** rights of the Deaner Note would have been transferred, without acquiring rights of enforcement as defined in Code 1976 36-3203 (a), as there is a lack of agency relationship between the Deaner Note and the Deaner Mortgage filed on record, **since a party cannot establish an Agency relationship with an as-of-yet-unnamed payee...code 1976 36-3-205, when endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specifically indorsed...and Code 1976 36-3-2013 (a), An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery**

the right to enforce the instrument. In #51, The Deaner Mortgage filed of record **IS UNPERFECTED, as one CAN NOT perfect an instrument to an as-of-yet-unnamed payee.**

(6) In #52, the Deaner Note with an as-of-yet-unnamed payee is an incomplete instrument pursuant to Code 1976 36-3-115. In #54, In agreement with code 1976 36-3-203 (c), even Mortgage Electronic Registration systems, Inc. (MERS) admits that "The debt can only be transferred by properly endorsing the promissory note to the transferee...source, MERS Procedural Manual.

(7) In #55-56, Countrywide did not delivery the Deaner Note to an as-of-yet-unnamed payee and Countywide no longer has the entire rights to the Deaner Note. Countrywide Home Loans, Inc. must have an entire interest in the Deaner Note for a negotiation to occur. In #57, Countrywide can no longer claim the entire rights to the Deaner Note...Code 1976 36-7-501 and 36-3-203. In #58, whoever becomes the transferee of the Deaner Note, through being named payee, will not acquire the right to enforce the Deaner Note.

(8) In #59-64, **THE TERMS OF THE DEANER MORTGAGE HAVE BEEN VIOLATED AND THE DEANER MORTGAGE IS UNENFORCEABLE.**
In #60, the Deaner Mortgage is governed by South Carolina Law. South Carolina Law and Federal Law recognize and require proper recordation of assignment to transfer ownership of the Deaner Mortgage....#16 of Deaner's Mortgage. In #61, **it was previously explained in 25-47 how it is NOT POSSIBLE FOR OWNERSHIP OF THE DEANER MORTGAGE TO HAVE BEEN ASSIGNED TO BAC HOME LOANS SERVICING LP FKA COUNTRYWIDE HOME LOANS SERVICING LP. In #62, the Deaner Mortgage is an unenforceable contract.** In #63, interest in the Deaner Mortgage is no longer with Quicken

Loans, Inc., yet no one else has any authority to enforce its terms, while the Deaner Note is waiting for someone to acquire rights. The Deaner Mortgage is an unenforceable contract, no longer tied to an obligation to enforce its contractual terms over. In #64, Even if ownership of the Deaner Note and the Deaner Mortgage could be rejoined, the Deaner Mortgage, s a now unenforceable contract, no longer tied to an obligation to enforce its contractual terms over, **CAN NOT be returned to being an enforceable contract without Carolyn S. Deaner's consent.**

(9) In #65-70, **INTEREST IN THE DEANER INTANGIBLE OBLIGATION CAN NOT BE REJOINED TO THE INTEREST IN THE DEANER NOTE OR THE DEANER MORTGAGE.** In #65, Multiple classes of the FNMA-2007-91 Trust have rights to the Deaner Intangible Obligation. Multiple classes of the FNMA-2007-01 Trust **were not each and all named as payee on the Deaner Note and DO NOT now have rights to the Deaner Note.** In # 66, there is no possible way for the Deaner Note to be transferred to each and all multiple class of the FNMA-2007-91 Trust for the partial rights to the Deaner Intangible Obligation that each owns. Interest in the Deaner Intangible Obligation and rights to the Deaner Note will remain separate.

(10) In #67, Because the **RIGHTS TO THE DEANER MORTGAGE WERE SEPARATED FROM THE RIGHTS TO THE DEANER INTANGIBLE OBLIGATION, AND WILL REMAIN SEPARATE, THE DEANER MORTGAGE IS LEFT WITH NO WAY TO ENFORCE ITS CONDITIONS OVER THE OBLIGATION WHICH SHOULD BE EVIDENCED BY THE DEANER NOTE, MAKING THE DEANER MORTGAGE AN UNENFORCEABLE CONTRACT.**

(11) In 68-70, **WITH INTEREST IN THE DEANER INTANGIBLE**

OBLIGATION STRIPPED AWAY AND NO WAY TO ENFORCE THE CONDITIONS UNDER THE DEANER MORTGAGE, THE DEANER MORTGAGE CONTRACT IS A NULLITY.

(12) In #68, no Intangible Obligation to enforce conditions over. In #69, Quicken Loans, Inc. retained no beneficial interest in the Deaner intangible Obligation after selling the Deaner Intangible Obligation to countrywide Home Loans Inc. on or before the Trust Closing Date of September 28, 2007. **No acceptable assignments to the Deaner Mortgage to each and all multiple class of the FNMA-2007-91 Trust have been recorded into the official Records of the Aiken County Register of Mesne Conveyance. There is no evidence of negotiations of the Deaner Note to each and all multiple class of the FNMA-2007-91 Trust.**

With no properly recorded owner of the Deaner Mortgage, there is no one to enforce the conditions over the Deaner Intangible Obligations which is no longer evidenced by the Deaner Note. **The Deaner Intangible Obligation is no longer secured by the Deaner Property.**

(See Glaski v. Bank of America, N.A., California Court of Appeal 5th Appellate District, "Hence, the securities issued by the trust are "mortgage backed". For purposes of this opinion, we will refer to such a trust as a "securitized trust". We conclude that a borrower may challenge the securitized trust's chain of ownership by alleging the attempts to transfer the deed of trust to the securitized trust (which was formed under New York law) occurred after the Trust's closing date. Transfers that violate the terms of the trust instrument are VOID under New York trust law, and borrowers have standing to challenge VOID ASSIGNMENTS of their loans even though they are not a party to, or a third party beneficiary of, the assignment agreement. We therefore reverse the judgment.

The validity of attempts to transfer Glaski's Note and deed of Trust to a securitized trust is a fundamental issue in this appeal. One controversy presented by this appeal is whether this court should consider the December 9, 2008 assignment of the deed of trust, which is not an exhibit to the SAC. Because the trial court took Judicial Notice of the existence and recordation of the assignment earlier in the litigation, we too will consider the assignment, but will not presume the matters stated therein are true. (See pt. IV.B post). For instance, we will not assume JP Morgan actually held any interest that it could assign to LaSalle Bank. (See Herrara v. Deutsche Bank National Trust Co. (2011) 196 Cal. Appeal 4th 1366, 1375 (taking judicial notice of a recorded assignment does not establish assignee's ownership of a deed of trust). (Also, on page 16, in order to maintain REMIC tax status in a Trust, the transfers must be made to the trust within the 90 days, (Deconstructing Securitized Trusts, supra, 41 Stetson L. Rev. at pp. 757-758)."

(See Wells Fargo v. Erobobo, NY Supreme 4/2013, a bankruptcy court recently concluded, "that under New York law, assignment of the Salvidar's Note after the start up day is VOID ab initio."

(See Bank of America, NA v. O'Donnell, NY Supreme Ct, 62225-13 (2015), "Mortgage on date action commenced vested in Freddie Mac NOT Bank of America."

Defendant Deaner's note and mortgage on date action was filed by Plaintiff, Bank of America are vested in Fannie Mae REMIC 2007-91 Trust., NOT Bank of America.

(See Bellitri v. Ocwen, MO E. Dis Ct App 2009, comments from Attorney Gardner, Mortgage was declared unenforceable in DOT case, Note declared unsecured, "when MERS assigned the Note to Ocwen the Note became unsecured and the Deed of trust became worthless." Bifurcation. MERS is not mentioned in the Defendant's Note.

As a MATTER OF LAW, THE RIGHT TO FORECLOSE GOES AWAY WHEN THE PROMISSORY NOTE IS SPLIT FROM THE DEED OF TRUST/MORTGAGE THAT IT IS SUPPOSED TO SECURE. The Deaner Note was split from her mortgage when MERS assigned it, and also, when it was securitized and changed into a stock certificate rendering the Note unsecured. Defendant Deaner's Bankruptcy in 2011 bankrupted unsecured debts.

Therefore, DEFENDANT DEANER'S MOVES ON THIS COURT TO REQUIRE STRICT EVIDENCE OF THE VALIDITY OF THE NOTE AND MORTGAGE BEING TRANSFERRED TO THE FANNIE MAE REMIC 2007-91 TRUST LEGALLY WITHIN ALL NEW YORK TRUST LAWS INCLUDING BUT NOT LIMITED TO THE POOLING & SERVICING AGREEMENT AND THE MASTER LOAN SCHEDULE , AND BRING EVIDENCE TO THE COURT, OTHERWISE, THIS IS EXTRINSIC FRAUD UPON THE COURT BY THE PLAINTIFF'S LEGAL COUNSEL.

The Defendant has PLEAD specific facts in her MCI REPORT demonstrating to this Court the Note lacks an endorsement to the Fannie Mae REMIC 2007-91 Trust and no such recording is recorded at the Aiken County Register of Mesne Conveyance of the Fannie Mae REMIC 2007-91 Trust and multiple classes of investors. NOTE IS VOID.

III. MATTERS OF LAW

Bank of America was not the Lender and did not have authority to send the Acceleration Letter which is a fatal breach of the Mortgage Agreement contract #22. In addition, no authorization was given by the Defendant to Quicken Loan, Inc. Countrywide, FSB, Fannie Mae or Bank of America to securitize her promissory note, thus changing it from a promissory note to a stock certificate owned by multiple classes of the Fannie Mae REMIC 2007-91 Trust which forever destroys the Lender/Borrower relationship. Selling a note and securitizing a Note are entirely two different actions. South Carolina **CONVERSION LAW states the Promissory Note cannot be changed, altered, or made different. The original promissory note has been changed, altered and made different as it is now a stock certificate and no longer a note without any authorization whatsoever from the Defendant for the Plaintiff to create a high finance vehicle from her promissory note making unknown amounts of money from the securitization and derivatives.**

IN CONCLUSION, the original promissory note is a cash item, (see U.S.SUPREME COURT, FDIC V. Philadelphia Gear Corp, 476 U.S. 426, 442 (1986), "Promissory notes typically are negotiable instruments, and therefore, readily convertible to cash, unconditional and equivalent to money, and especially if the note is negotiated." Defendant Deaner's Original Promissory Note was a cash item, not told to the borrower at the time of the alleged loan and is misrepresentation by the Lender, since there was not a loan, but a swap or exchange of currency at the closing. The Defendant claims recoupment of the entire amount of the original promissory note on the payable side of the bank's ledger and under Civil Rule 13, the Defendant is bringing a mandatory counter claim for recoupment and applying the set off in this Memorandum and Motion. This is all Equitable action and all Judges are privy to this matter of law and operative law.

Defendant MOVES ON THIS COURT to order all evidentiary documents from the Plaintiff to prove the PSA Guidelines were strictly followed and the payable side ot the bank ledgers and any other evidentiary documents this court requires to establish the truth in Defendant's case. (Schott v. BAC Home Loans, the loan has long ceased to be a mortgage, it was securitized and mortgages and stocks are separate under U.S. Law, and the loan ceased to be secured to the house making foreclosure INVALID. Also, SC Code Article 5, 35-1-501 (1)(2)(3), General Fraud as Defendant's loan is securitized.

WHEREFORE, Defendant claims recoupment (Section 36-3-305, a (1), ii, iii, iv) , damages due to the extrinsic and intrinsic fraud, fraud in the concealment, and attorney fees, and Defendant MOVES ON THIS COURT to grant Defendant's Motion To Vacate Judgment and Reverse or Cancel Sale with prejudice, removal of the lis pendens, enter satisfaction and any other Relief this court deems just and EQUITABLE.

Respectfully Submitted,

Date: JULY 17, 2015
North Augusta,, SC
Aiken County

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

DESIGNATION: 45

45. MEMORANDUM TO DEFENDANT'S MOTION TO ORDER RETURN OF THE IPN OR DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER OF JUDGEMENT.....filed July 17, 2015.

    (contains pages 1-3)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP

Plaintiff,

vs.

Carolyn S. Deaner

Defendant(s).

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

MEMORANDUM TO DEFENDANT'S MOTION TO ORDER RETURN OF THE IPN OR DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON ORDER OF JUDGMENT

DOCKET NO. 2012-CP-02-00699

TO: PLAINTIFF, Bank of America, N.A., successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P.

YOU WILL PLEASE TAKE NOTICE that CAROLYN S. DEANER, Defendant, Pro Se, will on JULY 23, 2015 as Defendant is heard, MOVES before the Court, pursuant to Rule 15 of the South Carolina Rules of Civil Procedure and Fed Rule of Civil Procedure 60(b) (1-5) for an order granting Defendant's MOTION TO DISCHARGE DEBT DUE TO TENDER OF PAYMENT MADE TO PLAINTIFF ON THE ORDER OF JUDGMENT, and prospective application of the Judgment Order and Sale of Defendant's property is no longer equitable.

This motion is made on the grounds that the Defendant intends to present facts of merit to show Defendant's new evidence of a DEBT PAID AND REQUESTS dismissal of this case with prejudice.

Pursuant to Rule 11 of the South Carolina Rules of Civil procedure, the undersigned hereby certifies that prior to filing this Motion she communicated with Plaintiff's counsel and attempted in "Good Faith" to resolve this matter.

