

THE SOUTH CAROLINA COURT OF APPEALS

BRANCH BANKING AND TRUST COMPANY, RESPONDENT

RECEIVED

V.

FEB 01 2017

SC Court of Appeals

WILTON H. CAIN AND CASSANDRA M. CAIN, APPELLANTS

APPELLATE CASE NO. 2016- 000292

AMENDED RECORD ON APPEAL

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale Van Slambrook, Master in Equity

Case No. 2016-000292

Branch Banking and Trust Company..... Plaintiff/ Respondent,

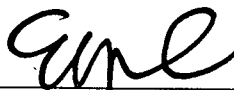
v.

Wilton H. Cain; Cassandra M. Durrah-Cain;
Liberty Hall Residential Property Owners
Association, Inc..... Defendants,

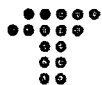
Of whom Wilton H. Cain and
Cassandra M. Durrah-Cain are the..... Appellants.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **RESPONDENT'S MOTION FOR EXTENSION OF TIME** on Appellants Wilton H. Cain and Cassandra M. Durrah-Cain by depositing copies of it in the United States Mail, postage prepaid, on August 11, 2016, addressed to Appellants Wilton H. Cain and Cassandra M. Durrah-Cain at 6476 N. Highway 17, Awendaw, SC 29429.



Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
Post Office Box 100200(29202)
1221 Main Street, 14th Floor
Columbia, South Carolina 29201
(803)771-7900
Attorney for the Respondent
Rogers Townsend & Thomas, PC and its staff are debt collectors



ROGERS TOWNSEND
ATTORNEYS AT LAW

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Erica G. Lybrand
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LICENSED IN SOUTH CAROLINA

Karissa Richardson
Paralegal for Erica G. Lybrand
Karissa.Richardson@RTT-LAW.COM
P: 803-744-5323

August 11, 2016

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals Clerk of Court
1015 Sumter Street
Columbia, SC 29201

RE: *Branch Banking and Trust Company v. Wilton H. Cain; Cassandra M. Durrah-Cain; Liberty Hall Residential Property Owners Association, Inc.*
C/A # 2010-CP-08-03514
RTT File # 504335-02111

Dear Ms. Kitchings:

Enclosed are an original and one copy of Respondent's Motion for Extension of Time to File Brief and Proof of Service in the above referenced matter. Also enclosed is a check in the amount of \$25.00 representing the motion filing fee. Please file the original document, and return the clocked copy to me in the envelope provided for the Court's convenience.

With kind regards, I remain

Cordially yours,

Karissa Richardson
Paralegal for Erica G. Lybrand

Enclosures

cc:

Joseph E. DaPore, Esquire
PO Box 993
Charleston, SC 29402

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company;

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;
Liberty Hall Residential Property Owners
Association, Inc.;

Defendants.

(504335-02111 EL1)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2010-CP-08-03514

ORDER

CLERK OF COURT
BERKELEY COUNTY, SC.

FILED
DEC - 1 PM 4:05

This matter came before me on October 29, 2015, for a status conference relating to the Defendant Wilton H. Cain's Petition for Appraisal originally filed on September 29, 2011. This matter was remitted to this court from the South Carolina Court of Appeals on October 17, 2014.

Based upon the arguments of counsel for the Plaintiff and Mr. Cain, it is hereby ordered that:

1. Mr. Cain is entitled to pursue his rights to the appraisal process pursuant to § 29-3-710, South Carolina Code of Laws;
2. Plaintiff is ordered to obtain an appraisal of the property and submit to the court within 30 days of the date of this order;
3. The Parties may submit any additional information to the Court for the use in determining the value of the property at the time of the foreclosure sale;
4. The Court shall render a decision regarding the deficiency judgment entered in this matter upon receipt of Plaintiff's appraisal.
5. Parties agreed to proceed with two (2) appraisers. *DN*

IT IS SO ORDERED.


The Honorable Dale Van Slambrook
Master in Equity for Berkeley County

12/1, 2015

MSE

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-08-3514

BRANCH BANKING AND TRUST
COMPANY,

Plaintiff,

Vs.

WILTON H. CAIN, ET AL.,

Defendant(s).

NOTICE OF HEARING

TO:

Wilton H. Cain
6476 North Highway 17
Awendaw, SC 29429

Cassandra M. Durrah-Cain
6476 North Highway 17
Awendaw, SC 29429

Joseph E. DaPore
Attorney for Liberty Hall Residential
Property Owners Association, Inc.
Post Office Box 993
Charleston, SC 29402

Rogers, Townsend & Thomas, PC
Attn: Erica G. Lybrand, Esq.
Post Office Box 100200
Columbia, SC 29210

PLEASE TAKE NOTICE that a hearing has been set for Thursday, January 14, 2016 at 11:00 a.m. in Courtroom A, at the Berkeley County Courthouse, 300-B California Avenue, Moncks Corner, South Carolina 29461.

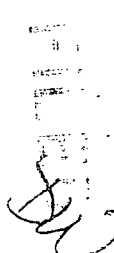
Please be present if so minded.


Dale E. Van Slambrook,
Berkeley County Master-In-Equity

December 8, 2015

CLERK OF COURT
BERKELEY COUNTY, S.C.

15 DEC -9 PM 2:38



KDC

SCAILED

KDC

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

BRANCH BANKING AND TRUST
COMPANY,

Plaintiff

-versus-

WILTON H. CAIN, ET AL.

Defendant(s).

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-CP-08-3514

ORDER REDUCING
DEFICIENCY JUDGMENT

CLERK OF COURT
BERKELEY COUNTY, SC.

DEC-14 PM 1:59

This matter came before me to determine a deficiency judgment amount, if any, following Defendants Wilton H. Cain and Cassandra M. Durrah-Cain exercise of their rights to the appraisal process pursuant to S.C. Code §29-3-710 (1976). This Court would make the following findings of fact and conclusions of law:

1. This Court issued a Judgment of Foreclosure in the amount of \$205,393.82 as of September 2, 2011. Judgment was entered on September 19, 2011.
2. Pursuant to proper notice following the Order of Foreclosure the subject property was sold to the Plaintiff for \$121,000.00. Such sale was final as of September 2, 2011 resulting in a Deficiency Judgment in the amount of \$83,893.82 dated September 16, 2011.
3. Defendants properly exercised their rights to the appraisal process pursuant to S.C. Code §29-3-710 (1976) and submitted an appraisal performed by a duly licensed South Carolina Appraiser asserting the indicated value by Sales Comparison Approach of the subject property as of September 2, 2011 was \$168,000.00. This appraisal included an assessment of the interior of the subject property.

Don

4. Plaintiff also submitted an appraisal performed by a duly licensed South Carolina Appraiser asserting the indicated value by Sales Comparison Approach of the subject property was \$167,000.00. However, such appraisal was based upon an examination of the exterior of the subject property.
5. The parties waived the necessity of a third appraiser and agreed to allow this Court to determine the value based upon the two appraisals referenced above.
6. Based upon a thorough and careful review of the referenced appraisals this Court determines the value of the subject property as of September 2, 2011 was \$168,000.00.
7. Defendants deficiency is established as follows:

Final Judgment Amount	\$205,393.82
Less-Value	<u>\$168,000.00</u>
Deficiency Judgment as of 9/2/11 with interest thereon at the rate of 6.25% per annum	\$ 37,393.82

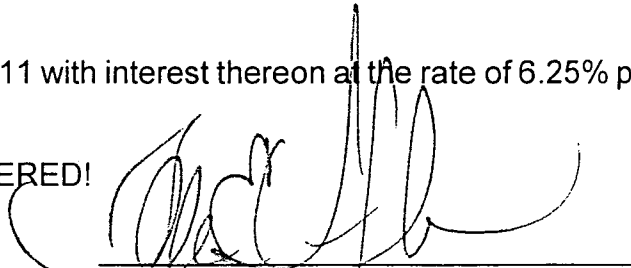
It is therefore Ordered, Adjudged and Decreed that the Deficiency Judgment rendered against Defendants Wilton H. Cain and Cassandra M. Durrah-Cain in the amount of \$83,893.82 entered on September 16, 2011 be reduced to \$37,393.82.

It is further Ordered, Adjudged and Decreed that the Plaintiff have judgment against Defendants Wilton H. Cain and Cassandra M. Durrah-Cain in the amount of

Don

\$37,393.82 as of September 2, 2011 with interest thereon at the rate of 6.25% per annum.

AND IT IS SO ORDERED!



Dale E. Van Stambrook
Master-in-Equity, Berkeley County

2ND day of DECEMBER 2015
Moncks Corner, South Carolina



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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-08-3514

Branch Banking and Trust Company,

Wilton H. Cain, et al.

PLAINTIFF(S)

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (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. 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)
Branch Banking and Trust Company	Wilton H. Cain	\$ 37,393.82
		\$
		\$

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.

Presiding Judge / Master in Equity

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 4 day of Dec, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of Dec, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Rogers, Townsend & Thomas, PC

Post Office Box 100200

Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Mary P. Brown IDW
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY 16 JAN 26 PM 3:49 DOCKET NO. 2010-CP-08-03514

Branch Banking and Trust Company
v. MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

**ORDER CONFIRMING
DEFICIENCY JUDGMENT AND
DENYING DEFENDANTS
MOTION TO ALTER, AMEND,
OR RECONSIDER**

Wilton H. Cain; Cassandra M. Durrah-Cain;
Liberty Hall Residential Property Owners
Association, Inc.;

Defendants.

(504335-02111 EL1)

This matter came before me on January 14, 2016, for a status conference and hearing as to Defendants Wilton H. Cain and Cassandra M. Durrah-Cain's ("Defendants") Motion to Dismiss Deficiency Judgment filed on December 29, 2015. Pursuant to discussion at the hearing, the Court is treating Defendants motion as a Motion to Alter, Amend, or Reconsider the Order Reducing Deficiency Judgment filed on December 4, 2015, pursuant to Rule 59(c) of the *South Carolina Rules of Civil Procedure*.

FACTS/ PROCEDURAL HISTORY

1. Plaintiff filed its foreclosure action against Defendants on October 4, 2010, regarding a Mortgage on real property located in Berkeley County, South Carolina, more fully described as follows ("Subject Property"):

All that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "Subdivision Plat Showing Phase 10A, (39.298 AC), Mulberry Park, A Portion of Tract E1 of The Liberty Hall Tract, Property of Centex Homes, A Nevada General Partnership, located in the City of Goose Creek, Berkeley County, South Carolina" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear. Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record. This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and

DW

recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

TMS # 244-03-04-016

Property Address: 259 Clayburne Drive
Goose Creek, SC 29445

2. The Mortgage includes a provision regarding Mortgage Insurance which reads, in part:

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.

3. Defendants were served with the Lis Pendens, Summons, and Complaint, and an Order of Default was entered on December 8, 2010, holding the Defendants in default in the action¹.

4. The matter was referred to the Master in Equity on the same date, December 8, 2010.

5. A hearing was set for March 22, 2011, and Defendant Wilton H. Cain appeared at the hearing. The hearing was continued by Judge Watson at that time on order to allow Plaintiff to produce a live witness for cross-examination.

6. Defendants then filed a late answer on March 28, 2011, although already in default.

7. A second hearing was held on June 16, 2011, and Plaintiff produced Richard Miller ("Mr. Miller") from BB&T as a witness. Mr. Miller testified as to the loan documents, the payment history, the default of the loan by the Defendants, and the debt amount. Mr. Miller also

¹ An Amended Affidavit of Default and Non-Military Service was filed on December 29, 2010, to withdraw the order of default as to Liberty Hall Residential Property Owners Association, Inc. as that entity was inadvertently held in default after filing an answer.

testified regarding the mortgage insurance policy between BB&T and the mortgage insurance carrier.²

8. A Judgment of Foreclosure and Sale was entered on June 30, 2011, with a judgment amount of \$201,660.89.

9. The judicial sale of the property was finalized on September 2, 2011, and the Subject Property sold to the Plaintiff for the sum of \$121,500.00.

10. Subsequently, a deficiency judgment was entered on September 19, 2011, in the amount of \$83,893.82, representing the difference between the judgment amount plus post-judgment interest and supplemental costs and the final sales price, pursuant to S.C. Code Ann. § 29-3-660.

11. Thereafter, Defendants filed a Petition and Proposed Order for Appraisal, and on September 28, 2011, The Honorable Kristi Lea Harrington signed the Order. It was filed the next day, September 29, 2011.

12. On October 21, 2011, Judge Harrington *sua sponte* issued a Form 4 Order rescinding her prior Order for Appraisal.

13. Defendants filed a Motion to Reconsider on November 1, 2011, which was denied by Judge Harrington on November 9, 2011, without hearing or participation from Plaintiff or its counsel.

14. Defendants filed a Notice of Appeal on December 8, 2011. Following a lengthy appeals process, the South Carolina Court of Appeals vacated the Order of Judge Harrington and remanded the case for an order containing the specific factual findings and conclusions of law as

² While it is believed that the topic of mortgage insurance was discussed at the time of the hearing, the transcript of the hearing is no longer available from the court reporter and, thus, Plaintiff cannot accurately report the extent of the discussion at hearing.

ORDER

to whether the Defendants were entitled to exercise their appraisal rights. The Order was entered on September 24, 2014. A Remittitur was issued on October 17, 2014.

15. On May 29, 2015, a Form 4 Order was entered, reinstating the September 28, 2011, Order for Appraisal.

16. On December 4, 2015, after the appraisal process was completed, this Court entered an Order Reducing Deficiency Judgment.

17. The Court determined the value of the Subject Property as of the date of the judicial sale to be \$168,000.00 and therefore reduced the deficiency judgment to \$37,393.82, which reflected the total after final judgment amount (including post-judgment interest and additional costs) less the newly determined value of the Subject Property.

18. Defendants objected to the entry of the deficiency judgment on the basis of alleged mortgage insurance and alleged payment of said insurance to Plaintiff. *Defendants did not object to this Court's valuation of the subject property.*

19. Defendants' Motion to Dismiss Deficiency Judgment was filed on December 29, 2015.

20. Defendants did not present any evidence or affidavits regarding his position prior to or at the hearing.

21. Plaintiff's Brief Regarding Deficiency Judgment was filed on January 7, 2016, containing the arguments and evidence presented by the Plaintiff.

CONCLUSIONS OF LAW

1. I find that "[T]he general rule is that "if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the

remaining deficiency." *Am. Gen. Fin. Servs., Inc. v. Brown*, 376 S.C. 580, 583, 658 S.E.2d 99, 100 (2008), citing *Perpetual Bldg. and Loan Ass'n of Anderson v. Braun*, 270 S.C. 338, 340, 242 S.E.2d 407, 408 (1978).

2. The law regarding deficiency judgments and the appraisal process in South Carolina is governed by statute. *S.C. Code Ann.* § 29-3-660 states:

In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage ...

3. Further:

In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.

S.C. Code Ann. § 29-3-680.

4. Once the appraisal process has been completed and the return of the appraisers made, the deficiency judgment is to be confirmed, altered, or extinguished based upon the Court's finding after review of the return:

If the value returned after deduction therefrom of the amount of the price at which the property was sold under direction of the court be equal to or exceed the amount of the deficiency remaining upon the judgment after application of the net proceeds of sale the judgment shall be thereupon extinguished and cancelled of record by the clerk and if such returned value, after deduction of the amount of the sale price, be less than the deficiency the latter shall be abated and deemed paid, pro tanto, and be thereafter enforceable for only the remainder, the amount of which will be determined by the clerk and stated in a proper order from which any party may appeal within ten days after notice of filing thereof to the court or any judge thereof in accord with the procedure prescribed in § 29-3-750.

S.C. Code Ann. § 29-3-740.

5. The statute does not contemplate any other considerations in the confirmation, reduction, or cancellation of a deficiency judgment entered, other than the value as returned by the appraisers.

6. I find that, pursuant to the law outlined above, the Plaintiff is entitled to a deficiency judgment unless it is waived. Plaintiff in this case specifically demanded deficiency from the filing of the complaint and has made no waiver of this right.

7. Further, the statute governing deficiency judgments and the appraisal rights of the borrower provides for specific considerations in the setting of the deficiency judgment entered against the borrower or the reduction of such a judgment following the appraisal process; third party insurance payments or other sources of recovery by the Plaintiff are not contemplated by the statute and, therefore, will not be considered by this Court in entering an award in favor of Plaintiff.

8. Additionally, I find that South Carolina also recognizes the "collateral source rule" as to an award of damages. While the collateral source rule is typically used in tort actions, the theory can be translated to the context of a deficiency judgment and payment of mortgage insurance by a third party insurance company.

9. The collateral source rule provides that compensation received by an injured party from a source wholly independent of the wrongdoer will not reduce the amount of damages owed by the wrongdoer. *Rattenni v. Grainger*, 298 S.C. 276, 379 S.E.2d 890 (1989); *Young v. Warr*, 252 S.C. 179, 165 S.E.2d 797 (1969); *Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967).

10. "A source is wholly independent of the wrongdoer 'when the wrongdoer has not contributed to it and when payments to the injured party were not made on behalf of the

wrongdoer.” *Mount v. Sea Pines Co.*, 337 S.C. 355, 357, 523 S.E.2d 464, 465 (Ct. App. 1999), citing *Citizens & S. Nat’l Bank v. Gregory*, 320 S.C. 90, 92, 463 S.E.2d 317, 318 (1995).

11. This rule has been liberally applied in South Carolina to preclude the reduction of damages. See *Otis Elevator v. Hardin Construction Co.*, 316 S.C. 292, 450 S.E.2d 41 (1994) (holding that a contractual right to indemnification is not defeated by fact that loss was actually paid by an insurance company).

12. A wrongdoer should not be able to take advantage of a contract between an injured party and a third person, no matter what the source of the funds received. *Johnston v. Aiken Auto Parts*, 311 S.C. 285, 287, 428 S.E.2d 737, 738 (Ct.App. 1993).

13. “A benefit that is directed to the injured party should not be shifted to result in a windfall for the [wrongdoer]... It is the [wrongdoer]’s responsibility to compensate the injured party for all the harm that he causes, not the net loss the injured party receives.” *Dixon v. Besco Eng’g, Inc.*, 320 S.C. 174, 182, 463 S.E.2d 636, 640 (Ct. App. 1995), see also 22 *Am.Jur.2d Damages* § 566 (1988).

14. I find that, as a matter of equity, the tenets of the collateral source rule should be applied in this scenario, and that the rule as applied does not contemplate a reduction in the award to Plaintiff.

15. Defendants are responsible for the debt they incurred and the judgment entered against them. Payment of a third party insurance contract does not obviate their responsibility for the debt.

16. Defendants argue that they paid mortgage insurance premiums as part of their mortgage payments and therefore the insurance should be considered in a reduction of the award entered against them. However, in the mortgage contract, it is made clear that the Defendants are

not party to the insurance and are not the beneficiaries of such a policy. The payment of the mortgage insurance was a condition precedent to the Defendants obtaining the loan with the terms as outlined, but any payments made by the third party mortgage insurance company were not made on behalf of the Defendants.

17. Defendants further argued that if the award to Plaintiff was not reduced or extinguished, Defendants would be subject to an attempt at double recover from the Plaintiff and the mortgage insurance company due to the contract between the two entities. However, Plaintiff and the mortgage insurance company at issue have a subrogation agreement whereby the mortgage insurance company is subrogated to the recovery rights of the Plaintiff with regard to the deficiency judgment. Even if a claim is paid pursuant to the insurance policy, that payment does not absolve the Defendants of their responsibility for the debt as the Plaintiff or the mortgage insurance company can seek to collect on that deficiency judgment pursuant to the agreement.

18. A copy of the Mortgage Insurance Policy (without endorsements) is attached to this Order as Exhibit A, for reference.

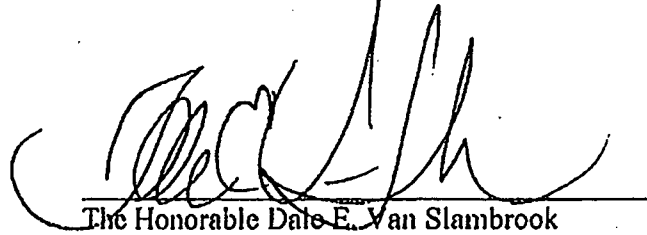
Based upon the foregoing and the arguments of counsel for the Plaintiff and Mr. Cain, it is hereby ordered that:

1. Defendants' Motion to Dismiss Deficiency Judgment filed on December 29, 2015, and treated as a Rule 59(e) Motion to Alter, Amend or Reconsider, is denied.
2. The Order Reducing Deficiency Judgment filed on December 4, 2015, is confirmed.

{continued on next page}

3. Subject to the Order Reducing Deficiency Judgment, Plaintiff is entitled to a personal judgment against Wilton H. Cain and Cassandra M. Durrah-Cain in the amount of \$37,393.82.

IT IS SO ORDERED.


The Honorable Dale E. Van Slambrook
Master in Equity for Berkeley County

1/25, 2016
Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

Branch Banking and Trust Company)
PLAINTIFF(S)))

IN THE COURT OF
COMMON PLEAS
Doc.No. 10-CP-08-3514

Petition and Proposed Order for
Appraisal after Deficiency
Judgment

VS.)

Wilton H. and Cassandra M. Cain
Defendants

That Pursuant to South Carolina Code of Laws §§29-3-680 thru 29-3-760 hat the real estate subject to the Plaintiffs foreclosure action has been foreclosed upon by Robert E. Watson, Master in Equity for Berkeley County, with final sale held on September 2, 2011 in which a deficiency judgment against the Defendant, Wilton and Cassandra Cain, was sought; now comes the Defendant in this matter, and makes application within thirty (30) days after the sale of said mortgaged property, applying by verified petition to the Clerk of Court for Berkeley County, which is the County in which the Decree and Order for Sale was taken, for an Order of Appraisal of said property which is hereby listed as follows:

Brief Legal Description of Real Estate: 259 Clayburne Drive Goose Creek, SC 29445 This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex homes dated September 19, 2007 and recorded on September 20, 2007 in book 6868 at page 155 in the office of the ROD for Berkeley County, South Carolina.

PERSONALLY appeared before me, Wilton H. Cain who, being duly Sworn, deposes and says as follows:

1. That Pursuant to §29-3-680 the Defendant Wilton H. Cain is timely requesting an order of appraisal in the above-filed action.
2. That pursuant to §29-3-710, the Court appoint DOT ADAMS TRI COUNTY APPRAISALS as one designated appraiser for the Petitioner. 843 797 5222
3. That upon information and belief the mortgaged property was sold for a figure significantly beneath its appraised value and is thereby subject to §29-3-740 which states that the amount for which the property was sold beneath its appraised value should be deducted from the amount of any deficiency judgment.
4. That pursuant to §29-3-740, the return of the appraisers shall be filed and recorded by the Clerk of Court as a judgment of the Court.
5. That this property at 259 Clayburne Drive had PMI (insurance) from RMI CERT # 0726007538 (I BELIEVE number correct).
6. Mortgage Insurance reimburses Lender for loses it may incur if Borrower default on loan.
7. That the plaintiff testified in court the coverage was 25%, that the court insure that deficiency judgment reflects insurance payment to lender from PMI insurance carrier.

