

APPEARANCES

Pete Balthazor, Esquire
Riley, Pope & Laney, LLC
2838 Devine Street
Columbia, South Carolina 29205
Attorney for the Plaintiff

Also Present:
Samuel Barfield

INDEX

Certificate 29

EXHIBITS

(There were no exhibits marked in the hearing.)



1 **THE COURT:** All right. Are you Mr. Barfield?

2 **MR. BARFIELD:** Yes, sir.

3 **THE COURT:** All right. This is case number CP-2015-
4 46-3068, The Bank of New York Mellon against
5 Tara B. Barfield, Samuel C. Barfield and
6 others. Present and representing the plaintiff
7 is Mr. Paul Balthazor of Riley, Pope and Laney.
8 Also present is the defendant Mr. Samuel
9 Barfield. No one else has appeared. So, if
10 you're ready to proceed Mr. Balthazor, go
11 ahead.

12 **MR. BALTHAZOR:** Yes, Your Honor. May it please the
13 court, good morning. Pete Balthazor here on
14 behalf of the Plaintiff in this matter. This
15 is a foreclosure action pending in York County.
16 The property is located in York County. I
17 think the Plaintiff has filed a couple of
18 motions. It just occurred to me this morning
19 while I was still at the office that I did have
20 a motion to strike the request for a jury, and
21 I've also got a Motion for Summary Judgment
22 pending. There's multiple defendants in the
23 case. Mr. Barfield is one of the defendants
24 and is present here and filed an answer. Mr.
25 Barfield, I do not believe, asked for a jury



1 trial. Tara Barfield filed an answer on --
2 let's see, on March 9th of this year. And in
3 that answer, it's basically a general denial
4 and asserted a number of affirmative defenses
5 and must have separately filed a request for a
6 jury trial. I'm not sure where -- I'm not even
7 sure now I see in the complaint where a jury
8 trial was asserted. But in any event -- maybe
9 that's it on the last paragraph. No ---

10 **MR. BARFIELD:** It was in a separate ---

11 **MR. BALTHAZOR:** A separate filing?

12 **THE COURT:** Let me stop you a second. The Summary
13 Judgment Motion, I've already done one order
14 granting partial Summary Judgment. That order
15 was filed on May the 2nd. So, this motion is
16 to establish the debt amount?

17 **MR. BALTHAZOR:** Yes, Your Honor. The first Motion
18 for Summary Judgment that you heard was on a
19 cause of action for declaratory relief based on
20 the order of recording. I think Mrs. Barfield
21 executed a note and mortgage. And then after
22 she executed the note and mortgage, she deeded
23 a portion of the property to Mr. Barfield and
24 there was some discrepancy in the way those
25 documents were recorded.



1 **THE COURT:** Okay.

2 **MR. BALTHAZOR:** And that's what the previous motion
3 was.

4 **THE COURT:** I see that now.

5 **MR. BALTHAZOR:** This motion is for -- this Motion
6 for Summary Judgment is on the second cause of
7 action for foreclosure for the mortgage given
8 by Mrs. Barfield. And to the extent she has
9 requested a jury trial in this matter, I think
10 it's well established that a mortgage
11 foreclosure action is an action in equity, and
12 I think I cited a case in my motion. As I
13 mentioned, Mrs. Barfield's answer was basically
14 a general denial with the assertion of various
15 affirmative defenses with no counter claims.
16 So, I don't believe there is any entitlement to
17 any jury trial based on the allegations or any
18 of the affirmative defenses raised in the
19 complaint by Mrs. Barfield. Would Your Honor
20 like me to go on to the Motion for Summary
21 Judgment at this point?

22 **THE COURT:** Well, it seems to me that -- I'm looking
23 at her answer and defenses document ---

24 **MR. BALTHAZOR:** And not to interrupt, Your Honor,
25 but I do see filed on March 22nd, 2016, was a



1 demand for jury trial made by Mrs. Barfield.
2 It doesn't state any other grounds for the
3 demand for jury trial other than as a matter of
4 right pursuant to Rule 38 of the Rules of Civil
5 Procedure.

6 **THE COURT:** Hold on a minute.

7 **MR. BALTHAZOR:** Sure.

8 **THE COURT:** Her answer was filed dated March the 9th
9 and filed the same day. Her jury trial demand,
10 I'm not finding that easily. Do you have a
11 copy of that?