COPY
ORIGINAL FILED
JUL 17 2015
3:50pm
AIKEN COUNTY
CLERK OF COURT

I. STATEMENT OF FACTS ON TENDER OF PAYMENT

1. **Bank of America did not return the International Promissory Note (hereafter, IPN) within the requested 10 days demanded after months of holding the IPN or at any time prior to the last request, therefore, the debt is discharged for Tender of Payment was made in "Good Faith" and declined by Plaintiff. (See U.S. SUPREME COURT, FDIC V. Philadelphia Gear Corp, 476 U.S. 426 442 (1986), "Promissory notes typically are negotiable instruments, and therefore, readily convertible to cash, unconditional and equivalent to money." The debt has been paid in "readily convertible cash" and declined so the DEBT IS DISCHARGED according to UCC 3-603.**

2. **An IPN was received on or around 7/7/2015 left on the front porch out of view by Fed-X, however, the IPN could not be identified as the original IPN as the IPN had staple holes in it, was damaged and must have been a copy as surely no officer of Bank of America would have stapled the original cash item IPN. Since the returned IPN is not in the form and condition in which it was sent by Fed-X to Mr. Bruce Thompson, Chief Financial Officer of Bank of America, nor was it officially dishonored, therefore, THE DEBT IS DISCHARGED as an "unconditional and equivalent money" payment was tendered to the Plaintiff, Bank of America. (US SUPREME COURT CASE, FDIC V. PHILADELPHIA GEAR CORP.)**

3. **All U. S. currency is only a promise to pay a debt, just like a Federal Reserve Note Dollar is only a promise to pay due to there not being any gold or silver to pay debts. Everything is a debt instrument and everything constitutes DISCHARGE and when Defendant mailed the IPN to the BOA, CFO Defendant presented payment, UCC 3-501 thru 505, & UCC 3-601-603 debt has been DISCHARGED.**

4. **This court in the previous hearing on page 36, 5-11 of the transcript admitted and agreed U.S. SUPREME COURT Rulings prevail, therefore, a cash "Tender of Payment" was made to the Plaintiff in "Good Faith" and the DEBT IS DISCHARGED according to UCC 3-603 and SC Court of Appeals Anderson v. Citizens Bank (1987) case.**

WHEREFORE, THE DEFENDANT MOVES ON THIS HONORABLE COURT TO ORDER THE DEBT DISCHARGED AND DISMISS THIS CASE WITH PREJUDICE, REMOVE THE LIS PENDENS, ENTER SATIFACTION AND GRANT ATTORNEY FEES, RECOUPMENT AND ANY OTHER EQUITABLE RELIEF THIS COURT DEEMS JUST AND FAVORABLE TO THE DEFENDANT.

Respectfully Submitted,

Date: JULY 17, 2015
North Augusta, SC
Aiken County

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

DESIGNATION: 46

46. DEFENDANT'S MOTION TO DISMISS FORECLOSURE ACTION, JUDGMENT AND CANCEL SALE.....filed July 17, 2015.

(contains pages 1-12)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP

Plaintiff,

vs.

Carolyn S. Deaner

Defendant(s).

DEFENDANT'S MOTION TO DISMISS FORECLOSURE ACTION, JUDGMENT AND CANCEL SALE

DOCKET NO. 2012-CP-02-00699

COPY
ORIGINAL FILED
JUL 17 2015
3:50pm
AIKEN COUNTY
CLERK OF COURT

TO: PLAINTIFF, Bank of America, N.A., successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P.

YOU WILL PLEASE TAKE NOTICE that CAROLYN S. DEANER, Defendant, Pro Se, on July 23, 2015 as Defendant is heard MOVES ON THIS COURT pursuant to Rule 15 of the South Carolina Rules of Civil Procedure and Federal Rule of Civil Procedure 60 (b) 1-5 for an ORDER granting Defendant's MOTION TO DISMISS FORECLOSURE ACTION AND CANCEL SALE based on the following merits of law, matter of law, lack of standing, lack of this court's subject matter jurisdiction and prospective application of the Judgment Order and Sale would no longer be equitable.

This motion is made on the grounds that the Defendant intends to present facts and show facts of merit and matters of law with new evidence to show this existing foreclosure action is barred and extrinsic fraud and RICO actions are being perpetrated upon the Defendant in this case. **The Full Faith and Credit Clause of the United States Constitution provides that "Full Faith and Credit shall be given in each state to the judicial proceedings of every other state." U.S. Const. art IV, 1.**

I. STATEMENT OF FACTS

1. On or about July 14, 2015 a representative named Nicole Glass from Seterus, Inc. called Defendant Deaner on her cell phone, began asking questions and informing Defendant they were the new servicing company, and that Bank of America had sold them the Servicing rights to the alleged loan and they were demanding payment.
2. Defendant Deaner responded and told Mrs. Glass she was not a party to the existing law suit and would not be able to discuss the matter except to tell her there was not a debt owed or a loan and no monies were owed to Seterus, Inc.
3. Mrs. Glass informed Defendant Deaner she was holding the Note from Bank of America, then threatened foreclosure and informed Defendant Deaner that she had already filed for a foreclosure and would send me a package of information and call me next week, at which point, Defendant Deaner again informed Mrs. Glass she was not a party to the existing lawsuit, and I would not be able to talk with her concerning this matter. This is infliction of continued emotional distress upon the Defendant in this case and the Defendant claims damages in this equitable court..

II. MERITOUS MATTERS OF LAW

1. Defendant Deaner objects to such a call and Seterus, Inc. is barred by collateral estoppel from this lawsuit as a third party or any future lawsuit and Defendant objects to adding parties or third party claims to the existing lawsuit in its present procedure with the existing Plaintiff not being the OWNER OF THE NOTE WITH NO EVIDENCE OF A DEBT PROVEN OR EVIDENCE OF AN AGENCY RELATIONSHIP WITH ANYONE PROVEN AND THE MERS ASSIGNMENT IS INVALID. (See Deutsche Bank National Trust Co. v. Heinrich, SOUTH CAROLINA 2011-CP-10-1060, July 31, 2013 and the SC Gervainis case). **DEFENDANT DEEMS THIS MOVE AND ACTION BY THE PLAINTIFF AS LEGAL HARASSMENT AND ABUSE OF JUDICIAL RESOURCES.**

2. The Plaintiff is barred from selling a VOID NOTE, based on Carpenter V. Longan, U.S. SUPREME COURT 83 U.S. 16 Wall 271(1872) which states the Plaintiff (Bank of America in this case) must be the OWNER of the note and was accepted by the SC SUPREME COURT (1933), in Young v. People's National Bank. The Plaintiff in the Original Complaint only stated they held the Note, but the Plaintiff did not allege facts that "raise a right to relief above the speculative level", Twombly, 550 at U.S. 555. (2007) BELLISTRI V. OCWEN LOAN SERVICING, LLC, MO Ct of App., held that a note

and MERS mortgage had been separated and the ASSIGNEE HAD NO STANDING TO FORECLOSE. (See Joseph vs. BAC Home Loans Servicing LP (4th District Ct of Appeals Florida, January 7, 2015) ruled directly on this issue that a Plaintiff needed to show standing as a PETE at the time the lawsuit was filed. The Plaintiff, bank of America has not proven anything or established entitlement to foreclose or have a perfected lien of any kind. The actions of the Plaintiff is a SHAM and fraud on the Defendant and this court.

3. Selling the servicing rights of an unauthenticated and VOID Note with no endorsements to the Fannie Mae REMIC 2007-91 Trust and no dates at all on the Note and rubber stamped signatures is perpetrating fraud upon the Defendant in this case and is RICO.

4. Defendant also seeks redress from Plaintiffs for damages, for other injunctive relief and cancellation of written instrument based upon:

   (a) an invalid and unperfected security interest in the Defendants home property

   (b) VOID "True Sale" violating NEW YORK law and express terms of the Pooling and Servicing Agreement (PSA) governing the securitization of Plaintiff's mortgage in the Fannie Mae REMIC 2007-91 Trust which is under New York Trust Laws.

   (c) an incomplete and ineffectual perfection of a security interest in the Defendant's home.

5. Based on all the Defendant's previous filings and her Mortgage Compliance Investigators Chain of Title Analysis and Mortgage Fraud Investigation Report (hereafter, MCI Report) Defendant is further informed that the following deficiencies Exist in the "True Sale" and securitization process as to the Defendant's mortgage which renders INVALID any security interest in the Defendant's mortgage, including, but not limited to;

(a) The splitting or separation of title, ownership and interest in Defendant's Note and Mortgage of which the present Plaintiff is not named in the mortgage, or note. The splitting of the note from the mortgage renders the Note a nullity.

(b) When the loan was sold to each intervening entity, there was no assignments of the mortgage to and from any intervening entity at the time of the sale. Therefore, "True Sales" could not and did not occur.

(c) The failure to assign and transfer the beneficial interest in the Defendant's mortgage to the Fannie Mae REMIC 2007-91 Trust in accordance with the PSA GUIDELINES and NEW YORK Trust Laws.

(d) The failure to endorse, assign and transfer the Defendant's Note and/or Mortgage to the Fannie Mae REMIC 2007-91 Trust in accordance with the PSA GUIDELINES and NEW YORK Trust Laws.

(e) No Assignment of Beneficiary or Indorsements of the Note to each of the intervening entities in the transaction ever occurred under NEW YORK LAW, which is CONCLUSIVE PROOF that no true sales occurred as required under the PSA filed with the SEC; and

(f) Plaintiff, and each of them, violated the pertinent terms of the PSA.

6. Defendant, therefore, upon authentic information and the MCI Investigative Report that none of the parties to neither the securitization transaction, nor any of the Plaintiffs in this case hold a perfected and secured claim to the Defendant's property, and that ALL OF Plaintiffs are ESTOPPED AND PRECLUDED from asserting an unsecured claim against the Defendant's estate. In **KEMP V. COUNTRYWIDE HOME LOANS, INC., U.S Bankruptcy Court, District of New Jersey (11/16/10) "Most significantly for purposes of this discussion, the note in question was never indorsed in blank or delivered to the Bank of New York as required by the Pooling and Servicing Agreement." "Ms. DeMartini, a supervisor and operational team leader for the litigation management Department for BAC Home Loans Servicing, LP (BAC Servicing), testified that to her knowledge, the original note never left the possession of Countrywide, and that the original note appears to have been transferred to Countrywide's foreclosure unit, as evidenced by internal Fed-X tracking numbers. She testified further that is**

related loan documents." "In addition, she testified on page 11, "It is believed the notes may have been shredded due to the origination of the MERS data recording and tracking system, and the Note was never transferred as legally required."

NJ BANKRUPTCY COURT STATES, "Countrywide's claim here must be disallowed, because it is unenforceable under New Jersey law on two grounds. First, under New Jerseys's Uniform Commercial code (UCC) provisions, the fact that the owner of the note, the Bank of New York, NEVER HAS POSSESSION OF THE NOTE IS FATAL to its ENFORCEMENT. Second, upon the sale of the note and mortgage to the Bank of New York, the fact that the Note was not properly indorsed to the new owner also defeats the ENFORCEABILITY OF THE NOTE. Also, "But Countrywide, as Servicer, acts only as the agent of the owner of the instrument, and has NO GREATER RIGHT TO ENFORCE THE INSTRUMENT THAT ITS PRINCIPAL. (See e.g., Greer v. O'Dell, 305 F. 3d at 1303. Because the Bank of New York has no right to enforce the note, Countrywide as its agent and servicer cannot enforce the Note." In Defendant Deaner's case, Fannie Mae has no right to enforce the Note since the Note has been securitized into the Fannie Mae REMIC 2007-91 Trust, therefore, the Plaintiff as Servicer for Fannie Mae cannot enforce the Note. (Kemp v. Countrywide case 08-02448 JHW, 11/16/10)

In the Kemp case CONCLUSION, CHIEF JUDGE WIZMUR, states, "Because the claim filed by Countrywide Home Loans, Inc., servicer for "Bank of New York" cannot be enforced under applicable state law, the claim must be disallowed under 11 U.S.C. 502 (b) (1)

In Defendant Deaner's case the Kemp case should apply and 11 U.S.C. 502 (b) (1) be used in her case due to her bankruptcy discharge in 2011.

In addition, the Note has been split from the mortgage by securitization and the MERS assignment as MERS never holds notes, rendering the note VOID and Unsecured. Defendant's BANKRUPTCY In 2011 **discharged all unsecured debt..** Also, see Kirby vs. Bank of America, the DEPOSITION of Michele Sjolander, on 1/25/12 (a rubber stamped endorser in Defendant's Note) where she testified Notes were printed off her imaging system, P.31, the file is scanned and imaged to an electronic file, p37, Recontrust/vault owned by Bank of America, notes are rubber stmped, p55, in 2007, its employees at Recontrust that stamp the endorsements on the notes, p71, they have my power of attorney, p71, no way to know absolutely for sure that endorsement was done on a particular day, NO, p.72, multiple stamps used, but actual person stamping unknown or when stamped, p.75,76,77, Sjolander does not know the people at ReContrust who actually stamp her name on Notes or when, p.77, 79, Sjolander does not know how many individual at Recontrust are responsible for endorsing notes on her behalf, p.81, Sjolander admits she never personally signs an endorsement on a

promissory note with a pen, p.82, dates endorsements done unknown, p.90. This constitutes ROBO-STAMPING.

