

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2016-002041

U.S. Bank National Association, as Trustee for
Citigroup Mortgage Loan Trust, Inc., Mortgage
Pass-Through Certificates, Series 2006-WF2,

Respondent,

v.

Charles T. Brooks, III; Irma R. Brooks; Woodcreek
Farms Homeowners Association; Community Recourse
Bank N.A.; Robinson Equipment Company, a Limited
Partnership; South Carolina Department of Revenue; and
the United States of America acting by and through its
Agency the Internal Revenue Service,

Defendants,


Of whom Charles T. Brooks, III and Irma R. Brooks are the,

Appellants.

RESPONDENT'S MOTION TO DISMISS APPEAL AS UNTIMELY

Respectfully submitted,

FINKEL LAW FIRM LLC


Magalie A. Creech (S.C. Bar 78855)
Post Office Box 41489
Charleston, South Carolina 29423
Telephone: (843) 577-5460
Facsimile: (866) 800-7954
mcreech@finkellaw.com
Attorneys for Respondent

February 10, 2017

INDEX

Index2

Table of Authorities3

Memorandum4

Conclusion7

TABLE OF AUTHORITIES

Cases:

Burnett v. S.C. State Highway Dep't, 252 S.C. 568, 167 S.E.2d 571 (1969)6

Camp v. Camp, 386 S.C. 571, 689 S.E.2d 634 (2010)6

Canal Ins. Co. v. Caldwell, 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999)6

Elam v. S.C. DOT, 361 S.C. 9, 602 S.E.2d 772 (2004)6

First Carolina Nat'l Bank v. A & S Enters., Inc., 272 S.C. 339, 251 S.E.2d 762 (1979)6

Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC, 413 S.C. 642,
776 S.E.2d 575 (Ct. App. 2015)6-7

Rules:

Rule 59(e), SCRCF6

Rule 203, SCACR6

MEMORANDUM

Undersigned counsel for Respondent U.S. Bank National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc., Mortgage Pass-Through Certificates, Series 2006-WF2 hereby submits the instant Memorandum of Law in Support of its Motion to Dismiss the appeal filed by Appellants Charles T. Brooks, III and Irma R. Brooks pursuant to Rule 240 of the South Carolina Appellate Court Rules (SCACR). The Appellants' failure to timely serve a Motion for Reconsideration under Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRPC) did not stay the time for an appeal, and thus the time for Appellants to file a notice of appeal pursuant to Rule 203(b), SCACR was never tolled. Appellants' notice of appeal was filed more than thirty (30) days from the date Appellants received written notice of the entry of the Order Striking Appellants' Jury Demand, which renders their appeal untimely and divests this Court of jurisdiction. Accordingly, an immediate dismissal of the appeal is required.

I. PROCEDURAL POSTURE

Respondent (Plaintiff) commenced a foreclosure action against Appellants Charles T. Brooks, III and Irma R. Brooks (Defendants) by the filing of a Lis Pendens, Summons, Complaint, and Notice of Foreclosure Intervention on August 20, 2015. Defendants timely returned an executed Foreclosure Intervention response form pursuant to the 2011-05-02-01 Administrative Order of the Supreme Court, requesting a reinstatement, payoff plan, loan modification, or forbearance agreement. Defendants also served an Answer and Counterclaim with a jury trial demand on September 21, 2015, to which Plaintiff replied on October 19, 2015. Thereafter, Plaintiff served Defendants a Denial of Foreclosure Relief on March 15, 2016 based on their failure to return all requested documentation and the expiration of the reinstatement

quote provided. A Certification of Compliance with the 2011-05-02-01 Administrative Order was filed on August March 18, 2016.