12 **MR. BALTHAZOR:** I can bring you up my file and show
13 it to you, Your Honor. Like I say, it was --
14 let's see.

15 **THE COURT:** When was it dated and filed?

16 **MR. BALTHAZOR:** It looks like it was filed March
17 22nd.

18 **THE COURT:** Well, it's not timely. Here it is.

19 **MR. BALTHAZOR:** Right.

20 **THE COURT:** Dated March 22nd, filed March 22nd.
21 Rule 38 says any party may demand a jury trial
22 by jury of any issue triable of right by jury
23 by serving upon the other parties the demand
24 therefore in writing at any time after the
25 commencement of the action and not later than



1 ten days after the service of the last pleading
2 directed to such issue. And as far as I know,
3 that was the last pleading. Her answer was the
4 last pleading was it not?

5 **MR. BALTHAZOR:** Yes, Your Honor. She's not filed
6 any pleadings.

7 **THE COURT:** And Mr. Barfield has filed none?

8 **MR. BARFIELD:** I'm sorry?

9 **THE COURT:** Mr. Barfield has not filed an answer?

10 **MR. BALTHAZOR:** No. Mr. Barfield filed an answer
11 prior to Mrs. Barfield. He filed an answer on
12 November 16th, 2015.

13 **THE COURT:** All right.

14 **MR. BALTHAZOR:** We solicited Mrs. Barfield for
15 foreclosure intervention, and that's why her
16 answer came later.

17 **THE COURT:** All right. Well, the jury trial demand
18 is not timely.

19 **MR. BALTHAZOR:** I agree.

20 **THE COURT:** So, that motion is granted.

21 **MR. BALTHAZOR:** Thank you.

22 **THE COURT:** All right. Let's move on to the Summary
23 Motion Judgment.

24 **MR. BALTHAZOR:** Yes, sir. In your file, you should
25 have a copy of the Plaintiff's Motion for



1 Summary Judgment. It was filed on August 4th,
2 2016 along with an affidavit from an employee
3 of Bayview Loan Servicing. It's our contention
4 that in a mortgage foreclosure action that once
5 a party seeking foreclosure -- well, a party
6 seeking foreclosure has the burden of
7 establishing the existence of the debt and the
8 mortgagors default on that debt. And once
9 those two things have been established, the
10 debt and the default, then the mortgagor would
11 have the burden of establishing some defense
12 such as a lack of consideration, payment or
13 record of satisfaction or any other defenses.
14 And as Your Honor knows, Rule 56 requires that
15 if there is a properly supported Motion for
16 Summary Judgment that is supported by an
17 affidavit and other exhibits that's accepted by
18 the court, then the opposing party cannot just
19 rest on the allegations of any pleading. That
20 opposing party has to come forward with some
21 specific proof or specific evidence refuting
22 those allegations to show some genuine issue of
23 material fact. And I will go through some of
24 the facts of this matter which we believe are
25 undisputed at this point.



1 **THE COURT:** Well, let me clarify something else
2 first.

3 **MR. BALTHAZOR:** Sure.

4 **THE COURT:** I find no -- I find no affidavit or
5 other acceptable response to the Motion for
6 Summary Judgment. In other words, the
7 plaintiff has filed an affidavit. I find no
8 counter affidavit or other exhibit.

9 **MR. BALTHAZOR:** Right, and that's my ---

10 **THE COURT:** Is that right?

11 **MR. BALTHAZOR:** Yes, sir. That's my point
12 concerning Rule 56. Once we've properly --
13 once we've moved under Rule 56 and properly
14 supported our motion ---

15 **THE COURT:** I understand that. I just wanted to be
16 sure that I'm correct and not finding in the
17 file any appropriate response. Mr. Barfield,
18 you raised your hand.

19 **MR. BARFIELD:** Your Honor, I do have the opposition
20 to the motion here that I was going to -- and
21 a whole lot of exhibits to go along with it.

22 **THE COURT:** To file today?

23 **MR. BARFIELD:** Yes, sir.

24 **THE COURT:** It's too late. They're required -- any
25 response -- in the first place, it needs to be



1 an affidavit, not just a piece of paper because
2 a piece of paper has to be properly
3 authenticated. That is something has to show
4 that it is what it says it is. And typically
5 that is done by an affidavit or a deposition if
6 one has been taken in the case. In any event,
7 the rule provides that such responses have to
8 be filed two days prior to the date for the
9 hearing. You have a question about that?