7. Plaintiff concealed the fact that the loan was securitized from the original Lender to the Present Plaintiff and perpetrates FRAUD IN THE INDUCEMENT upon the Defendant. In addition, the terms of the Securitization Agreement were concealed, including inter alia: (1) Financial Incentives paid; (2) existence of Credit Enhancement Agreement; and (3) existence of Acquisition Agreements. By concealing the securitization, the Plaintiff concealed the fact that the Defendant's loan changed in character inasmuch as no single party would hold the Note, but rather the Notes would be included in a pool with other notes, split into tranches, and multiple investors would effectively buy shares of the income streams from the loans. Changing the character of the loan in this way had a MATERIALLY NEGATIVE EFFECT on the Defendant that was known by the Plaintiff, successors and predecessors, but not disclosed

8. In addition, the fact that the promissory note is a cash item was never disclosed by the Lender to the Defendant and is further fraud in the inducement. The Defendant would never have entered into a loan agreement knowing she was doing an exchange or swap of currency and no monies were being loaned at all. (See **US SUPREME COURT**, FDIC V. PHILADELPHIA GEAR CORP, 476 U.S. 426, 442 (1986) stating, "**Promissory Notes typically are negotiable instruments, and therefore, are readily convertible to**

cash, unconditional and equivalent to money, especially if they are negotiated." This is extrinsic fraud, breach of contract and fiduciary responsibilities perpetrated upon the Defendant and now another Servicer plans to do the same thing...RICO and UNCLEAN HANDS are claimed by the Defendant in this UNCONSIOUSABLE foreclosure action.

9. Defendant claims RICO AGAINST THE Plaintiff, "**THE US SUPREME COURT** found that a party in a civil action need establish only a criminal "violation" and not a criminal conviction. Further, the Court held that a party need only have caused harm to the other party by the commission of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the party need not demonstrate that the other party is an organized crime figure, a mobster in the popular sense, or that the party in the civil action has suffered some type of Racketeering injury, all that the party must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation is to be liberally construed to effect the congressional purpose as broadly formulated in the Statute." **SEE, Sedima SPRL vs. IMREX Co, 473 US 479 (1985).**

10. In Defendant's Motion to Dismiss Foreclosure Action and Cancel Sale, Defendant Deaner incorporates her complete MEMORANDUM OF LAW, pages 1-67 filed in this foreclosure case on September 20, 2013 which includes numerous judicial proceedings and rulings across the nation to support the requested dismissal with prejudice.

Throughout this case, the Defendant has brought to the attention both with her first legal aid attorney, then her previous attorney that the Plaintiff lacks standing to bring this foreclosure action and is a wrongful foreclosure action and this Court lacks subject matter jurisdiction.

U. S. SUPREME COURT, CARPENTER V. LONGAN (1872) HONORED BY THE SOUTH CAROLINA SUPREME COURT IN YOUNG V. PEOPLE'S BANK AND DEUTSCHE BANK NATIONAL TRUST CO. V. HENRICH, SC 2011-cp-10-1060, 7/31/2013.

The Plaintiff must be the owner of the note at the commencement of the suit, to have STANDING and this COURT to have subject matter jurisdiction. In the Plaintiff's original complaint, they stated they held the note, but, there was no evidence offered or proof established at that time. The **BURDEN OF PROOF IS ON THE PLAINTIFF IN THIS CASE.** In addition, **if the Plaintiff DID NOT HAVE AN ENDORSEMENT AT THE TIME THAT THEY FILED THE SUIT, whether or not they are the Servicer or not, they WERE NOT A PETE, a person entitled to enforce per SC Code Ann. 36-3-301. SC Code Ann. 36-3-412 states that a maker, Defendant Deaner here, has a duty only to pay a PETE. However, in this case the Defendant denies a default due to third party pay-offs and tender of payment.**

The **DOCTRINE OF UNCLEAN HANDS "precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is subject of the litigation to the prejudice of the defendant." Ingram v. Kasey's Assocs., 340 SOUTH CAROLINA 98, 107 n. 2, 531 S.E. 2d 287, 292 n. 2, (2000). For the Plaintiff to continue to misrepresent that the Plaintiff, Bank of America, is the owner of the note, and to sell an invalid, unauthenticated Note to another servicer is acting more than unfairly to the prejudice of the Defendant in this case. It is willful intent to continue to oppress and do grave harm to the Defendant's health and well being in this case.**

WHEREFORE, DEFENDANT MOVES ON THIS EQUITABLE COURT TO DISMISS THIS CASE WITH PREJUDICE, REMOVAL OF THE LIS PENDENS, ENTER SATISFACTION, AND GRANT ATTORNEY FEES, RECOUPMENT, DAMAGES, DECLARATORY RELIEF, AND ANY OTHER RELIEF DEEMED JUST AND EQUITABLE BY THIS HONORABLE COURT.

Respectfully Submitted,

Date: JULY 17, 2015
North Augusta,, SC
Aiken County

Carolyn S. Deaner
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

Defendant *Pro Se*

DESIGNATION: 47

47. NOTICE TO REFEREE JUDGE HARVEY ON DEFENDANT'S MOVE ON THE COURT AND MOTION TO ORDER ALL TRUST DOCUMENTS OF DEFENDANT'S FANNIE MAE REMIC 2007-91 TRUST.....filed July 30, 2015.

(contains pages 1-7)

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP

Plaintiff,

vs.

Carolyn S. Deaner

Defendant(s).

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

NOTICE TO REFEREE JUDGE HARVEY ON DEFENDANT'S MOVE ON THE COURT AND MOTION TO ORDER ALL TRUST DOCUMENTS OF DEFENDANT'S FANNIE MAE REMIC 2007-91 TRUST

DOCKET NO. 2012-CP-02-00699

TO: PLAINTIFF, Bank of America, N.A., successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P.

YOU WILL PLEASE TAKE NOTICE that CAROLYN S. DEANER, Defendant, Pro Se, MOVES ON THIS HONORABLE COURT, pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, for an ORDER granting DEFENDANT'S PRESENT AND PREVIOUS REQUESTS FOR THE SECURITIZED TRUST DOCUMENTS OF THE FANNIE MAE REMIC 2007-91 TRUST PURSUANT to Carolina Rules of Civil Procedure in RULE 60 (b)(1-5) AND TO BE RULED UPON PRIOR TO ANY POTENTIAL APPEAL HEARING as Defendant believes this vital matter was overlooked by the Court in the previous hearing of May 19, 2015 and the last hearing of July 23, 2015. In addition, Rule 12(b)(6) authorizes a Court to Dismiss a claim on the basis of a dispositive issue of law. Neitzke v.Williams, 490 U.S. 319, 326 (1989).

This motion is made on the grounds that the Defendant intends to SHOW FORTH EVIDENCE of a VOID NOTE by the Plaintiff in DEFENDANT'S CASE as more accurately described and defined in the FOLLOWING WITH EVIDENCE PREVIOUSLY FILED AND MAILED TO THE PLAINTIFF AND THIS HONORABLE COURT in the Defendant's

FILED 7-30 2015
C.C.P. & G.S.
Deputy Clerk

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **NOTICE TO REFEREE JUDGE HARVEY ON DEFENDANT'S MOVE ON THE COURT AND MOTION TO ORDER ALL TRUST DOCUMENTS OF DEFENDANT'S FANNIE MAE REMIC 2007-91 TRUST** **DOCKET NO. 2012-CP-02-00699**

TO: PLAINTIFF, Bank of America, N.A., successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, L.P.

YOU WILL PLEASE TAKE NOTICE that CAROLYN S. DEANER, Defendant, Pro Se, MOVES ON THIS HONORABLE COURT, pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, for an ORDER granting DEFENDANT'S PRESENT AND PREVIOUS REQUESTS FOR THE SECURITIZED TRUST DOCUMENTS OF THE FANNIE MAE REMIC 2007-91 TRUST PURSUANT to Carolina Rules of Civil Procedure in RULE 60 (b)(1-5) AND TO BE RULED UPON PRIOR TO ANY POTENTIAL APPEAL HEARING as Defendant believes this vital matter was overlooked by the Court in the previous hearing of May 19, 2015 and the last hearing of July 23, 2015. In addition, Rule 12(b)(6) authorizes a Court to Dismiss a claim on the basis of a dispositive issue of law, Neitzke v.Williams, 490 U.S. 319, 326 (1989).

This motion is made on the grounds that the Defendant intends to SHOW FORTH EVIDENCE of a VOID NOTE by the Plaintiff in DEFENDANT'S CASE as more accurately described and defined in the FOLLOWING WITH EVIDENCE PREVIOUSLY FILED AND MAILED TO THE PLAINTIFF AND THIS HONORABLE COURT in the Defendant's

MCI REPORT, and last hearing referencing the Glaski v. Bank of America, N.A. case with request made and incorporated herein respectively.

Pursuant to Rule 11 of the South Carolina Rules of Civil procedure, the undersigned hereby certifies that prior to filing this Motion she and her PREVIOUS legal attorneys communicated with opposing counsel and attempted in "Good Faith" to resolve this matter with a cash offer of a reverse mortgage with no response from opposing council. In addition, the Defendant paid a legal tender payment on March 31, 2015 and a decline from Plaintiff was received on April 22, 2015 creating a DISCHARGE to the extent of the amount of the tender of the obligation of an endorser which was the full amount of the judgment and alleged debt obligation in the amount of $147,000. Therefore, TENDER OF PAYMENT DESTROYS A lien and alleged debt DISCHARGED in compliance to UCC 3-603, 3-307, 103, and 4-106. Also, upon Tender of Payment NO charges can be added to the debt and Seterus, Inc. has already added over $18,000 on their fraudulent statement. Defendant CLAIMS a RICO Enterprise Operation and UNJUST ENRICHMENT by Plaintiff and Plainitff's cohort, Seterus, Inc. in this case. A non-party to the case cannot legally increase the amounts due in this case.

1. **On motion and upon such terms as are just, the court may relieve a party or a party's legal representation from a final judgment, decree order or proceedings for the following reasons, Rule 60 (1-5) with special emphasis on: (3) fraud, misrepresentation, or other misconduct of an adverse party such as "unjust enrichment" in this matter.**

2. AT THE PREVIOUS HEARING OF MAY 19, 2015, THE DEFENDANT STATED TO THE COURT, "by the way, if someone does not believe all this, there was a case in Walterboro, South Carolina where the Judge ordered the Plaintiff , I think it was Bank of America, to give the Court all the documents from the time of origination all the way to - all the transfers and everything, bring it to Court, and I'd like to – to request that if someone doesn't believe what I am saying today, Then, I want Bank of America to bring to the Court all the documents that we asked for in discovery and they refused to do, OKAY? (THE COURT, Your request is duly noted). AND AGAIN ON JULY 23, 2015, the DEFENDANT officially MOVED ON THE COURT to order any and all documents related to the FANNIE MAE REMIC 2007-91 TRUST, including but not limited to, the Pooling & Servicing Agreement (PSA

AGREEMENT), the NOTE, THE MORTGAGE, ASSIGNMENTS, FAS140, Prospectus, Mortgage Register, Master Servicer & Custodian Docs & all COLLATERAL documents in the file showing the negotiations, endorsements, transfers and assignments of the note and mortgage from Quicken Loans, Inc. all the way to the REMIC TRUST, and now all assignments, includingthe MULTIPLE CLASSES of INVESTORS in the TRUST. Since no order to date has been made by the Court, then it is reasonable to believe the Court believes the statements in the Transcript, dated May 19, 2015, page 29, 20-25, and page 30, page 1-9.

3. IN ADDITION, the Defendant MOVES ON THE COURT TO ORDER ANY AND ALL AGENCY AGREEMENTS FROM THE MULTIPLE CLASSES OF INVESTORS, OR OTHERWISE, OF THE FANNIE MAE REMIC 2007-91 TRUST from the ORIGINATION OF QUICKEN LOANS, INC., to COUNTRYWIDE, to FANNIE MAE, to MERS to the PLAINTIFF, BANK OF AMERICA, and now SETERUS, INC. GIVING BENEFICIARY RIGHTS, ENTITLEMENT RIGHTS OR ANY LEGAL RIGHTS TO FORECLOSE AND POWER TO SALE THE DEFENDANT'S PERSONAL PROPERTY by any and all of these corporations and entities.

4. THE DEFENDANT MOVES ON THE COURT to ORDER THE PAYMENT RECORDS and FAS 140 of the FANNIE MAE REMIC 2007-91 TRUST of the Defendant's alleged loan to prove FANNIE MAE PAID for the DEFENDANT'S LOAN IN FULL.

MERITORIOUS FACTS FOR DEFENDANT TO MOVE ON THE COURT FOR THE REQUIRED TRUST DOCUMENTS TO BE PRODUCED BEFORE THIS COURT:

1. The Defendant's trust is a common law trust created pursuant to the laws of the State of New York, and its existence and actions are governed by New York Law. (see HORACE V. LaSalle National Association, Cir Ct of Alabama, ORDER, 3/20/2011, CV 08-362) (Attached Exhibit "A")

2. New York Trust Law is ancient and well established with respect to the determination of whether an asset is Trust property. (see Horace v. LaSalle Nat Assoc., page 6, n.15)

3. There is no Trust under the common law until there is a valid delivery of the asset in question to the Trust. Furthermore, when the Trust fails to acquire the property, **then there is no trust over that property that may be enforced.** (See Horace, page 7, n.18)

4. In Defendant's case there HAS NOT been a valid delivery to the Fannie Mae REMIC 2007-91 Trust as the invalid and VOID note held and submitted at trial in the Defendant's case is not endorsed or dated to Fannie Mae or the Fannie Mae REMIC 2007-91 Trust, so the Servicer as the Servicer is not greater than the Trust, so therefore, cannot enforce the mortgage note. (In Horace case number CV-2008-362, see 9/10/2011 testimony of Thomas J. Adams, attorney at Thatcher, Profit& Wood in New York working on Mortgage securitizations in 1989 , states, "I would expect to see a series of endorsements of the promissory note reflective of each party who had an ownership interest in the promissory note culminating with a blank endorsement from the DEPOSITOR at the very minimum." There is no evidence of transfer in the collateral file of either the note or mortgage." "It is my opinion that this trust does no own this promissory note." (Affidavit and Testimony, p.3 n.12 &13, p. 4 n.14, 16, & 17 and p.5 n.18).