On April 27, 2016, Plaintiff filed a Motion to Strike Defendants' Jury Demand and for a Mandatory Order of Reference to the Master-in-Equity. Defendants' Answer raised counterclaims for violation of the South Carolina Unfair Trade Practices Act, violation of the South Carolina Consumer Protection Code, breach of contract, breach of contract accompanied by fraudulent act and libel, in addition to the affirmative defense of unclean hands¹. Plaintiff's Motion requested that Defendants' jury demand be stricken and that the case be referred to the Master-in-Equity, on the grounds that Defendants' waived their right to a jury trial on any legal claims asserted in the Answer because they are permissive and were raised in response to Plaintiff's equitable foreclosure action.

A hearing on Plaintiff's Motion was held August 1, 2016 before the Honorable G. Thomas Cooper, Jr. The trial court took the Motion under advisement, and requested Plaintiff and Defendants to submit respective proposed orders via email within the next ten (10) days. The parties complied with this directive, and on August 16, 2016, the trial court sent counsel for Plaintiff and Defendants a copy of the filed Order Striking Defendants' Jury Demand and for Mandatory Reference via email. (See Exhibit A).

On August 31, 2016, fifteen (15) days after counsel for the parties' received written notice of the entry of the Order, Defendants served a Motion for Reconsideration. (See Exhibit B). Thereafter, by Order entered September 16, 2016, the Defendants' Motion was denied without oral argument. (See Exhibit C). Defendants then served a notice of appeal on September 27, 2016, forty-two (42) days after counsel for the parties' received written notice of

¹ Defendants' assertion of unclean hands is captioned "counterclaim" in the Answer.

the entry of the Order Striking Defendants' Jury Demand and for Mandatory Reference to the Master-in-Equity.

II. ARGUMENT

Pursuant to Rule 59(e), SCRPC, a motion to alter or amend a judgment shall be served not later than ten (10) days after receipt of written notice of the entry of the order. See Rule 59(e), SCRPC. "A *timely* post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRPC, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (emphasis added).

Rule 203(b), SCACR requires that a party serve his or her notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment. See Rule 203(b), SCACR. Failure to do so divests this Court of subject matter jurisdiction and requires dismissal of the appeal. See *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 5-6, 524 S.E.2d 416, 418 (Ct. App. 1999) (citing *First Carolina Nat'l Bank v. A & S Enters., Inc.*, 272 S.C. 339, 251 S.E.2d 762 (1979); *Burnett v. S.C. State Highway Dep't*, 252 S.C. 568, 167 S.E.2d 571 (1969)). The Supreme Court of South Carolina has previously stated that "[s]ervice of the notice of appeal is a jurisdictional requirement, and [the] Court has no authority to extend or expand the time in which the notice of intent to appeal must be served." *Camp v. Camp*, 386 S.C. 571, 574-575, 689 S.E.2d 634, 636 (2010) (internal quotations omitted); *Elam*, 361 S.C. 9, 602 S.E.2d 772 (2004) (if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to extend or ignore the deadline for service of the notice.)

This Court has held that email notification from a trial judge of the execution of an order constitutes receipt of written notice pursuant to Rule 203(b)(1), SCACR. See *Wells Fargo Bank*,

N.A. v. Fallon Properties S.C., LLC, 413 S.C. 642, 776 S.E.2d 575 (Ct. App. 2015). In *Fallon*, this Court found that an email from the office of the Master-in-Equity with the order on appeal as an attachment constitutes written notice of entry of the order under Rule 203(b)(1), SCACR.

The Order which Appellants are appealing was entered on August 16, 2016, and counsel for Appellants and Respondent were notified of the foregoing via email *including a copy of the Order* that same day. Based on the holding in *Fallon*, this email from the office of the trial judge constitutes written notice of the entry of the Order pursuant to Rule 203(b)(1), SCACR, absent the filing of a timely post trial motion. Appellants' Rule 59(e) Motion for Reconsideration was untimely served more than ten days after the parties' receipt of written notice of the entry of the Order. Accordingly, Appellants' deadline to serve the notice of appeal was not tolled and fell on September 15, 2016. Appellants served their notice of appeal on September 27, 2016. Appellants' notice of appeal was not served within thirty (30) days after receipt of written notice of the Order and is thus untimely. Therefore, this Court lacks jurisdiction to consider the appeal.