10 **MR. BARFIELD:** No, sir.

11 **THE COURT:** All right. Go ahead, Mr. Balthazor.

12 **MR. BALTHAZOR:** Yes, sir, Your Honor. According to
13 the complaint and as I say, I'll go through
14 some of these facts alleged in the complaint
15 and they've been verified and attested to in
16 the affidavit, also. That the Plaintiff in the
17 current action is the holder of the note. On
18 December 8th, 2003, Mrs. Barfield, Tara
19 Barfield, executed a note in the original
20 principal amount of \$159,180 at 6.25 percent.
21 She executed a mortgage, which is alleged in
22 paragraph eight of the complaint. That
23 mortgage was recorded in York County on January
24 22nd, 2004. On April 22nd, 2015, the mortgage
25 was assigned to the current plaintiff. The



1 assignment of that mortgage is stated in the
2 complaint as to the book and page. Mrs.
3 Barfield entered into a loan modification
4 agreement on March 7th, 2011, which we would I
5 guess be in the 6th year of that now, and which
6 modified the payments for years one through
7 five at two percent interest, for year six at
8 three percent interest and year seven at four
9 percent interest. In paragraph 29 of the
10 complaint alleges that the April 1st, 2011
11 installment was not paid and at that time, the
12 principal balance was \$194,516.68 at two
13 percent interest from March 1st, 2012. In the
14 affidavit, its support of summary judgment,
15 paragraph five, we have again confirmed that
16 the Plaintiff is the holder of the note and
17 mortgage in this matter. Attached is exhibits
18 to the affidavit, is a copy of the note and
19 mortgage. Paragraph six attests that the
20 mortgage or that the plaintiff is the mortgagee
21 of record in this matter. And paragraph nine
22 I'll also address because I think this was
23 raised in the answer at some point that any
24 notice of right to cure had not been provided.
25 Paragraph nine along with Exhibit H shows that



1 a Notice of a Right to Cure was sent to the
2 borrower on December 21st, 2012. The affidavit
3 also establishes the amount of the debt, which
4 as I've already mentioned, the principal amount
5 being due as of April 1st, 2012 was
6 \$194,516.68. Interest in different amounts
7 based on that modification agreement, there was
8 a period where interest was at two percent,
9 then three percent, then four percent. There
10 was some interest that was subject to
11 forbearance. Then there were various advances
12 for property taxes and insurance and property
13 inspections and late charges, which are
14 outlined in the affidavit. And as of the date
15 of the affidavit, the total amount due was
16 \$238,434,08 and that is accruing a per diem
17 charge of \$21.32. I would also mention for the
18 court and Mr. Barfield, and I can certain
19 provide to the court, Mrs. Barfield has raised
20 in her answer that the plaintiff does not have
21 standing and that, I think she raises that she
22 has never seen the original note and mortgage
23 and she requested to see the original note and
24 mortgage. I have brought the original
25 collateral file with me today. Obviously, Mrs.



1 Barfield is not here to see that today. Mr.
2 Barfield is not a borrower. Mr. Barfield is an
3 owner of the property. But if anybody would
4 like to see the original collateral file, I
5 have that with me here today as well. And some
6 of the issues raised by Mrs. Barfield, I think
7 she raises some irregularities with some
8 assignments in the matter, but as Your Honor
9 knows, we have the original note in possession
10 of the Plaintiff. The mortgage follows the
11 note and as we've established in the affidavit,
12 the Plaintiff here today is the holder of the
13 note and the mortgagee of record. And we
14 believe based on the showing made today is
15 entitled to the foreclosure of the property.

16 **THE COURT:** All right. Let me see the original
17 note.

18 **MR. BALTHAZOR:** Yes, sir.

19 **THE COURT:** And show it to Mr. Barfield. I
20 recognize that he's not a lawyer.

21 **MR. BALTHAZOR:** Certainly.

22 **THE COURT:** I think the issues are pretty identical.

23 **MR. BALTHAZOR:** And I do have the original mortgage,
24 also.

25 **THE COURT:** Let me see.



1 MR. BALTHAZOR: Yes, sir.

2 THE COURT: A copy was appended to the motion and
3 affidavit as an exhibit. This original appears
4 to be -- or copy appears to be a true copy of
5 the Exhibit A attached to the motion and
6 affidavit except for the redactions that are
7 required by law. So, there you go. I'll give
8 it back. I'm not going to keep your original.