Affiant/Defendant

SWORN to before me this ___ day of ___, 20 ___. NOTARY
PUBLIC FOR SOUTH CAROLINA
My Commission Expires: ___

Wilton H. Cain
2886 Palmer Drive
Charleston, SC 29414

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010- CP-08-3514

Branch Banking and Trust Company

Wilton H. Cain and Cassandra Durrah-Cain

PLAINTIFF(S)

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 or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Pursuant to the Order filed on September 24, 2014, in Appellate Case No. 2011-205089, this case came before the Court on May 28, 2015. The Court hereby reinstates this Court's Order filed on September 29, 2011 (see attached).

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 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

2151

Judge Code

Date

FILED
2015 MAY 29 AM 11:45
CLERK OF COURT
BERKELEY COUNTY

29 day of May, 20 15
s box on this 29 day of
as follows:

CLERK OF COURT

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

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

CIVIL CASE NUMBER
10-CP-08-3514

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Petition and Proposed Order for Appraisal after
Deficiency Judgment

Branch Banking and Trust Company)
PLAINTIFF(S))

VS.)

Wilton H. & Cassandra M. Durrah-Cain)
DEFENDANT(S))

MAJESTY P. EMMETT
CLERK OF COURT
BERKELEY COUNTY, SC

2011 SEP 29 PM 4:41

IT APPEARING to the Court that pursuant to South Carolina Code of Laws § 29-3-660 ET SEQ., that an Affidavit and Verified Petition for Order of Appraisal executed by the Defendant, has been duly and properly filed in the above captioned matter with the Office of the Clerk of Court for Berkeley County, a copy of said is attached hereto;

NOW, THEREFORE, on motion of Defendant, in accordance with South Carolina Code of Laws § 29-3-710, which allows for the appointment of three appraisers, one to be appointed by the Defendant, one to be appointed by the Plaintiff and one to be appointed by the Court, IT IS ORDERED that:

- DOT ADAMS* 843 7973222
1. TRICEUNTY APPRAISALS, LLC, be appointed Appraiser by the Defendant;
 2. _____, be appointed Appraiser by the Plaintiff; and,
 3. _____, be appointed Appraiser by this Honorable Court.

IT IS FURTHER ORDERED that pursuant to the South Carolina Code of Laws § 29-3-740, the appraisers are to deliver a copy of said appraisal to the Office of the Clerk of Court for Berkeley County within thirty (30) days; and,

IT IS FURTHER ORDERED that the deficiency judgment be stayed pending the outcome of the appraisal and the application of § 29-3-740, and,

IT IS SO ORDERED.

[Signature]
Presiding Judge 9/28/11

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010- CP-08-3514

Branch Banking and Trust Company

Wilton H. Cain and Cassandra Durrah-Cain

PLAINTIFF(S)

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 or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Pursuant to the Order filed on September 24, 2014, in Appellate Case No. 2011-205089, this case came before the Court on May 28, 2015. The Court hereby reinstates this Court's Order filed on September 29, 2011 (see attached).

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 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

2151

Judge Code

Date

FILED
2015 MAY 29 PM 4:46
CLERK OF COURT
BERKELEY

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of MAY, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of MAY, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Mary P. Brown DW
 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.

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

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

Branch Banking and Trust Company, Respondent,

v.

Wilton H. Cain and Cassandra Durrah-Cain, Appellants.

Appellate Case No. 2011-205089

Appeal From Berkeley County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2014-UP-333
Submitted July 1, 2014 – Filed September 24, 2014

VACATED AND REMANDED

Wilton H. Cain and Cassandra Durrah-Cain, of
Charleston, pro se.

Samuel C. Waters and Jason David Wyman, both of
Rogers Townsend & Thomas, PC, of Columbia, for
Respondent.

PER CURIAM: Wilton H. Cain and Cassandra Durrah-Cain appeal the circuit court's denial of their petition for an order of appraisal following a foreclosure and entry of a deficiency judgment against them. Because the circuit court's order did



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 17, 2014

The Honorable Mary P. Brown
PO Box 219
Moncks Corner SC 29461-0219

REMITTITUR

Re: Branch Banking v. Cain, Wilton
Lower Court Case No. 2010CP0803514
Appellate Case No. 2011-205089

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. A. Kitchings".

CLERK

cc: Wilton Cain and Cassandra Cain
Samuel C. Waters, Esquire
Jason David Wyman, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeal

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook Master of Equity

Case No. 2010-CP 08-3514

Appellate Case No. 2016-000292

Branch Banking and Trust Company -----Respondent,

v.

Wilton H. Cain: Cassandra M. Cain-----Appellants

Appellants Amended Record On Appeal

The Appellants apologies to the Court for its filing. This case is over six years old with numerous attorneys for Plaintiff and therefore they are not aware of past history of case, specifically communication between Plaintiff and Defendants was requested and permitted by Court.


Wilton H and Cassandra M. Cain

6476 North Highway 17 Awendaw, SC 29429

Jan 30, 2017

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THE EXACT AMOUNT OF PMI PAID BY INSURER (RMIC).

THE CORRECT AMOUNT OF OWED PLAINTIFF.

DOES PMI INSURANCE PAYMENT REDUCE PLAINTIFF LOSS.

DOES PLAINTIFF PROPERLY REPRSENT PMI INSURER 3RD PARTY.

DOES FORECLOSURE ALLOW ENRICHMENT OR LOSS INCURED.

**IS PLAINTIFF UNDER SC CODE REQUIRED TO GIVE NOTICE THEY
ALSO REPRESENT PMI INSURER.**

DOES COLLATERAL SOURCE RULE APPLY IN FORECLOSURES IN SC.

IS PMI WHICH DEFENDANTS PAY FOR AND IS A PART OF LOAN AGREEMENT WHOLLY INDEPENDENT OF DEFENDANTS.

IS A FORECLOSURE IN SC A TORT ACTION OR A CIVIL ACTION.

DID COURT COURT ERR BY NOT DISMISSING DEFICIENCY JUDGMENT AGAINST DEFENDANTS, DID PMI COVER PLAINTIFF LOSS.

WHEN WAS PMI INSURANCE PAID

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SUPREME C ADM LETTER MAY 2, 2011 (2011-05-02-01)

APPELLANTS ISSUES ON APPEAL

THE EXACT AMOUNT OF PMI PAID BY INSURER (RMIC).

THE CORRECT AMOUNT OF OWED PLAINTIFF.

DOES PMI INSURANCE PAYMENT REDUCE PLAINTIFF LOSS.

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DID COURT COURT ERR BY NOT DISMISSING DEFICIENCY JUDGMENT AGAINST DEFENDANTS, DID PMI COVER PLAINTIFF LOSS.

WHEN WAS PMI INSURANCE PAID

STATEMENT OF THE CASE

This appeal results from Master of Equity Order Denying Defendants motion to dismiss Deficiency Judgment filed on January 26, 2016.

This foreclosure case was filed Oct 4, 2010 by BB&T a trial without jury and no court reporter was held on June 16, 2011, with a judgment entered June 30, 2011, the sale value was set at 121,500.00, on September 2, 2011 the property was sold at a judicial sale for 121,500.00 to BB&T, on September 19, 2011 a deficiency judgment was entered for 83,893.82, within 30 days on September 29, 2011 defendants filed petition for Proposed Order for Appraisal under S.C Code 29-3-700 there was no opposing party, Judge K. L. Harrington denied Appraisal right which Defendants appealed Case no. 2011-205089 on September 24, 2014 three years later Court remanded issue back to Circuit Court on May 29, 2015 Order was issued for Appraisal. And Ordered case back to Master of Equity. Appraisal being completed on December 4, 2015 Judge Dale E. Van Slambrook accepted Appraisal of 168,000.00 and issued an Order Reducing Deficiency Judgment to 37,393.82. On December 29, 2015 Defendants filed a Motion to Dismiss Deficiency Judgment hearing was held on January 14, 2016 and on

January 26, which resulted in Order confirming Deficiency Judgment of 37,393.82 on February 16, 2016 Defendants filed a Notice of Appeal.

STATEMENT OF FACTS

This is a case, which expands a period of over six years, and the fact of the case remains the facts. This Appeal is in regards to Defendants believe the Court Eroded in the Order for the Deficiency Judgment against the defendants eroded in the correct amount, order not being dismissed, using the Collateral source rule and subrogation right and whether (PMI) Mortgage Insurance paid to Plaintiff reduces lost for Lender Freddie Mac, in a foreclosure case whether this mortgage insurance is wholly independent of defendants, the amount of mortgage insurance, what sale price 121,500.00 or proper value of 168,00.00 was mortgage insurance paid to plaintiff, did plaintiff rushed settlement before final value set to all which were covered as part of the deficiency Order written January 26, 2016.

The Plaintiff sole the house on 10/03/2012 while case was in Appeal did not report it to court or deduct the increase from Deficiency Judgment, and failed to report sale to court and the value on home had

not yet been set. House sold for 154,000.00. that an increase of 33,000.00 in value.

The Court requested and permitted emails to be used as a means of communication in those contact defendants raised questions on RMI subrogation and collateral source on January 21, 2016, the email also point out to Court Defendants concern about whether plaintiff attempt on subrogation was lawful, on January 15, 2016 , email also clearly show the Court directed the Plaintiff to write Order base on their finding, dated January 14, 2016 the order is dated January 16, 2016,

The defendants contend numerous errors exist and were made in the conclusion of the deficiency judgment order, let me begin with this as directed by Court to contact Plaintiff attorney for any information on case and in line with the South Carolina Supreme Court Administrative letter stating the Foreclosure Attorney is the point of contact on May 2, 2011 (2011-05-02-01) Ref: Mortgage Foreclosure Action to prevent defendants run around. Defendant therefore contend communication to and from Plaintiff Attorney is a part of case , therefore letter from Defendants to Plaintiff attorney dated August 28, 2010 must be accepted as part of case defendants. Contained in the letter from Attorney state there is Mortgage Insurance, which pays for loss suffered

by default, that the insurance carrier Republic Mortgage Insurance Company (RMIC) has been notified of default by defendants. Defendants also received a letter from BB&T dated March 29, 2011 stating PMI coverage provides BB&T with the option of filing a claim to offset losses to the owner Freddie Mac thereby verifying PMI reduces their loss and does exist on this loan. **This letter also clearly state that only agreement that BB&T has with the PMI company (RMIC) is “ that they will insure our loan as long as we pay the premiums” clearly denying there is a Subrogation agreement between them as was alleged by Plaintiff.** The plaintiff also has supplied documentation on the amount defendant paid on a monthly bases for mortgage insurance coverage the amount is 97. 70 from payment of 1290.14 dated. The Mortgage signed by lender and defendants also includes information on mortgage insurance and that defendant shall pay premium as well as it covers for loss resulting from non-payment or default on loan, the definition (M) page 2 and section 3 on page 4, then on page 8 of agreement state mortgage insurance was a condition of lender before making loan to defendants.

Defendants further claim private mortgage insurance is for default and is a RISK insurance under S.C Code of Law 38-12-70, further

defendants contend a mortgage represent a security for a obligation but not full payment " Perptul Bldg and Loan Association of Anderson V. Braun 270,S.C. 338, 340 therefore defendants contend Tort does not apply and PMI payment must reduce loss and that reduction must be considered in determination of Deficiency Judgment against Defendants.

Defendants raised question about mortgage insurance at a hearing on June 16, 2011 which Mr. Rick Miller BB&T witness testified tat there was mortgage insurance and that it was 25% of loan as evident in Plaintiff filing " plaintiff's Brief Regarding Deficiency Judgment" filed Jan 4, 2016 page 2, there was no Court reporter how ever Judge Watson Master of Equity wrote in his notes of the case which Judge Dale E. Van Slambrook made reference to at hearing as evident in transcript of Hearing on January 14, 2016 as to defendants concern whether insurance company had any rights under equitable Subrogation, Court didn't respond, on page 9 line15 thru line 2 page 10, again in transcript page 24 ,line 14 thru line 25 it was stated that BB&T representative notified Court there was 25% of PMI on loan, the state ok confirming notes from Judge Watson , then again stated "okay, but today you have any documentation, letters, affidavits, paperwork that you can submit,

Defendant is able to present evidence because Plaintiff refuse all request to provide any evidence on amount of PMI paid or the date paid.

Defendants further refer to Plaintiff filing on January 4, 2016 a copy of the agreement between BB%T and the Mortgage Insurance Co. RMIC , in that agreement on page 3 (1:10) state Default mean the failure by a borrower (a) to pay when due an amount equal to or greater than one periodic monthly payment due under the terms or condition of the loan, or (b) comply with any other terms or condition of the loan base on borrower loan agreement. This agreement also addresses Subrogation rights on page 21, line 7:3 stating those right are exclusively RMIC rights and not the Plaintiff's the insurer is exclusive agent to pursue recovery right unless plaintiff is given a waiver in writing stating Subrogation right given to Plaintiff.

Defendants raised issue of Mortgage Insurance in trail Court therefore proper to raise in Appeal Court SC Dept of Transp V. Horry County 391 SC 76, 82-83, 705 SE 2d 21,25 (2011).

The Plaintiff at no time for more than over five years has implied or given this Court or the Defendant any notice that they had

Subrogation rights given by insurer for insurance payments, neither has there been any notice that Plaintiff Attorney represent the insurer RMIC, the Plaintiff first mention of Subrogation right in January 4, 2016 by Attorney Erica Lybrand and again at hearing on January 14, 2016 . Defendants contend third party right is a Civil action and therefore require proper notification to the parties involved. Civil action notice must be timely to pursue which according to S.C.Code of Law Title 15. Defendants however call the Courts attention to the fact that Plaintiff claim subrogation rights, that states that indeed and insurance payment was made by the insurer, any action demanding payment under subrogation requires the amount to be clearly stated. Defendants request Court to instruct Plaintiff to state amount of insurance paid by RMIC.

Plaintiff only claim subrogation rights after case was over six years old defendants contend right to raise issue not preserved Summersell V. SC Dept of Pub Safety 337,SC 19, 522 SE 2d 144 (1999).

Defendant executed mortgage with CTX Mortgage Company September 19, 2007 was recorded September 20, 2007 book 6868 at page 186 PMI agreement was included in loan agreement. Loan was not signed by BB&T until June 13, 2011 over three years nine months later,

seem impossible for BB&T to have a subrogation agreement with PMI insurer over three years earlier, Defendant request to see document do to the fact Defendants are affected by same. BB&T sued defendants under S.C. Code Title 29 chap 3 as first party (lender) , requested and received payment from insurer and are therefore not entitled under Equitable Subrogation S.C Code of Laws Title 15-39-(610-760), Title 38-71-190, Title 29-3-(310-740), cases Calvert Fire Ins. Co. V. James 236 SC 431-435 SE2d 832,834 (1960), United Carolina Bank V. Caroprop LTD. 316 SC 1-446 SE 2d 415 (1994), Dedes V> Strickland 307 SC 155, 158, 414 SE 2d 134, 136 (1992), SC Supreme Court National Bank V. Buncombe Professional Park LLC case # 2014-000915, BB&T received payment from insurer as a result of Defendants default and foreclosure.

The SC Code 29-3-10 is clear provides Mortgagee is entitled to recover lost for money lent not profit or be enriched. The property was sold before the process was completed the sale price was then 121,500 raising the question what was the default value at the time mortgage insurance was requested, that would place the value 46500 dollars below actual value which is 168000 meaning any value to be subrogated higher than legally allowed. This process was not completed under court direction in violation of court order (Judgment of Foreclosure and

sale page 7 item number 32 June 30, 2011) and out of line with SC Code Sec. 15-39-720 (1976). The Plaintiff being in violation of Court Order under SC CODE 29-3-710-740-750 all action resulting must be extinguished and cancel, the Court had no jurisdiction over process nor does court have knowledge of any fund transferred or due and neither does Defendant. Fact Plaintiff made decision to alter the process without Court approval. Foreclosure is an open Civil process not a closed secret process as Plaintiff have made it. Further Defendant contend any payment received by Plaintiff reduced there loss and there have no loss resulting from foreclosure proceeding and have no claim for loss under Title 29 they have received full payment (recovery).

Plaintiff completed sale prior to the completion of sale process as outlined in SC Code 15-39-610 which prays NO JUDICIAL SALE OF PROPERTY SHOUL BE MADE UNTIL AFTER THE TIME FOR FILING OF AN APPEAL OF A JUDGMENT IS PAST OR AN APPEAL IS HEARD AND THE JUDGMENT AFFIRMED an appraisal was requested in a timely manner an after appeal granted yet Plaintiff completed a sale of property which was under court judiction. (SC Code 22-3-300-310) It is believed Plaintiff requested and received more Mortgage Insurance than

was due because it was requested at a sale value of 121500 and not true value of 168000 as set by the Court after appraisal

Equitable maximum are set under Title 29-3 of the SC Code which forbid enrichment only collection of debt.. Plaintiff in there filing to seek equity must grant equity therefore are not entitled to enrichment only payment for debt and not third party possible debt Shumaker V. Shumaker 234 SC 421, 427,108 SE 2d 682,686 (1959), Anderson V. Purvis 211, SC 255, 266, 44 SE 2d 611,616 (1947).

Rule 267 foreclosure procedures to be proper must satisfy Mortgage by foreclosure signed by Judge Robert Watson dated September 16, 2011

Defendants contend the application of the Collateral Source Rule to a foreclosure action which is a Civil action is in error, the South Carolina Courts have not addressed foreclosure action as a Tort specifically under Collateral Resource Rule which applies to “ wrongdoer “ and permits damages to be awarded to the injured party, in this case it would put Plaintiff in a better position than if no default had occurred Maro V. Lewis, 389 SC 216, 222, 697 SE 2d 684,688 CT APP 2010, there was no willful intent no fraud committed by Defendants and no harm to lender, BB&T are just the severer of the loan Freddie Mac is

the lender . There has been no claim of an injury and no harm just a default on a contract, Collateral Source fails for wrongdoer implies some criminal act or unlawful act has been committed by defendants not true, also it fails to be wholly independent of Defendants , fact Master policy submitted by Plaintiff is proof PMI (insurance) is not wholly independent of defendants reference items 1.16, 1.17, 2.4(2b), 4.1,5.1 page 173 borrower shall pay for mortgage insurance, point in fact if defendants fail to pay premium of 97.70 monthly it would be a breach of contract, proving not wholly independent of Defendants in each case cited must be " wholly independent ", Rattenni V. Grainger 298 SC 276, 379 SE 2d 890 (1989), Young V. Warr 252 SC 179, 165 SE 2d 797 (1969), Powers V. Temple, 250 SC 149, 156 SE 2d 759 (1967), mount V.Sea Pines Co. 337, SC 355, 357, 523 SE 464, 465, CT App. 1999, Johnston V. Aiken Auto Parts, 311 SC 285, 287, 428, SE 2d 737, 738,CT App. 1993. Foreclosure is a Civil action Defendants contend no criminal act Tort may be brought in a civil action SC Code 15-3-150. Therefore Collateral Source fails to apply in a foreclosure.

CONCLUSION

RULE THAT THE COURT ERRED IN NOT DISMISSING DEFICIENCY JUDGMENT, THE COURT ERRED BY NOT SEPARATING PLAINTIFF LOSS FROM THIRD PARTY INSURER PAYMENT TO PLAINTIFF, COURT ERRED IN NOT RULING MORTGAGE INSURANCE IS DEPENDANT UPON DEFENDANTS WHO MAKE PAYMENT AND AGREED TO IT BEING A PART OF LOAN, THE COURT ERRED IN APPLYING COLLATERAL SOURCE RULE, COURT ERRED BY ALLOWING PLAINTIFF TO CLAIM SUBROGATION RIGHTS. COURT MUST DENY PLAINTIFF SUBROGATION RIGHTS PLAINTIFF COURT ERRED IN NOT RULING RMI IS NOT WHOLLY INDEPENDENT OF DEFENDANTS, THE COURT ERRED IN NOT RULING A FORECLOSURE ACTION IS NOT A TORT ACTION, COURT ERRED IN NOT RULING PLAINTIFF PRESENTED NO EVIDENCE THEY HAD SUBROGATION RIGHTS , ORDER SAME ALSO RULE NO NOTICE GIVEN BY PLAINTIFF THEY HAD SUBROGATION RIGHTS, RULE PLAINTIFF FAILED TO FOLLOW AND ALLOW COURT TO MANAGE SALE , PLAINTIFF COMPLETED SALE BEFORE VALUE OF HOME SET BY COURT, ORDER PLAINTIFF TO TURN ALL ASSET OVER TO COURT FOR COURT TO CONTROL, RULE PLAINTIFF HAVE NO LOSS AND DISMISS

DEFICIENCY JUDGMENT, Order Plaintiff to notify Defendants and Court
the amount of PMI insurance paid and the date paid.

Wilton H. Cain Cassandra Durell Cain

Wilton H. and Cassandra Cain

6476 North Highway 17

Awendaw, SC 29429

8439913198

January, ~~30~~, 2017

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company;

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;
Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2010-CP-08-3514

Motion to Dismiss Deficiency Judgment

FILED
2015 DEC 29 AM 11:25
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Motion to DISMISS DEFICIENCY JUDGMENT

PLANTIFF UNDER THE CODE OF LAW HAS SUFFERED NO LOSS AND RECEIVED FULL EQUITABLE AND LEGAL RELIEF.

The Plaintiffs in this action of deficiency Judgment against defendants are Federal Home Loan Mortgage Corp. (lender) with Branch Banking and Trust Company as service representative being represented by Roger Townsend Law firm and Liberty Hall HOA which has chosen not to appear. No other party has appeared or served any notice on Defendants in the over four years of this case that also include PMI insurer known as RMIC. Insurance (cert.#0726007538). The Loan originator and first party will be identified as BB&T.

Further neither Plaintiff nor any other party has ever notified Defendant or this Court that they have any contractual responsibility or obligation to represent any other party specifically Insurer of PMI in this action as of this date Dec 26, 2015 over four years. BB&T are not insurer of loan and insurer are not represented by BB&T.

Further Lender sold said home 10/03/12 for the sum of 15400.00 to the Bakers, which is 14000.00 below appraisal value under of Law. Thereby when 25% is added to sale price total comes to 197747 when deficit of 14000 is added total becomes 211747.00 again leaving an excess 6353.18 an enrichment for Plaintiff over and above debt. Defendants note that Plaintiffs has yet to mention home was sold.