III. CONCLUSION

Appellants' Motion for Reconsideration of the Order Striking Appellants' Jury Demand and for Mandatory Reference was served more than ten (10) days after counsel for the parties' received written notice of entry of said Order. Therefore, the time for Appellants to file a notice of appeal was not tolled. Appellants' notice of appeal was served forty-two (42) days after the parties received written notice of the entry of the Order and as a result, Appellants' notice of appeal was untimely. Therefore, this Court lacks jurisdiction to consider the appeal and should dismiss it accordingly.

(SIGNATURE PAGE FOLLOWS)

Respectfully submitted,

FINKEL LAW FIRM LLC


Magalie A. Creech (S.C. Bar 78855)
Post Office Box 41489
Charleston, South Carolina 29423
Telephone: (843) 577-5460
Facsimile: (866) 800-7954
mcreech@finkellaw.com
Attorneys for Respondent

February 10, 2017

Magalie Creech

From: Cooper, G. Thomas Law Clerk (George C. James, III) <GCooperLC@sccourts.org>
Sent: Tuesday, August 16, 2016 2:59 PM
To: 'brooksirbrooks@aol.com'; Magalie Creech; Cooper, G. Thomas
Subject: U.S. Bank National Association, as Trustee v. Charles T. Brooks, III; et al. (2015-CP-40-05098)
Attachments: Order Striking Defendants' Jury Trial Demand and For Mandatory Reference.pdf

Counsel,

Attached please find a scanned copy of signed Order Striking Defendants' Jury Demand and for Mandatory Reference in the above referenced case. The original will be mailed Magalie Creech at her P.O. Box for filing.

Thank you,

George James
Law Clerk to the Honorable G. Thomas Cooper, Jr.
Circuit Court of South Carolina, Fifth Circuit
1701 Main St., Room 320
P.O. Box 192
Columbia, SC 29201
Phone: (803) 576-1783
Fax: (803) 576-1741

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# The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW  
IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150  
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151

(803) 418-5708

FAX: (803) 934-9618

Email: [cbrooks@ctbrooks.com](mailto:cbrooks@ctbrooks.com)

[brooksirbrooks@aol.com](mailto:brooksirbrooks@aol.com)

August 31, 2016

The Honorable G. Thomas Cooper, Jr.  
Fifth Judicial Circuit  
Post Office Box 192  
Columbia, South Carolina 29202-0192

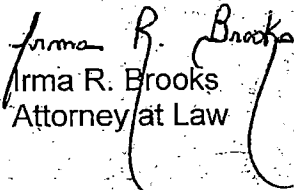
RE: U.S. Bank National Association, *et al.* v. Charles T. Brooks, III, *et al.*  
C/A No.: 2015-CP-40-05098

Dear Judge Cooper:

Enclosed, please find a **MOTION FOR RECONSIDERATION OF ORDER STRIKING DEFENDANTS' JURY TRIAL DEMAND AND FOR MANDATORY REFERENCE** and a **PROOF OF SERVICE** in the above referenced matter.

Thank you in advance for your attention to this matter.

Sincerely,

  
Irma R. Brooks  
Attorney at Law

Enclosures as stated

cc: Ms. Magalie A. Creech  
Attorney at Law  
FINKEL LAW FIRM, LLC  
Post Office Box 41489  
Charleston, South Carolina 29423

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-40-05098

U.S. Bank National Association, as Trustee )  
for Citigroup Mortgage Loan Trust, Inc., )  
Mortgage Pass-Through Certificates, Series )  
2006-WE2, )

MOTION AND ORDER INFORMATION

\_\_\_\_\_, Plaintiff, )  
vs. )  
\_\_\_\_\_, Defendant. )  
Charles T. Brooks, III )