9 MR. BALTHAZOR: Thank you.

10 THE COURT: Anything further from the Plaintiff?

11 MR. BALTHAZOR: Your Honor, we would just at this
12 time request judgment as requested in the
13 complaint subject to a later request for
14 attorney's fees or any costs.

15 THE COURT: When do you want to do that?

16 MR. BALTHAZOR: Well, we would do that when we
17 submit an order to you, Your Honor, if Summary
18 Judgment is granted.

19 THE COURT: Okay. Mr. Barfield?

20 MR. BARFIELD: Yes, sir. I understand now that we
21 were untimely on the opposition for the motion.
22 However, you know, as he just stated there were
23 in the answers claims of lack of standing. If
24 I have evidence as to that, would that be
25 admissible?



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1 **THE COURT:** No, sir. Not unless it's -- as the
2 rules says, the adverse party may serve
3 opposing affidavits not later than two days
4 before the hearing. It goes on to say, it
5 talks about the form of affidavits. Supporting
6 and opposing affidavits shall be made of
7 personal knowledge and shall set forth such
8 facts as would be admissible in evidence and
9 shall show affirmatively that the affiant is
10 competent to testify to the matter stated
11 therein. Sworn or certified copies of all
12 papers or parts thereof referred to in an
13 affidavit shall be attached thereto and served
14 therewith. In other words, any documents that
15 are attached to such an affidavit would have to
16 be either certified copies or notarized copies
17 of documents, and we have none of that.

18 **MR. BARFIELD:** What about copies of affidavits that
19 are already in the record?

20 **THE COURT:** What affidavits are you talking about?

21 **MR. BARFIELD:** Can I bring them to you?

22 **THE COURT:** Just tell me what they are. You say in
23 the record. Are they filed?

24 **MR. BARFIELD:** They're filed, and what they are they
25 are filed in the original case but it's the



1 same parts.

2 **THE COURT:** Is the before the prior case was
3 dismissed due to a loan modification?

4 **MR. BARFIELD:** Yes, sir, before that.

5 **THE COURT:** No, sir. I think those are not -- I'm
6 not going to consider those. That case no
7 longer exists.

8 **MR. BARFIELD:** I mean, the case may no longer exist
9 but the reason that I was asking ---

10 **THE COURT:** Well, those affidavits are not submitted
11 in this case. They have not been submitted in
12 opposition of this motion, and they are not
13 part of the record in this case. Go ahead.

14 **MR. BARFIELD:** Other than that, that's all I have.
15 Yeah. I mean, they're not in this case, but
16 they are in the record for the other case and
17 they do directly contradict exactly what they
18 say.

19 **THE COURT:** Well, I'm not going to consider it. Go
20 ahead. Any other argument? This is your time.

21 **MR. BARFIELD:** Well, I don't have anything that's in
22 the record in this case. I do have responses
23 from the Plaintiff to qualify written responses
24 that have been in, one that I just got in and
25 one that we just got yesterday that also



1 contradict the affidavit for the Motion for
2 Summary Judgment.

3 **THE COURT:** What are you talking about?

4 **MR. BARFIELD:** I'm talking about this one dated
5 August 17th that we just received yesterday,
6 which says that the owner of the loan is CWALT,
7 Incorporated Alternative Loan Trust 2004-CB
8 with the Bank of New York, LS Trustee gives
9 their address as, you know, 101 Parker Street,
10 Eight West, New York. Please be advised that
11 be the one serving as the subservicer of the
12 loan on behalf of the master servicer of Bank
13 of America. In their affidavit, they are
14 saying that the trust is the holder of the
15 holder of the note but that Bank of America is
16 and always has been the owner. But then I have
17 three different responses to the qualified
18 written requests that all say that the trust is
19 ---

20 **THE COURT:** What issue is created by that, who to
21 pay?

22 **MR. BARFIELD:** Right. We don't know who the owner
23 of the loan is.

24 **THE COURT:** Well, I can tell you that what Mr.
25 Balthazor has said is correct, that the law of



1 South Carolina is the possession of the
2 original note carries with it proof that the
3 possessor is the owner of the mortgage. And he
4 has presented the original note today, and he
5 represents the Plaintiff. That note is in
6 possession of the Plaintiff, and the Plaintiff
7 is entitled to enforce the mortgage.