Defendant request Court order Deficiency Judgment paid in full to Lender and Dismiss Deficiency Judgment that Lender has suffered no loss received full equitable and legal relief. And is not third party with Equitable Subrogation right.

Wilton H. Cain

THANK YOU:

Wilton H. Cain and Cassandra M. Durrah-Cain
Defendants

6476 North Highway 17
Awendaw, SC
29429

8439913198

Dec 28, 2015



REPUBLIC MORTGAGE INSURANCE COMPANY
REPUBLIC MORTGAGE INSURANCE COMPANY OF FLORIDA
REPUBLIC MORTGAGE INSURANCE COMPANY OF NORTH CAROLINA

P.O. Box 2514 (27102)
101 North Cherry Street
Winston-Salem, North Carolina 27101
Toll Free: (800) 999-7642

MASTER POLICY

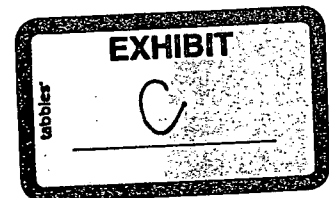
The Company, as indicated by both the applicable Commitment/Certificate and the Policy as either Republic Mortgage Insurance Company, Republic Mortgage Insurance Company of Florida, or Republic Mortgage Insurance Company of North Carolina, agrees to pay to the Insured identified below, in consideration of the premium or premiums to be paid as hereinafter specified and in reliance upon the Insured's representations and statements made in any Application for coverage under this Policy and in any documents and writings, including any data transferred by electronic media related thereto, any Loss due to the Default by a Borrower on a Loan, subject to the terms and conditions contained herein.

Insured's Name and Mailing Address

- CTX MORTGAGE COMPANY
- 1603 LBJ FWY, STE 500
- DALLAS, TX 75234
-

Policy Number: 48025 (REVISED)

Effective Date of Policy: 02/08/1991



In Witness Whereof, the Company has caused its Corporate Seal to be hereto affixed and these presents to be signed by its duly authorized officers in facsimile to become effective as its original seal and signatures and binding on the Company.

Christopher S. Harb
President
Elizabeth C. Dixon
Secretary
K. Diane L. Wall
Authorized Representative



TERMS AND CONDITIONS

1. Definitions

- 1.1 **Application** means a request for coverage, including assumption of coverage, under this Policy for a Loan on a form or in a format provided by the Company, and all other statements, documents, or information furnished to the Company by the Insured or any other Person in connection with the insuring of the Loan. An Application will include information, if so furnished to the Company, contained in the Borrower's Loan application, appraisal, verifications of income and deposit, plans and specifications for the Property, and all other exhibits and documents, and will include all data and information so furnished by electronic means.
- 1.2 **Appropriate Proceedings** means any legal or administrative action by the Insured affecting either a Loan or title to a Property, including:
- a. Preserving a deficiency recovery by making a bid at the foreclosure sale and pursuing a deficiency judgment until the end of the Settlement Period, where appropriate and permissible and where directed by the Company; or
 - b. Enforcing the terms of the Loan as allowed by the law where the Property is located; or
 - c. Acquiring Borrower's Title or Good and Merchantable Title to the Property, as either may be required under this Policy, but excluding such title as may be acquired by a voluntary conveyance from the Borrower; or
 - d. Asserting the Insured's interest in the Property in a Borrower's bankruptcy.
- 1.3 **Borrower** means any Person legally obligated to repay the debt obligation created by a Loan, including any co-signer or guarantor of the Loan.
- 1.4 **Borrower's Title** means such title to a Property as was vested in the Borrower at the time of a conveyance to the Insured arising out of or pursuant to a foreclosure of the Loan; provided, however, if the Insured so elects, the redemption period need not have expired. Borrower's Title in the Insured may be, but need not be, the equivalent of Good and Merchantable Title, and the deed evidencing Borrower's Title need not be recorded unless required by applicable law.
- 1.5 **Certificate** means the document, which may be on the same form as the Commitment, issued by the Company pursuant to this Policy and extending the coverage indicated therein to a specified Loan.
- 1.6 **Certificate Effective Date** means, as specified in the Certificate, (a) the closing date of a Loan, or (b) the later date requested by the Insured and accepted by the Company.
- 1.7 **Claim** means the timely filed written request, made on a form or in a format provided or approved by the Company, to receive the benefits of this Policy.
- 1.8 **Claim Amount** means the amount calculated in accordance with Section 6.2 of this Policy.
- 1.9 **Commitment** means the document, which may be on the same form as the Certificate, issued by the Company evidencing the Company's offer to insure the Loan identified therein, subject to the terms and conditions therein and in this Policy.

1.10

Default means the failure by a Borrower (a) to pay when due an amount equal to or greater than one (1) periodic monthly payment due under the terms of a Loan, or (b) to comply with any other term or condition of the Loan, if failure to comply is a basis for the acceleration of the principal balance of the Loan and the institution of Appropriate Proceedings.

A Loan is deemed to be in Default for that month as of the close of business on the installment due date for which a scheduled monthly payment has not been made or as of the close of business on the date the Borrower fails to comply with any such other term or condition of the Loan. The Loan will be considered to remain in Default until filing of a Claim so long as such periodic payment has not been made or basis for acceleration and Appropriate Proceedings remains. For example, a Loan is "four (4) months in Default" if the monthly installments due on January 1 through April 1 remain unpaid as of the close of business on April 1 or if a basis for acceleration and Appropriate Proceedings exists.

1.11

Deficiency Expenses means reasonable attorney's fees and necessary court costs incurred by the Insured for those Appropriate Proceedings necessary to pursue or establish a deficiency against the Borrower and which are in addition to those incurred in standard and customary foreclosure proceedings, plus additional interest accruing on the Loan, real estate taxes, casualty insurance premiums, and Property preservation expenses incurred during such Appropriate Proceedings and any additional related redemption period as necessitated by such deficiency pursuit.

1.12

Environmental Condition means the presence, on or under a Property, of any "Hazardous Substance" as that term is defined by the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq., as amended from time to time) or as defined by any similar state law; or any "Hazardous Waste" or "Regulated Substance" as those terms are defined by the federal Resource Conservation and Recovery Act (42 U.S.C. sec. 6901, et seq., as amended from time to time) or as defined by any similar state law, but does not mean the presence of radon, lead paint, or asbestos.

1.13

Fair Market Value means, with regard to the amount bid for any Property at a foreclosure sale, the Property's value at the approximate time of the foreclosure sale as determined by appraisal if available or in accordance with customary servicing practices (which may include reliance on information provided by a local real estate broker), subject to applicable law governing foreclosure.

1.14

Good and Merchantable Title means title to a Property free and clear of all liens, encumbrances, covenants, conditions, restrictions, encroachments, impediments, easements and rights of redemption, and other rights and claims of a Borrower or third parties except for:

- a. A lien of any public bond, assessment, or tax, when no installment, call, or payment of or under such bond, assessment, or tax is delinquent;
- b. Outstanding mineral, oil, or timber rights, rights of way, easements, rights of support, sewer rights, zoning ordinances, building restrictions or other restrictions, covenants, regulations of use, or applicable laws, provided the Property conforms to, and its intended and normal use and occupancy is not adversely affected by, such covenants, rights, restrictions, regulations, or ordinances; and
- c. Any conditions or defects which will not have a materially adverse effect on either the transferability of the Property or the sale thereof to a bona fide purchaser.

Good and Merchantable Title does not exist if convenient means of ingress and egress are not conveyed as well as freely alienable rights to the use and enjoyment of municipal or private sources of water and means of sewage disposal, whether such rights are by easement or covenant running with the Property are reflected in the public records relating to the Property.

In addition, Good and Merchantable Title does not exist if notice has been given of the commencement of proceedings that could result in the imposition of a lien upon the Property pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601, et seq., or any other statute, law, or regulation of any governmental authority providing for the imposition of a lien in connection with the cleanup of Environmental Conditions.

1.15

Insured means:

- a. The Person designated on the face of this Policy; or
- b. Any Person to whom coverage has been assigned resulting in a change in the Insured named on a Certificate in accordance with this Policy.

The Insured must be the Servicer of a Loan or, if there is no Servicer, the Owner of the Loan.

1.16

Loan means any note, bond, or other evidence of indebtedness secured by a mortgage, deed of trust, or other similar instrument, which constitutes or is equivalent to a first lien or charge on a Property and which the Company has approved for insurance and to which coverage under this Policy has been extended.

1.17

Loss means the liability of the Company with respect to a Loan for payment of a Perfected Claim which is calculated in accordance with Section 6.3. A loss will be deemed to have occurred when a Default on a Loan occurs, even though the amount of Loss is not then either presently ascertainable or due and payable.

1.18

Owner or Owner of the Loan means the Person who owns a Loan and of whom the Company is notified in accordance with this Policy.

1.19

Perfected Claim means a Claim received by the Company which contains all information or proof required by the Company and for which all requirements of this Policy applicable to payment of a Claim are satisfied.

1.20

Person means any individual, corporation, partnership, association, or other entity.

1.21

Physical Damage means any tangible injury to a Property or any Environmental Condition, whether caused by accident, natural occurrence, or any other reason.

1.22

Policy means this contract of insurance and all Applications, Commitments, endorsements, schedules, and Certificates, which are incorporated in this Policy, related to Loans insured under this Policy.

1.23

Possession of the Property means, if the Company elects to acquire the Property, physical and undisputed occupancy and control of the Property at the time of acquisition.

1.24

Property means a Residential real property and all improvements thereon which secure a Loan, together with all easements and appurtenances, all rights of access, all rights to use common areas, recreational and other facilities, and all of their replacements or additions.

- 1.25 **Recovery Rights** means all rights of recovery against the Borrower and any other Person relating to the Loan or to the Property.
- 1.26 **Residential** means a type of building or a portion thereof which is designed for occupancy by not more than four (4) families, a single-family condominium, or a unit in a planned unit development.
- 1.27 **Servicer** means that Person acting on behalf of the Owner of a Loan (or on behalf of the Owner's designee, if any) to service the Loan and of whom the Company has been notified. The Servicer acts as a representative of the Owner of the Loan (and the Owner's designee, if any) and will bind the Owner and its designee for all purposes of this Policy, including providing information to the Company, receiving any notices, paying premiums, accepting Loss payments, and performing any other acts under this Policy. References in this Policy to a Servicer's obligations will not be construed as relieving the Owner or its designee of responsibility for the Servicer's performance.
- 1.28 **Settlement Period** means the sixty (60) day period as determined under Section 6.4, at the end of which a Loss is payable by the Company; provided that if the Company pays a Loss prior to expiration of such sixty (60) day period, the Settlement Period ends with such payment.
- 1.29 **Uninsured Loan Balance** means, at any time, with respect to a Loan, the estimated Claim Amount less the Loss as estimated pursuant to a percentage option settlement.
- 1.30 Any pronouns, when used in this Policy, will mean the singular or plural, masculine or feminine, as the case may be.

2. Obtaining Coverage and Payment of Premiums

- 2.1 **Application and Certificate** - In order to insure a Loan under this Policy, the Insured or a Person acting on behalf of the Insured must submit to the Company a properly completed Application. Approval of any Application will be at the discretion of the Company and will be in the form of a Commitment or a Certificate which offers to extend, or extends, coverage under the terms and conditions of both this Policy and the Commitment or Certificate, as the case may be.

In lieu of such an Application and supporting statements, documents, and information submitted to the Company in connection with insuring a Loan, the Company may accept an alternative form of Application, containing more limited information, including certifications by or on behalf of the Insured as to characteristics of a Loan in lieu of supporting statements, documents, and information. The Company shall be entitled to rely fully on such alternative Application as submitted. Use of an alternative form of Application shall not waive or change the other terms and conditions of this Policy under which a Loan is insured or the responsibility of the Insured for the accuracy of statements, documents, and information submitted by it or other Persons to the Company as provided in this Policy.

If the Company declines to insure a Loan, it will not issue a Commitment or Certificate, and it will notify the Insured in writing of such declination. If the Insured or the Person acting on its behalf subsequently denies the Loan application which it received from the applicant, the Insured or such Person will be responsible for notifying the applicant that the Company declined to insure the Loan. Such notification will be made in compliance with any applicable state or federal laws or regulations, including the Equal Credit Opportunity Act and any other similar law or regulation.

2.2

Representations of the Insured - The Insured represents that:

- a. All statements made and information provided to the Company in an Application or in any Commitment or Certificate (including any that is related to continuation of coverage upon assumption of a Loan), whether by it, the Borrower, or any other Person, have been made and presented for and on behalf of the Insured; and
- b. Such statements and information are not false or misleading in any material respect as of the date(s) on which they are made or provided and do not omit any fact necessary in order to make such statements and information not false or misleading in any material respects as of such date(s).

It is understood and agreed that such statements and information in the aggregate are, and in certain instances individually may be, material to the Company's decision to offer, provide, or so continue coverage of the related Loan; the Company issues the related Commitment and Certificate or continues coverage in reliance upon the accuracy and completeness of such statements and information and without any obligation to verify independently the statements and information submitted to it; and the Company's reliance upon the representations in Section 2.2(a) and (b) above survive the issuance of a Commitment and Certificate or such continuation of coverage.

Without otherwise limiting the scope of this Section 2.2, a breach of Section 4.8 relating to down payment will be deemed a material misrepresentation for purposes of this Section 2.2. The down payment representation shall be effective whether or not it is made by the Insured or other Person with the intent to deceive or mislead, or with the knowledge that it is not true and correct.

2.3

Certificate Cancellation or Rescission by the Company for Misrepresentation - Subject to Section 2.4, if any of the Insured's representations as described in Section 2.2 are materially false or misleading with respect to a Loan, the Company will have the right, at its option and to the extent permitted by applicable law, to cancel or rescind coverage under any Certificate retroactively to commencement of coverage (or if the misrepresentation occurs with respect to continuation of coverage upon assumption of a Loan, retroactively to the date of such continuation) and to return at that time all paid premiums retroactively to such applicable date.

2.4

Incontestability for Certain Misrepresentations - Notwithstanding Sections 2.2 and 2.3, no Claim for Loss will be denied or adjusted, nor will the Certificate's coverage be rescinded or canceled, by reason of any misrepresentations (whether by statements made or omitted) contained in an Application, provided that all of the following requirements, conditions, and circumstances, to the extent not waived in writing at the option of the Company, are satisfied:

- a. The misrepresentation must not have been knowingly made, or knowingly participated in, by:
 1. The Insured or any other Person which originated the Loan; or
 2. Any other of the following Persons:
 - i. Correspondent lender, mortgage loan broker, or other intermediary underwriting or processing the loan on behalf of the Insured or any other Person which originated the Loan; or

- ii. Escrow or closing agents, or any other agent of, or broker for, the Insured or any other Person which originated the loan acting with respect to the Loan or the related Property transaction.
- b. The Borrower must have made twelve (12) consecutive full installment payments of principal, interest, and impound or escrow amounts in the amounts as called for by the loan, and all of those payments must have been made from the Borrower's own funds.

A payment will be considered to be "consecutive" only if it is made prior to the date the next scheduled installment becomes due. The "Borrower's own funds" will include any funds used by the Borrower for the purpose of making installment payments, but will not include funds provided directly or indirectly by any Person (other than the Borrower) who is or was a party to the Loan or to the related Property transaction, unless expressly set forth in the Application.
- c. This Section 2.4 will not apply to a Certificate if within twelve (12) months before or after a material misrepresentation by a Borrower or other Person (other than those Persons identified in Section 2.4(a)), there are one or more material misrepresentations in an Application (i) with respect to three or more other mortgage loans insured at any time by the Company for the Insured or any other lender and (ii) which result from the direct or indirect acts or omissions of the same Borrower or same other Person (including any other Person acting directly or indirectly in concert).
- d. The Company's payment of a Claim will not limit any rights which the Company has against the Borrower or any other Person (other than the Insured) for any misrepresentation.

2.5

Initial Premium - Within fifteen (15) days from the Certificate Effective Date, or such other date as the Company and the Insured may agree to in writing, the Insured must forward to the Company the appropriate initial premium. Tender of the initial premium will constitute a representation for purposes of Section 2.2 by the Insured that any special conditions included by the Company in the related Commitment have been satisfied and that no payment which is then due under the Loan is more than thirty (30) days past due. The Company will not rescind or cancel coverage, or deny or adjust a Claim for Loss, with respect to a Loan on the basis of a failure to satisfy a special condition (other than a special condition relating to completion of construction, rehabilitation, or repairs) if the Borrower has made twenty-four (24) consecutive full installment payments from the Borrower's own funds. The terms "installment payments," "consecutive," and "Borrower's own funds" shall have the meanings provided in Section 2.4(b).

2.6

Renewal of Certificate and Termination for Nonpayment of Renewal Premium; Reinstatement of Terminated Coverage

- a. **Timing; Responsibility for Payment** - In order to continue coverage beyond the initial term, the Insured shall, at its option, pay renewal premiums to the Company for each loan insured under this Policy, calculated at the rate specified in the related Certificate and in accordance with Section 2.6(c) below.

The Company shall give thirty (30) days notice of the renewal due date to the Servicer, if a Servicer is shown on the records of the Company, and otherwise to the Owner, and renewal premiums shall be due and payable on or before the last day of the period covered by the previous premium payment.

If a Default occurs prior to the date through which the applicable premium has been paid, and if such Default is not cured and results in a Claim being filed, such Default shall remain covered and no further premium shall be due in order to maintain coverage of such Default.

With respect to a Loan with renewal premiums due on an annual basis, if the annual renewal premium is not paid within a sixty (60) day grace period after the premium due date (but subject to the Owner's right to cure nonpayment as provided in Section 2.6(b)), the coverage of the Certificate and the Company's liability will terminate effective as of 12:01 a.m. on the first day following the date through which the applicable premium has been paid and as a result, any Default occurring after the date through which the applicable premium has been paid will not be covered.

With respect to a Loan with renewal premiums due on a monthly basis, if the monthly renewal premium is not paid within such sixty (60) day grace period (but subject to the Owner's right to cure nonpayment as provided in Section 2.6(b)), the coverage of the Certificate and Company's liability will terminate at the end of such sixty (60) day grace period. However, if a Default on the Loan occurs during such sixty (60) day grace period, the Insured shall not be required to pay renewal premiums while such Default exists. If such Default is cured, all monthly renewal premiums not paid during the period of Default shall be payable within sixty (60) days after notice from the Company. If such Default is not cured and results in a Claim, the unpaid monthly renewal premiums through the renewal month in which such Default occurred shall be paid as provided in Section 6.3 by deduction from the Loss.

- b. **Transfer or Seizure of Servicing** - Notwithstanding paragraph (a) above, in the event that the Owner establishes to the reasonable satisfaction of the Company that the failure to pay renewal premiums on or before the renewal premium due date, or during the applicable grace period, was due to an error or omission that occurred in connection with the transfer, surrender, or seizure of servicing rights associated with a group of Loans, the Company shall permit the Owner or its new Servicer to reinstate coverage of the Loans contained in the group that are insured under this Policy provided that the following conditions are met:
1. The Owner or its new Servicer shall reinstate coverage with respect to all Loans insured under this Policy affected by such transfer, surrender, or seizure;
 2. The renewal premiums are paid, in all events, on or before one hundred twenty (120) days after the applicable premium due date; and
 3. Interest is paid on the renewal premiums due from the renewal premium due date until the date that such renewal premiums are paid at the three month Treasury Bill rate established at the first Treasury auction occurring during the month in which the renewal premium becomes due as published in the *Wall Street Journal*, or if not so published, in any other comparable publication.
- c. **Calculation** - Renewal premiums due with respect to a Loan shall be payable in accordance with the method and at the rate specified on the related Certificate. Renewal premiums payable under the "outstanding unpaid principal balance" or "outstanding balance renewal" method shall be calculated by applying the applicable premium rate to the then unpaid principal balance of the Loan as of the date such premium is due and payable. Renewal premiums payable under the "level original insured principal balance" or "level renewal" method shall be calculated by applying the applicable premium rate to the original insured principal balance of the Loan.

2.7**Special Procedures for Certificates of Coverage; Payment of Initial and Renewal Premiums**

- a. The Company may permit coverage of a Loan to be certified and become effective without the Insured's return of an executed Commitment or Certificate, but coverage will only become effective if, within fifteen (15) days after the Certificate Effective Date (or other date the Company and the Insured may agree to in writing), the Insured provides the Company with the Certificate Effective Date and other information required by the Company, and pays the required premium. If signature and return of an executed Commitment or Certificate is not required, the Insured will nevertheless be automatically deemed to have made all certifications, representations, and statements attributable to it in the form of the Commitment or Certificate, as though, and to the same extent as if, the Insured had executed and returned the Commitment or Certificate.
- b. The Insured acknowledges that the Company deposits initial and renewal premium checks immediately upon receipt and agrees that the receipt and deposit of premium checks by the Company after the time specified in this Policy for receipt, does not constitute a waiver of the requirements of this Policy for timely receipt or an acceptance of premium by the Company. The Company will have the right to return such late premium payment, but only within sixty (60) days after receipt, in which case coverage will be canceled retroactively to the Certificate Effective Date for a late initial premium, or to the last day of the period covered by the previous premium payment for a late renewal premium. Receipt, deposit, and retention of a premium check will not constitute a waiver of any defenses with respect to any other matters which the Company may have under this Policy.

2.8

Cancellation by the Insured of a Certificate - The Insured may obtain cancellation of a Certificate by returning the Certificate to the Company or by making a written request to the Company for cancellation. Upon receipt, the Company will refund, where applicable, a portion of the premium paid in accordance with the appropriate cancellation schedule which is either attached to this Policy or which will be provided by the Company to the Insured upon request. However, no refund on a Certificate will be paid if the Loan is in Default at the time the Company receives the request. Cancellation of a Certificate will not cancel this Policy.

2.9

Cancellation of Policy - Either the Insured or the Company may cancel their respective right or obligation to receive or issue new Commitments or Certificates under this Policy by providing thirty (30) days written notice of cancellation of this Policy. However, Commitments and Certificates issued prior to such cancellation of this Policy will continue in force so long as all premiums are paid and all other terms and conditions of this Policy for coverage are complied with by the Insured.

2.10

Relationship Among the Company, the Owner of a Loan, and the Servicer of a Loan - The Company will be entitled to assume that the Insured identified on this Policy and under a Certificate is the Owner of the Loan. If the Company receives written notice acceptable to it that there is an Owner of the Loan who is not the Insured, the Company shall identify that Owner in its internal records and for purposes of this Policy. The Company shall be required to identify only one Owner for a Loan at any one time.