5. The PSA Agreement requires the complete CHAIN OF ENDORSEMENTS to be in place by the Trust's closing date or under no circumstances later than 90 days after the Trust's closing date. The Defendant's note lacks the CHAIN OF ENDORSEMENTS AND DATES TO the Trust in order to establish the PSA AGREEMENT requirements were met by the Plaintiff. The endorsement CHAIN presented by the Plaintiff, Bank of America, does not comply with that required by the PSA, therefore the Trust and the Servicer CANNOT ENFORCE.

6. In Defendant's case before this Court, there is no "Good Faith" basis for the Plaintiff, Bank of America, predecessors and successors, or now, Seterus, Inc. to assert or otherwise claim that the Deaner promissory note is Trust property. PSA Rules require delivery of the NOTE AND MORTGAGE to be physically deposited with the Trustee TIMELY by PSA RULES.

7. Defendant Deaner requests the Court enter a judgment in her favor that the trust is not the owner of her promissory note and that the Plaintiff, Bank of America, predecessors and successors, and now Seterus, Inc. have no right to foreclose on her real property.

8. Defendant Deaner requests this Court enter any appropriate Orders to effectuate this Judgment concerning the operative law of the securitization process and requirements of the PSA Agreement and other New York State Trust Law requirements.

9. The Plaintiff, Bank of America, has offered no proof of ownership or that the Defendant's alleged loan was transferred to the Defendant Trust as required by the PSA Guidelines. Further, any attempt to accept transfer of the Deaner Promissory Note now would violate the REMIC provisions of the IRS code for a number of reasons with one being it would be after the closing date and after certificates were issued, and by its terms been closed for over 8 years, and two, the promissory note is not endorsed to the Trust by the DEPOSITOR and DEVOID of the REQUIRED CHAIN OF ENDORSEMENTS as required in the PSA. A claim by the Plaintiff that the note has been transferred to the Trust when it is endorsed in blank simply flies in the face of the mandatory terms of the PSA and is an extreme deviation.

10. In the Horace v. LaSalle case, the Alabama Court also held that the Homeowner is a third-party beneficiary of the PSA as well as the Glaski v. Bank of America, N.A.(Cal. Ct. APP 5th APP. Dis., p.18, 20. (Because Defendant's FNMA REMIC 2007-91 TRUST, was created by the Pooling And Servicing Agreement and that agreement establishes a closing date after which the trust may no longer accept loans, this STATUTORY PROVISION provides a legal basis for concluding that the Trustee's attempt to accept a loan after the closing date would be VOID as an act in contravention of the trust document. (Defendant's Note was not endorsed, negotiated, transferred or delivered to the Defendant's Trust as no endorsement to Fannie Mae or the Fannie Mae REMIC 2007-91 Trust are stamped on the back of the Note submitted at Trial, therefore the Note and Mortgage are VOID in accordance with the PSA Rules and Guidelines and the Trustee and Depositor duties and responsibilities).

11. Defendant also request that the FINAL JUDGMENT OF FORECLOSURE AND SALE be set aside Pursuant to SC and Fed Rule of Civil Procedure 60 (b)(6), as to do so is appropriate to accomplish the ends of justice under the circumstances.

12. Defendant requests injunctive relief and restraining orders against the foreclosure and a foreclosure sale by the Plaintiff, and Seterus, Inc. who now is claiming to be the Servicer.

13. Defendant is requesting these SECURITIZATION TRUST DOCUMENTS, but not limited to, as follows:

1. POOLING AND SERVICING AGREEMENT (PSA AGREEMENT)
2. ISSUER AGREEMENTS AND PROSPECTUS
3. COMMITMENT TO GUARANTEE AGREEMENTS
4. RELEASE OF DOCUMENT AGREEMENTS
5. TRUSTEE AGREEMENTS, etc.
6. DOCUMENTS CONCERNING INSURANCE ON THE SECURITIZED MORTGAGE LOAN AND CREDIT DEFAULT SWAP DOCUMENTS,
7. SERVICING AGREEMENTS
8. DOCUMENTS AS TO PROOF OF CHARGES ON THE HUD-1
9. DOCUMENTS AS TO THE IDENTIFICATION OF THE HOLDER OF OR INVESTOR IN ANY SPECIAL INVESTMENT VECHICLE
10. COLLATERALIZED MORTGAGE OBLIGATION
11. COLLATERALIZED DEBT OBLIGATION
12. MORTGAGE BACKED SECURITY, OR CREDIT DEFAULT SWAP WHICH IS COLLATERALIZED IN WHOLE OR IN PART BY THE MORTGAGE OR NOTE
13. DOCUMENTS WHICH IDENTIFY ALL PERSONS WHO AUTHORIZED THE FILING OF THE FORECLOSURE ACTION

14. FAS 140, NOTE, AND MORTGAGE

15. MASTER SERVICER AGREEMENT AND CUSTODIAN DOCUMENTS

16. MORTGAGE REGISTER

17. ASSIGNMENTS, AND ALL COLLTERAL DOCUMENTS IN THE FILE SHOWING NEGOTIATIONS, ENDORSEMENTS TRANSFER AND DELIVERY OF NOTE, MORTGAGE AND ANY OTHER DOCUMENTS

WHEREFORE, DEFENDANT REQUESTS THIS HONORABLE COURT ,

1. ORDER THE DOCUMENTS as moved on the Court by the Defendant to PROVE THE TRUTH and obtain JUSTICE in the DEFENDANT'S case.
2. AWARD DECLARATORY RELIEF, RECOUPMENT and any other RELIEF this Court deems JUST and EQUITABLE in the Defendant's case and DISMISS the DEFENDANT'S CASE WITH PREJUDICE.

Respectfully Submitted,
Date: July 28, 2015
North Augusta,, SC
Aiken County

Carolyn S. Deaner, Defendant, Pro Se
704 Kershaw Drive
North Augusta, SC 29841
(706) 399-5496

DESIGNATION: 48

48. Transcript of Hearing on July 23, 2015...filed 10/30/2015

    (contains condensed version pages 1-10, and word index pages 1-4)

    (Hearing pertains to the above #41, #42, #43, #44, #45 and #46).

    Original...filed 10/30/2015.

STATE OF SOUTH CAROLINA)COURT OF COMMON PLEAS
)
COUNTY OF AIKEN)C/A No. 2012-CP-02-00699

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP,

Plaintiff,

v.

Carolyn S. Deaner,

Defendant.

ORIGINAL

HEARING

****

Thursday, July 23, 2015
10:32 a.m. - 11:22 a.m.

The hearing before the Honorable J. Martin Harvey, Special Referee for Barnwell County, was taken at 110 Main Street, Barnwell, South Carolina on the 23rd day of July, 2015 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.

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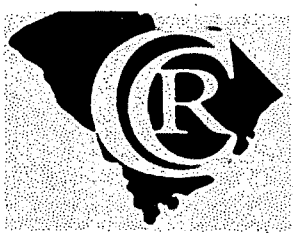
CLERK OF COURT

Transcript of the Testimony of
BANK OF AMERICA V. CAROLYN DEANER

Date: July 23, 2015



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STATE OF SOUTH CAROLINA)COURT OF COMMON PLEAS
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APPEARANCES:

Charles S. Gwynne Jr., Esquire
ROGERS, TOWNSEND & THOMAS, PC
Synergy Business Park
220 Executive Center Drive
Columbia, South Carolina 29210
Attorney for the Plaintiff

Also Present - Carolyn S. Deaner, Pro Se Defendant

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EXHIBITS

(No exhibits were marked during this hearing.)

THE COURT: Okay. The court reporter has noted the caption and the appearances. We are here today on Ms. Deaner's, Defendant's, motions that were filed on June 9, 2015. The first of these orders was a Motion to Reconsider Defendant's Emergency Motion to Vacate Judgement and Reverse or Cancel Sale. This Motion was filed on June the 9th of this year, and Ms. Deaner has filed, subsequently, a memorandum in support of that Motion. All right. The second Motion that we'll take up is the Defendant to file a Motion on June 9th to order return of the IPN or discharge debt due to tender of payment. I had entered an order on May 28th which addressed the issues that I believe were raised in that order and I'm going to treat Ms. Deaner's June 9th Motion as a Motion to Reconsider. And then the last Motion that's before the court is Ms. Deaner's Motion to Proceed In Forma Pauperis, which was also filed on June 9.

MR. GWYNNE: There were also some motions that were filed on June 17th.

THE COURT: That's right, one more Motion. You're right. And that is the Motion to Dismiss --

thank you, Mr. Gwynne. July 17 Motion to Dismiss Foreclosure Action Judgement and cancel sale. Okay. All right. So Ms. Deaner, you want to proceed with your Motion to Reconsider, is that right?

MS. DEANER: Correct, but am I allowed to ask you a question off the record?

THE COURT: Sure. We'll go off the record a second.

(Off the record discussion)

MS. DEANER: All right. Are we back on the record?

THE COURT: Yes, ma'am. You may proceed.

MS. DEANER: Okay. I'm going to begin with the Motion to Reconsider the Defendant's Emergency Motion Vacate Judgement, reverse and cancel sale. There's a case here from the Court of Appeals South Carolina, Mr. G and Mrs. G, the South Carolina rules of civic procedures, Rule 60(b)(3), intricate (sic) fraud may be used -- may not be used to set aside a judgement unless the intrinsic fraud was misrepresentation by an attorney. In addition, CR 5904 and CR 60(b)(3), this Motion will demonstrate the evidence was material and potentially determinative, and not merely cumulative. Permitting the Trial Court to correct any

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1 mistakes serves the interest of judicial
2 economy. The reconsideration rules fulfill
3 this purpose, and for the Defendant to command
4 the full truth. This Motion is made on the
5 grounds that the Defendant intends to show
6 extrinsic fraud in the Defendant's case by the
7 Plaintiff's attorney in order for the Defendant
8 to obtain equitable relief as follows. The
9 information is relevant ---
10 MR. GWYNNE: Your Honor, I apologize.
11 MS. DEANER: --- under SCRE 402 ---
12 THE COURT: Excuse me, Ms. Deaner.
13 MR. GWYNNE: If Ms. Deaner is simply going to read
14 her Motion, I would just ask that the court not
15 allow her to do that. It's in the record. If
16 she has something to add to the Motion -- it
17 would take all day for her to read all these
18 motions. I'm just asking that the court only
19 allow her to make arguments that may not be in
20 the Motion or if she needs to explain something
21 in the Motion, but not simply read her Motion.
22 THE COURT: That's well taken, Ms. Deaner. I can
23 read, and I have read, and I'll be glad -- the
24 purpose of oral argument is to elaborate on
25 what's in writing. You've done a very thorough

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1 job of putting in writing, and if there's
2 things that you need to elaborate on or you
3 want to point out in particular why I should
4 reconsider, you're welcome to do that, but
5 there's no need to read to me what I can read.
6 MS. DEANER: Okay. So I'm not allowed to quote
7 these cases?
8 THE COURT: You can quote cases, but you can't quote
9 what you have written. You're reading verbatim
10 what you -- this is not a case. This is your
11 argument.
12 MS. DEANER: Correct.
13 THE COURT: I don't need to hear you argue when I
14 can read your argument.
15 MS. DEANER: Okay. I just want to enter into the
16 record the Glaski versus Bank of America case.
17 THE COURT: You got a citation?
18 MS. DEANER: Okay?
19 THE COURT: Where is that recorded?
20 MS. DEANER: That is recorded in the Fifth District
21 Court of Appeals, California, 2013.
22 THE COURT: You don't have a West citation or a
23 California Reporter's citation for that?
24 MS. DEANER: What is that?
25 THE COURT: In other words, it's not -- where can I

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1 go to read that case?
2 MS. DEANER: To the Glaski case.
3 THE COURT: Right, but where is that published?
4 MS. DEANER: It's the Fifth District Court of
5 Appeals in California.
6 THE COURT: That's right. Yes, ma'am. But look at
7 where -- at some of these other cases you've
8 got cited or perhaps have cited, like this one
9 on page four. You've got Bankers Trust versus
10 Braden.
11 MS. DEANER: South Carolina.
12 THE COURT: And that's published in the South
13 Carolina Reporter and also in the Southeastern
14 Reporter ---
15 MS. DEANER: Correct.
16 THE COURT: --- but where is the Glaski case
17 recorded? Do you have ---
18 MS. DEANER: Where is it recorded?
19 THE COURT: Yeah, where is it recorded? What book
20 can I go to, to read what the court says?
21 MS. DEANER: Well the only thing I had on the Glaski
22 case was the actual suit.
23 THE COURT: Do you have a copy of the court's order
24 that you can give me to read?
25 MS. DEANER: I could get it to you.