FORM AND COVERSHEET

2016 AUG 31 PM 2:06  
HEARSHETTE H. NOBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Plaintiff's Attorney:<br>Magalie A. Creech, Bar No. 78855<br>Address:<br>FINKEL LAW FIRM, LLC,<br>Post Office Box 41489<br>Charleston, SC 29423<br>Phone: 843-577-5460 Fax 866-800-7954<br>E-mail: _____ Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Defendant's Attorney:<br>Irma R. Brooks, Bar No. 8507<br>Address:<br>THE BROOKS LAW OFFICE, LLC<br>Post Office Box 3512<br>Sumter, SC 29151<br>Phone: 803-418-57-8 Fax 803-934-9618<br>E-mail: _____ Other: _____ |
| <input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)<br><input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)<br><input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                   |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                   |
| Nature of Motion: Motion for Reconsideration<br>Estimated Time Needed: 15 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                   |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                   |
| <input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                   |
| <u>Irma R. Brooks</u><br>Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 8-31-2016<br>Date submitted                                                                                                                                                                                       |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                   |
| <input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____<br><input type="checkbox"/> EXEMPT:<br>(check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____<br><input type="checkbox"/> Other: _____ |                                                                                                                                                                                                                   |
| <b>JUDGE'S SECTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                   |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | JUDGE CODE _____<br>Date: _____                                                                                                                                                                                   |

CLERK'S VERIFICATION

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

MOTION FEE COLLECTED: \$ \_\_\_\_\_

CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

U.S. Bank National Association, as )  
Trustee for Citigroup Mortgage Loan )  
Trust, Inc., Mortgage Pass-Through )  
Certificates, Series 2006-WF2, )

Plaintiff, )

vs. )

Charles T. Brooks, III; Irma R. Brooks; )  
Woodcreek Farms Homeowners )  
Association; Community Resource Bank )  
N.A.; Robinson Equipment Company, )  
A Limited Partnership; South Carolina )  
Department of Revenue; and the United )  
States of America acting by and through )  
its agency the Internal Revenue Service, )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT  
C/A No.: 2015-CP-40-05098

RICHLAND COUNTY  
FILED  
2016 AUG 31 PM 2:06  
JEANNETTE W. MORRIS  
C.C.P. & C.S.

---

**MOTION FOR RECONSIDERATION OF  
ORDER STRIKING DEFENDANTS'  
JURY TRIAL DEMAND  
AND FOR  
MANDATORY REFERENCE**

---

YOU WILL PLEASE TAKE NOTICE that the Defendants, Charles T. Brooks, III, and Irma R. Brooks, by and through their undersigned attorney, hereby moves before the Honorable Judge G. Thomas Cooper, Jr., Presiding Judge of the Circuit Court for the Fifth Judicial Circuit, in the County of Richland for RECONSIDERATION of the ORDER STRIKING DEFENDANTS' JURY TRIAL DEMAND AND FOR MANDATORY REFERENCE based on the following reason(s):

**Whether the Defendants have alleged compulsory legal counterclaims such that the Plaintiff cannot prevail on the foreclosure claim, necessitating a jury trial on those counterclaims and preventing this foreclosure matter from being referred to the Master-in-Equity in its entirety?**

The issue herein is whether any or all of the counterclaims are permissive or compulsory. Except for the accounting, the Defendants have argued that the counterclaims are compulsory, entitling them to a jury trial on those issues. The Plaintiff, relying on *Wachovia Bank, National Association v. Blackburn*, No. 27359, 2014 WL 766311 at \*4 (February 26, 2014), has argued that the counterclaims are permissive in nature, therefore the Defendants have waived the right to a jury trial.