The Company will provide the Owner of a Loan so identified in its records with an opportunity to cure nonpayments of renewal premium, as provided under Section 2.6(b); will notify such Owner of the Loan of a non-approved Servicer and allow replacement with a new Servicer, as provided under Section 4.5; will allow the Owner (or its designee, if any) to replace a Servicer and allow the replacement Servicer to become the Insured under Section 1.15; and will allow the Owner to

become the Insured under Section 1.15 if the Owner services the Loan itself. Any Person becoming an Insured under this Policy shall be subject to all of the terms and conditions of this Policy, to the same extent as any previous Insured hereunder and without regard to the extent of the knowledge or responsibility of such Person, relating to matters occurring before such Person became an Insured.

- 2.11 Refund of Premium for Denial of Claim in Full** - If, because of a provision in Sections 3 or 4 (other than Sections 4.3, 4.6, or 4.7), no Loss is payable to the Insured, the Company shall return to the Insured all paid premiums retroactively and pro rata to the date when the event or circumstance occurred which resulted in no Loss being payable.

3. Changes in Various Loan Terms, Servicing; Coordination and Duplication of Insurance Benefits

- 3.1 Loan Modifications** - Unless advance written approval is provided by, or obtained from, the Company, the Insured may not make any change in the terms of a Loan, including the borrowed amount, interest rate, term, or amortization schedule of the Loan, except as permitted by terms of the Loan; nor make any change in the Property; nor release the Borrower from liability on a Loan.
- 3.2 Open End Provisions** - The Insured may increase the principal balance of a Loan, provided that the written approval of the Company has been obtained. The Insured will pay the Company the additional premium due at the then prevailing premium rate.
- 3.3 Assumptions** - If a Loan is assumed with the Insured's approval, the Company's liability for coverage under its Certificate will terminate as of the date of such assumption, unless the Company approves the assumption in writing. The Company will not unreasonably withhold approval of an assumption. It is understood that coverage will continue, and that the restriction of this Section 3.3 will not apply, if under the Loan or applicable law, the Insured cannot exercise a "due-on-sale" clause or is obligated to consent to such assumption under the Loan or applicable law. Notwithstanding anything to the contrary in this Section 3.3, the Company will be deemed to have approved the assumption of any Loan where no release is requested and, under Section 11-406.02 of the Federal National Mortgage Association's Servicing Guide or any successor provision approved by the Company thereof or any similar provision of the Federal Home Loan Mortgage Corporation's Sellers' & Servicers' Guide, the assumption is an "exempt transaction" that the Servicer is to approve without review of the terms of the transaction.
- 3.4 Change of Servicing** - If the servicing rights for a Loan are sold, assigned, or transferred by the Insured or the Owner, coverage of the Loan hereunder will continue, provided that written notice of the new Servicer is given to the Company and the new Servicer is approved in writing by the Company.
- 3.5 Change of Owner** - If a Loan or a participation in a Loan is sold, assigned, or transferred by its Owner, coverage of the Loan will continue, subject to all of the terms and conditions contained in this Policy. The new Owner of the Loan will be identified in the Company's records from the date that the Company receives written notice thereof. In the case of the sale of a participation in a Loan, the Company shall be notified of only one new Owner. If there is a new Owner, the Loan must continue to be serviced by a Person approved by the Company as a Servicer.

- 3.6 **Coordination and Duplication of Insurance Benefits** - The Insured shall not carry duplicate mortgage guaranty insurance on any Loan, other than mortgage guaranty pool insurance or supplemental mortgage guaranty insurance, and if duplicate insurance is carried, coverage under this Policy shall be null and void.

4. **Exclusions From Coverage**

The Company will not be liable for, and this Policy will not apply to, extend to, or cover the following:

- 4.1 **Balloon Payment** - Any Claim arising out of or in connection with the failure of the Borrower to make any payment of principal and/or interest due under a Loan, (a) as a result of the Insured exercising its right to call the Loan (other than when the Loan is in Default) or because the term of the Loan is shorter than the amortization period, and (b) which is for an amount more than twice the regular periodic payments of principal and interest that are set forth in the Loan (commonly referred to as a "balloon payment"). This exclusion will not apply if the Insured, the Owner of the Loan, or other Person acting on either's behalf offers the Borrower, in writing, a renewal or extension of the Loan or a new loan which (i) constitutes a first lien, (ii) is at rates and terms generally prevailing in the marketplace (but otherwise subject to Section 3.1), (iii) is in an amount not less than the then outstanding principal balance, (iv) has no decrease in the amortization period, and (v) is offered regardless of whether the Borrower is then qualified under the Insured's or Owner's underwriting standards. This exclusion also will not apply if the Borrower is notified of the availability of such renewal or extension of the Loan or new loan and does not accept the renewal, extension, or new loan.
- 4.2 **Effective Date** - Any Claim resulting from a Default existing at the Certificate Effective Date or occurring after lapse or cancellation of a Certificate.
- 4.3 **Incomplete Construction** - Any Claim when, as of the date of such Claim, construction of a Property is not completed in accordance with the construction plans and specifications.
- 4.4 **Fraud, Misrepresentation, and Negligence** - Any Claim not otherwise within the scope of Section 2.3 where there was fraud, misrepresentation, or negligence by the Insured with respect to the Loan, and the fraud, misrepresentation, or negligence (a) materially contributed to the Default resulting in such Claim; or (b) increased the Loss, except that if the Company can reasonably determine the amount of such increase, such Claim will not be excluded, but the Loss will be reduced to the extent of such amount.
- 4.5 **Non-Approved Servicer** - Any Claim occurring when the Servicer, at time of Default or thereafter, is not approved in writing or in a list published by the Company; provided that this exclusion shall only apply if the Company notifies the Owner of the Loan in writing that a Servicer is no longer approved and if within ninety (90) days thereafter the Owner does not complete a transfer of servicing to a new Servicer approved by the Company.
- 4.6 **Physical Damage (Other Than Relating to Pre-Existing Environmental Conditions)** - Any Claim where, at any time after the Certificate Effective Date, Physical Damage occurs to a Property of a type other than as described in Section 4.7 and other than reasonable wear and tear, subject to the following provisions:
- a. This exclusion will not apply if the Company in good faith determines that the aggregate cost of restoring all such Physical Damage is less than fifteen hundred dollars (\$1,500), or such higher amount as the Company may provide from time to time.

- b. The exclusion will apply only if: (i) the Company elects to acquire the related Property in settlement of a Claim and the damage occurred prior to expiration of the Settlement Period; or (ii) the damage occurred prior to the Default and such damage was the most important cause of the Default and the Property was either uninsured for loss arising from such Physical Damage or was insured for an amount which, net of any applicable deductibles, was insufficient to restore the Property as provided in paragraph (c) below.
- c. The exclusion resulting from paragraph (b) will not apply if the Property is restored in a timely and diligent manner to its condition (except reasonable wear and tear) as of the Certificate Effective Date.

In lieu of requiring restoration of the Property, as required by this subsection, the Company may, at its option, reduce the Claim Amount by an amount equal to the cost of such restoration.

- d. For purposes of this Section 4.6, the Property subject to restoration will consist only of the land, improvements, or personal property deemed part of the real property under applicable law and chattel items affixed to the real property and identified in the appraisal of the Property at the time the Loan was made, whether or not they are deemed part of the real property.
- e. Cost estimates relied upon by the Company in connection with this Section 4.6 shall be provided in writing by an independent party selected by the Company. The Company will furnish the Insured with any such written cost estimates, if requested by the Insured.

4.7

Pre-Existing Environmental Conditions - Any Claim where there is an Environmental Condition which existed on the Property (whether or not known by the Person submitting an Application for coverage of the Loan) as of the Certificate Effective Date, subject to the following provisions:

- a. This exclusion will not apply if the existence of such Environmental Condition, or the suspected existence of such Environmental Condition, was specifically disclosed to the Company in the Application relating to the Property.
- b. This exclusion will apply only if such Environmental Condition (i) was a principal cause of the Default, and (ii) has made the principal Residential structure on the Property uninhabitable. A structure will be considered "uninhabitable" if generally recognized standards for Residential occupancy are violated or if, in the absence of such standards, a fully informed and reasonable person would conclude that such structure was not safe to live in without fear of injury to health or safety.
- c. This exclusion will not apply if the Environmental Condition is removed or remedied in a timely and diligent manner in accordance with applicable governmental standards for safe Residential occupancy.

4.8

Down Payment - Any Claim involving a Loan which is for the purchase of the Property, and for which the Borrower did not make a down payment as described in the Application.

4.9

First Lien Status - Any Claim, if the mortgage, deed of trust, or other similar instrument executed by the Borrower and Insured hereunder did not provide the Insured at origination with a first lien on the Property.

4.10

Breach of Insured's Obligations or Failure to Comply with Terms - Any Claim involving or arising out of any breach by the Insured of its obligations under, or its failure to comply with the terms of, this Policy or of its obligations as imposed by operation of law, if the breach or failure:

- a. Materially contributed to the Default resulting in such Claim; or
- b. Increased the Loss, except that if the Company can reasonably determine the amount of such increase, such Claim will not be excluded, but the related Loss will be reduced to the extent of such amount.

4.11

Release of Borrower; Defenses of Borrower - The Insured's execution of a release or waiver of the right to collect any portion of the unpaid principal balance of a loan or other amounts due under the loan will release the Company from its obligation under its Certificate to the extent and amount of said release. If, under applicable law, the Borrower successfully asserts defenses which have the effect of releasing, in whole or in part, the Borrower's obligation to repay the loan, or if for any other reason the Borrower is released from such obligation, the Company will be released to the same extent and amount from its liability under this Policy, except as provided by Section 7.5.

5. Conditions Precedent to Payment of Claim

It is a condition precedent to the Company's obligation to pay a Loss that the Insured comply with all of the following requirements:

5.1

Notice of Default - The Insured must give the Company written notice:

- a. Within forty-five (45) days of the Default, if it occurs when the first payment is due under the loan; or
- b. Within ten (10) days of either:
 1. The date when the Borrower becomes four (4) months in Default on the loan; or
 2. The date when any Appropriate Proceedings which affect the loan or the Property or the Insured's or Borrower's interest therein have been started;

whichever occurs first.

5.2

Monthly Reports - Following a notice of Default on the loan, the Insured must give the Company monthly reports on forms or in a format furnished or approved by the Company on the status of the loan and on the servicing efforts undertaken to remedy the Default. These monthly reports may be furnished less frequently if allowed in writing by the Company and must continue until the Borrower is no longer in Default, the Appropriate Proceedings terminate, or until the Insured has acquired the Property.

5.3

Company's Option to Accelerate Filing of a Claim - If the Company so directs, at any time after receiving the Insured's Notice of Default, the Insured must file a Claim within twenty (20) days after notice from the Company. The Company will then make a payment of Loss in accordance with the percentage guaranty option in Section 6.3(b). Thereafter, following the acquisition of Borrower's Title by the Insured, the Insured will be entitled to file a supplemental Claim at the time prescribed in Section 6.1 in an amount equal to the sum of its advances, less the deductions, all as

specified in Section 6.2, to the extent not included in the payment of the initial Claim. Such supplemental Claim must be paid by the Company in accordance with Section 6.3(b). If the Company exercises its option under this Section 5.3, the Company shall not have the right to direct or participate in a deficiency recovery under Section 7.2.

5.4

Voluntary Conveyance - The Insured may only accept a conveyance of the Property from the Borrower in lieu of foreclosure or other proceedings if the prior written approval of the Company has been obtained.

5.5

Appropriate Proceedings - The Insured must begin Appropriate Proceedings no later than when the Loan becomes six (6) months in Default unless the Company provides written instructions that some other action be taken. Such instructions may be general or applicable only to specific Loans. The Company reserves the right to direct the Insured to institute Appropriate Proceedings at any time after Default. When either defending against or bringing Appropriate Proceedings, the Insured must report its status to the Company as reasonably and expeditiously as possible.

In conducting Appropriate Proceedings, the Insured must:

- a. Diligently pursue the Appropriate Proceedings once they have begun;
- b. Apply for the appointment of a receiver and assignment of rents, if permitted by law and requested by the Company;
- c. Furnish the Company with copies of all notices and pleadings filed or required in the Appropriate Proceedings, except as the Company may waive such requirements in writing;
- d. Act and bid at the foreclosure sale in accordance with Section 5.11 so that its ability to preserve, transfer, and assign to the Company its rights against the Borrower are not impaired, and so that the rights of the Company under this Policy against the Borrower are fully protected. Such rights include any rights to obtain a deficiency judgment, subject to the Company's compliance with Sections 7.2 and 7.3 relating to establishing a deficiency; and
- e. When requested by the Company, furnish the Company with a written statement indicating the estimated potential Claim Amount (as computed under Section 6.2) at least fifteen (15) days before the foreclosure sale.

5.6

Mitigation of Loss - The Insured shall, or shall cause its Servicer to, actively cooperate with the Company to prevent and mitigate the Loss and to assist the Company in the Company's attempts to prevent and mitigate the Loss, including but not limited to, taking reasonable and good faith efforts to cure the Default and, if such attempts are unsuccessful, to effectuate the early disposition of the Property.

The Insured shall report to the Company any pre-foreclosure sale offers received by the Borrower and known to the Insured. If a pre-foreclosure sale is approved by both the Insured and the Company, but the sale does not close for any reason, the Company shall continue to administer the Policy as if no sale had been attempted.

The Company agrees to administer the Policy in good faith.

5.7**Advances** - The Insured shall advance:

- a. Normal and customary hazard insurance premiums (in calculating the Claim Amount pursuant to Section 6.2, such premiums shall be prorated to the date that the Claim is paid);
- b. Real estate property taxes that become due and payable on or after the date of Default (but not including penalties or late fees);
- c. The costs of engaging in foreclosure and eviction proceedings (including court costs and moving costs where required by law to be paid by the evicting party), reasonable or customary attorney's fees not exceeding three percent (3%) of the sum of the outstanding principal balance and accumulated interest due under the loan; and
- d. Reasonable expenses necessary for the protection and preservation of the Property as approved by the Company. Although advance approval is not required, the Company reserves the right to disallow advances reflecting such expenses upon payment of the Claim if, in the Company's reasonable judgment, such advances were not reasonable or necessary. Insureds are therefore encouraged to seek the Company's prior consent.

5.8**Claim Information and Other Requirements** - The Insured must provide the Company with:

- a. All information reasonably requested by the Company;
- b. A completed form furnished by or acceptable to the Company for payment of a Claim;
- c. If the Property is not being acquired by the Company: a copy of an executed trustee's or sheriff's deed (which may be unrecorded) conveying Borrower's Title to this Property to the Insured (or satisfactory evidence that the foreclosure sale has been completed if the Borrower's right of redemption has not expired); or a deed from the Borrower (which may be unrecorded) if a voluntary conveyance has been approved by the Company, conveying to the Insured the title that was required by the Company in the approval of the conveyance.

In the event the most important cause of Default was a circumstance or event which would prevent the Insured from obtaining Good and Merchantable Title, the Insured shall instead provide the Company with evidence described in Section 5.8(d)(2) that it has acquired Good and Merchantable Title to the Property;

- d. If the Property is being acquired by the Company:
 - 1. A recordable deed in normal and customary form containing the customary warranties and covenants conveying to the Company or its designee Good and Merchantable Title to the Property;
 - 2. A title insurance policy acceptable to the Company or an attorney's opinion of title acceptable to the Company, confirming that the Insured has and can convey to the Company Good and Merchantable Title to the Property;
 - 3. Possession of the Property, but only if the Company has required such Possession in writing; and
- e. Access to the Property, if requested by the Company pursuant to Section 6.4(b).

5.9

Acquisition of Borrower's Title Not Required - The Insured will not be required to acquire Borrower's Title to a Property if (a) the Company approves a sale of the Property prior to a foreclosure sale and such sale is closed; (b) the Company requires an early Claim filing pursuant to section 5.3, except that such acquisition will be required as a condition to the Insured's filing of a supplemental Claim; or (c) the Property is acquired by someone other than the Insured at a foreclosure sale, as provided in Section 5.11, or thereafter pursuant to exercise of rights of redemption.

5.10

Sale of a Property by the Insured Before End of Settlement Period

- a. The Insured must submit to the Company any offer to purchase a Property which would mitigate the Company's Loss and which it receives after the Company has notified the Insured that it will acquire the Property and before the end of the Settlement Period. The Company must then promptly notify the Insured that it will either (i) not approve of such offer, in which case the Company's notice to acquire the Property will remain in effect, or (ii) approve such offer, in which case the Company's notice of acquisition will remain in effect, if the approved offer does not close as scheduled. The Insured shall promptly notify the Company if the approved offer does not close as scheduled.
- b. If the Company has not notified the Insured that it will acquire the Property, and if the Company's right to acquire the Property has not expired pursuant to Section 6.5 or has not been waived, the Insured must submit to the Company for approval any offer to purchase the Property which would be acceptable to the Insured and which would mitigate the Company's Loss. The Company shall then promptly either approve or not approve such offer. If an approved sale does not close, the Company may settle under either of the settlement options set forth in Section 6.3, provided that if the Settlement Period has expired, (i) interest as provided for in Section 6.5 shall be payable, and (ii) if the Company wishes to settle under Section 6.3(a), the Insured's obligations in connection with the transfer of the Property to the Company shall be as required by this Policy subject to the limitation that they shall not be more burdensome to the Insured than its obligations (including, but not limited to, its obligations as to the condition of the Property) as seller in the approved sale that failed to close.
- c. The following provisions shall apply to offers submitted to the Company under this Section 5.10:
 1. The Insured shall provide the Company with a good faith estimate of gross proceeds and expenses in sufficient detail for the Company to calculate the estimated net proceeds described below. The Company may not require any changes to the offer or direct the marketing of the Property or expenditures by the Insured for restoration of the Property as a condition to its approval.
 2. If the Company approves the offer submitted by the Insured, it must also advise the Insured of the estimated net proceeds which it has calculated. The estimated net proceeds calculated by the Company will be the estimated gross sales proceeds to be received by the Insured less all reasonable estimated expenses submitted by the Insured and approved by the Company in its approval of the offer which have been or are expected to be paid by the Insured in obtaining and closing the sale of the Property. If the estimated net proceeds as calculated by the Company is acceptable to the Insured, the Loss payable shall be computed as determined in Section 5.10(c)(3) below. If such estimated net proceeds is not acceptable to the Insured, the offer shall be deemed to have not been approved by the Company.

3. If the Company approves the offer, the Loss payable by the Company under this Section 5.10 will be the lesser of (i) the actual net amount as calculated below, or (ii) the percentage guaranty option under Section 6.3(b) calculated without regard to a sale of the Property. The actual net amount will be the Claim Amount calculated under Section 6.2, except that (a) delinquent interest will be computed through the closing date for sale of the Property and (b) the Claim Amount shall be reduced by the actual net proceeds realized by the Insured from sale of the Property. The actual net proceeds will be determined in the same manner as the estimated net proceeds, but on the basis of the actual sales proceeds and actual expenses, such expenses not to exceed the amounts approved by the Company either at the time the Company approved the offer or thereafter.
4. The Company shall not unreasonably withhold its approval of expenses submitted to it after its approval of an offer. Expenses paid to Persons employed or controlled by the Insured or the Owner of the Loan or their internal costs will not be allowed in calculation of either the estimated or actual net proceeds.
5. If requested by the Company, the Insured or the Owner shall advise the Company of the name of the real estate broker or other Person marketing the Property for the Insured or the Owner and authorize such broker or other Person to release marketing information about the Property to the Company.

5.11

Foreclosure Bidding Instructions - Bid an amount at the foreclosure sale which is not less than the minimum amount nor more than the maximum amount set forth below, unless the Company notifies the Insured of other instructions or waives its right to give bidding instructions, in writing.

- a. If the Fair Market Value of a Property is less than the Uninsured Loan Balance, the Insured shall start bidding at not less than the Fair Market Value of the Property and may continue bidding up to a maximum of the Uninsured Loan Balance.
- b. If the Fair Market Value of a Property is greater than the Uninsured Loan Balance, the Insured shall start bidding at not less than the Uninsured Loan Balance up to a maximum amount equal to the Claim Amount.

If other bidding instructions are provided, those instructions will not specify a maximum bid that is less than the Uninsured Loan Balance, and, if the Property is subject to redemption for less than the outstanding amount of the Loan, then such other bidding instructions will not specify an opening bid of less than the Uninsured Loan Balance.

The Insured is not required to acquire Borrower's Title if it has bid in accordance with paragraphs (a) and (b), whether or not pursuant to directions from the Company.

5.12

Effect of Unexpired Redemption Period on Payment of a Claim - If the Insured files a Claim prior to expiration of an applicable redemption period, the Loss payable shall only be computed through the date of filing of the Claim, and if the Company elects to acquire the Property, the Insured will remain responsible for management and control of the Property until the Company's acquisition thereof, which may be after expiration of the redemption period, but not later than as required by Section 6.4.

6. Loss Payment Procedure

- 6.1 Filing of Claim** - The Insured shall file a Claim after, but no later than sixty (60) days following, the conveyance to the Insured of Borrower's Title to the Property. If the Insured is not required to have Borrower's Title to file a Claim for a reason described in Section 5.9, then the Claim must be filed (a) within sixty (60) days after the Property is conveyed in a pre-foreclosure sale, at the foreclosure sale, or by exercise of the rights of redemption, or (b) at the time specified by Section 5.3. If the Insured fails to file a Claim within the applicable time, the Insured will not be entitled to, and the Company will not be obligated for, any payment under this Policy for amounts, including additional interest and expenses, which would otherwise be claimable, but which accrue or are incurred after the sixty (60) day period for filing of a Claim.

If the Insured fails to file a Perfected Claim within one hundred eighty (180) days after the filing of the Claim (or within such longer period of time as the Company may allow in writing), the Insured will no longer be entitled to payment of a Loss and the Company will not be obligated to make any payment under this Policy.

- 6.2 Calculation of Claim Amount** - Subject to Section 7.5, the Claim Amount will be an amount equal to the sum of:

- a. The amount of unpaid principal balance due under the Loan as of the date of Default without capitalization of delinquent interest, penalties, or advances;
- b. The amount of accrued and unpaid interest due on the Loan computed at the contract rate stated in the Loan through the date that the Claim is filed with the Company, but excluding applicable late charges, penalty interest, or other changes to the interest rate by reason of Default; and
- c. The amount of advances incurred by the Insured under Section 5.7 prior to filing of the Claim (except to Persons employed or controlled by the Insured or the Owner of the Loan or their other internal costs) provided that:
 1. Attorney's fees advanced for completion of Appropriate Proceedings and obtaining Possession of the Property will not be allowed to the extent they exceed three percent (3%) of the sum of the unpaid principal balance plus the accrued and accumulated interest due; and
 2. Such advances, other than attorney's fees, must have first become due and payable after the Default, and payment of such advances must be pro-rated through the date the Claim is filed with the Company;

less:

- i. The amount of all rents and other payments (excluding proceeds of a sale of the Property and the proceeds of fire and extended coverage insurance) collected or received by the Insured, which are derived from or in any way related to the Property;
- ii. The amount of cash remaining in any escrow account as of the last payment date;
- iii. The amount of cash to which the Insured has retained the right of possession as security for the Loan;

- iv. The amounts paid under applicable fire and extended coverage policies which are in excess of the cost of restoring and repairing the Property, if the Property is damaged, and which have not been paid to the Borrower or applied to the payment of the Loan as required by the terms of the Loan; and
- v. Any other amounts claimed by the Insured to the extent they are excluded by reason of Section 4.10.