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1 THE COURT: Okay. Well I need you to do that,
2 please.
3 MS. DEANER: Okay. All right. Where to read it?
4 THE COURT: Either where to go to read it myself or
5 you can make me a copy and send it to me.
6 MS. DEANER: Okay.
7 THE COURT: But I will tell you that if it is not an
8 appellate court opinion ---
9 MS. DEANER: It is.
10 THE COURT: Okay.
11 MS. DEANER: It is an appellate court opinion.
12 THE COURT: It's also not a South Carolina opinion
13 and not necessarily controlling, because each
14 laws with respect to -- each State's laws with
15 respect to mortgages are different, but I'd be
16 glad to read it.
17 MS. DEANER: Okay, but the full faith and credit
18 clause of the United States Constitution
19 provides that full faith and credit be given to
20 each State to do judicial proceedings of every
21 other state. That's in United States
22 constitution article 4.1. So every case that
23 I read, it says -- they quote cases from every
24 other -- even South Carolina Appellate Court
25 puts in cases from other states.

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1 THE COURT: Sometimes they do, yes ma'am, but that
2 does not necessarily mean it's controlling
3 precedent.
4 MS. DEANER: Okay.
5 THE COURT: I'm not saying I'm not going to pay
6 attention to Glaski, but I wanted to let you
7 know that citing cases outside of South
8 Carolina, unless there are no cases in South
9 Carolina on point, they're not necessarily
10 controlling with respect to the rulings of a
11 South Carolina Trial or Appellate Court.
12 MS. DEANER: Okay. I understand.
13 THE COURT: And I'm not beating you up. I'm just
14 telling you the same thing that if I go to ---
15 MS. DEANER: I'm not an attorney. You can beat me
16 up, you know.
17 THE COURT: If I go to the Court of Appeals and I
18 try -- and I argue a case that's from North
19 Carolina for South Carolina law, those jud- --
20 the judges are going to chew me out unless --
21 unless there are no cases in South Carolina on
22 point.
23 MS. DEANER: But I can't find one that agrees with
24 that.
25 THE COURT: That's right.

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1 MS. DEANER: A curve so to speak.
2 THE COURT: That's right.
3 MR. DEANER: Okay.
4 THE COURT: So please, that's the first thing I
5 would like for you to do as your homework is
6 get me a copy of that opinion or tell me where
7 to go on the Internet ---
8 MS. DEANER: No, I will get you the ruling.
9 THE COURT: --- to get it.
10 MS. DEANER: Okay, I will fax you over the ruling --
11 -
12 THE COURT: Okay.
13 MS. DEANER: --- on that case.
14 THE COURT: I'm sorry to interrupt you, but ---
15 MS. DEANER: But it's major.
16 THE COURT: Yeah, obviously it is and that's why I'm
17 giving you that instruction to get that to me
18 so that I can ---
19 MS. DEANER: Okay.
20 THE COURT: --- pay attention, okay?
21 MS. DEANER: All right. I'm with you.
22 THE COURT: Proceed.
23 MS. DEANER: Okay. In number two on there is I
24 would like to bring to the attention of this
25 court the fact of merit and tribal issues of

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1 the material facts are relevant to this
2 subsequent action. Now this is fraud by the
3 Plaintiff attorney and misrepresentation, which
4 is extrinsic fraud.
5 THE COURT: And where are you referring to?
6 MS. DEANER: All right. It's number two on page
7 four. Chewning versus Ford Motor Company, 354
8 South Carolina 7279.
9 THE COURT: I see that.
10 MS. DEANER: Okay. Fraud upon the Court by an
11 attorney, whether or not intrinsic or
12 extrinsic, can be used to set aside a prior
13 judgement. What I'm considering
14 misrepresentation by this attorney is that my
15 Note is secured. It is a non-negotiable Note.
16 It's securitized. It falls under Article
17 Eight, not under Three.
18 THE COURT: Okay.
19 MS. DEANER: I basically said the same thing in
20 number three. My Note falls under the UCC
21 Article Eight, Investment Securities. Now ---
22 THE COURT: And just to clarify, because you say
23 your Note is an Article Eight Note and not an
24 Article Three Note, it is not a negotiable
25 instrument?

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1 MS. DEANER: That's right.
2 THE COURT: That's what you're saying?
3 MS. DEANER: It's non-negotiable, correct. Once
4 it's securitized, it's non-negotiable.
5 THE COURT: All right.
6 MS. DEANER: Not only that, Fannie Mae says it's
7 non-negotiable; Lisa O'Donnell, which I will
8 quote later. But even so, I would like to just
9 quote this. It's also worth noting that the
10 Article Three Section that cuts off defenses in
11 favor of a holder in due course states an
12 exception for law under than this article that
13 protects the obligor in a consumer transaction
14 defined as a transaction which an individual
15 incurs an obligation primarily for personal,
16 family or household purposes, which is my case.
17 UCC 3-305(e)(f), 3-103(a)(3) 2002. That's
18 2002. Therefore a statute overriding the
19 holder in due course doctrine as a general
20 matter for homeowners would not conflict with
21 the Article Three. Okay, moving along back to
22 the Motion. In number five, I'm stating that
23 the Plaintiff intentionally misrepresented a
24 material fact that goes to the heart of the
25 claim of which this Plaintiff brings his suit.

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1 THE COURT: Yes, ma'am. I read that. And so ---
2 MS. DEANER: But what -- the point that I am making
3 is, no where has the Plaintiff revealed the
4 truth about this Note. Now, a non-negotiable
5 Note has to have all the endorsements on it.
6 Okay, it has to be endorsed from Quicken Loans
7 all the way to the Fannie Mae Trust. That's
8 not -- that's not on the Note. That's not on
9 the back of the Note, which renders this Note
10 void. It's an unauthenticated Note. It's void
11 because it doesn't have the chain of title on
12 it. That's in all the securitization laws,
13 books and everything you can read.
14 THE COURT: Ms. Deaner, what you're arguing, those
15 are matters of law. It's not fraud to argue
16 law that may or may not be right.
17 MS. DEANER: Well ---
18 THE COURT: It's fraud to present facts. It's not a
19 fact -- it's not a question of fact of whether
20 the Note is or is not a negotiable Note. It's
21 a matter of law.
22 MS. DEANER: Yeah.
23 THE COURT: That's not fraud.
24 MS. DEANER: The Note being non-negotiable is a
25 matter of law.

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1 THE COURT: That's right.
2 MS. DEANER: That's correct.
3 THE COURT: That's the point.
4 MS. DEANER: Okay. And ---
5 THE COURT: And I ruled as a matter of law -- I
6 ruled as a matter of law that it -- that ---
7 MS. DEANER: It's non-negotiable.
8 THE COURT: Against you, right. So that's not --
9 his argument to the Court otherwise or in his
10 favor is not a matter of presenting facts to
11 the Court. It's a matter of presenting law to
12 the Court. That's not fraud.
13 MS. DEANER: Okay, the fact that this was not
14 revealed to the Court is fraud. The fact that
15 he came into this Court and said that he was
16 the owner of this Note is fraud on the Court.
17 THE COURT: He didn't say he was the owner. He's an
18 attorney.
19 MS. DEANER: They did. They said it in the Trial
20 Court.
21 THE COURT: Mr. Gwynne never once said that he was
22 the owner of this Note.
23 MS. DEANER: The witness, Bank of America, said that
24 Fannie Mae was the investor.
25 THE COURT: Right, but you're saying the lawyer

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1 represented that he was.
2 MS. DEANER: He's representing the Bank of America.
3 THE COURT: Okay. Go ahead. Next point.
4 MS. DEANER: I believe. Is that correct?
5 THE COURT: Next point.
6 MR. DEANER: Okay.
7 THE COURT: Don't be reading. Please don't be
8 reading, which is what you're lapsing back into
9 doing. Please make an argument.
10 MS. DEANER: Okay. Okay. As a matter of law, the
11 right to foreclose goes away when the
12 Promissory Note is cleared.
13 THE COURT: You're reading. Excuse me, ma'am.
14 You're reading again, page six.
15 MS. DEANER: Okay, but I have to read that ---
16 THE COURT: I can read it.
17 MS. DEANER: --- because I want you to know that
18 when -- and I stated this, the Bellistri case
19 where -- they said that once Mers assigned the
20 Note and split it from the mortgage because
21 Mers does not own Notes. Okay, that's the
22 South Carolina Gerbanis. They concurred on
23 that. So once it's split, it's annulled. The
24 Note is null and void. It was split there, and
25 it was split ---

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1 THE COURT: Is it your position the lien goes away
2 because the Note ---
3 MS. DEANER: Yes.
4 THE COURT: Okay, that's not South Carolina law.
5 MS. DEANER: Well ---
6 THE COURT: The law is clear in South Carolina that
7 a debt can be discharged and the lien still ---
8 MS. DEANER: The tender of payment destroys the
9 lien.
10 THE COURT: --- and the lien ---
11 MS. DEANER: And I'll go to that.
12 THE COURT: I've already ruled on that, Ms. Deaner.
13 MS. DEANER: What?
14 THE COURT: I've already ruled tender of payment.
15 You didn't -- that wasn't legal tender.
16 MS. DEANER: Well, I'm going to show in the next
17 round where it is.
18 THE COURT: Let's stick to this Motion.
19 MS. DEANER: Okay, all right. All right. There's
20 no record in the evidence or pleadings that
21 Mers held the Promissory Note in the
22 Defendant's case or that Quicken Loans gave
23 Mers the authority to transfer the Promissory
24 Note. I'm not going to read that, but the
25 Bellistri versus Aquin Loan Servicing, LLC

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1 Missouri Court of Appeals was what I was
2 quoting in that case.
3 THE COURT: And once again, I don't see a citation
4 to any published ...
5 MS. DEANER: I'll send you the Bellistri.
6 THE COURT: You were very good at citing Black
7 against Adrien for Missouri, and George and
8 Saint Louis, and all that Missouri law, but you
9 didn't -- but the Bellistri case that you
10 cited, you did not cite the published opinion,
11 book and page number.
12 MS. DEANER: All right. I will send that ruling
13 also.
14 THE COURT: Thank you.
15 MS. DEANER: Okay. I'm pretty much going to be
16 through in just a minute with this one. In the
17 Federal Home Loan Mortgage versus Schwartzwald
18 in the Ohio Supreme Court, the Court held that
19 a party failed to establish an interest in the
20 Mortgage or the Note at the time of the filed
21 suit had no standing to invoke the jurisdiction
22 of the Court. Moreover, a litigant cannot cure
23 a lack of standing after the commencement of
24 the suit by later obtaining interest in the
25 subject litigation. Now the Plaintiff was not

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1 the owner of the Note at the time the original
2 complaint was filed, nor is the Plaintiff the
3 owner of the Note at present. That's Carpenter
4 versus Logging again, the United States Supreme
5 Court and peoples -- Young versus People's
6 Bank. I'm asking the Court to consider all the
7 extrinsic fraud as listed in this Motion, 1
8 through 14, and on the previous Motion to
9 Vacate and establish the truth in this matter.
10 Okay, now.
11 THE COURT: All right. Hold on a second. Are you
12 done with this Motion, because Mr. Gwynne gets
13 an opportunity to respond before I go to the
14 next Motion.
15 MS. DEANER: Okay. I just had one other thing that
16 I wanted to put in here, the Bulloch versus
17 United States, Tenth Circuit 1985. Fraud upon
18 the Court may void the orders and judgements of
19 that Court. The maxim that fraud vitiates
20 every transaction to which it enters; and I'll
21 do a citation there.
22 THE COURT: I will tell you Ms. Deaner that when you
23 -- that that particular opinion was either
24 using one of the State rules of civil procedure
25 that's in the Tenth Circuit or it was using the

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1 Federal rules which are not applicable to South
2 Carolina State Courts, the South Carolina rules
3 of civil procedure; and there's areas of
4 difference between rule 60 of the Federal rules
5 of civil procedure and rule 60 of the South
6 Carolina rules. And so ---
7 MS. DEANER: Well, my Mortgage says that I'm under
8 Federal rules.
9 THE COURT: This is a South Carolina Court.
10 MS. DEANER: Right.
11 THE COURT: And South Carolina rules apply.
12 MS. DEANER: Well does my Mortgage apply?
13 THE COURT: Your Mortgage has been foreclosed on,
14 yes, ma'am. It was legally enforceable against
15 you according to my ruling.
16 MS. DEANER: Okay, so ---
17 THE COURT: Under South Carolina law.
18 MS. DEANER: Okay, but what I'm asking is, in the --
19 in my Mortgage, it says that it is also under
20 Federal law.
21 THE COURT: Right. If you had wanted it to be heard
22 by a Federal Court, you had a certain number of
23 days from the day this case was filed in State
24 Court to remove it to the Federal Court.
25 MS. DEANER: Okay, okay.