The South Carolina Supreme Court in *Johnson v. S.C. Natl. Bank*, set out “the proper analysis for determining the trial of legal and equitable issues in complaints and counterclaims” as follows:

- (1) If both the complaint and the counterclaim are in equity, the entire matter is triable by the court.
- (2) If both are at law, the issues are triable by a jury.
- (3) If the complaint is equitable and the counterclaim legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaims. In that case, the proper procedure is as follows:
  - (a) The trial judge may, pursuant to Rule 42(b), order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding.

(b) If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the "most imperative circumstances," *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 79 S. Ct. 948, 3 L.Ed.2d 988 (1959), the "at law" claim must be tried first. If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first.

(c) If the claims are to be tried in a single proceeding and there are factual issues common to both claims, the jury shall first determine the legal issues. The court may then determine the equitable claims, but the jury's determination of common factual issues shall be binding upon the court.

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

The next important inquiry herein is whether the counterclaims alleged by the Defendants are compulsory counterclaims in a mortgage foreclosure action. The South Carolina Court of Appeals in *Wells Fargo Bank, N.A. v. Smith*, discussed the test for determining whether a counterclaim is compulsory as follows:

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

Here, there is a "logical relationship" between the enforceability of the Note, which is the subject of the foreclosure action, and the allegation that the Mortgage between Wells Fargo and Smith is unconscionable. If Smith prevails on his unconscionability claim, it will affect Wells Fargo's right to enforce the Note and foreclosure the Mortgage. Therefore, Smith's common law unconscionability counterclaim is compulsory under the "logical relationship" test.

Therefore, the *Wells Fargo v. Smith* test is that if success on the counterclaim would mean that the plaintiff cannot prevail on its foreclosure claim, then the counterclaim is compulsory. A jury trial would then be appropriate under such a test.

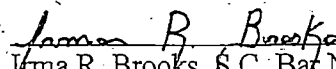
Nine of the ten counterclaims alleged by the Defendants fall under the "logical relationship" test relating to the note and the foreclosure of the Mortgage: (1) violating foreclosure intervention by denying Defendants participation in the Home Affordable Modification Program; (2) unclean hands as it relates both the loan modification process and for refusing to accept monthly payments to prevent the foreclosure action in the first place; (3) violation of the Home Affordable Modification Program, specifically as it relates to proceeding with a foreclosure action in the first place; (4) violation of the South Carolina Consumer Protection Code both for the loan modification process and the debt collection practices leading to the foreclosure action in the first place; (5) violation of the South Carolina Unfair Trade Practices Act as it relates to the foreclosure action and the debt collection practices; (6) breach of contract concerning the loan, the mortgage, and the loan modification; (7) breach of contract with fraudulent intent concerning the loan, the mortgage, and the loan modification; (8) libel per se regarding the payments involving the loan and mortgage; and (9) conversion of payments under the loan and the mortgage. All of the counterclaims allege facts dealing with the debt and the foreclosure action, specifically the note and the mortgage. While it is true the counterclaims also allege facts concerning the loan modification process, those allegations are not exclusive to disregarding facts relating to the debt and the Mortgage, which are

the subjects of the foreclosure action and fall under the "logical relationship" test. All of the Defendants' counterclaims are compulsory in that they do affect the Plaintiff's right to enforce the note and foreclose the mortgage. More specifically, the counterclaims asserting unclean hands (2), breach of contract (6), breach of contract with fraudulent intent (7), libel per se (8), and conversion (9) all deal with the debt and the foreclosure action and do not only allege facts occurring after the alleged default. As such, those counterclaims are legal and compulsory and entitle the Defendants herein to a jury trial on those matters.

In *Plantation Fed. Bank v. Gray*, Op. No. 5075 (S.C. Ct. of App., 2013), the Court of Appeals reversed a case in which the master-in-equity allowed the bank to proceed with its foreclosure action before the compulsory legal counterclaims were adjudicated. Gray alleged unclean hands as a part of her defense to the foreclosure action. The court noted that Gray's counterclaims were compulsory in nature and involved questions of facts that will arise in the foreclosure action.