6.3

Payment of Loss; Company's Options - Within the Settlement Period, but only if the Insured has satisfied all requirements for a payment of Loss and if the Company has received a Perfected Claim, the Company shall at its sole option exercise its:

- a. Property acquisition settlement option. Pay to the Insured as the Loss the Claim Amount calculated in accordance with Section 6.2 for the Company's acquisition of the Property; or
- b. Percentage guaranty option. Allow the Insured to retain all rights in and title to the Property, and pay to the Insured as the Loss the Claim Amount calculated in accordance with Section 6.2 of this Policy multiplied by the percentage of coverage or as otherwise calculated as specified in the Certificate; or
- c. Pre-Claim sale option. If the terms and conditions of Section 5.10 are met, pay to the Insured as the Loss the amount calculated in accordance with Section 5.10; and if the terms and conditions of Sections 5.9(c) and 5.11 are met, then the Company will pay the lesser of (i) the percentage guaranty option amount and (ii) the Claim Amount less the amount realized by the Insured at the foreclosure sale or from the redemption of the Property as required by law.

In addition to the sum due pursuant to the option described above which the Company selects, the Loss payable by the Company will include the other amounts provided for under Sections 5.3, 6.5, or 7.2 when such Sections are applicable. The Company will deduct from its payment of Loss the aggregate amounts of any payments of Loss which it had previously made. In the event of a Loss on a Loan with renewal premiums due monthly, which results from a Default covered under Section 2.6(a), the Company shall deduct from the payment of Loss an amount equal to any unpaid renewal premiums for the subject Loan through the end of the monthly renewal period in which such Default occurred.

6.4

Calculation of Settlement Period - The Settlement Period will be a sixty (60) day period after the Company's receipt of a Claim, calculated as follows:

- a. No later than the twentieth (20) day after the filing of a Claim, the Company may notify the Insured of additional documents or information which it requires for processing the Claim. The sixty (60) day period will be suspended until the Company receives such additional documents and information. The Company may request additional documents and information after such twenty (20) day period, and the Insured must use reasonable efforts to satisfy such request.
- b. No later than the twentieth (20) day after filing of a Claim, the Company may notify the Insured that it will require access to the Property sufficient to inspect, appraise, and evaluate the Property. If the Company does not notify the Insured by that date, its right to such access will be deemed waived. If such notice is given, the Insured will use its best efforts to provide access to the Company and, if access is not then available, the sixty (60) day period will be suspended from the date such notice was given until the Company receives notice from the Insured that access is available to it. If access is in fact

not available when sought by the Company after such notice from the Insured; the Company will promptly notify the Insured of such unavailability, and the passage of the sixty (60) day period will remain suspended as if the Insured's notice of availability had not been given to the Company.

- c. If the Company has elected to acquire the Property in settlement of a Claim, the sixty (60) day period also will be suspended, if necessary, for there to be a period of ten (10) days after the date on which the Insured satisfies all conditions to acquisition, including any required restoration of the Property, the Insured's delivery of a recordable deed and title policy or opinion evidencing Good and Merchantable Title (not subject to any rights of redemption, unless the Company waives such requirement) and, if applicable, delivery of Possession of the Property.
- d. If the sixty (60) day period is suspended for more than one reason, the resulting suspended periods will only be cumulative if in fact they occur at different times; to the extent they occur simultaneously, they will not be cumulative.

6.5 Payment by the Company After the Settlement Period - If the Company has not paid a Loss during the Settlement Period, then (a) the Company will include in its payment of Loss, if a Loss is ultimately payable, simple interest on the amount payable accruing after the Settlement Period to the date of payment of Loss at the applicable interest rate or rates which would have been payable on the Loan during such period, and (b) the Company will no longer be entitled to acquire the Property as an option for payment of the Loss. The Company must either pay the amount of applicable Loss (including any additional applicable interest as computed above) or deny the Claim in its entirety within (a) one hundred twenty (120) days after expiration of the Settlement Period, or (b) if the Settlement Period has not expired, no later than one hundred eighty (180) days after filing of the Claim. If at a later date it is finally determined by agreement between the Insured and the Company (or by completion of legal or other proceedings to which the Insured and the Company are parties) that the Company was not entitled to deny all or a portion of the Claim, the Company will include in any resulting subsequent payment of Loss interest as calculated above through the date of such payment on the amount of Loss which the Company was not entitled to deny.

6.6 Discharge of Obligation - payment by the Company of the full amount of Loss required to be paid in accordance with this Policy will be a full and final discharge of its obligation with respect to such Loss under this Policy.

7. Additional Conditions

7.1 Proceedings of Eminent Domain - In the event that part or all of a Property is taken by eminent domain, condemnation, or by any other proceedings by federal, state or local governmental unit or agency, the Insured must require that the Borrower apply the maximum permissible amount of any compensation awarded in such proceedings to reduce the principal balance of the Loan, in accordance with the law of the jurisdiction where the Property is located.

7.2 Pursuit of Deficiencies

- a. To facilitate the independent decisions of both the Insured and the Company of whether to pursue or establish a deficiency against a Borrower, the Insured shall provide the Company with any information it may have relevant to collecting on a deficiency judgment for that case. The Company will discuss all such information it may have with the Insured so that the parties can decide whether any Appropriate Proceedings necessary to establishing or

pursuing a deficiency are to be pursued for the benefit of both parties or whether one of the parties will elect not to participate in any recovery.

The Insured will be entitled to pursue Appropriate Proceedings, or shall, at the direction of the Company, pursue Appropriate Proceedings through the end of the Settlement Period, which may result in the Borrower becoming liable for a deficiency after completion of the Insured's acquisition of a Property. Such pursuit may not be directed by the Company unless the Company notifies the Insured at least thirty (30) days before the foreclosure sale that it will pursue a deficiency judgment, in whole or in part for its account. If the Company does not so notify the Insured, the deficiency judgment, if established by the Insured, will be solely for the account of the Insured, and the Company will not be subrogated to any rights to pursue the deficiency judgment.

The Insured will be deemed to be participating in Appropriate Proceedings solely at the request of the Company when such proceedings are not a condition precedent to obtaining Borrower's Title to or Possession of a Property and, after the parties have exchanged information on the Loan, the Insured has advised the Company in writing that the Insured does not wish to participate in such proceedings.

- b. Notwithstanding the provisions of Section 6 (Loss Payment Procedure) above, in the case where a deficiency against the Borrower is being pursued solely at the request of the Company, then any Deficiency Expenses shall be added to the amount of the Loss. If a deficiency against a Borrower is being pursued as part of Appropriate Proceedings for the benefit of both the Insured and the Company, then at the time such deficiency rights are established or a deficiency judgment is obtained, whichever shall occur first, the Deficiency Expenses plus any similar expenses incurred by the Company in connection with such deficiency shall be settled between the parties on the same pro rata basis set forth in Section 7.3 (Subrogation) for the settlement of deficiency recoveries. Expenses and costs arising after that point shall be treated as collection expenses to be netted against the deficiency recovery, if any (and, if none, to be shared between the parties on the same pro rata basis when it becomes clear that nothing will be recovered).

7.3

Subrogation - Subject to Section 7.2(a), and only to the extent that the Company is entitled under applicable law to pursue such deficiency rights, the Company shall be subrogated pro rata, to the full extent permitted by law, to all of the Insured's Recovery Rights with respect to a Loan, upon payment of a Claim hereunder. The Company's pro rata share of the net deficiency recovered (i.e., amounts recovered less reasonable costs and expenses) with respect to any Loan shall be the amount of the Loss divided by the amount of the deficiency judgment. Internal staff costs and overhead expenses shall not be deducted in determining the amount of a net deficiency recovery unless specifically agreed to in writing by the parties. The Insured hereby designates the Company as its exclusive agent (a) to pursue all of the Insured's Recovery Rights to which the Company has not become subrogated by payment of a Claim (i.e., the Insured's share of the Recovery Rights), (b) to file any action in the Company's name as assignee of the Insured, to collect on the Insured's Recovery Rights, and (c) to settle and compromise any such Recovery Rights on behalf of the Insured, it being understood and agreed that the Company shall have the exclusive rights to pursue and settle all Recovery Rights for any Loan on which a Claim payment is made hereunder, unless waived in writing by the Company. If the Company decides not to pursue Recovery Rights with respect to a Loan, then the Company shall issue a written waiver of its subrogation and management rights to the Insured. The Insured shall execute and deliver at the request of the Company such instruments and documents, and undertake such actions as may be necessary to transfer, assign, and secure such Recovery Rights to the Company. The Insured shall refrain from any action, either before or after payment of a Claim hereunder, that shall prejudice such Recovery Rights.

Notwithstanding any provision in the foregoing paragraph to the contrary, in the event the Insured has, in addition to Recovery Rights against a Borrower or any other Person, a claim or claims against such Borrower or other Person not related to the Recovery Rights, then the Insured shall have the right to pursue in its own name all the Recovery Rights in conjunction with the Insured's other claim or claims, and the Company will waive its right to manage the pursuit of the Recovery Rights (but not the Company's pro rata subrogation rights).

- 7.4 Policy for Exclusive Benefit of the Insured and the Owner** - A Commitment and Certificate issued as the result of any Application submitted hereunder and the coverage provided under this Policy will be for the sole and exclusive benefit of the Insured and the Owner of the related Loan, and in no event will any Borrower or other Person be deemed a party to, or an intended beneficiary of, this Policy or any Commitment or Certificate.

- 7.5 Effect of Borrower Insolvency or Bankruptcy on Principal Balance** - If under applicable insolvency or bankruptcy law, a loan's principal balance secured by a Property is reduced (after all appeals of such reduction are final or the time for such appeals has lapsed without appeal), the portion of such principal balance of the Loan not secured by the Property, and related interest, will be includable in the Claim Amount, as provided in this Section 7.5.

If a Default occurs on the Loan, the Insured has acquired Borrower's Title or Good and Merchantable Title to the Property if required by this Policy, and all other requirements for filing of a Claim are complied with, the Insured will be entitled to include in the Claim Amount (a) the amount of the principal balance of the Loan which was deemed unsecured under applicable insolvency or bankruptcy law, less any collections or payments on such unsecured principal balance received by the Insured, and (b) interest thereon at the rate and as computed in Section 6.2, from the date of Default giving rise to the Claim (but for no prior period). In no event will any expenses or other amounts associated with the amount by which the principal balance of the Loan became unsecured be includable in the Claim Amount, directly or by an addition to the principal balance includable in the Claim Amount.

- 7.6 Arbitration of Disputes; Suits and Actions Brought by the Insured**

- a. Unless prohibited by applicable law, the Insured, at its option, may elect to settle by arbitration a controversy, dispute, or other assertion of liability or rights which it initiates arising out of or relating to this Policy, including the breach, interpretation, or construction thereof. Such arbitration shall be conducted in accordance with the Title Insurance Arbitration Rules of the American Arbitration Association in effect on the date the demand for arbitration is made, or if such Rules are not then in effect, such other Rules of the American Arbitration Association as the Company may designate as its replacement.

The arbitrator(s) shall be neutral person(s) selected from the American Arbitration Association's National Panel of Arbitrators familiar with the mortgage lending or mortgage guaranty insurance business. Any proposed arbitrator may be disqualified during the selection process, at the option of either party, if such individual is, or during the previous two years has been, an employee, officer, or director of any mortgage guaranty insurer, or of any entity engaged in the origination, purchase, sale, or servicing of mortgage loans or mortgage-backed securities.

- b. No suit or action (including arbitration hereunder) brought by the Insured against the Company with respect to the Company's liability for a Claim under this Policy shall be sustained in any court of law or equity or by arbitration unless the Insured has substantially complied with the terms and conditions of this Policy, and unless the

suit or action is commenced within three (3) years (five (5) years in Florida or Kansas) after the Insured has acquired Borrower's Title to the Property or sale of the Property approved by the Company is completed, whichever is applicable to a Loan. No such suit or action with respect to a Claim may be brought by the Insured against the Company until sixty (60) days after such acquisition of Borrower's Title or sale, as applicable to a Loan.

- c. If a dispute arises concerning the Loan which involves either the Property or the Insured, the Company has the right to protect its interest by defending the suit, even if the allegations contained in such suit are groundless, false, or fraudulent. The Company is not required to defend any lawsuit involving the Insured, the Property, or the Loan.

7.7

Amendments; No Waiver; Rights and Remedies; Use of Term "Including"

- a. The Company reserves the right to amend the terms and conditions of this Policy from time to time; provided, however, that any such amendment will be effective only after the Company has given the Insured written notice thereof by endorsement setting forth the amendment. Such amendment will only be applicable to those Certificates where the related Commitment was issued on or after the effective date of the amendment.
- b. No condition or requirement of this Policy will be deemed waived, modified, or otherwise compromised unless that waiver, modification, or compromise is stated in writing properly executed on behalf of the Company. Each of the conditions and requirements of this Policy is severable, and a waiver, modification, or compromise of one will not be construed as a waiver, modification, or compromise of any other.
- c. No right or remedy of the Company provided for by this Policy will be exclusive of, or limit, any other rights or remedies set forth in this Policy or otherwise available to the Company by law or equity.
- d. As used in this Policy, the term "include" or "including" will mean "include or including, without limitation."

7.8

No Agency - Neither the Insured, any Servicer, or Owner, nor any of their employees or agents, will be deemed for any reason to be agents of the Company. Neither the Company, nor any of its employees or agents, will be deemed for any reason to be agents of any Insured, Servicer, or Owner.

7.9

Successors and Assigns - This Policy will inure to the benefit of and shall be binding upon the Company and the Insured and their respective successors and permitted assigns.

7.10

Applicable Law and Conformity to Law - All matters under this Policy will be governed by and construed in accordance with the laws of the jurisdiction in which the office of the original Insured on a Certificate is located. Any provision of this Policy which is in conflict with any provision of the law of such jurisdiction is hereby amended to conform to the provisions required by that law.

7.11

Notice - Premium payments are to be paid as provided in Section 2 and sent to the Company at the address listed on the Commitment, or as otherwise instructed by the Company in writing. All other notices, Claims, tenders, reports, and other data required to be submitted to the Company

by the Insured shall be either (a) mailed postpaid, (b) sent by overnight courier, (c) transmitted electronically or via magnetic tape or other media in a manner approved by the Company, or (d) sent by telephonic facsimile transmission, to the Company's home office at the following address and facsimile number:

For Claim matters:

P.O. Box 2514
Winston-Salem, NC 27102
Attention: Claims Department
Facsimile Number: (336) 661-9413

For Customer Service matters:

P.O. Box 2514
Winston-Salem, NC 27102
Attention: Policy Servicing Department
Facsimile Number: (800) 849-7642

All notices given by the Company to the Insured or the Owner shall be either (a) mailed postpaid, (b) sent by overnight courier, (c) transmitted electronically or magnetically in a manner approved by the Insured, or (d) sent by telephonic facsimile transmission, at the address and facsimile number for that Person, as reflected in the records of the Company, except that for facsimile transmissions, the Company shall confirm telephonically or otherwise the accuracy of the facsimile number used. Nonpayment notices under Section 2.6 (Renewal of Certificate and Termination for Nonpayment of Renewal Premium) and notices required under Section 4.5 (Non-Approved Servicer) shall be sent to both the Insured and the Owner whenever the Company has been notified that the Insured is a Person other than the Owner.

Either party may notify the other of a change in address in the same manner as provided for giving notice. All notices, Claims, tenders, reports, and other data required to be submitted to the Company or to the Insured shall be deemed to have been given five (5) days after the same is deposited in the U.S. Mail, delivered to an overnight courier, or transmitted in a manner approved above, unless actually received earlier. If the Insured requests that notices be sent to a third party other than the Insured, the Company agrees to use its best efforts to give such notices, but the Company shall not incur any liability for failure to send any notice to any third parties.

7.12 Reports and Examinations - The Company may request, and the Insured must provide, such reports or information as the Company may deem necessary pertaining to any loan, and the Company will be entitled to inspect the books and records of the Insured or any of its representatives pertaining to such loan.

7.13 Electronic Media - The Company and the Insured may agree, from time to time, that information, documents, or other data may be transferred between the Insured and the Company by electronic media acceptable to the Insured and to the Company. In addition, the Company and the Insured may maintain information, documents, or other data on electronic media or other media generally accepted for business records, including microfiche. Such electronic or other media will be as equally acceptable for all purposes between the Insured and the Company as information, documents, or other data maintained in printed or written form.

State of South Carolina	)	
	)	
County of Berkeley	)	
	)	
Branch Banking and Trust	)	10-CP-08-03514
Company,	)	
	)	
Plaintiff,	)	Transcript
	)	
v.	)	of
	)	
Wilton H. Cain, et al,	)	Hearing
	)	
Defendants.	)	

Date: January 14, 2016

Time: 11:04 a.m.

Location: Berkeley County Courthouse, Courtroom B
300-B California Avenue, Moncks Corner, South Carolina
29461

Reported by
Diane M. Hendricks

APPEARANCES

Presiding: The Honorable Dale E. Van Slambrook,
Master-in-Equity for Berkeley County

For the Plaintiff:

Erica G. Lybrand, Esq.
Rogers Townsend & Thomas, PC
220 Executive Center Drive
Columbia, South Carolina 29210

Pro-se Defendant:

Wilton H. Cain
6476 North Highway 17
Awendaw, South Carolina 29429

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Proceeding:

3

EXHIBITS

(There were no exhibits proffered.)

1 PROCEEDINGS:

2 THE COURT: All right. And we are here -- it's the
3 BB&T and Wilton Cain. And Mr. Cain is here
4 with us.

5 Good morning, Mr. Cain.

6 MR. CAIN: Good morning, Your Honor.

7 THE COURT: 2010-CP-08-03514. And this is relative
8 to an objection, I believe. I'm not sure
9 the -- the -- I want to make sure I -- I frame
10 it properly, relative to the valuation on the
11 property; is that correct?

12 MS. LYBRAND: I believe so, Your Honor. You had
13 entered an order reducing the deficiency
14 judgment based on the appraisal process that
15 was completed in this case. And I objected. I
16 think Mr. Cain objected to the deficiency order
17 that was entered, and I said, well, I would
18 rather this not be conducted via email. Any
19 kind of objections need to be made in writing
20 or by motion.

21 And then you asked us to go ahead and brief the
22 issue. Mr. Cain then filed a motion to dismiss
23 the deficiency, late 2015, so I think it was
24 like July 29th -- I mean, December 29th or 30th
25 of 2015, and I then -- I'm submitting my brief

1 in opposition to a reduction in the deficiency
2 judgment based upon his objections.

3 THE COURT: Okay. Yeah. That -- that tracks my
4 understanding that, pursuant to the statute we
5 went through, there were the appraisals that
6 were obtained, I issued an order setting the
7 value, I think it was \$168,000 ---

8 MR. CAIN: Sixty-eight.

9 THE COURT: And then -- then there's some
10 entitlement under the statute to allow for some
11 objection to that. There's the objection by
12 Mr. Cain ---

13 MR. CAIN: No. No, Your Honor.

14 THE COURT: Well, okay. If -- if -- if you don't
15 object, then we're done.

16 MR. CAIN: I never objected to the 168,000 ---

17 THE COURT: Okay. Well, you -- you -- you objected
18 to the deficiency amount that resulted from
19 that determination ---

20 MR. CAIN: Yes ---

21 THE COURT: --- right?

22 MR. CAIN: --- that.

23 THE COURT: And then you entered an objection as to
24 the ultimate order, that after the subtraction
25 in the numbers, and yours was as to an

1 application of mortgage insurance; is that
2 right?

3 MR. CAIN: Absolutely, sir.

4 THE COURT: Okay. So no objection as to the
5 168,000?

6 MR. CAIN: No.

7 THE COURT: Merely the objection or issue that
8 you've taken and -- and want to bring to my
9 attention relative to the mortgage insurance?

10 MR. CAIN: PMI. Yes, sir.

11 THE COURT: Okay.

12 MR. CAIN: Yes, Your Honor.

13 THE COURT: Okay. I just want to make sure I
14 framed it, framed it properly.

15 MR. CAIN: Yes. Yes, Your Honor.

16 THE COURT: I thought for some reason you were
17 telling me that -- that we were all okay ---

18 MS. LYBRAND: Uh-uh.

19 THE COURT: --- and we're all in agreement. I just
20 want to make sure that -- that -- that I didn't
21 misunderstand.

22 MR. CAIN: Okay.

23 THE COURT: I don't want to put words in anybody's
24 mouth. I just want to make sure I've got it
25 straight in my head.

1 MR. CAIN: Yes, sir.

2 THE COURT: So, my position or my -- I guess
3 the -- the way we're dealing with it is, is
4 that -- that this calculation is a continuation
5 of the appraisal process bringing it to its
6 conclusion as to a final determination; is that
7 correct?

8 MR. CAIN: I -- I guess that's fair.

9 THE COURT: Okay. Okay.

10 MS. LYBRAND: My -- my position on that would be
11 your order reducing the deficiency would have
12 been your final order, and that this is some
13 kind of motion to alter, amend, or otherwise
14 alter your final order, because he filed a
15 motion to dismiss your deficient -- your -- the
16 deficiency judgment.

17 THE COURT: Okay. Is there any -- is there any
18 objection from the plaintiff as to
19 the -- either the appropriateness of the filing
20 of -- of -- of that or the treatment as a
21 motion to alter or amend that order?

22 MS. LYBRAND: I'm happy to have the Court treat it
23 however you see ---

24 THE COURT: Okay.

25 MS. LYBRAND: --- fit. I -- I think, you know, you

1 filed the order reducing the deficiency
2 judgment. And then he filed his motion to
3 dismiss the deficiency judgment. I -- I'm not
4 sure in terms of like this -- you know,
5 post-foreclosure, post-sale motions, how that
6 should be treated, but I was kind of thinking
7 along the lines of a motion to alter or amend
8 your order entering the reduced deficiency
9 judgment.