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1 THE COURT: And by not doing that, you've waived any
2 rights you may have had with the Federal Court
3 to apply to in this matter.
4 MS. DEANER: So I have to go bankrupt again, right?
5 Okay. To get it in to the Federal Court, all
6 right. Now, I'm going to the memorandum to the
7 emergency ---
8 THE COURT: Wait a minute. Now, wait a minute. Mr.
9 Gwynne, what is your response to Ms. Deaner's
10 arguments on her Motion to Reconsider?
11 MR. GWYNNE: I don't have a very long response. I
12 would just argue these issues, the Court's
13 already ruled on whether there's any evidence
14 of extrinsic fraud in Your Honor's May 28th,
15 2015 Motion. Ms. Deaner just seems to have
16 taken that order and then tried to find
17 evidence of extrinsic fraud. A lot of these
18 arguments clearly should've been raised during
19 trial, or are more appropriate on appeal based
20 on the Court's ruling at the foreclosure trial.
21 So I would just argue that this Motion, I
22 assume it's -- I guess the Court is treating it
23 as a 59(e) Motion to the Court's order but I
24 think this is essentially a rule 60(b) Motion,
25 and there's no grounds to grant relief under

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1 60(b).
2 THE COURT: All right. I'm going to read the Glaski
3 opinion that she says is critical, and then
4 I'll make a ruling. Okay. Next Motion, Ms.
5 Deaner.
6 MS. DEANER: Okay. I'm going over to the memorandum
7 that I quoted earlier, the full faith and
8 credit clause of the United States
9 Constitution.
10 THE COURT: We've already talked about that. Let's
11 go to the next Motion, memorandum -- that
12 memorandum was part of that first Motion that
13 you started?
14 MS. DEANER: It is.
15 THE COURT: All right.
16 MS. DEANER: It's just asking for rulings on some
17 things, okay. So you don't want me to go
18 through all that?
19 THE COURT: No, ma'am.
20 MS. DEANER: Because you can read it?
21 THE COURT: Yes, ma'am.
22 MS. DEANER: All right. Can I just at least point
23 out one thing?
24 THE COURT: All right.
25 MR. GWYNNE: What Motion is that?

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1 MS. DEANER: This is the memorandum to the Motion to
2 Vacate.
3 THE COURT: It's what we're still arguing. Okay.
4 What would you like to point out?
5 MS. DEANER: I would like to point out, of course,
6 now there's a lot on page -- here's what I
7 would like to point out, is page nine, ten
8 where I've listed all of these crucial cases,
9 okay? And on page 11, again I just want to
10 state that as a matter of law, the right to
11 foreclose goes away when the Promissory Note is
12 cleared from the deed of trust Mortgage that is
13 supposed to secure. The Deaner Note was split
14 from her Mortgage when the Mers assigned it and
15 also when it was securitized and changed into
16 a stock certificate rendering the Note
17 unsecured. Now, I bankrupted in 2011. I
18 bankrupted all unsecured debts.
19 THE COURT: You bankrupted secured debts as well.
20 MS. DEANER: Unsecured debts.
21 THE COURT: No, ma'am. All your debts that were
22 listed in your bankruptcy, secured or
23 unsecured, were discharged.
24 MS. DEANER: Correct.
25 THE COURT: South Carolina law and bankruptcy law in

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1 the State of South Carolina is even if a
2 mortgage debt Note is discharged in bankruptcy,
3 the lien survives, and the lien is still
4 subject to being foreclosed on. So that's the
5 law in South Carolina, and I'm not going to --
6 I'm not going to issue a ruling in
7 contradiction to that. That's something that
8 you're welcome ---
9 MS. DEANER: Okay, but ---
10 THE COURT: --- to argue on your appeal.
11 MS. DEANER: No, I'm arguing about the lien. You're
12 saying that there is a lien. The lien's
13 unperfected.
14 THE COURT: No, there is a mortgage that is of
15 record that is perfected under South Carolina
16 law. That's why they have you sign a mortgage
17 when you sign your Note.
18 MS. DEANER: Yes, but what I'm saying is it's not
19 perfected.
20 THE COURT: Yes, it is perfected. When it is --
21 under South Carolina law, when a mortgage is
22 recorded in the RMC office in Aiken County,
23 it's a perfected lien.
24 MS. DEANER: Okay, but the Mers assignment is
25 invalid.

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1 THE COURT: It doesn't matter. We're talking about
2 a mortgage here. The mortgage was perfected.
3 MS. DEANER: How?
4 THE COURT: By recording in the Office of the Clerk
5 -- the Office of the RMC of Aiken County.
6 MS. DEANER: The Mortgage was assigned to Bank of
7 America.
8 THE COURT: The Mortgage was recorded and the
9 assignment was recorded.
10 MS. DEANER: Correct, the ---
11 THE COURT: All right. So it was perfected.
12 MS. DEANER: --- assignment was invalid. So it's
13 not -- okay.
14 THE COURT: You're arguing against something I've
15 already ruled on. I'm not going to change my
16 mind on that.
17 MS. DEANER: Okay. Okay. On this last part of this
18 memorandum, I'm moving on the Court to order
19 and require strict evidence of the validity of
20 the Note and Mortgage being transferred to the
21 Fannie Mae agreement 2007-91 trust. Legally,
22 within all the New York trust laws, including
23 but not limited to the pooling and servicing
24 agreement and the master loan schedule, and
25 bring evidence to the Court; otherwise, this is

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1 extrinsic fraud upon the Court by the
2 Plaintiff's legal counsel. Now, the Defendant
3 plead specific facts in the last hearing with
4 the MCI report demonstrating to this Court no
5 lasting endorsement to the Fannie Mae agreement
6 2007-91 trust, and no such recording is
7 recorded at the Aiken County Registrar's at
8 all. And by the way, I'll give you -- I had a
9 change of title done where it is not listed by
10 South Carolina ---
11 THE COURT: Notes are not required to be recorded.
12 Mortgages are recorded.
13 MS. DEANER: Notes ---
14 THE COURT: No, ma'am. You can go to the Courthouse
15 and ---
16 MS. DEANER: No, I know the Note wasn't recorded.
17 THE COURT: Okay. And so no assignment of the Note
18 is going to be recorded. The mortgage is
19 what's recorded and the assignment of the
20 mortgage is what's recorded.
21 MS. DEANER: The assignment of the mortgage is
22 recorded by Mers and Mers, what I've said from
23 the very beginning, is invalid. They can't
24 transfer anything they don't own. They can't
25 assign something they don't own. Mers doesn't

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1 own anything. They are a tracking ---
2 THE COURT: I know what Mers is.
3 MS. DEANER: Okay, they're a tracking company.
4 THE COURT: I understand what you're saying.
5 MS. DEANER: They don't own the Note. They don't
6 own the mortgage. They can't assign it. That
7 makes it invalid.
8 THE COURT: I've already ruled on that. I'm not
9 going to rule -- I'm not changing my mind on
10 that. You can appeal.
11 MS. DEANER: Okay. All right. That's all for that.
12 THE COURT: All right. The Motion -- you wanted to
13 argue why the return of the IPN should
14 discharge the debt, and you wanted to argue
15 additional law on that one, is that correct?
16 MS. DEANER: Well, yes, I wanted to quote the United
17 States -- let me go over here and find it.
18 There was a couple of -- the main one that I
19 want to quote is the FDIC United States Supreme
20 Court versus Philadelphia Gear, but I'm sorry.
21 I've got it in here somewhere. I do want to
22 bring this up here. The IPN presented for a
23 special deposit is a statutory legal tender
24 obligation of the United States and is in
25 accordance with the public policy established

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1 in the HJR 192, which is the House Joint
2 Resolution of June the 5th, 1933, Chapter 48,
3 48th statute 112-113, public law 73-10. Now
4 the United States Supreme Court case Guaranteed
5 Trust Company of New York versus Henwood, 1938,
6 in accordance with 31 USC 5103 and 18 USC 8,
7 such instruments are national bank currency and
8 thereby coin currency of the United States by
9 statutory definition. If a bank refuses a
10 properly rendered instrument, which was the
11 IPN, the debt is discharged pursuant to UCC 3-
12 603(b), FS 673.6031 and all other States' debt
13 discharge statutes. And then I went on, and in
14 this document showed that everything that I did
15 was in compliance with the quoted case Anderson
16 -- South Carolina Anderson case.
17 THE COURT: I'm sorry. What page is that on?
18 MS. DEANER: Okay, that's on page -- it starts on
19 page six and goes through page, I think eight.
20 Yeah, eight.
21 THE COURT: You're talking about the Anderson versus
22 Citizens Bank case?
23 MS. DEANER: Correct.
24 THE COURT: All right.
25 MS. DEANER: Because there were some things in the

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1 last answer that gave me that case, and so I
2 went and made sure that I complied with
3 everything the appeals Court, you know, had in
4 that case.
5 THE COURT: Okay. I'll review that case.
6 MS. DEANER: Okay. All right. I think I -- let me
7 find the memorandum to the -- yeah, here it is.
8 Okay, All right. That's pretty much all I want
9 to say on that one, and I quoted that United
10 States Supreme Court. And of course, what I
11 understand from the Court is that you have read
12 all this, and you'll take everything into
13 consideration ---
14 THE COURT: Yes, ma'am.
15 MS. DEANER: --- and these motions that are in there.
16 Okay. THE COURT: All right. Mr. Gwynne, what's your
17 response?
18 MR. GWYNNE: Your Honor, the Court's has already
19 addressed the issue in it's May 28th, 2015
20 order. The International Promissary Note is
21 not money and not accepted -- acceptable to pay
22 the judgement based on that Anderson case that
23 the Court cites in its order.
24 THE COURT: All right. Okay. What's your next?
25 You've got ---

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1 MS. DEANER: This is the memorandum, and ---
2 THE COURT: Ma'am, ma'am, we don't argue what's in a
3 motion and then get another bite of the apply
4 by arguing what's in the memorandum.
5 MS. DEANER: But that's what I did last time.
6 THE COURT: Yeah, and I told you not to, but you did
7 it anyway.
8 MS. DEANER: Okay, well then, I need to at least get
9 this in here, okay?
10 THE COURT: All right.
11 MS. DEANER: All right. Because he just said that
12 it's not money.
13 THE COURT: That's what I ruled, yes ma'am.
14 MS. DEANER: Okay, I know what you ruled. So I went
15 to work to see if there's anything else out
16 there and the United States Supreme Court FDIC
17 versus Philadelphia Gear Corp. 476 U.S. 426-442
18 (1986) Promissory Notes typically are
19 negotiable instruments and therefore readily
20 convertible to cash unconditional and
21 equivalent to money. The debt has been paid in
22 readily convertible cash and declined so the
23 debt is discharged according to UCC 3-603.
24 THE COURT: Ms. Deaner, let me ask you a question.
25 MS. DEANER: Okay.

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1 THE COURT: Where was the money going to come from
2 if Bank of America had taken this Note and
3 tried to cash it?
4 MS. DEANER: All they do is deposit it. It's cash.
5 THE COURT: But where does that ---
6 MS. DEANER: It came from the Federal Reserve.
7 THE COURT: So you're saying that the Federal
8 Reserve was going to pay your debt for you?
9 MS. DEANER: HJR 192.
10 THE COURT: So, basically you were looking for
11 corporate welfare?
12 MS. DEANER: It pays all the debts. It pays all the
13 debts. Look, I didn't ---
14 THE COURT: So the government will pay your loan for
15 you?
16 MS. DEANER: I did not do the HJR 192, okay. That's
17 law.
18 THE COURT: It's not the law as far as I read it.
19 All right. What's your next -- you got a
20 Motion to Proceed In Forma Pauperis or you want
21 to do the Motion to Dismiss that you filed on
22 July 17th?
23 MS. DEANER: Okay, that's done. What?
24 THE COURT: You've got two motions left.
25 MS. DEANER: Right.

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1 THE COURT: You've got a Motion to Proceed In Forma
2 Pauperis, and then you've got a Motion that you
3 filed on July 17th to dismiss and cancel the
4 sale.
5 MS. DEANER: Correct. Okay.
6 THE COURT: Which one do you want to argue first?
7 MS. DEANER: Let's do the Motion to Proceed In Forma
8 Pauperis ---
9 THE COURT: All right.
10 MS. DEANER: --- because I sent all my information
11 to the legal counsel for Bank of America. They
12 put everything through the mod. It was
13 declined. I had requested the Hardest Hit
14 Program, and they have referred me over to the
15 Hardest Hit Program in South Carolina, which is
16 where I am now. We're still in the mod
17 situation.
18 MR. GWYNNE: That's not correct, Your Honor. Ms.
19 Deaner was denied for modification. There is
20 no active modification that I'm aware of.
21 MS. DEANER: The South Carolina Help Hardest Hit
22 program is just that.
23 THE COURT: So in one sense, Bank of America is not
24 considering a modification, but she's saying
25 South Carolina Help is, and that may be very

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1 well that Bank of America has no knowledge of
2 what's going on with that.
3 MR. GWYNNE: That's possible.
4 MS. DEANER: No, Bank of America, it does know
5 what's going on with that. They're the ones
6 that referred me over there, Charlie.
7 THE COURT: But they don't know what the situation
8 is. Once they referred you, they're out of it.
9 MS. DEANER: But they know where I am right now,
10 because I keep in touch with Janiere Taylor,
11 and right now I'm waiting on some documents to
12 come be filled out.
13 THE COURT: Okay. Well, we haven't scheduled a sale
14 yet and as long as there's something ascending
15 that gives you an opportunity to get that ---
16 MS. DEANER: Right. That's definitely in the works.
17 THE COURT: Okay.
18 MS. DEANER: Okay. Now, I'm going over to the
19 Motion to Proceed In Forma Pauperis.
20 THE COURT: Okay.
21 MS. DEANER: Is that -- I guess that's the way you
22 pronounce that.
23 THE COURT: I'm not a good Latin speaker.
24 MS. DEANER: Okay, me either. In the Martin versus
25 State, 321 South Carolina 1995, the Supreme

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1 Court went on to state that when further
2 certain fundamental rights are involved, the
3 constitution requires that an indigent be
4 allowed access to the Courts, and then of
5 course I'm not going to read all that.
6 THE COURT: That involves an action involving the
7 state of South Carolina. It's not a civil
8 action between two private parties. I have
9 found no ---
10 MS. DEANER: Okay, it's ---
11 THE COURT: --- legal authority for me -- for a
12 civil action for someone to be granted the ---
13 MS. DEANER: It says the United States Supreme Court
14 stated in Bodie, due process requires at
15 minimum that absent a countervailing State
16 interest of overriding significance persons
17 forced to settle their claims of right and duty
18 through the judicial process must be given a
19 meaningful opportunity to be heard.
20 THE COURT: Yes, ma'am. Bodie versus Connecticut
21 was a case that we learned in law school --
22 when I was in law school in the late '70s.
23 That also involved a criminal action, and it's
24 clear that due process regarding criminal --
25 when someone's liberty is at stake is a

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1 different matter regarding right to counsel and
2 right to Proceed In Forma Pauperis than
3 something involving a civil case, which is what
4 we have here.
5 MS. DEANER: Well, the South Carolina Supreme Court
6 is the one that I'm quoting here that says that
7 I have a fundamental right as an indigent to be
8 allowed access to the Courts.
9 THE COURT: If it's involving a matter involving the
10 State of South Carolina, that's correct. You
11 do. This doesn't involve the state of South
12 Carolina. Do you have anything -- any opinion
13 anywhere where there's two parties involved in
14 a civil lawsuit that said one party was allowed
15 to Proceed In Forma Pauperis? Everything that
16 I can find -- I've already read all this.
17 Everything I can find involves either post-
18 conviction relief proceedings, which are
19 criminal in nature or direct appeals on
20 criminal conviction. I can't find anything
21 that says if two people are involved in a
22 contract dispute or a wreck case or whatever,
23 that someone gets the right to Proceed In Forma
24 Pauperis, which basically means the State pays
25 for all your expenses.