Here, the Defendants have raised through their compulsory counterclaims alleged questions of fact regarding the note and mortgage, which are the central issues of the foreclosure case. The Defendants are entitled to a jury trial as a matter of right and submit this request for RECONSIDERATION of the court's ruling.

RESPECTFULLY SUBMITTED,

  
Irma R. Brooks, S.C. Bar No. 8507  
Attorney for Defendants Charles T. Brooks,  
III and Irma R. Brooks

THE BROOKS LAW OFFICE, LLC  
309 Broad Street  
Post Office Box 3512  
Sumter, South Carolina 29151  
803-418-5708  
803-934-9618 [Facsimile]  
brooksirbrooks@aol.com

August 31, 2016

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

U.S. Bank National Association, as )  
Trustee for Citigroup Mortgage Loan )  
Trust, Inc., Mortgage Pass-Through )  
Certificates, Series 2006-WF2, )

Plaintiff, )

vs. )

Charles T. Brooks, III; Irma R. Brooks; )  
Woodcreek Farms Homeowners )  
Association; Community Resource Bank )  
N.A.; Robinson Equipment Company, )  
A Limited Partnership; South Carolina )  
Department of Revenue; and the United )  
States of America acting by and through )  
its agency the Internal Revenue Service, )

Defendants. )

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-40-05098

**PROOF OF SERVICE**

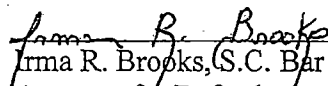
The undersigned states that on August 31, 2016, a true and correct copy of

**MOTION FOR RECONSIDERATION OF  
ORDER STRIKING DEFENDANTS'  
JURY TRIAL DEMAND  
AND FOR  
MANDATORY REFERENCE**

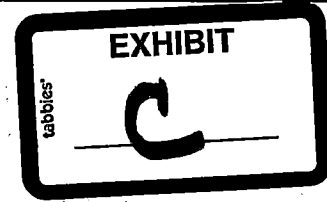
has been served upon the parties identified below by depositing in the United States mail, proper postage affixed and addressed as follows:

The Honorable G. Thomas Cooper, Jr.  
Fifth Judicial Circuit  
Post Office Box 192  
Columbia, South Carolina 29202-0192

Ms. Magalie A. Creech  
Attorney at Law  
FINKEL LAW FIRM, LLC  
Post Office Box 41489  
Charleston, South Carolina 29423

  
Irma R. Brooks, S.C. Bar # 8507  
Attorney for Defendants Charles T. Brooks,  
III, and Irma R. Brooks  
THE BROOKS LAW OFFICE, LLC  
309 Broad Street  
Post Office Box 3512  
Sumter, South Carolina 29151  
803-418-5708  
803-934-9618 [Facsimile]  
brooksirbrooks@aol.com

August 31, 2016



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT  
C/A No.: 2015-CP-40-05098

U.S. Bank National Association, as )  
Trustee for Citigroup Mortgage-Loan )  
Trust, Inc., Mortgage Pass-Through )  
Certificates, Series 2006-WF2, )

**ORDER DENYING DEFENDANTS'  
MOTION FOR RECONSIDERATION**

Plaintiff, )

vs. )

Charles T. Brooks, III; Irma R. Brooks; )  
Woodcreek Farms Homeowners )  
Association; Community Resource Bank )  
N.A.; Robinson Equipment Company, )  
A Limited Partnership; South Carolina )  
Department of Revenue; and the United )  
States of America acting by and through )  
its agency the Internal Revenue Service, )

Defendants. )

RICHLAND COUNTY  
FILED  
2016 SEP 19 AM 9:19  
JEANETTE W. McBRIDE  
C.C.P. & G.S.