10 THE COURT: All right. So, I -- I think what we'll
11 probably do, and -- and I think it's a valid
12 point. I want to make sure that procedurally
13 it's -- it's properly explained, so that if
14 there's an issue after today with the results,
15 that it's appropriate, that y'all can take
16 whatever steps following that. I don't want to
17 create any confusion that would inhibit either
18 one or both from -- from -- from continuing to
19 exercise your -- your rights. So, I'll hear,
20 relative to the positions that I think that
21 we'll treat today as exactly that: A motion to
22 alter or amend, or, in the alternative, a
23 conclusion relative to the appraisal process,
24 to envelope all of it, so that there isn't any
25 question that -- and that's it's timely -- that

1 it was timely filed, it's appropriately heard,
2 no procedural objection, so that the issuance
3 resulting from today would be the final order
4 after the motion to alter or amend, so that
5 there wouldn't have to be any other motions or
6 wouldn't necessarily require any additional
7 motions, not that there wouldn't be any. That
8 would be up to y'all. So -- all right. Sorry
9 for boring and confusing y'all on that. I just
10 wanted to make sure that that was -- that
11 was -- that we're all on the same page relative
12 to the positions.

13 Mr. Cain, you've -- you've -- you're in essence the
14 moving party on this.

15 MR. CAIN: Yes.

16 THE COURT: And you've provided me some written
17 explanation of -- of -- of your position. Tell
18 me again what you want me to do and why you
19 want me to do it.

20 MR. CAIN: Yes, Your Honor. Well, here's my
21 concern, Your Honor: And I'm not an attorney.
22 But, as I read the code of law, I find that the
23 insurance company, RMI, under equitable
24 subrogation, can possibly come back with
25 respect to the deficiency judgment. Any money

1 that they paid BB&T as a result of the default,
2 for the foreclosure, they can come back, under
3 the code of law, and sue me for what they paid,
4 what the insurance company paid BB&T or the
5 financing company, which was Freddie Mac. I've
6 seen a number of cases in South Carolina where
7 they are the third party, they may have that
8 right if they timely or whatever, you know,
9 situation is. But they would have that
10 specific right. So, here's my concern: My
11 concern is, is that if Freddie Mac, and when I
12 talked to Freddie Mac for the last two weeks,
13 they said the case is closed; BB&T tells me the
14 case is closed. Freddie Mac sold the house and
15 was paying the insurance, the -- as a result of
16 the default. So, if I'm going to have a
17 default with BB&T, that means twice. That
18 means the insurance company can come back on
19 that equitable subrogation, and sue me.
20 Whether they are successful or not, they do
21 have that right under the code of the law, and
22 then now, I'm faced with two deficiency
23 judgments: One with BB&T and one with them.
24 And my meaning of it is that BB&T
25 received -- not BB&T. The financing, their

1 service company. That Freddie Mac done
2 received what they lost. So they're not faced
3 with a loss. BB&T has been fully paid. In
4 fact, I think they've been paid more than what
5 the foreclosure required. They indicated to
6 Judge Watson that it was 25 percent insurance
7 on that; that comes to \$43,000. If the
8 deficiency judgment that is remaining, this
9 \$37,000, that leaves an additional \$6,000.
10 And, in all the cases I've read, if they
11 received more than what the judgment was, those
12 funds should be turned over to the Court for
13 the Court's discretion. And my concern is, is
14 that BB&T has been paid, then -- then they do
15 not have a right to be a part of the deficiency
16 judgment against them. It needs to be
17 dismissed as far as them. If the insurance
18 company wants to come back at me, fine. We'll
19 deal with that if they do. That's what I'm --
20 where I'm at.

21 THE COURT: Okay. All right. Thank you.

22 Yes, ma'am.

23 MS. LYBRAND: Your Honor, the insurance company has
24 an agreement with BB&T, as the mortgage
25 insurance company, by a subrogation agreement.

1 In order for the insurance company or BB&T to
2 seek to collect the -- the debt owed by
3 Mr. Cain, there would have to be a judgment in
4 order to collect. And that's what we're trying
5 to establish here, that there's a \$37,000
6 judgment that is owed by Mr. Cain as a result
7 of his default, as a result of the fact that
8 the property was sold for less than the
9 judgment amount, and that resulted after
10 the -- the -- the appraisal process and the
11 \$37,000 judgment. BB&T can seek to collect
12 that judgment or it can assign its right to
13 collection of that judgment to the mortgage
14 insurance company based upon any payments that
15 were made by the mortgage insurance company.
16 But, in order for that to happen, a judgment
17 has to exist. And that's what we're trying to
18 establish for the record today, Your Honor, is,
19 is that this judgment is owed by Mr. Cain; this
20 amount, this \$37,000, is the result of his
21 default on this mortgage loan. We went through
22 the appraisal process, he was given his rights
23 to the appraisal process, the appraisal process
24 did result in a reduction of the deficiency
25 judgment to the -- I think it was originally

1 like eighty -- \$83,000, and now it's \$37,000
2 based upon that appraisal process. But, we
3 have to establish that judgment amount in order
4 for anyone to have the rights to come back and
5 seek to collect that from Mr. Cain. In my
6 brief, you'll see, and I don't know if you've
7 had a chance to review it yet, that -- and
8 there's two points on this matter: One is the
9 statute itself, the appraisal statute, which
10 doesn't provide for any reduction of the
11 deficiency judgment other than by and through
12 the appraisal process, the value of the -- of
13 the property. It doesn't say that the -- the
14 deficiency judgment can subsequently be -- be
15 reduced by other considerations like mortgage
16 insurance or other payments made by third
17 parties. It strictly gives this process for a
18 reduction of the deficiency judgment in the
19 event that the appraisal comes back at an
20 amount higher than what's bid in at the
21 foreclosure sale.

22 Secondarily, I use the collateral source rule here
23 in South Carolina as a means to illustrate the
24 equitable position that plaintiff is taking in
25 this matter. There's no point -- you know,

1 collateral source rules are used mostly in tort
2 actions here in South Carolina where, after a
3 party, insurance carrier pays out a benefit to
4 the insured, and oftentimes, the third party
5 who caused the accident or whatever tort that's
6 being sued upon, seeks to have that judgment
7 reduced by the amount that the insurance
8 company pays for. The law's pretty clear in
9 South Carolina that you can't reduce a debt
10 that's owed or an amount that's owed by that
11 party due to the payment of insurance funds in
12 a situation where that payment's made by a
13 source wholly independent of the wrongdoer. In
14 this -- and it's for the specific reason, the
15 subrogation reason, in those cases, which is,
16 that that insurance carrier should be able to
17 go after that party for the judgment amount,
18 just like the -- the original person who's
19 injured. And so what -- what we have here
20 today, Your Honor, is a situation where
21 plaintiff is simply trying to establish that
22 this is the judgment amount, this is the amount
23 due by Mr. Cain. Mr. Cain should not get the
24 benefit of insurance being paid to reduce the
25 debt that he legitimately owes, and that's been

1 established by both the foreclosure and now the
2 appraisal process post foreclosure. And that
3 we need to be able to establish this debt for
4 it to be able to be collected from Mr. Cain in
5 the -- in the event that that happens down the
6 road.

7 MR. CAIN: (Rises.)

8 THE COURT: And I'll -- I'll -- I'll come back to
9 you, Mr. Cain. I just want to make sure I
10 understand.

11 And -- and I've -- and you've given me a different
12 way to look at it, and thank you. In essence,
13 you -- the argument, the first argument or
14 position is none of this stuff that -- that Mr.
15 Cain has raised matters. I've calculated the
16 amount based upon the appraisal, entered a
17 judgment figure, and what he is essentially
18 arguing is some sort of a credit or offset that
19 is not relevant to or not a part of the -- the
20 appraisal statute process. Is that right?

21 MS. LYBRAND: Correct.

22 THE COURT: How would you anticipate that, if there
23 was some other source, if there was some matter
24 outside the realm of -- of mortgage insurance
25 that reduced this amount, how would he seek to

1 have that -- how would he seek to have that
2 judgment figure changed?

3 MS. LYBRAND: Well, to be honest, Your Honor, I
4 think at the point that we're at in -- in this
5 particular process, that there is not -- unless
6 he pays some portion of that judgment, once
7 the ---

8 THE COURT: Well ---

9 MS. LYBRAND: --- judgment is -- is determined that
10 that amount is what he owes, and unless he pays
11 it, there shouldn't be anything that reduces
12 it.

13 THE COURT: Let's say -- let's say he pays it, he
14 pays \$10,000?

15 MS. LYBRAND: Then, I would think, in the event
16 that the amount, the full amount, the 37. So
17 let's say he pays \$10,000, and the full amount
18 of the 37, if it's sought -- if the plaintiff
19 or the mortgage insurance carrier seeks to
20 collect the entire 37 down the road, he would
21 have a challenge at that point saying, "Listen,
22 I paid you \$10,000 in 2015 ---

23 THE COURT: Okay.

24 MS. LYBRAND: --- at the -- you know, I don't owe
25 you the full 37." Of course, then he'd still

1 be subject to post-judgment interest, so
2 it -- the -- all of these amounts, you know,
3 come into play at that point. But, in -- in
4 the event that he pays something towards that
5 judgment and they try to collect more than what
6 he owes, at that point when they try to collect
7 it would be where he would have this ability
8 to -- to argue that he doesn't owe that amount.
9 I don't think that it's appropriate at this
10 stage, once the order is entered providing the
11 amount that he owes pursuant to this judgment,
12 that unless he makes some kind of payment, that
13 there be any other considerations in the amount
14 that he owes.

15 THE COURT: If he -- if he had paid money in the
16 meantime, if last year before this thing had
17 finalized, he paid the \$10,000, wouldn't it be
18 appropriate for me to consider that?

19 MS. LYBRAND: You mean like if the judgment
20 amount -- because there was a judgment that was
21 entered in the amount of \$83,000. If he had
22 paid \$10,000, certainly at that point his
23 payment would be considered a reduction of that
24 original \$83,000, which you would have had to
25 take into consideration in the amount that you

1 would finally enter. But, I think it would be
2 a separate consideration. I don't think you'd
3 say, "I'm going to reduce the judgment in whole
4 by these amounts and here's the final judgment
5 amount." I think you'd say, "Here's the final
6 judgment amount. But he's also paid \$10,000,
7 so the actual amount owed at this time is 27."

8 THE COURT: Okay.

9 MS. LYBRAND: I think that a payment by Mr. Cain
10 would have to be a separate consideration in
11 this process, and not, according to statute,
12 not part of the actual determination of the
13 debt owed.

14 THE COURT: Okay. Thank you.

15 Mr. Cain?

16 MR. CAIN: You Honor, bear with me, Your Honor.

17 With reference -- first, with reference to the
18 statutes in the State of South Carolina, in all
19 foreclosure actions, the plaintiff is only
20 allowed to collect that which is due. In other
21 words, a foreclosure value. That's all they're
22 allowed to collect. Anything over that comes
23 into the Court's jurisdiction. That's number
24 one.

25 Number two, the insurance company is a third party.

1 This foreclosure deal is with no one but
2 Freddie Mac who -- who is the lender, and BB&T
3 who is the servicer. Freddie Mac is the one
4 who my responsibility to pay back is through
5 them, not BB&T. Freddie Mac. If Freddie Mac
6 has received the income or the money that was
7 due, they no longer have a claim. So we need
8 to separate them. The insurance company
9 themselves is a third party. They're only
10 involved in this if they pay money as a result
11 of a default. That's where the -- the
12 subrogation comes in at, okay? They can -- and
13 they don't need them and their authorization to
14 sue. According to their own paperwork that
15 they sent me, and the loan papers itself, it
16 separates the insurance company on the PMI
17 authority to sue. And it says specifically
18 that they have the right to sue for the money
19 that they paid in -- in regards to any default,
20 not authorization from the plaintiff, then they
21 can sue. They have a specific right under
22 their agreement to sue. It's on Page 123 of
23 their paperwork.

24 That also, to get back to the collateral source,
25 it's totally irrelevant for the simple reason,

1 every case on collateral source in the State of
2 South Carolina has a clause in it. And that
3 clause says that it is independent of the
4 plaintiff -- I mean, the defendant. Mortgage
5 insurance is not independent of me. Number
6 one, it's based on my contract with the lender.

7 Number two, I paid for the mortgage insurance.

8 Number three, the mortgage insurance, I could have
9 it canceled if certain conditions aren't met.

10 It's not totally independent of me.

11 So it has nothing to do with collateral source.

12 Collateral source is involving personal
13 injuries as well. There was an attempt
14 to -- to relate them in some of their cases,
15 but they've never been related in South
16 Carolina. These are two different things.

17 BB&T and the -- I mean, the lender is one
18 thing, and the insurance is another thing. We
19 should not be putting them together.

20 BB&T -- the insurance company does not need an
21 order from BB&T saying the default exists.

22 They can come back and sue under equitable
23 subrogation with the money that they paid
24 strictly to the mortgage company.

25 THE COURT: Isn't the -- the mortgage insurance

1 company subrogated to the rights of the
2 original lender?

3 MR. CAIN: I -- you -- you lost me. Let me say
4 what -- what I think you're trying to say to
5 me. Their agreement with the PMI, Republic
6 Mortgage, is that if there's a default, they
7 have in their agreement that Republic Mortgage
8 has a right to sue. Is that what you're
9 saying?

10 THE COURT: I'm asking you. If -- under the
11 language of the -- of the agreement between the
12 mortgage insurance company and the -- and the
13 lender, doesn't the mortgage insurance company,
14 aren't they subrogated to the rights of the
15 lender?

16 MR. CAIN: If there's a default.

17 THE COURT: No. It -- I mean, if -- are -- are
18 they or aren't they?

19 MR. CAIN: I -- I'm -- I'm not understanding what
20 you're -- what you're trying to get me to say.
21 When you say are they subrogated to them, you
22 mean are they dependent upon them?

23 THE COURT: Are they subrogated.

24 MR. CAIN: No. I would say no, then. If ---

25 THE COURT: Okay.

1 MR. CAIN: If that's what you're asking me.

2 THE COURT: Okay.

3 MS. LYBRAND: Your -- Your Honor, if I might

4 respond. Mr. Cain is making my point for me in

5 that there has to be a judgment in order for

6 the mortgage insurance company to be able to

7 come back and collect against Mr. Cain. In

8 this case, as a third party, the mortgage

9 insurance company can't step in and enter a

10 judgment in this case. BB&T is the original

11 plaintiff, the one who was originally

12 the -- the loss payee essentially, the -- the

13 one who made -- who had originally had the loss

14 in this case, and has established this debt

15 owed by Mr. Cain; it has to establish that

16 amount. And then, pursuant to the subrogation

17 rights, yes, the mortgage insurance carrier

18 subrogated to the rights of -- of BB&T to this

19 judgment amount. And so, in the event that

20 there is an ability to collect this amount,

21 this judgment has to be established to do so.

22 The mortgage insurance carrier can't just

23 willy-nilly sue Mr. Cain, especially if this

24 deficiency is extinguished, can't just come in

25 to court and say, "Mr. Cain owes us this

1 money," when there's been no debt -- debt
2 established by the Court. And so that's what
3 I'm trying to say in -- in this -- in this
4 case, Your Honor, is that there has to be a
5 debt established in order for anyone to have a
6 right to sue Mr. Cain to collect it. And so
7 that's where we're -- we are in this case. And
8 that -- and that -- I would also mention for
9 the record that there's been no official
10 testimony or evidence presented or anything of
11 that nature as part of any prior proceedings
12 with regard to the actual amount of deficiency,
13 whether or not deficient -- or mortgage
14 insurance, and whether or not mortgage
15 insurance was actually paid in this case. And
16 so we're talking about a whole lot of what-ifs,
17 and that is normally not even a problem,
18 because, like I said, the deficiency judgment
19 is entered in favor of the original plaintiff,
20 then the mortgage insurance company has that
21 right of subrogation to collect that judgment
22 pursuant to its rights under the mortgage
23 insurance contract, which I have attached to my
24 brief for your -- for your review as well.
25 And -- and the subrogation rights are explained

1 as part of .7.3 in that contract, which
2 specifically says that the company shall be
3 subrogated pro rata to the full extent
4 permitted by law to all the insurance recovery
5 rights with respect to a loan upon a payment of
6 a claim.

7 So -- and this -- this contract requires the
8 plaintiff, the mortgage -- the company
9 to -- mortgage company to pursue its deficiency
10 rights in the event that they can in order to
11 obtain a judgment that can later be collected
12 upon pursuant to the subrogation rights of the
13 company. So I would just ask Your Honor that
14 you confirm the entry of your order reducing
15 the deficiency judgment to an amount of I
16 believe it was \$37,393.82 pursuant to -- to
17 that. And I could -- I could speak on the
18 issues of the collateral source rule that he
19 was mentioning, if you want. If -- if you want
20 me to.

21 THE COURT: No. No. You ---

22 MR. CAIN: Okay.

23 THE COURT: You've argued sufficiently on that.

24 MS. LYBRAND: Okay.

25 THE COURT: Mr. Cain, in support of your position

1 and -- and -- and motion, did you have any
2 affidavits, any documents, or testimony, other
3 than ---

4 MR. CAIN: Well ---

5 THE COURT: --- the arguments that you presented in
6 those documents?

7 MR. CAIN: Well, Your Honor, the only thing -- the
8 only thing that I have with reference to
9 Republic Mortgage is my personal conversation
10 with Republic Mortgage, a representative. And,
11 in September in 2010, the question came up
12 about the mortgage insurance.

13 THE COURT: Uh-huh.

14 MR. CAIN: And BB&T's representative notified the
15 Court that it was 25 percent, okay?

16 THE COURT: Okay. But, as far -- as far as today,
17 did you have any documentation, letters,
18 affidavits, paperwork that you want to submit
19 as -- that would be evidence or testimony
20 today, other than your -- than your argument?

21 MR. CAIN: Well, not -- not here. No. No, Your
22 Honor. I would only ask that -- well, my
23 question would be, is BB&T alleging that no
24 default was paid, and ---

25 THE COURT: Well, my -- my question is do you have

1 Just so -- and if -- if -- if I request that,
2 that's not an invitation to discuss or continue
3 the argument, okay? I know that's the ---

4 MR. CAIN: (Nods head.)

5 THE COURT: The natural tendency to it. I
6 just -- I just want to clarify that because I
7 don't want to get to the -- to the -- going
8 back and forth on the -- on the email.

9 MR. CAIN: Yes, Your Honor.

10 THE COURT: Kind of, it started before. So, if I
11 request that, then I'll --- we'll -- we'll do
12 that. And then whatever or as a result of the
13 issuance of any order, then y'all can take
14 whatever steps you want to take. Okay?

15 MR. CAIN: Yes, Your Honor.

16 MS. LYBRAND: Thank you, Your Honor.

17 THERE BEING NOTHING FURTHER.

18 (WHEREUPON, the within hearing adjourned at 11:33 a.m.)

19 (*This transcript may contain quoted material.

20 Such material is reproduced as read or quoted by the
21 speaker.)

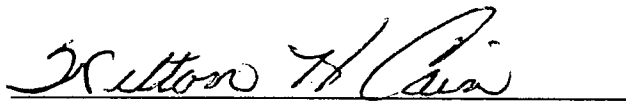
22 (**Certificate accompanies sealed original only.)

To: Master of Equity Berkeley County Court

The Honorable Dale E. Van Slambrook

Sir: my name is Wilton H. Cain I am the Defendant in Case No. 2010-CP-08-3514

This case is presently before the Appeal Court; there is information that I am in need of that is in your files written by Judge Watson. During a hearing before him the issue of Mortgage Insurance was raised and he directed a question to the Plaintiff as to the amount of insurance the Plaintiff stated 25% of the loan was covered. During a hearing in your Court you I believe affirmed the note. Please I need a copy of that note. There wasn't a reporter in the court. I brought the question up before the Court. Please Sir.



Wilton H. Cain

Jan 23, 2017

FILED
17 JAN 23 PM 4:03
CLERK OF COURT
BERKELEY COUNTY, S.C.

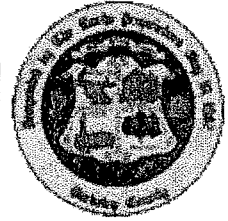
WJ

1/23/17
Per Judge Van
Slambrook -
File letter from
Defendant

WJC

FILED

Unofficial Berkeley County Property Card



Summary Information:

TMS: 2440304016
Parent TMS: 235-00-00-047
Owner Information:
 BAKER JOSEPH & NANETTE MARIE
 259 Clayburne Dr

Goose Creek, SC 29445-3484

Council District: C3
Fire District: F18
Tax District: T18
TIS Zone: 9
Jurisdiction: 1P
Acres: 0.00
Lots: 1.0

Neighborhood: S049 - MULBERRY PARK (LIBERTY HALL TRAC
Appraiser ID: DR
Lot: 704 **Block:** Section: 10A
Zoning: Goose Creek - PD
Homestead Exempt: No
Notes:
 ADD NEW RES PER SALE 9/07
 SALE NO CHANGE 10/07
 1-2-08

Site addresses:

259 CLAYBURNE DR
 GOOSE CREEK, SC 29445, Unit/Lot:

Previous Owner History:

Owner: FEDERAL HOME LOAN MORTGAGE CORPORATION,	Sale Date: 10/03/2012	Sale Price: \$154,000.00	Deed Book-Page: 9782 - 342	Plat:
Owner: CAIN WILTON H & CASSANDRA M DURRAH SURVIVORSHIP(MASTER DEED)	Sale Date: 09/02/2011	Sale Price: \$121,500.00	Deed Book-Page: 9111 - 192	Plat:
Owner: CENTEX HOMES	Sale Date: 09/19/2007	Sale Price: \$184,468.00	Deed Book-Page: 6868 - 0155	Plat: CAB R - 243A

Sales Information:

Last Sale Date: 10/03/2012
Recording Date: 11/08/2012
Sale Price: \$154000

Plat Information:
Deed Book: 9782
Deed Page: 342

Sales Validity: 0A
Validity Other:

Valuation Information:

Building Market: 110,000
Land Market: 43,000

Building Taxable (4% Res): 110,000
Building Taxable (6% Other): 0
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 43,000
Land Taxable (6% Other): 0
Land Taxable (4% Ag): 0
Land Taxable (6% Ag): 0

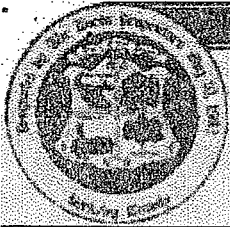
Total Taxable Value: 153,000

Total Assessment: 6,120

Fee Summary:

Fee Name	Fee Amount
Goose Creek Sanitation Fee	135
Land Fill Fee	75

EXB 4



Berkeley County Government

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Ownership

Tax Info

Map Info

Property Card

Ownership & Location Information

Parcel #:	2440304016
Location:	259 CLAYBURNE DRIVE
Legal Description:	LOT 704 BLK
On Tax Books As:	BAKER JOSEPH & NANETTE MARIE
Deed Book/Page:	9782 /342
Plat Book/Page:	/
Present Owner:	BAKER JOSEPH & NANETTE MARIE
Lender Name:	NONE ON FILE
Tax District:	18
Neighborhood:	S049 /MULBERRY PARK (LIBERTY HALL TRAC
Deed Recorded Date:	11/08/2012
# Of Buildings:	1
Current Taxable Value:	153,000.00
Current Taxable Value may reflect CAP or Market Value:	FUTURE USE

Property Card is from AssessPro -- Non standard html port # 91 is used to deliver the property card

- Print current page's data

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1/16/2017

AOL Mail (64)

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This Order Completely Fails!!!!