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1 MS. DEANER: I understand that the State's not
2 paying my expenses. I'm not -- I am reading
3 this as a constitution requires that an
4 indigent person be allowed access to the
5 Courts. It does not say Criminal Courts here.
6 THE COURT: If you read all the cases on it, ma'am,
7 you'll find that it does. But if you can find
8 a case that says -- that holds that, in a civil
9 action between two private parties, I'll be
10 glad to consider that further. Charlie, do you
11 have any law otherwise?
12 MR. GWYNNE: No.
13 THE COURT: All right. Okay. Last Motion.
14 MS. DEANER: Okay. My last case has to -- my last
15 Motion has to do with the -- this new situation
16 with Seterus. And my question to the Court
17 today is how can they -- how can Bank of
18 America sell the servicing rights when the Note
19 is invalid? Or how can they sell the servicing
20 rights to Seterus who is now communicating
21 totally with me as if they are the owner of the
22 Note so to speak, and how can we -- how does
23 that play out in this case, because now Bank of
24 America is no longer involved?
25 THE COURT: First of all, what Ms. Nicole Glass may

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1 or may not have told you it's hearsay, and
2 there's no independent -- you haven't presented
3 any independent facts that Seterus is in fact
4 stating what you're saying.
5 MS. DEANER: Well, what ---
6 THE COURT: And Mr. Gwynne, if in fact someone -- if
7 in fact Seterus has this thing ---
8 MS. DEANER: Yeah, they do.
9 THE COURT: --- then I'm instructing you to tell
10 Seterus to call you.
11 MR. GWYNNE: I will, Your Honor.
12 MS. DEANER: Well, they're not only ---
13 THE COURT: Because it might've been foreclosed on.
14 MS. DEANER: No, they're not only calling, they're
15 sending me all this stuff in the mail.
16 THE COURT: All communications. Quit sending it to
17 her. This is a matter that's gone to
18 foreclosure. If she can deal with South
19 Carolina Help to get out of this, that's great.
20 MS. DEANER: Well, the only other thing that I can
21 say on this last Motion is, you know, all of
22 the cases in this be considered.
23 THE COURT: I will consider them, and I will be glad
24 to hear from Mr. Gwynne because he said he was
25 prepared to argue.

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1 MR. GWYNNE: I mean, again, a short argument of
2 these -- the issues that are raised are not
3 proper. If in fact the loan has been service
4 transferred to Seterus, doesn't void the
5 judgement or just wouldn't be a justification
6 to dismiss the foreclosure action or cancel a
7 sale that hasn't even been scheduled yet.
8 THE COURT: Okay. Anything else, Ms. Deaner?
9 MS. DEANER: Could you say that again, please?
10 MR. GWYNNE: I don't know if I can say it word for
11 word.
12 MS. DEANER: Well, not word for word but what is
13 your main point?
14 MR. GWYNNE: That your arguments are not proper at
15 this stage of the case.
16 MS. DEANER: Okay, my argument is if Bank of America
17 has sold their servicing rights to Seterus,
18 then they would have to be now filing for the
19 foreclosure.
20 THE COURT: No, ma'am. That's not -- that might be
21 your understanding, but that's not the law.
22 MS. DEANER: Okay, well then how can they be
23 involved?
24 THE COURT: I just told you -- you just heard me
25 make an order that they can't be involved

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1 anymore, if they are involved at all.
2 MS. DEANER: Okay.
3 THE COURT: I'm amazed because I've got a case
4 pending right now where someone was dealing
5 with JP Morgan Chase and Seterus is involved.
6 And I can't believe that JP Morgan Chase and
7 BAC would be dealing with the same company
8 together. I don't find it very credible.
9 MS. DEANER: Well Seterus I believe is a sub market,
10 right? Do you know? I said I believe that
11 Seterus when you sell the Note -- when Bank of
12 America, one of your national banks sells a
13 Note to someone like Seterus, that's a sub
14 market.
15 THE COURT: All right. What else?
16 MS. DEANER: I just want everything in this to be
17 taken into consideration.
18 THE COURT: I will take it all into consideration.
19 I want you to send me those cases that you
20 cited that I did not have -- otherwise have
21 access for, and I will review them all
22 carefully and then I'll make a ruling.
23 MS. DEANER: Okay, so you just want me to send
24 those?
25 THE COURT: Yes, ma'am. The two cases that I told

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1 you.
2 MS. DEANER: Right, Glaski ---
3 THE COURT: Bellistri and ---
4 MS. DEANER: Glaski.
5 THE COURT: --- Glaski.
6 MS. DEANER: And everything else that's in there ---
7 THE COURT: Everything ---
8 MS. DEANER: --- gives you the place to go?
9 THE COURT: Everything else you've cited gives me
10 where I need to go to review it, yes ma'am.
11 MS. DEANER: Okay, do you need a copy of this chain
12 of title that shows ---
13 THE COURT: No, ma'am. I think you've already given
14 me that.
15 MS. DEANER: Okay.
16 THE COURT: Back in early May if not April, late
17 April.
18 MS. DEANER: No, this is a ---
19 THE COURT: Oh, that's a new one?
20 MS. DEANER: --- a new one.
21 THE COURT: Okay.
22 MS. DEANER: Do you need that is what I'm saying?
23 THE COURT: No.
24 MR. DEANER: Okay.
25 THE COURT: That's not an issue that I'm prepared to

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1 tes- -- to control -- will be controlling on
2 this.
3 MS. DEANER: Right, okay.
4 THE COURT: All right. Thank you very much.
5 (There being nothing further, the hearing concluded
6 at 11:22 a.m.)

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THE
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July 8, 2015

Re: Carolyn S. Deaner – 704 Kershaw Drive, Belvedere, SC 29841
Title Search Results

To Whom It May Concern:

I have researched the public records for the property commonly known as 704 Kershaw Drive, Belvedere, South Carolina 29841, legally known as Lot 10, Block B of Pinecrest Subdivision, Belvedere, Aiken County, South Carolina. The records show the property was conveyed to Ms. Carolyn S. Deaner by Title to Real Estate from Marolyn D. Spoores, Individually and as Trustee of the Velda K. Deaner Revocable Trust and Donald D. Deaner, Jr. and Michael A. Deaner dated October 4th, 2004 recorded in Deed Book 2458, at Page 111 in the Office of the RMC for Aiken County, South Carolinas as shown in Exhibit "A" attached hereto.

Subsequently, a Mortgage from Carolyn S. Deaner to Quicken Loans Inc., dated June 26, 2007 was recorded in Record Book 4149, at Page 773 in the Office of the RMC for Aiken County, South Carolina. A copy of said Mortgage is attached as Exhibit "B" hereto. Said Mortgage was later assigned to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP on April 29, 2011 as evidenced by that Assignment of Mortgage recorded in Record Book 4356, at Page 932 in the Office of the RMC for Aiken County, South Carolina. A copy of this assignment is attached as Exhibit "C" hereto.

Other than a prior satisfied mortgage (Record Book 4026, Page 311, Satisfied in Record Book 4084, Page 804, these are the only recorded instruments found when searching the public records for "C Deaner". No assignments were found to Federal National Mortgage Association (Fannie Mae) or the Fannie Mae REMIC 2007-91 Trust. I have attached a copy of the search results as Exhibit "D" hereto.

Thank you for your attention to this matter. Please feel free to call me if you have any questions.

Sincerely,

P. Wesley Fountain

This opinion covers a search of "C Deaner" for the period from October 13, 2004 to July 7, 2015.

DESIGNATION: 49

49. Special Referee Harvey's ORDER on HEARING of JULY 23, 2015 of the above Designation Number #48. Ruled on_____20___, or not ruled on as of _____,20___.

Carolyn Deaner

From: "Carolyn Deaner" <cdeaner@bellsouth.net>
To: <kim@hkattorney.net>
Sent: Tuesday, September 15, 2015 2:57 PM
Subject: Fw: Fw: Fw: Emailing: Seterus, Inc. False claim of mortgagee to Allstate

Kim:

Is there any way you can ask Referee Harvey when he is going to do the Order on the July 23, 2015 hearing and give me an answer this week?

Thank you.

Carolyn

----- Original Message -----
From: Kim Moore
To: Carolyn Deaner
Sent: Tuesday, September 08, 2015 3:24 PM
Subject: Re: Fw: Fw: Emailing: Seterus, Inc. False claim of mortgagee to Allstate

Mrs. Deaner,.

Mr. Harvey is out of the office this afternoon. I forward this email for his response. Thanks

On 9/8/2015 3:22 PM, Carolyn Deaner wrote:

Kim:

Just a reminder...please let me know on the e-mail below just as soon as possible. If Referee Harvey has already done the Order, are you allowed to e-mail it to me? And I will go to Aiken county and pick up the clocked copy?

Thank you very much for your time.

Carolyn S. Deaner
Pro Se
Case: 2012-CP-02-00699

----- Original Message -----
From: Carolyn Deaner
To: kim@hkattorney.net
Sent: Thursday, September 03, 2015 8:16 PM
Subject: Fw: Fw: Emailing: Seterus, Inc. False claim of mortgagee to Allstate

Kim:

In response to the e-mail below, do you know when Referee Harvey is going to file the Order from the July 23, 2015 hearing? I e-mailed an Order to you for his review, but have not received anything in the mail.

Has he already filed it? Please let me know as I need a copy as soon as possible, and will go to Aiken County to pick up a clocked copy if necessary, but just need a copy from Referee Harvey e-mailed or faxed to me first.

Thank you.

Carolyn

----- Original Message -----
From: Carolyn Deaner
To: kim@hkattorney.net
Sent: Thursday, August 27, 2015 12:52 PM
Subject: Fw: Fw: Emailing: Seterus, Inc. False claim of mortgagee to Allstate

Kim:

Thank you very much.

Carolyn

----- Original Message -----
From: Kim Moore
To: Carolyn Deaner
Sent: Wednesday, August 26, 2015 7:59 AM

Carolyn Deaner

From: "Carolyn Deaner" <cdeaner@bellsouth.net>
To: <kim@hkattorney.net>
Sent: Wednesday, December 30, 2015 9:20 AM
Subject: Fw: Emailing: REF. HARVEY ORDER MOT to RECON, DISCHARGE DEBT, im@Hkattorney.netPAUPERIS AND DISMISS FORECLOSURE AND CANCEL SALE.docm

Kim:

OK, and thank you. I will wait to hear back from you next week.

Happy New Year 2016.

Carolyn

--- Original Message ---
From: Kim Moore
To: Carolyn Deaner
Sent: Wednesday, December 30, 2015 9:02 AM
Subject: Re: Emailing: REF. HARVEY ORDER MOT to RECON, DISCHARGE DEBT, im@Hkattorney.netPAUPERIS AND DISMISS FORECLOSURE AND CANCEL SALE.docm

Mrs. Deaner.

I forwarded your email to Mr. Harvey, He will be out of the office until after the first of the year.

Thanks

On 12/30/2015 6:43 AM, Carolyn Deaner wrote:

Kim:

Please forward this ORDER concerning the hearing of July 23, 2015 to Special Referee, Mr. Harvey. I have revised it and added some more cases.

No response yet
1/12/2016

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP Plaintiff, vs. Carolyn S. Deaner Defendant(s).	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT **ORDER** **DOCKET NO. 2012-CP-02-00699**

This matter came before me at a hearing on July 23, 2015, on Defendant, Pro Se, Carolyn S. Deaner's,

(1) Motion to Reconsider Emergency Motion to Vacate Judgment and Reverse or Cancel Sale and MEMORANDUM to Motion to Reconsider Emergency Motion to Vacate Judgment and Reverse or Cancel Sale under Rule 60 (b), SCRCP ("Motion"), and Rule 12 (b) (1, 2, 3, 4, & 5),

(2) Defendant's Motion to Order Return of the IPN or Discharge Debt Due To Tender of Payment Made to Plaintiff On Order Of Judgment, and the MEMORANDUM to Defendant's Motion to Order Return of the IPN o Discharge Debt Due To Tender of Payment Made to Plaintiff On Order of Judgment, under Rule 12 (b) (5)

(3) Defendant's Motion and Affidavit To Proceed In Forma Pauperis, and

(4) Defendant's Motion To Dismiss Foreclosure Action, Judgment and Cancel Sale under Rule 60 (b) and Rule 12 (b) 1-5).