8 **MR. BARFIELD:** Right. And also, my wife asserted in
9 her answer two things that may void the note.
10 One when we are talking about the different
11 assignments. This is a REMIC trust that's
12 listed in the U.S. Treasury list of REMIC
13 trusts for the first quarter of 2004. So, I
14 mean, there's really no doubt that it is a
15 REMIC trust. And the assignments that we were
16 talking about are in direct controvention of
17 that, meaning that they were done five or six
18 years even initially after the close of the
19 trust, which means that the trust is taxed at
20 100 percent of anything that's put into it.

21 **THE COURT:** What does that got to do with who owns -
22 - who currently owns the note and mortgage and
23 is entitled to enforce it?

24 **MR. BARFIELD:** As the laws that govern the trust,
25 that makes that transfer void, because they



1 would never accept the transfer.

2 **THE COURT:** So, there's no note?

3 **MR. BARFIELD:** No. According to that, there ---

4 **THE COURT:** No debt?

5 **MR. BARFIELD:** There would be -- well, there may be
6 a debt, but there's no note. The only way that
7 they can prove the debt would be through third
8 party proof of payment through canceled checks
9 or wire transfer receipts through the Federal
10 Reserve System.

11 **THE COURT:** So, as a consequence, there's no way --
12 you don't owe anything?

13 **MR. BARFIELD:** We may owe something to somebody, but
14 it -- they haven't proven that it's them if the
15 note and mortgage are void because of the way
16 that this ---

17 **THE COURT:** Why are the note and mortgage void?

18 **MR. BARFIELD:** Because if the assignments were done
19 in controvention to the pooling and servicing
20 agreement of the trust, it's not voidable, it's
21 void. Because it would never -- the trust
22 would never accept the loan into the trust
23 after the trust had closed. The trusts all
24 close 90 days after they open.

25 **THE COURT:** And as a consequence, you don't owe any



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1 money?

2 **MR. BARFIELD:** We may owe money to someone, but that
3 would have to be -- but absent the note and
4 mortgage ---

5 **THE COURT:** But to whom would you be willing to pay
6 it?

7 **MR. BARFIELD:** Whoever ---

8 **THE COURT:** Are you able to pay it?

9 **MR. BARFIELD:** Whoever could -- whoever could prove,
10 you know, through third party verification, you
11 know, through a canceled check or wire transfer
12 receipt that they actually paid for the note
13 and mortgage.

14 **THE COURT:** And they don't have to prove that. They
15 have possession of the original note. Right or
16 wrong, they have possession of the original
17 note.

18 **MR. BARFIELD:** Even if the ---

19 **THE COURT:** Under South Carolina law, they can
20 enforce the debt and the rights under the
21 mortgage.

22 **MR. BARFIELD:** But if -- would that be true even if
23 the note and mortgage were void?

24 **THE COURT:** Why are they void?

25 **MR. BARFIELD:** Because what I was just talking about



1 with the nature of the assignments in the REMIC
2 trust.

3 **THE COURT:** The nature of assignments does not
4 render a note void.

5 **MR. BARFIELD:** It's the ---

6 **THE COURT:** The assignments may be fouled up, but
7 that doesn't make the note void.

8 **MR. BARFIELD:** No. I mean, the assignments, there
9 are a lot of issues.

10 **THE COURT:** Let me ask you this. Was the note used
11 -- was the money, the proceeds of the loan that
12 we're talking about used to buy the house?

13 **MR. BARFIELD:** No. It was a refinance.

14 **THE COURT:** It was a refinance. So, you received
15 the funds for the purpose of paying off a prior
16 mortgage?

17 **MR. BARFIELD:** Right.

18 **THE COURT:** Right. So, there was actually a debt
19 created because you received that money.

20 **MR. BARFIELD:** There was.

21 **THE COURT:** Right. And now you're telling me that
22 debt is void?

23 **MR. BARFIELD:** Well, I'm not saying the debt is
24 void. I'm saying the note ---

25 **THE COURT:** So, the only question is who has a right



1 to enforce it?

2 **MR. BARFIELD:** Right.

3 **THE COURT:** Well, this gentleman has presented to me
4 and to you a copy of the original note,
5 possession of which the note being a negotiable
6 instrument is sufficient to prove that that
7 person has a right to enforce it.

8 **MR. BARFIELD:** I mean, I would just like to object
9 to that because of ---

10 **THE COURT:** You can object all day.