Wilton Cain to **suzanne.albert** [show details](#)

21 Jan 2016

64 Your Honor The South Carolina supreme Court Has spoken Colateral source Must be WHOLLY INDEPENDANT OF DEFENDANT TO not be counted PMI is not INDEPENDANT OF DEFENDANTS totally based on defendants can be canceled by defendants under certant condition , was paid for by defendants, based on defendants down payment for loan again BB&T stated over phone case closed SO who DOES ROGER represent THEMSELVES.I will OBJECT AN APPEAL. NOT FOR PLAINTIFFS EYES

36

5

SEARCH

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More

Fwd: BB&T v. Cain et. al 2010-3574Wilton Cain to **adurrahb** show details show image slideshow

7 Dec 2015

2010CP0803514_ORDER_206821.pdf (33 KB)

-----Original Message-----

From: Suzanne Albert <suzanne.albert@berkeleycountysc.gov>To: Erica Lybrand <Erica.Lybrand@rtt-law.com>Cc: wilca6 <wilca6@aol.com>; Karissa Richardson <Karissa.Richardson@rtt-law.com>; Charlie Gwynne <CHARLIE.GWYNNE@rtt-law.com>; Olivia Wicker <Olivia.Wicker@rtt-law.com>

Sent: Wed, Dec 2, 2015 10:58 am

Subject: RE: BB&T v. Cain et. al 2010-3574

Attached is the filed Order that your office submitted yesterday. Judge Van Slambrook is in the process of drafting another Order.

Please be advised that a hard copy of this filed Order will not follow this email.

Suzanne Albert

Foreclosure Specialist

Master-In-Equity's Office

Dale E. Van Slambrook, Judge

843-719-4437- Direct

843-719-4397- Fax

suzanne.albert@berkeleycountysc.govVisit our Website at: www.berkeleycountysc.gov-----
From: Erica Lybrand [<mailto:Erica.Lybrand@rtt-law.com>]

Sent: Tuesday, December 01, 2015 10:13 AM

To: Suzanne Albert <suzanne.albert@berkeleycountysc.gov>Cc: wilca6 <wilca6@aol.com>; Karissa Richardson <Karissa.Richardson@rtt-law.com>; Charlie Gwynne <CHARLIE.GWYNNE@rtt-law.com>; Olivia Wicker <Olivia.Wicker@rtt-law.com>

Subject: RE: BB&T v. Cain et. al 2010-3574

Good morning,

My apologies. I thought I had previously forwarded the attached proposed order.

SEARCH

Reply Reply All Forward Delete

More

Re: BB&T v. Cain et. al 2010-3574

Wilton Cain to dale.vanslambrook show details

15 Jan 2016

For Judge Dale Van Slambrook eyes only, please do not forward as per Judge instruction not to discuss! Your Honor I have no objection to the amount after Appraisal, my objection is to there being any residue owed BB&T FOR they collected from PMI per Teresa Roberts agent at RMIC the insurance company (gan # 0726007538) after being notified of Default by BB&T. Any order for BB&T will allow double payment to BB&T. It is not defendant fault PMI insurer has not attempted to collect, and this Court Should not write or issue any order that has any possibility of extending notification time or any thing which aids insurer ability to SUE nor allow BB&T to back door same, I am willing to face Insurer if need be, I see no Court case where first party has right to sue for third party nor has BB&T or their attorney notified this court or defendant they represent PMI Insurer in FIVE years I believe time has expired. It has been over five years Insurer could have SUED. Equity DEMANDS COURT protect my RIGHTS, As your Honor Stated no order has been signed. Thank You

-----Original Message-----

From: Dale Van Slambrook <dale.vanslambrook@berkeleycountysc.gov>
To: Erica Lybrand <Erica.Lybrand@rtt-law.com>
Cc: wilca6 <wilca6@aol.com>
Sent: Thu, Jan 14, 2016 12:23 pm
Subject: RE: BB&T v. Cain et. al 2010-3574

Ms. Lybrand, Please prepare a proposed Order in reference to the above matter heard today denying the requested relief. Outline the procedural history as set forth in your brief and that this Order is issued in response to Defendant's Motion to Dismiss but was considered a Motion to Amend, Alter Judgment or to Reconsider the Order dated December 4, 2015. Please make the appropriate findings and conclusions in conformity with your arguments set forth in your brief and the Motion Hearing. Thank you.

Dale E. Van Slambrook
Master-in-Equity Berkeley County
PO Box 1163
Moncks Corner, South Carolina 29461
(843)719-4437

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SEARCH

Reply Reply All Forward Delete More

From: Harrington, Kristi L. Secretary (Vivian Sox) [<mailto:kharringtonsc@sccourts.org>]
Sent: Thursday, July 23, 2015 1:17 PM
To: Valerie Butler <valerie.butler@berkeleycountysc.gov>
Cc: wilca6@aol.com; Harrington, Kristi L. Law Clerk (Katherine P. Clifton) <kharringtonlc@sccourts.org>
Subject: 2010-CP-08-3514

Ms. Valerie,

Judge Harrington would like to hear the matter below during her next Common Pleas term in Berkeley. Please schedule for Wednesday, September 2, at 9:00 AM.

Thank you,

Vivian E. Sox

Administrative Assistant & Law Clerk
The Honorable Kristi Lea Harrington
The Circuit Court of South Carolina
Ninth Judicial Circuit
300-B California Avenue
Moncks Corner, SC 29461
Phone: (843) 719-4480
Fax: (843) 719-4724
Email: KHarringtonSC@sccourts.org

From: Harrington, Kristi L. Law Clerk (Katherine P. Clifton)
Sent: Thursday, July 23, 2015 11:10 AM
To: Harrington, Kristi L. Secretary (Vivian Sox)
Subject: FW: Appraisal in hand

From: Wilton Cain [<mailto:wilca6@aol.com>]
Sent: Thursday, July 23, 2015 10:50 AM
To: Harrington, Kristi L. Law Clerk (Katherine P. Clifton); kharringtonsc@sccourt.org
Subject: Appraisal in hand

Please I am awaiting your scheduling of hearing on value of house after appraisal, that rescheduling in Equity Court may occur, please schedule Case

1/16/2017

AOL Mail (64)

SEARCH

Reply Reply All Forward Delete More

BB&T V Cain 2010-3514

Wilton Cain to [suzanne.albert](#) show details

30 Nov 2015

64

Dear Clerk: This is for the Honorable Dale E. Van slambrook Master In Equity, there was a hearing a month ago where BB & T attorney was given 30 days to have an Appraisal done, Question has the Appraisal been done? If so what is the value You have set ? And when is next Hearing, Keeping in mind that the loan had an Mortgage insurance to cover 25% of the loan, which I paid to insure Mortgage company had no loss, Judge Watson implied it was to cover loss for BB&T, this case is quite old Thank You!!!!

38



5



ROGERS TOWNSEND & THOMAS, PC

ATTORNEYS AND COUNSELORS AT LAW

DEFAULT SERVICES DEPARTMENT ATTORNEYS

SAMUEL C. WATERS	CHERYL H. FISHER	REGINALD P. CORLEY	JENNIFER W. RUBIN	ELLIE C. FLOYD	MICHAEL P. MORRIS
MARY R. POWERS		ROBERT P. DAVIS		WILLIAM S. KOEHLER	
EVE MORDOCK STACEY	KELSEY K. BROCKBANK	JOHN P. FETNER	KEVIN T. HARDY	BENJAMIN J. POWELL	

September 28, 2010

Wilton Cain
259 Clayburne Drive
Goose Creek, SC 29445

RE: 6991389936
RTT File No: 004335-02111

Dear Mr. Cain:

In response to your Qualified Written Request, my client responds as follows:

Your Requests:

1. Branch Banking and Trust Company is the servicing agent not the creditor the creditor is Freddie Mac case #476596726.
2. How much is owed on the house and how much is interest and attorney fees?
3. This loan has mortgage insurance on it from Republic Mortgage Insurance Co. (RMIC).
4. How much of this loan is covered all or what portion by RMIC I paid for it to cover loan?
5. Has RMIC been notified of default?
6. What is owed creditor after RMIC pay insurance?
7. I dispute I owe \$182,527.89 how much does RMIC owe?

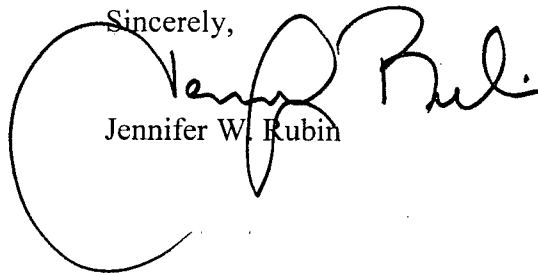
Plaintiff's Response:

1. Branch Banking and Trust Company is the holder of the Note.
2. The amount owed on the subject loan as of August 19, 2010 is \$182,527.89.
3. The loan does indeed have private mortgage insurance coverage as required.
4. Private mortgage insurance only covers the creditor for a loss under specific circumstances. It does not reimburse you in any way.
5. Private mortgage insurance carrier has been notified that the loan is delinquent and in default.
6. Private mortgage insurance only pays a creditor when a loss is suffered. Your obligations are set forth pursuant to the Note and Mortgage you signed (see attached).
7. Private mortgage insurance only pays a creditor when a loss is suffered. Please see the Validation of Debt in respect to your dispute. Assuming you resolve this delinquency, the mortgage insurer would owe nothing under the policy.

In Response to all Requests: Please find enclosed a copy of the Note, Mortgage, Validation of Debt and Payment History.

Sincerely,

Jennifer W. Rubin



JWR/tsm
Enclosures

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

EXB 2

August 28, 2010

Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Columbia, South Carolina 29210

RE: 6991389936
RTT File No: 004335-02111

RESPONSE

Concerning your notice dated Aug 23, 2010:

1. Branch Banking and Trust Company is the servicing agent not the creditor the creditor is Freddie Mac case # 476596726
2. How much is owed on house and how much is interest and attorney fees?
3. This loan has mortgage insurance on it from Republic Mortgage Insurance Co (RMIC).
4. How much of this loan is covered all or what portion by RMIC I paid for it to cover loan?
5. Has RMIC been notified of default?
6. What is owed creditor after RMIC pay insurance?
- 7 I dispute I owe 182,527.89 how much does RMIC owe ?

Expedite foreclosure sale we have moved which BB&T is well aware of. We could not accept mod that added 120 months onto the loan house would have cost nearly 500,00.00 dollars. And it now appraises for about 140,000.00

thank you
Wilton Cain



Branch Banking and Trust Company

March 29, 2011

Mortgage
P.O. Box 2027
Greenville, SC 29602-2027
(800) 827-3722
Fax (864) 242-9533

WILTON H CAIN
CASSANDRA M DURRAH CAIN
2886 PALMER DR
CHARLESTON SC 29414

RE: Mortgage Loan Number 6991389936
Property Address 259 CLAYBURNE DR, GOOSE CREEK SC 29445

Dear Wilton Cain and Cassandra Cain

In response to your recent inquiry to waive the PMI Insurance for your loan please note the following: BBT never received a 'qualified written request' for PMI deletion on this account. If one had been received however, a denial would have been the result, due to the loan-to-value ratio (92.6% Loan To Original Value/99.3 Loan To Current Value) and loan delinquency (due for 11/109 pmt).

PMI coverage provides BB&T with the option of filing a claim to offset our losses. This loan is also owned by Freddie Mac, who would expect this loan to remain insured due to its present delinquency.

There are no agreements in SC or otherwise with PMI companies not to waive PMI coverage when qualified. The only agreement we have with the PMI Companies is that they will insure our loans as long as we pay the premiums. Furthermore, we are bound by the requirements of the Homeowner's Protection Act to remove PMI when the Homeowner is qualified. Even under the act, PMI does not have to be deleted until the loan payments are current.

On July 20, 2010 Branch Banking and Trust sent a Vacant Property Notice to your attention. Please see enclosed letter. Please review section 9 of your Mortgage concerning Property preservation. A copy of the mortgage is enclosed also.

Sincerely,

Yolanda Young
Yolanda Young

BB&T Mortgage
Non-Performing Assets
1-800-827-3722 ext.28790

EXB 2

MLH452

CUSTOMER HISTORY STATEMENT AS OF: 12/31/08

LOAN # ~~68-1000000~~
 WILTON H CAIN
 CASSANDRA M DURRAH CAIN
 259 CLAYBURNE DR
 GOOSE CREEK SC 29445

PROPERTY ADDRESS: 259 CLAYBURNE DR
 GOOSE CREEK SC 29445

ORIG MORTGAGE AMOUNT	174,988.00	P & I PAYMENT	1,077.44
PRINCIPAL BALANCE	172,583.04	ESCROW PAYMENT	212.70
ESCROW BALANCE	40.84	TOTAL PAYMENT	1,290.14
RESTRICTED ESCROW	.00	DUE DATE	01/01/09
SUSPENSE BALANCE	.00	FIRST PAYMENT DATE	11/01/07
BUYDOWN FUNDS BALANCE	.00	NOTE DATE	09/19/07
LATE CHARGE BALANCE	.00	YTD INTEREST	10,857.27
RECOVERABLE CORPORATE		YTD LATE CHARGES	.00
ADVANCE BALANCE	.00	YTD INT ON ESCROW	.00
INTEREST RATE	06.25000	YTD PRIN PAID	2,072.01
		YTD TAXES	610.88
		YTD HAZARD	740.00

ACTIVITY FROM 01/01/08 TO 12/31/08

PROC DTE TRANSACTION AMT	DUE DTE PD PRINCIPAL AMT PRINCIPAL BAL	TRAN INTEREST AMT	DESCRIPTION ESCROW AMOUNT ESCROW BALANCE	L-C AMT	SUSPENSE AMT	OTHER AMT
12/15/08 97.70-	11/08 .00 172583.04	310 .00	MORTGAGE INSURANCE DISBURSEMENT 97.70- 40.84	.00	.00	.00 PAYEE: 011
12/04/08 .00	12/08 .00	168 .00	REPAY OF ESCROW ADVANCE 74.16-	.00	.00	74.16 ADVANCE REFUND
12/04/08 1290.14	12/08 177.64 172583.04	171 899.80	PAYMENT 212.70 138.54	.00	.00	.00
11/18/08 74.16	12/08 .00	161 .00	ESCROW ADVANCE 74.16	.00	.00	.00
11/17/08 97.70-	10/08 .00 172760.68	310 .00	MORTGAGE INSURANCE DISBURSEMENT 97.70- 74.16-	.00	.00	.00 PAYEE: 011
11/04/08 .00	11/08 .00	168 .00	REPAY OF ESCROW ADVANCE 189.16-	.00	.00	189.16 ADVANCE REFUND
11/04/08 1290.14	11/08 176.72 172760.68	171 900.72	PAYMENT 212.70 23.54	.00	.00	.00
10/20/08 189.16	11/08 .00	161 .00	ESCROW ADVANCE 189.16	.00	.00	.00
10/17/08 610.88-	11/08 .00 172937.40	312 .00	PROPERTY TAX DISBURSEMENT 610.88- 189.16-	.00	.00	.00 PAYEE: 39015
10/17/08 97.70-	09/08 .00 172937.40	310 .00	MORTGAGE INSURANCE DISBURSEMENT 97.70- 421.72	.00	.00	.00 PAYEE: 011
10/06/08 1264.50	10/08 175.81 172937.40	171 901.63	PAYMENT 187.06 519.42	.00	.00	.00

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;
Liberty Hall Residential Property Owners
Association, Inc.;

Defendant(s).

(004335-02111)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

20 10 -CP-08- 3514

LIS PENDENS

Deficiency Judgment Demanded

FILED
2010 OCT -4 AM 11:02
CLERK OF COURT
BERKELEY COUNTY, SC

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Wilton H. Cain and Cassandra M. Durrah-Cain to CTX Mortgage Company, LLC dated September 19, 2007, and recorded in the Office of the RMC/ROD for Berkeley County on September 20, 2007, in Mortgage Book 6868 at Page 165. This Mortgage was subsequently assigned to Mortgage Electronic Registration Systems, Inc., its successors and assigns (MIN# 100159969913899368) by assignment dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 186.

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

All that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "Subdivision Plat Showing Phase 10A, (39.298 AC), Mulberry Park, A Portion of Tract E1 of The Liberty Hall Tract, Property of Centex Homes, A Nevada General Partnership, located in the City of Goose Creek, Berkeley County, South Carolina" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

Property Address: 259 Clayburne Drive
Goose Creek, SC 29445

TMS# 244-03-04-016

Kevin T Hardy

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar # 74935)
Shawn R. Willis (SC Bar # 71155) Kevin T. Hardy (SC Bar #76015) ✓
Benjamin J. Powell (SC Bar #77205) John P. Fetner (SC Bar # 77460)
Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
October 1, 2010

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

vs.

Wilton H. Cain; Cassandra M. Durrah-Cain; Liberty Hall Residential Property Owners Association, Inc.;

Plaintiff(s)

Defendant(s)

Submitted By: Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar # 68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar # 5300), Mary R. Powers (SC Bar# 16534), Robert P. Davis (SC Bar# 74030), William S. Koehler (SC Bar# 74935), Shawn R. Willis (SC Bar # 71155), Kevin T. Hardy (SC Bar #76015), Benjamin J. Powell (SC Bar #77205), John P. Fetner (SC Bar # 77460), Kelsey K. Brockbank (SC Bar # 77519)

Attorneys for the Plaintiff
004335-02111

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.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP-08-3514

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Construction (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 (229)

Torts - Personal Injury

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

Real Property

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

Inmate Petitions

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

Judgments/Settlements

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

Administrative Law/Relief

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

Appeals

- ☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security 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 Deposition (650)
☐ Motion to Quash Subpoena in
 An Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature:

Kevin T Hardy

Date:

OCT - 1 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, 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

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union 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 or by the 210th day of 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. Case 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 had been concluded.

004335-02111

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)
)
BERKELEY COUNTY)
)
Branch Banking and Trust Company,)
Plaintiff)
)
vs.)
)
Wilton H. Cain; Cassandra M. Durrah-Cain; Liberty)
Hall Residential Property Owners Association, Inc.;)
Defendant.)

IN THE CIRCUIT COURT FOR THE
NINTH
JUDICIAL CIRCUIT

20 10 -CP-08-3514

CERTIFICATE OF EXEMPTION
FROM ADR

DOCKET NO.

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;
- ☒ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

FILED
2010 OCT -4 AM 11:02
CLERK OF COURT, SC

Plaintiff/Attorney(s) for Plaintiff(s)

Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar # 68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar # 5300), Mary R. Powers (SC Bar# 16534), Robert P. Davis (SC Bar # 74030), William S. Koehler (SC Bar# 74935), Shawn R. Willis (SC Bar # 71155), Kevin T. Hardy (SC Bar #76013), Benjamin J. Powell (SC Bar #77205), John P. Fetner (SC Bar # 77460), Kelsey K. Brockbank (SC Bar # 77519)

Rogers Townsend & Thomas, PC

220 Executive Center Drive, Suite 109

Post Office Box 100200

Columbia, SC 29202

(803) 744-4444

Defendant/Attorney(s) for Defendant(s)

Date: October 1, 2010

004335-02111

SCCA / 234 (01/2010)

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;
Liberty Hall Residential Property Owners
Association, Inc.;

Defendant(s).

(004335-02111)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

20-10-CP-08 3514

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

2010 OCT -4 AM 11:02
FILED
CLERK OF COURT
BERKELEY COUNTY, SC

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

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

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Branch Banking and Trust Company.

Kevin T Hardy

Rogers Townsend & Thomas, PC

ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
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Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
October 1, 2010

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;
Liberty Hall Residential Property Owners
Association, Inc.;

Defendant(s).

(004335-02111)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2010-CP-08-3514

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Demanded

2010 OCT -4 AM 11:02
FILED
CLERK OF COURT
BERKELEY COUNTY, SC

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Berkeley County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.
3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the HMP modification process has been completed without a modification.
no attempt to modify loan
5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
attened over 500,000
6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.
7. Heretofore, on or about September 19, 2007, Wilton H. Cain and Cassandra M.

Durrah-Cain made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$174,988.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Wilton H. Cain and Cassandra M. Durrah-Cain made, executed and delivered unto CTX Mortgage Company, LLC a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "Subdivision Plat Showing Phase 10A, (39.298 AC), Mulberry Park, A Portion of Tract E1 of The Liberty Hall Tract, Property of Centex Homes, A Nevada General Partnership, located in the City of Goose Creek, Berkeley County, South Carolina" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

Property Address: 259 Clayburne Drive
Goose Creek, SC 29445

TMS# 244-03-04-016

9. The Mortgage was signed, witnessed and probated September 19, 2007; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Berkeley County on September 20, 2007, in Mortgage Book 6868 at Page 165. This Mortgage was subsequently assigned to Mortgage Electronic Registration Systems, Inc., its successors and assigns (MIN# 100159969913899368) by assignment dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 186.

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

11. Rogers Townsend & Thomas, PC sent a notice pursuant to 15 U.S.C. Section 1692(g) to the Notemaker(s), dated AUGUST 23, 2010, and a copy of the contents of the notice is attached hereto.

12. Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable Defendant(s) prior to the commencement of this action.

13. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for November 1, 2009, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of November 1, 2009, the principal sum of \$170,733.63, with interest from October 1, 2009, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

14. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly demanded against Wilton H. Cain and Cassandra M. Durrah-Cain.