Subsequent to the hearing the Defendant filed these motions.

Charles S. Gwynne, Jr. Esquire, appeared on behalf of the Plaintiff at the hearing. Defendant appeared Pro Se. Defendant was afforded more than 30 minutes to present her claims and arguments.

AFTER A COMPLETE REVIEW of Defendant's Motions and case exhibits, I conclude that the Defendant's arguments and claims are with merit and are supported and justified by the following cases,

1. Carpenter v. Longan, US SUPREME COURT 83 U.S. 16 Wall 271 (1872), and Young v. People's National Bank, SC SUPREME COURT, 1933 honoring Carpenter V. Longan, (MUST BE OWNER OF THE NOTE), and in addition, in the SC APPEALS COURT CASE, U.S. Bank Trust V. Bell 2009, THE SC APPEALS COURT quoted, e.g., Franklin Credit Mortgage Corp v. Nicholas, 812 A. 2d 51, 57-58 (Conn. App. Ct. 2002, "in a mortgage foreclosure action, to make out its prima facie case, the foreclosing party had to prove by a preponderance of the evidence that it was the OWNER OF THE NOTE AND MORTGAGE and that the DEFENDANT HAD DEFAULTED ON THE NOTE. At the trial, the Bank of America witness, Mrs. Deloney testified, Fannie Mae was the OWNER of the note and mortgage (on Trial Transcript page 28, #11). Mrs. Deloney further testified Quicken Loans was the LENDER of record on August 16, 2010 when the Acceleration Letter was mailed (on Trial Transcript page 22, #17), establishing the true LENDER DID NOT MAIL THE ACCELERATION LETTER as required by the Defendant's mortgage, #22 and contract law. In addition, she testified she did not know if Bank of America or their predecessors were ever or had ever been owner of the Note and Mortgage (on Trial Transcript page 31, #21). The Plaintiff did not establish a default of the note as no evidence was submitted by Countywide, nor was a witness at the trial from Countrywide to testify of the legality of the computer generated records of payments, and therefore were mere hearsay. (See Glarum case). Further, NO damages were established by the Plaintiff at trial as testified by Mrs. Deloney, witness for Bank of America, (on Trial Transcript page 29, #23-25, page 30, #1-9), concerning alleged default of principal and interest, NOR DID THE Plaintiff establish any consideration was paid at time of filing the Original Complaint or at the trial.

2. Deutsche Bank National Trust Co. v. Heinrich, SC 2011, CP-10-1060, 7/31/2013, (MUST BE OWNER OF THE NOTE and MERS IS NOT ON THE NOTE). Also, Mr. Deloney testified MERS did not give reference to Quicken Loans on the signature line of the assignment (on Trial Transcript page 27, #8), thus establishing MERS had no authority to act in behalf of Quicken Loans to assign the Note and Mortgage. Also, on Trial Transcript page 32 #4, Mrs. Deloney testified MERS was not listed in any way on the note, and also, testified that there was no mention of MERS as the Lender (on Trial Transcript page 32, #12-14), and MERS has no monetary interest in loan (on Trial Transcript page 38 #7-10), establishing the assignment is not authentic, thus is null and void.

3. Glaski v. Bank of America, (5th District Court of App, No. F0664556 Cal. 7/31/2013) (Borrower may challenge the securitized trust's chain of ownership by alleging the attempts to transfer the deed of trust to the securitized trust (which was formed under New York Trust Law) occurred after the Trust's closing date. TRANSFERS THAT VIOLATE the terms of the TRUST INSTRUMENT are VOID under New York Trust Law, and borrowers have standing to challenge VOID ASSIGNMENTS). Mrs. Deloney testified at the trial, FANNIE Mae was the investor, however, there is no evidence of a negotiation, endorsement, assignment, transfer or delivery established at the trial to FANNIE MAE or the FANNIE MAE REMIC 2007-91 TRUST proving the Plaintiff is not holding the ORIGINAL NOTE, and the NOTE held and submitted at the trial is not authentic and is VOID. As a result , the Defendant has stated a COGNIZABLE CLAIM for WRONGFUL FORECLOSURE under the THEORY that the ENTITY INVOKING THE POWER OF SALE, (the Plaintiff, Bank of America in this case) WAS NOT THE HOLDER OF THE DEANER MORTGAGE). The Plaintiff ceded any interest upon which it might foreclose when the loan was sold to Fannie Mae in the Fannie Mae REMIC 2007-91 Trust prior to any merger in 2008 with Countrywide who irrevocably sold all right, title and interest in the Defendant's Mortgage loan, for value received, to the Fannie Mae REMIC 2007-91 Trust, and the Plaintiff did not established an agency relationship with either Fannie Mae or Quicken Loans, Inc. the original Lender at the trial. In addition Kemp v. Countrywide Home Loans, Inc., U.S. Bankruptcy Court, NJ, 11/16/2010, "NOTE MUST BE ENDORSED AND DELIVERED TO FANNIE MAE TRUST, (in Defendant's case, the FANNIE MAE REMIC 2007-91 TRUST) as required by the PSA Guidelines.

4. Wells Fargo v. Erobobo NY SUPREME COURT 4/2013, "THAT UNDER New York Law, assignment of the Salvidar's Note after the start up day is VOID ab initio).

5. Bellistri v. Ocwen Loan Servicing, LLC, MO E. Dis. Ct of APP 2009, (Note declared unsecured, "when MERS assigned the Note to Ocwen the Note became unsecured and the Deed of Trust became worthless, bifurcation of the note, and MERS is not named in the Defendant's note. As a MATTER OF LAW, the right to foreclose goes away when the promissory note is "split" from the mortgage that it is supposed to secure, and was done in this case by MERS, and when the note was securitized and changed into a stock certificate.

6. Joseph v. BAC Home Loan Servicing, LP, 4th District Ct of Appeals FL, 1/7/2015,(BAC FAILED TO PROVE Taylor Bean acquired possession of the Note prior to filing the foreclosure Complaint and without proof of standing BAC failed to PROVE ENTITLEMENT TO FORECLOSE). The Plaintiff (on Trial Transcript page 45, #6-8), states the only issue relevant to standing in this case is whether the Plaintiff has possession of the original note properly endorsed. The Plaintiff has not established they are holding the original note as it is only a copy of the original note and is not properly endorsed as required by law, the PSA Guidelines and New York Trust Laws, nor does the ORIGINAL COMPLAINT prove or establish possession of the original Note at inception and filing of the Original Complaint. Merely stating, the Plaintiff "held the note and mortgage" which was not stated in the body of the Original Complaint does not establish evidence or proof of holding the Original Note and Mortgage as required at inception and filing of the Original Complaint in order to have standing to bring this foreclosure action. Conditions Precedent have not been met by the Plaintiff.

7. The SOUTH CAROLINA Supreme Court case, Martin v. State, 321 S.C. (1995) , Id, at 535, 471 S.E. 2d at 135, citing Boddie v. Connecticut, 401 U.S. 371 91 S.Ct. 780, 28 L.Ed 2d 113 (1971), the Supreme Court went on to state, "Further, where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts. The UNITED STATES SUPREME COURT stated in BODDIE: "due process requires at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their Claims of right and duty through the judicial

process must be given a meaningful opportunity to be heard", and also, civil case, SC Ct. of Appeals, Raymond C. Harrison, Appellant, v. Sherry Diane Harrison, Defendant where Court of Appeals granted Appellant's Motion to proceed in forma pauperis in a divorce case citing the above case which support the granting of the Defendant's Motion to Proceed in Forma Pauperis.

8. FDIC V. Phildelphia Gear Crop, US SUPREME COURT, 476 U.S. 426, 442 (1986) (Promissory Notes are typically negotiable instruments, and therefore, are readily convertible to cash, unconditional and equivalent to money). Defendant has tendered payment in full in the amount of $147,000 and the debt is discharged in accordance with UCC 3-603, 3-311, 673, 3111, 6031 and all other State's debt discharge statues. The International Promissory Note (IPN) presented for special deposit is a STATUTORY LEGAL TENDER obligation of the United States and is in accordance with the "Public Policy" established in HJR-192 of June 5, 1933, Chapter 48, 48 Stat. 112-113, Public Law 73-10, US SUPREME COURT CASE, "Guaranty Trust Company of New York vs. Henwood et al., (7/13/1938) 307 U.S. 247 (FN3, 31 U.S. C. 5118 (d)(2) and in accordance with 31 U.S.C. 5103 and 18 USC 8, such instruments are "national bank currency" and thereby "coin currency of the United States" by STATUTORY definition. If a bank refuses, and in this case the Plaintiff, Bank of America, has refused a properly rendered instrument, then the debt is discharged pursuant to U.C.C. 3-603 (b), F.S. 673, 6031 and all other State's debt discharge statutes. The IPN is CASH when deposited Dollar for Dollar by the Federal Reserve. The Defendant's tender of payment complied with requirements in SC cases, Tolbert v. Fouche, 129 S.C. 338, 123 S.E.859 (1924) and the Anderson v. Citizens Bank, 294 S.C. 387, 365, S.E. 2d 26 (Ct. App. 1987) and UNITED STATES SUPREME COURT LAW CASES.

9. Ingram v. Kasey's assoc., 340 South Carolina 98, 107 n. 2 531 S.E.2d 287, 292 n. 2 (2000), (the doctrine of UNCLEAN HANDS, "PRECLUDES A PLAINTIFF FROM RECOVERING IN EQUITY IF HE ACTED UNFAIRLY IN A MATTER THAT IS SUBJECT OF THE LITIGATION TO THE PREJUDICE OF THE DEFENDANT).

10. CONDITIONS PRECEDENT were not met by the Plaintiff in this case in regards to the Acceleration Letter to start the foreclosure, (on Trial Transcript by Def's Attorney Sloan, page 47, #3-35, page 48, #1-25, page 49, #1-6 and page 50, #7-20) as the Plaintiff did not establish satisfactory evidence that the letter was sent out, when it was sent out, where it was sent out or by whom since the Acceleration Letter was not signed, and the witness did not know any of these issues, nor could establish or verify the letter was ever mailed. (on Trial Transcript, page 18, #1-25, page 19, #1-25, page 20, #1-25, Page 21, #1-25, page 22, #1-25, page 23, #1-25, page 24, #1-22). Further on page 13 of Defendant's MORTGAGE #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. The NOTICE shall specify: (a) 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 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 proceedings and sale of property. The NOTICE shall further inform the Borrower of the right to reinstate after acceleration and the RIGHT TO ASSERT IN THE FORECLOSURE PROCEEDINGS THE NON-EXISTENCE OF A DEFAULT OR ANY OTHER DEFENSE OF BORROWER TO ACCELERATION AND FORECLOSURE.

The Plaintiff HAS NOT ESTABLISHED Bank of America is the LENDER, nor was the Plaintiff the LENDER at the date of the Acceleration Letter of August 16, 2010 , requiring default to be cured by September 15, 2010, which does not allow a 30 day time period as required in #22 of the mortgage contract by law. In addition, the mortgage allows by law in #22, the borrower, " the right to assert in the foreclosing proceedings the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. This is not stated in the Acceleration Letter, but states wrongly, "the borrower "may" have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure". The statement is not in compliance with the Mortgage Agreement #22 and implies the borrower cannot by law follow the mortgage and assert these rights in the Plaintiff's foreclosure, thus overcoming any judicial estoppel by Plaintiff. CONDITIONS PRECEDENT HAVE NOT BEEN MET in this case.

THEREFORE, because in the Original Complaint, the Plaintiff has not alleged it is entitled to enforce the Note, Plaintiff lacks standing to bring this action and has failed to state a claim upon which relief can be granted. The COURT may dismiss a claim where the Defendant shows that the Plaintiff has failed to state facts sufficient to constitute a cause of action, Hamrick v. GMAC Mortgage Corp., 370 S.C. 118, 634 S.E. 2d 5 (Ct. App. 2006). The Court must base its decision solely on the allegations in the Complaint.

IT IS HEREBY ORDERED;

1. Defendant's Motion to Reconsider Emergency Motion to Vacate Judgment and Reverse or Cancel Sale under Rule 60 (b) and Rule 12 (b) (1-5) is GRANTED.

2. Defendant's Motion to Discharge Debt Due to Tender of Payment Made to Plaintiff on Order of Judgment is granted according to UCC 3-603, and Rule 60 (b) 5.

3. Defendant's Motion and Affidavit To Proceed In Forma Pauperis is granted.

4. Defendant's Motion to Dismiss Foreclosure Action, Judgment and Cancel Sale under rule 60 (b) and Rule 12 (b) (1-5) is granted with prejudice.

5. Notice to Referee Judge Harvey on Defendant's Move On The Court and Motion to Order All Trust Documents of Defendant's Fannie Mae REMIC 2007-91 Trust is granted and/or moot.

IT IS SO ORDERED

_____

J. Martin Harvey

Date:_____

Special Referee for Aiken County

Barnwell, SC