This matter comes before the Court by way of Defendants' Motion For Reconsideration of Order Striking Defendants' Jury Trial Demand and For Mandatory Reference pursuant to Rule 59(e), SCRPC dated and filed August 31, 2016. Specifically, Defendants ask this Court to reconsider its Order Striking Defendants' Jury Trial Demand and For Mandatory Reference filed August 16, 2016.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby **DENIES** Defendant's Motion under Rule 59(e), SCRCP, to reconsider this Court's Order that was filed August 16, 2016. Furthermore, pursuant to Rule 59(f), SCRCP, the Court is of the opinion that oral argument is not necessary.

**IT IS SO ORDERED.**

Columbia, South Carolina  
September 16, 2016

  
\_\_\_\_\_  
G. Thomas Cooper, Jr., Judge  
Fifth Judicial Circuit

SCANNED

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4005098

US Bank National Association  
CitiGroup Mortgage Loan Trust Inc  
PLAINTIFF(S)

Charles T Brooks III  
Irma R Brooks  
DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

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

RICHLAND COUNTY  
 FILED  
 2015 SEP 19 AM 9:54  
 JENNIFER WOODBRIDGE  
 CLERK OF COURT

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 |
|-------------------------------------------|---------------------------------------|--------------------------------|
|                                           |                                       | \$                             |
|                                           |                                       | \$                             |
|                                           |                                       | \$                             |

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 2126 Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Sept, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas A. Shook                      Magalie Arcure Creech                      Brittany Lauren Kilpatrick                      Irma Pringle Brooks  
George John Conits

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. Pringle





THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Case No: 2015-CP-40-05098

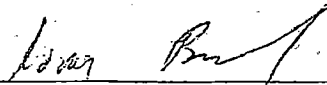
U.S. Bank National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc., Mortgage  
Pass-Through Certificates, Series 2006-WF2,.....Respondent

v.

Charles T. Brooks, III; Irma R. Brooks; Woodcreek Farms Homeowners Association;  
Community Resource Bank N.A.; Robinson Equipment Company, A Limited Partnership; South  
Carolina Department of Revenue; and the United States of America acting by and through its  
agency the Internal Revenue Service, .....Appellant

**NOTICE OF APPEAL**

Charles T. Brooks, III and Irma R. Brooks, Appeals the Order Denying Defendant's  
Motion for Reconsideration in this matter. The Order was imposed and signed by the Honorable  
Thomas G. Cooper, Jr., on September 16, 2016 and recorded in the Office of the Clerk of Court  
for Richland County on September 19, 2016.

  
Irma R. Brooks  
Post Office Box 3512

September 26, 2016

309 Broad Street  
Sumter, South Carolina 29151  
(803) 418-5708  
Attorney for Appellant

Other Parties on Record:

Magalie A. Creech  
Post Office Box 41489  
Charleston, South Carolina 29423

Thomas A. Shook  
Post Office Box 71727  
North Charleston, South Carolina 29415

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

---

Case No.: 2015-CP-40-05098

---

U.S. Bank National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc.,  
Mortgage Pass-Through Certificates, Series 2006-WF2,.....Respondent

v.

Charles T. Brooks, III; Irma R. Brooks; Woodcreek Farms Homeowners Association;  
Community Resource Bank N.A.; Robinson Equipment Company, A Limited  
Partnership; South Carolina Department of Revenue; and the United States of America  
acting by and through its agency the Internal Revenue Service,  
.....Appellant

---

**PROOF OF SERVICE**

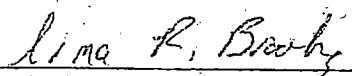
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I, the undersigned, do hereby certify that on this September 27, 2016, I served the  
foregoing **Notice of Appeal** as well as **Proof of Service** in this matter by depositing a  
true copy of it in the United States Mail, postage prepaid, on September 27, 2016,  
addressed to the following as indicated below:

Magalie A. Creech  
Post Office Box 41489  
Charleston, South Carolina 29423

Thomas A. Shook  
Post Office Box 71727  
North Charleston, South Carolina 29415

Dated: September 27, 2016

  
Irma R. Brooks  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

**RECEIVED**

FEB 14 2017

**SC Court of Appeals**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

---

Appellate Case No. 2016-002041

---

U.S. Bank National Association, as Trustee for  
Citigroup Mortgage Loan Trust, Inc., Mortgage  
Pass-Through Certificates, Series 2006-WF2,

Respondent,

v.