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

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

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

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

A. Liberty Hall Residential Property Owners Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto.

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

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

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

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

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

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

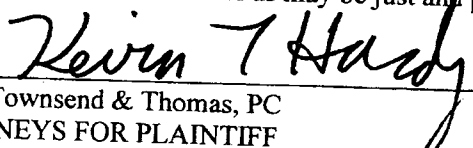
First, to the costs and expenses of the within action and sale;

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

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

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

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



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

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220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
October 1, 2010

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1692, As Amended

1. As of August 19, 2010, you owe \$182,527.89. Because of interest, late charges, attorney fees and other charges that vary from day to day, the amount due on the day you pay may be greater.
2. Branch Banking and Trust Company is the Creditor to whom the debt is owed. BB&T is the servicing agent for the Creditor to whom the debt is owed.
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Consumer, within thirty (30) days after the receipt of this notice, dispute the validity of the debt or some portion thereof.
4. If you, the Consumer, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain verification of the debt, and a copy of the verification will be mailed to you, the Consumer, by the Creditor's law firm.
5. If the Creditor named in this notice is different from the original Creditor, and if you, the Consumer, make a written request to the Creditor's law firm within the (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. This notice should not be construed as a thirty (30) day grace period. If, in writing, you request proof of the debt or the name and address of the original creditor within the thirty (30) day period that begins with your receipt of this notice, the law requires the Creditor's law firm to suspend its efforts (through litigation or otherwise) to collect the debt until the Creditor's law firm mails the requested information to you.
7. This notice pertains to your dealings with the Creditor's law firm as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time at which you must answer the complaint. The summons attached to the complaint is a command from the court, not from the Creditor's law firm, and you must follow its instructions even if you dispute the validity or amount of the debt. The advice in this notice also does not affect the Creditor's law firm's relations with the court. The Creditor's law firm may file papers in any such suit according to the court's rules and the judge's instructions.
8. This is an attempt to collect a debt, and any information obtained will be used for that purpose. The information provided in paragraphs 1 and 2 above has been provided to us by the Creditor or Servicer. At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account. If you have previously received a discharge in bankruptcy, this notice is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;
Liberty Hall Residential Property Owners
Association, Inc.;

Defendants.

(504335-02111 HPW)

Harriet Pollitt Wallace, Esquire
Attorney for the Plaintiff

Joseph E. DaPore, Esquire
Attorney for Liberty Hall Residential Property Owners Association, Inc.

Wilton H. Cain
Pro Se Defendant

Cassandra M. Durrah-Cain
Pro Se Defendant

A hearing was held June 16, 2011 at 9:30 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 October 4, 2010.
2. The Summons and Complaint were filed on October 4, 2010.
3. Service was made upon all Defendants as shown by the proofs of service filed herein.
4. The Defendants Wilton H. Cain, Cassandra M. Durrah-Cain are in default as shown by affidavit filed herein.
5. The Defendants Wilton H. Cain and Cassandra M. Durrah-Cain are not in the

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-08-3514

JUDGMENT OF FORECLOSURE AND SALE
Deficiency Judgment Demanded against Wilton H.
Cain and Cassandra M. Durrah-Cain

FILED
2011 JUN 30 AM 9:53
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

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 herein.

6. No Defendant raised any issues related to Plaintiff's standing to prosecute this action.

7. Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant.

8. Liberty Hall Residential Property Owners Association, Inc. filed an answer through its attorney, Joseph E. DaPore.

9. All Pro Se Defendants 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.

10. Wilton H. Cain and Cassandra M. Durrah-Cain for value received, made, executed and delivered a Fixed Rate Note dated September 19, 2007, promising thereby to pay to Plaintiff's predecessor the sum of \$174,988.00 with interest at a fixed rate of 6.25% per annum. Other terms and conditions are stated in the Fixed Rate Note, of record herein.

11. To better secure the payment of the Fixed Rate Note described above, Wilton H. Cain and Cassandra M. Durrah-Cain made, executed, and delivered to CTX Mortgage Company, LLC a certain real estate Mortgage in writing, dated September 19, 2007 covering real property in Berkeley County, which is the same as that described in the Complaint. This Mortgage was filed on September 20, 2007, and is of record in the Office of RMC/ROD in Book 6868 at Page 165. This Mortgage was subsequently assigned to Mortgage Electronic Registration Systems, Inc., its successors and assigns (MIN# 100159969913899368) by assignment dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 186. Subsequently, it was assigned to Branch Banking and Trust Company by assignment dated June 13, 2011 and subsequently recorded.

12. This Mortgage constitutes a purchase money first priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

13. 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.

14. Any notice required by the terms of the Mortgage or by state or federal statutes was given to the applicable Defendants prior to the commencement of this action.

15. Payment due on the Fixed Rate 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 Fixed Rate Note and Mortgage in the hands of the attorney herein for remedy by foreclosure.

16. The sum of ~~\$6,929.00~~ ^{5629.00 REW} is a reasonable fee to allow Plaintiffs counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Fixed Rate Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiffs 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 Plaintiffs counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

17. According to Plaintiffs accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Fixed Rate Note, with interest at the rate provided in the Fixed Rate Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Fixed Rate Note and Mortgage, is as follows:

- (a) Principal due November 1, 2009..... \$170,733.63
- (b) Interest from October 1, 2009 through
June 16, 2011 at 6.25% per annum \$18,223.33
- (c) Allowable Escrow Advances \$3,348.18

Private Mortgage Insurance - \$1,856.30
19 Payments of \$97.70

Property Tax - \$718.88
11/13/09 - \$142.58
11/01/10 - \$576.30

Hazard Insurance - \$773.00

- (d) Allowable Corporate Advances \$3,327.00
 Paid Attorney Fees - \$1,325.00
 BPO/Photos - \$224.00
 Property Preservation - \$1,778.00
- (e) Costs of collection prior to hearing (service, filing, etc.)..... \$705.00
 Service - \$405.00
 Master Fee - \$125.00
 Motion Fee - \$25.00
 Filing Fee - \$150.00
- (f) Abstract or Title Search \$550.00
 Title Search - \$425.00
 Title Search - \$125.00
- (g) Late Charges \$269.35
- (h) Private Mortgage Insurance Due but not yet advances \$195.40
- (i) Attorney fee (awarded herein, but unpaid, through 6-15-11) \$4,304.00
- (j) Anticipated attorney fee for hearing and post judgment work ~~\$1,900.00~~ **REN**

TOTAL debt secured by Fixed Rate Note and Mortgage,
 including interest to date shown..... ~~\$202,960.89~~ **REN**
\$ 201,660.89

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 6.25% per annum (pursuant to the terms of the Fixed Rate Note and purchase money first Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the purchase money first Mortgage through the date to which such interest is computed.

18. Plaintiff is seeking the usual foreclosure of the purchase money first mortgage and has expressly demanded the right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-660 demanded against Wilton H. Cain and Cassandra M. Durrah-Cain. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

19. The following Defendants may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendants may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure.

The said Defendants and such liens or legal interests are as follows:

- a. Liberty Hall Residential Property Owners Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions and any amendments thereto.

IT IS THEREFORE ORDERED:

20. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Order dated May 22, 2009, and the foreclosure action may proceed.

21. The property is not owner-occupied, and therefore, does not qualify for Foreclosure Intervention pursuant to the South Carolina Supreme Court Administrative Order dated May 11, 2011. A Certificate of Non-Owner Occupancy has been filed herein.

22. There is due on the Fixed Rate Note and purchase money first Mortgage set forth in the Complaint the principal sum of \$170,733.63 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 and other allowable advances.

23. Plaintiff shall have judgment demanded against Wilton H. Cain and Cassandra M. Durrah-Cain. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment at any time prior to the foreclosure sale.

24. 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 per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

25. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

26. The Defendants liable for the aforesaid judgment debt of the Fixed Rate Note and Mortgage including interest at the rate of 6.25% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

27. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold at public auction at the Berkeley County

Courthouse, in the City of Moncks Corner, and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. 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. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

c. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

d. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.

e. 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.

28. Personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

29. 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.

30. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

31. 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.

32. The Master in Equity will apply the proceeds of the sale as follows:

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

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

33. In the event the successful bidder is someone other than the Defendants in possession of the subject property, the Sheriff of Berkeley County, upon receipt of a Writ of Assistance or other order of ejectment, is authorized and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession.

34. In the event the successful bidder is other than the Defendants in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

35. The Defendants named herein, and all persons whosoever claiming under Defendants, 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.

36. 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.

37. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendants, and the Defendants 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.

38. 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.

39. 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 County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "SUBDIVISION PLAT SHOWING PHASE 10A, (39.298 AC), MULBERRY PARK, A PORTION OF TRACT E1 OF THE LIBERTY HALL TRACT, PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE CITY OF GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

Property Address: 259 Clayburne Drive
Goose Creek, SC 29445

TMS# 244-03-04-016

Robert E. Watson

Robert E. Watson
Master in Equity for Berkeley County

28
6/28, 2011
Moncks Corner, South Carolina

NOTICE OF SALE

BY VIRTUE of a decree heretofore granted in the case of: Branch Banking and Trust Company vs. Wilton H. Cain; Cassandra M. Durrah-Cain; Liberty Hall Residential Property Owners Association, Inc.; C/A No. 10-CP-08-3514, The following property will be sold on August 3, 2011, at 11:00 AM at the Berkeley County Courthouse to the highest bidder:

All that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "SUBDIVISION PLAT SHOWING PHASE 10A, (39.298 AC), MULBERRY PARK, A PORTION OF TRACT E1 OF THE LIBERTY HALL TRACT, PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE CITY OF GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

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Property Address: 259 Clayburne Drive
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TMS# 244-03-04-016

SUBJECT TO ASSESSMENTS, BERKELEY 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. Personal or deficiency judgment having been demanded or reserved, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. §15-39-720 (1976). The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale. 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 6.25% per annum. For complete terms of sale, see Judgment of Foreclosure and Sale filed with the Berkeley County Clerk of Court at C/A #10-CP-08-3514.

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.

Samuel C. Waters, Esq.
Attorney for Plaintiff
P.O. Box 100200
Columbia, SC 29202-3200
(803) 744-4444
504335-02111

Robert E. Watson
Robert E. Watson
Master in Equity for
Berkeley County

Website: www.rtt-law.com (see link to Resources/Foreclosure Sales)

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;
Liberty Hall Residential Property Owners
Association, Inc.;

Defendant(s).

(004335-02111)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-08-3514

ORDER FOR DEFICIENCY JUDGMENT
AGAINST

Wilton H. Cain and Cassandra M. Durrah-
Cain

in favor of
Federal Home Loan Mortgage
Corporation
for
\$83,893.82

2011 SEP 19 PM 1:14
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

COPY

1. Pursuant to Order of Court and after due notice and advertisement, the undersigned sold the subject property to the Plaintiff for the sum of \$121,500.00, that amount being the highest bid made on Sales Day August 3, 2011, which according to statute became final on September 2, 2011; subsequently the Plaintiff assigned its bid as well as all of its rights in and to the Deficiency Judgment unto Federal Home Loan Mortgage Corporation.

2. Pursuant to the Judgment of Foreclosure and Sale filed in this action, Plaintiff was awarded a judgment against Wilton H. Cain and Cassandra M. Durrah-Cain in the amount of \$201,660.89, together with interest thereon at the rate of 6.25% per annum; subject, to Plaintiff's right to a deficiency judgment pursuant to S.C. Code Ann. § 29-3-660.

3. The Plaintiff has submitted its Affidavit of Additional Costs in the amount of \$3,732.93, which I find to constitute proper expenses to be added to the aforesaid judgment amount.

4. I find that, as of September 2, 2011, the sum of Plaintiff's additional costs \$3,732.93 and the judgment amount \$201,660.89 total \$205,393.82. After crediting the proceeds of sale (\$121,500.00), I find that there is a difference due Plaintiff in the amount of \$83,893.82, which amount constitutes the deficiency as provided by the Judgment of Foreclosure and Sale and S.C. Code Ann. § 29-3-660.



NOW THEREFORE, IT IS ORDERED that the total deficiency judgment in the amount of \$83,893.82 shall be entered against the Defendant(s) Wilton H. Cain and Cassandra M. Durrah-Cain, with interest accruing from September 2, 2011 at the rate of 6.25%, in favor of Federal Home Loan Mortgage Corporation.

Judgment of Foreclosure	\$201,660.89
Additional Costs After Judgment	<u>\$3,732.93</u>
Total Judgment	\$205,393.82
Less Proceeds of Sale	<u>\$121,500.00</u>

Total Deficiency Judgment

\$83,893.82

Robert E. Watson

Robert E. Watson
Master in Equity for Berkeley County

9/11/11, 2011.
Moncks Corner, South Carolina

NOTICE OF SALE

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Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

Property Address: 259 Clayburne Drive
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TMS# 244-03-04-016

SUBJECT TO ASSESSMENTS, BERKELEY AD VALOREM TAXES, EASEMENTS AND/OR, RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

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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.

Samuel C. Waters, Esq.
Attorney for Plaintiff
P.O. Box 100200
Columbia, SC 29202-3200
(803) 744-4444
504335-02111

Robert E. Watson
Master in Equity for
Berkeley County

Website: www.rtt-law.com (see link to Resources/Foreclosure Sales)

BUIST, BYARS & TAYLOR, LLC
2680 ELMS PLANTATION BLVD.
BLDG 100, SUITE 101
NORTH CHARLESTON, SC 29406

2007080242

Return To:

CTX MORTGAGE COMPANY, LLC
185 FAIRCHILD ST. SUITE 402, FINAL DOCS
CHARLESTON, SC 29492

Doc # 00030619

Prepared By:

BRENN A RAY
185 FAIRCHILD ST. SUITE 402
CHARLESTON, SC 29492

00030619 Vol: 6862 Pg: 166

[Space Above This Line For Recording Data]

400152443

MIN#100159969913899368

MORTGAGE

DEFINITIONS

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

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

9/19/2007

(B) "Borrower" is

WILTON H. CAIN AND
CASSANDRA M. DURRAH-CAIN

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is

CTX MORTGAGE COMPANY, LLC

Lender is a A LIMITED LIABILITY COMPANY
organized and existing under the laws of THE STATE OF DELAWARE

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

Form 3041 1/01

CTX06(SC) (0409).01

Page 1 of 15

VMP Mortgage Solutions, Inc.



P + 400152443 + CF001 + 01 + 15 + 0918071424

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400152443

Lender's address is 2828 NORTH HARWOOD
DALLAS, TX 75201-1516

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated

9/19/2007

The Note states that Borrower owes Lender

ONE HUNDRED SEVENTY FOUR THOUSAND NINE HUNDRED EIGHTY EIGHT & 00/100
(U.S. \$ 174,988.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than 10/01/2037

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

(F) "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.

(G) "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] |

(H) "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.

(I) "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.

(J) "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.

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

(L) "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.

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

(N) "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.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this 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.



P + 4 0 0 1 5 2 4 4 3 + C F 0 0 1 + 0 2 + 1 5 + 0 9 1 8 0 7 1 4 2 4

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400152443

(P) "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 Lender and Lender's successors and assigns, the following described property located in the

COUNTY

of

BERKELEY

:

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

Parcel ID Number: 2440304016
259 CLAYBURNE DRIVE
GOOSE CREEK

which currently has the address of

[Street]

[City], South Carolina 29445 [Zip Code]

("Property Address"):

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, 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 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.

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.



P + 400152443 + CF001 + 03 + 15 + 0918071424

400152443

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



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be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, 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



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the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

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



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proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including



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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:



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

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

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

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



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

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

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

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

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

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.



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

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

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

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

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

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

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

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



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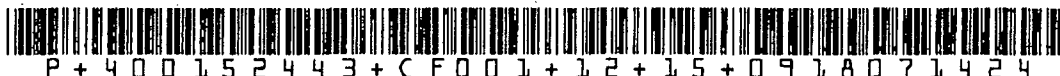
interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall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

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

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous 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).



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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.

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

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

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

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

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

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

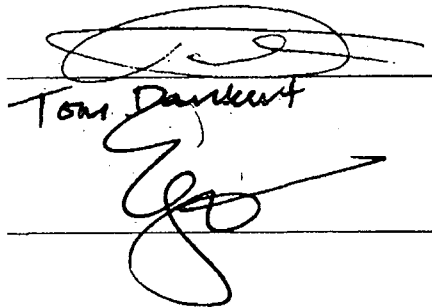


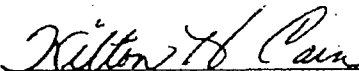
00030619 Vol: 6868 Pg: 179

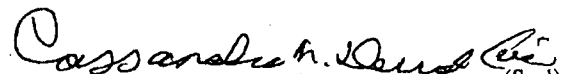
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:


Tom Dinkert


WILTON H. CAIN (Seal)
-Borrower


CASSANDRA M. DURRAH-CAIN (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower



00030619 Vol: 6868 Pg: 180

STATE OF SOUTH CAROLINA,

I,

Ego

Ego

400152443

Charleston County ss:

do hereby certify that

Wilton H. Cain and Cassandra M. Durnah-Cain

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

Witness my hand and official seal this

19

day of

September 2007

Ego

Notary Public for South Carolina

My Commission Expires:

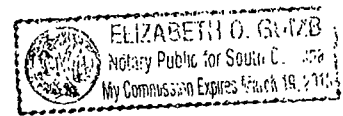


Exhibit "A"

00030619 Vol: 6868 Pg: 181

ALL that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "SUBDIVISION PLAT SHOWING PHASE 10A, (39.298 AC), MULBERRY PARK, A PORTION OF TRACT E1 OF THE LIBERTY HALL TRACT, PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE CITY OF GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to the Mortgagor herein by deed of conveyance from Centex Homes, a Nevada general partnership dated September 19, 2007 and recorded simultaneously herewith.

Tax Map # 244-03-04-016

Doc # 00030620

00030620 Vol: 6868 Pg: 187

RECORD AND RETURN TO:
 CTX MORTGAGE COMPANY, LLC
 185 FAIRCHILD ST. SUITE 402
 CHARLESTON, SC 29492

400152443

ASSIGNMENT OF MORTGAGE

FOR VALUABLE CONSIDERATION CTX MORTGAGE COMPANY, LLC

whose address is 2828 N. HARWOOD, DALLAS, TEXAS 75201

sole owner and holder of the mortgage dated the 19th day of SEPTEMBER 2007, the
 from WILTON H. CAIN AND
 CASSANDRA M. DURRAH-CAIN
 *

to CTX MORTGAGE COMPANY, LLC
 2828 NORTH HARWOOD, DALLAS, TX 75201-1516

securing a

loan in the amount of

ONE HUNDRED SEVENTY FOUR THOUSAND NINE HUNDRED EIGHTY EIGHT & 00/100

(\$ 174,988.00) Dollars, which mortgage was recorded in Book
 of the records of the Office of

for BERKELEY County, South Carolina, does hereby transfer, assign and
 set over the same with the Note which it was given to secure unto

Mortgage Electronic Registration Systems, Inc.
 whose address is 64318 Miller Road
 Flint, MI 48507

its successors and assigns.

IN WITNESS WHEREOF, CTX MORTGAGE COMPANY, LLC
 DEBRA GUNNELLS, DOCUMENT SIGNER

by

has caused its Corporate Seal to be hereunto affixed this

19th day of September, 2007

Witnesses:

Claudia Crawford
Michelle Canote

by: CTX MORTGAGE COMPANY, LLC

By: *Debra Gunnells*
 DEBRA GUNNELLS 9/19/2007
 DOCUMENT SIGNER



State of South Carolina
 County of Dorchester

The foregoing instrument was acknowledged before me this
 by Debra Gunnells
 Document Signer of CTX Mortgage Company, LLC,
 a Delaware corporation, on behalf of the corporation.

S.Carolina Assignment of Mortgage 1/03
 CTX995(SC) (0301)

VMP Mortgage Solutions(800)521-7291

BUJST, BYARS & TAYLOR, LLC
 2680 ELMS PLANTATION BLVD.
 BLDG 100, SUITE 101
 NORTH CHARLESTON, SC 29406

2007080242

Brenna Ray
 Brenna Ray
 South Carolina
 Dorchester County
 11/10/2009

MIN#100159969913899368
 MERS#888-679-6377

Exhibit "A"

ALL that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "SUBDIVISION PLAT SHOWING PHASE 10A, (39.298 AC), MULBERRY PARK, A PORTION OF TRACT E1 OF THE LIBERTY HALL TRACT, PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE CITY OF GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to the Mortgagor herein by deed of conveyance from Centex Homes, a Nevada general partnership dated September 19, 2007 and recorded simultaneously herewith.

Tax Map # 244-03-04-016

699-138 7936

NOTE

SEPTEMBER 19, 2007
[Date]

NORTH CHARLESTON
[City]

SOUTH CAROLINA
[State]

259 CLAYBURNE DRIVE
GOOSE CREEK, SC 29445
[Property Address]

FredMac# 476596726

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 174,988.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is

CTX MORTGAGE COMPANY, LLC

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 6.250 %.

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 11/01/2007. 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 10/01/2007, 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 650269
DALLAS, TX 75265-0269 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. \$ 1,077.44

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.

MULTISTATE FIXED RATE NOTE - Single Family Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

U244D-5N (0207)

Form 3200 1/01

VMP MORTGAGE FORMS - (800)521-7291

Page 1 of 3

Initials:

27/10
cmde



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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 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % 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.

Wilton H. Cain (Seal)
WILTON H. CAIN -Borrower

Cassandra M. Durrah Cain (Seal)
CASSANDRA M. DURRAH-CAIN -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

WITHOUT RECOURSE
PAY TO THE ORDER OF

BRANCH BANKING AND TRUST COMPANY

BY

Julie M. Palmer
JULIE M. PALMER, VP

Pay To The Order Of
Branch Banking & Trust Company
Without Recourse
CTX Mortgage Company
Amanda J. Williams
Division Vice President

(Sign Original Only)



400152443

MB-704

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 19th day of
 SEPTEMBER, 2007, and is incorporated into and shall be
 deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the
 "Security Instrument") of the same date, given by the undersigned (the "Borrower") to
 secure Borrower's Note to
 CTX MORTGAGE COMPANY, LLC

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

259 CLAYBURNE DRIVE
 GOOSE CREEK, SC 29445

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling,
 together with other such parcels and certain common areas and facilities, as described in
 RESTRICTIVE EASEMENTS, COVENANTS AND CONDITIONS OF RECORD.

(the "Declaration"). The Property is a part of a planned unit development known as

MULBERRY PARK @ LIBERTY HALL

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or
 equivalent entity owning or managing the common areas and facilities of the PUD (the
 "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's
 Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of
 incorporation, trust instrument or any equivalent document which creates the Owners
 Association; and (iii) any by-laws or other rules or regulations of the Owners Association.
 Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the
 Constituent Documents.

**MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
 Form 3150 1/01**

Page 1 of 4

CTX07R (0411)

VMP Mortgage Solutions, Inc. (800)521-7291



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400152443

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and 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, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.



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E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.



400152443

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

Wilton H. Cain (Seal)
WILTON H. CAIN -Borrower

Cassandra M. Durrah Cain (Seal)
CASSANDRA M. DURRAH-CAIN -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

CTX07R (0411)

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Form 3150 1/01