11 **MR. BARFIELD:** --- what I just said. The other
12 thing that was also brought up in my wife's
13 answer was that the note had been rescinded via
14 TILA and also with the current ---

15 **THE COURT:** Rescinded?

16 **MR. BARFIELD:** Yes, sir. I mean, you're familiar
17 with -- under the Truth and Lending Act, the
18 note can be -- the loan contract can be
19 rescinded.

20 **THE COURT:** It can be.

21 **MR. BARFIELD:** It can. And under the -- it's not
22 really recent anymore but it was in January or
23 February of 2015, the Supreme Court ruled on
24 the Jesinoski versus Countrywide Home Loans,
25 and what they said in that was the Truth and



1 Lending Act Statute means exactly what it says
2 in that all a borrower has to do to rescind the
3 note is effective upon mailing. It doesn't
4 have to be -- they don't have to file separate
5 lawsuits.

6 **THE COURT:** When was this note rescinded?

7 **MR. BARFIELD:** This note was rescinded in October of
8 2015.

9 **THE COURT:** When was the loan made?

10 **MR. BARFIELD:** Well, the loan was made -- the
11 original load was made in 2003. But the
12 wording of the Jesinoski decision is that ---

13 **THE COURT:** Wouldn't that require -- the rescission
14 of the note would require that you return any
15 money you got?

16 **MR. BARFIELD:** Well, we'd have to return any money
17 we got, but first the lender would ---

18 **THE COURT:** I tell you what. You return the money,
19 and I'll rescind the note.

20 **MR. BARFIELD:** Well, the thing with that is that
21 there's a whole list of things that the lender
22 has to do first. They have to return the note
23 and mortgage and any monies that we've paid
24 before we have to tender back that money, and
25 they have to do that within 20 days per the



1 statute. And the Jesinoski decision -- I'm not
2 sure you've seen that yet, but it does plainly
3 state ---

4 **THE COURT:** I have not.

5 **MR. BARFIELD:** It does plainly -- I have a copy if
6 you'd like.

7 **THE COURT:** No, sir. Because I think you just
8 wasted -- you're reliance upon this line of
9 logic is misplaced. Furthermore, you're not
10 the debtor.

11 **MR. BARFIELD:** Right.

12 **THE COURT:** And you have no standing to challenge
13 the debt. And you're not a lawyer.

14 **MR. BARFIELD:** No, sir. I'm not.

15 **THE COURT:** Thus, you are not representing your
16 wife.

17 **MR. BARFIELD:** No. No, I'm not. But she had
18 brought that up in her answer, in her original
19 answer.

20 **THE COURT:** Well, the whole purpose of what I just
21 read to you out of the Rule 56 of the South
22 Carolina Rules of Civil Procedure is to show
23 that one cannot rely upon an unverified answer
24 in response to a Motion for Summary Judgment if
25 that motion is supported by affidavits and



1 appropriate documents. This motion is
2 supported by an affidavit and appropriate
3 documents, and there's been no -- nothing filed
4 to contradict that in this case.

5 **MR. BARFIELD:** That's true, and like I said, I did
6 have that. I didn't realize it had to be filed
7 two days prior.

8 **THE COURT:** Well, I don't have the right to ignore
9 the rules because somebody didn't know the
10 rules, be it a lawyer or pro se person. I'm
11 happy to explain the rules to people who are
12 not lawyers who represent themselves, but I do
13 not have the right to waive the effect of the
14 rules. Anything else?

15 **MR. BARFIELD:** That was all I had.

16 **THE COURT:** All right. Based on the record, I find
17 there's no genuine issue of fact, that the
18 Plaintiff has the right to enforce the note
19 under existing law. I further find that the
20 Plaintiff is entitled to Summary Judgment on
21 the note and Judgment for foreclosure of the
22 mortgage. I further find that the total debt
23 amount exclusive of attorney's fees and costs
24 is \$238,434.08 and that interest runs on that
25 amount at the rate of \$21.32 a day. I ask that



1 the Plaintiff submit to me and Mr. Barfield an
2 affidavit within ten days of today establishing
3 Plaintiff's attorney's fees. If there's an
4 objection to the attorney's fees, I'll have a
5 separate hearing on that. So, I think what I
6 need for you to do Mr. Balthazor is to submit
7 to me a Judgment of Foreclosure granting
8 Summary Judgment for Foreclosure, an Order
9 granting Summary Judgment for Foreclosure in
10 the amount I said as far as the debt is
11 concerned. I will establish the attorney's
12 fees by subsequent order, and when that is all
13 done, we'll set a sale.