Charles T. Brooks, III; Irma R. Brooks; Woodcreek  
Farms Homeowners Association; Community Recourse  
Bank N.A.; Robinson Equipment Company, a Limited  
Partnership; South Carolina Department of Revenue; and  
the United States of America acting by and through its  
Agency the Internal Revenue Service,

Defendants,

Of whom Charles T. Brooks, III and Irma R. Brooks are the,


Appellants.

---

PROOF OF SERVICE

---

I certify that I have served the *Respondent's Motion to Dismiss Appellant's Appeal as Untimely* by depositing a copy of same in the United States Mail, postage prepaid, on February 10, 2017, addressed to Appellant *Pro Se* and Appellant Charles T. Brooks, III's counsel of record, Irma R. Brooks, Esquire, P.O. Box 3512, Sumter, South Carolina, 29151



Magalie A. Creech (SC Bar #78855)

FINKEL LAW FIRM LLC

Post Office Box 41489

Charleston, South Carolina 29423

Telephone: (843) 577-5460

Facsimile: (866) 800-7954

[mcreech@finkellaw.com](mailto:mcreech@finkellaw.com)

*Attorney for Respondent*

February 10, 2017



MAGALIE A. CREECH  
MCREECH@FINKELLLAW.COM

REPLY TO:  
CHARLESTON LITIGATION

February 10, 2017

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**  
FEB 14 2017  
SC Court of Appeals

RE: U.S. Bank National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc., Pass-Through Certificates, Series 2006-WF2 v. Charles T. Brooks, III; Irma R. Brooks; et al.  
Appellate Case No.: 2016-002041  
Our File No.: 40700.49897

Dear Ms. Kitchings:

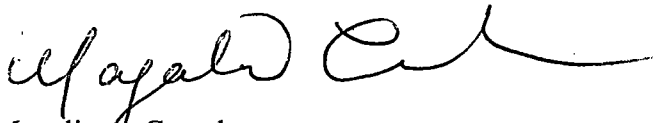
Enclosed for filing is the *Respondent's Motion to Dismiss Appellant's Appeal as Untimely* and related *Proof of Service* in the above-referenced case, along with six (6) copies, which we kindly ask you to file and return in the attached, self-addressed, stamped envelope. Enclosed also is check number 63193 in the amount of \$25.00 for the filing fee.

Should you have any questions concerning this matter, please do not hesitate to contact our office at your earliest convenience.

With kind personal regards, we are

Yours very truly,

FINKEL LAW FIRM

  
Magalie A. Creech

CC: Irma R. Brooks, Esquire

**COLUMBIA**  
1201 Main Street, Suite 1800  
Post Office Box 1799 (29202)  
Columbia, SC 29201  
Tel: (803) 765-2935  
Fax: (803) 252-0786

**CHARLESTON**  
Litigation, Real Estate & REO  
4000 Faber Place Drive, Suite 450  
Post Office Box 41489 (29423)  
North Charleston, SC 29405  
Tel: (843) 577-5460  
Fax: (843) 577-5135

**CHARLESTON**  
Foreclosure  
4000 Faber Place Drive, Suite 450  
Post Office Box 71727 (29415)  
North Charleston, SC 29405  
Tel: (843) 577-5460  
Fax: (843) 725-0015



U.S. POSTAGE PITNEY BOWNE



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**FINKEL**  
LAW FIRM LLC

P.O. Box 41489  
Charleston, SC 29423

DFB

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**

FEB 14 2017

SC Court of Appeals