14 **MR. BALTHAZOR:** Yes, Your Honor. I think normally,
15 I would send you a -- I say normally, I'm not
16 sure how you normally you do it. In other
17 cases, I've sent an entire judgement package,
18 which includes an affidavit of attorney's fees,
19 a statement of costs and that gets included in
20 the proposed Order. Obviously, I'll send that
21 entire package to Mr. and Mrs. Barfield. If
22 they've got any objection to any of those
23 amounts stated in the affidavit of the
24 attorney's fees, they can raise those at the
25 proper time.



1 **THE COURT:** Well, the proper time would be ten days
2 after you send it.

3 **MR. BALTHAZOR:** Certainly.

4 **THE COURT:** That's what I'm going to set. And then
5 depending on -- I'll review all that and
6 depending on that, we'll either hold a hearing
7 on attorney's fees or assign an order that
8 includes attorney's fees. So, maybe you need
9 to do those by separate order.

10 **MR. BALTHAZOR:** That can be done.

11 **THE COURT:** As these defendants are not in default,
12 I think that's what I need to do.

13 **MR. BALTHAZOR:** Yes, sir.

14 **THE COURT:** Okay. So, one order plus affidavit of
15 attorney's fees. Defendants Barfield have ten
16 days to file a proper objection to attorney's
17 fees. If necessary, I'll hold a hearing. If
18 I can, I'll review their objections and what is
19 submitted by the Plaintiff in support of the
20 attorney's fees. If I can rule on that, I
21 will.

22 **MR. BALTHAZOR:** Yes, sir.

23 **THE COURT:** Okay. Now, when do you want to -- when
24 did you propose to hold a sale?

25 **MR. BALTHAZOR:** Well, I can probably -- today is



1 Tuesday. I can probably submit a Proposed
2 Order to you by the end of the week. So, what
3 are we -- I guess maybe October.

4 **THE COURT:** October is fine with me.

5 **MR. BALTHAZOR:** I think October.

6 **THE COURT:** As a matter of fact, October is the
7 earliest we can do it, because we're past the
8 cutoff for advertising for September anyway.

9 **MR. BALTHAZOR:** Right.

10 **THE COURT:** So, do that and submit me a Notice of
11 Sale as well for the October sale date. That's
12 October the 3rd, I believe.

13 **MR. BALTHAZOR:** Yes, sir.

14 **THE COURT:** All right. Any questions? Mr.
15 Barfield, do you have any questions?

16 **MR. BARFIELD:** No, sir.

17 **THE COURT:** All right. That will conclude the
18 hearing. Thank you.

19 **(There being no further questions, the deposition**
20 **concluded at 11:38 a.m.)**

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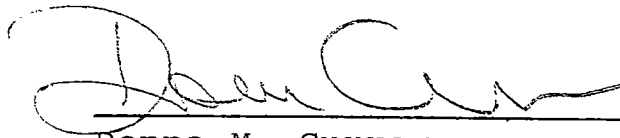


CERTIFICATE

This is to certify that the within hearing consisting of twenty eight (28) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on January 11, 2017.



Donna M. Currey
Court Reporter

Notary Public for South Carolina
My Commission Expires: January 31, 2024



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Master in Equity

Case No. 2015-CP-46-03068

Appellate Case No. 2016-002161

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SC Court of Appeals

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Trustee (CWALT 2004-2CB)

Respondent(s),

v.

Tara B. Barfield,

Appellant.

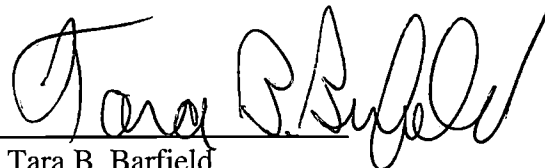
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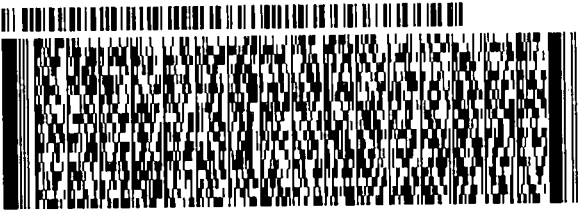
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