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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Master-In-Equity

The Honorable James O. Spence

Civil Action No. 2013-CP-32-01709

Appellate Case No. 2017-000874

RECEIVED

JUN 07 2017

SC Court of Appeals

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments, Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

Respondent,

v.

Cathy C. Lanier; Branch Banking and Trust Company, Regions Bank,

Defendants,

Of Whom Cathy C. Lanier is the Appellant,

Appellant.

Motion to Dismiss Appeal

Respondent the Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments, Inc., Mortgage Pass-Through Certificates, Series 2002-AR4 ("Respondent"), moves to dismiss the appeal of Appellant Cathy C. Lanier. As set forth below, this motion should be granted because Lanier cannot maintain this appeal until after a final foreclosure judgment has been entered. The appeal should be

dismissed to allow the foreclosure action to proceed to final judgment before the master-in-equity.

Procedural History

Respondent initiated a foreclosure action against Lanier in 2013. See Complaint, attached hereto as Exhibit A. Lanier answered, asserted affirmative defenses, and requested a trial by jury. See Answer dated June 20, 2013, attached hereto as Exhibit B. Lanier's affirmative defenses, inter alia, challenged Respondent's standing to initiate the foreclosure action. See Id. at ¶ 16, attached hereto as Exhibit B ("AFFIRMATIVE DEFENSES . . . At this time, Plaintiff has produced no verifiable proof or evidence to bring this case"). Lanier also filed a motion to dismiss the foreclosure based on the alleged lack of standing.

Respondent moved to strike the affirmative defenses and refer the matter to the master-in-equity. See Motion to Strike, attached hereto as Exhibit D. At the hearing, the circuit court addressed Lanier's motion to dismiss and Respondent's motion to strike. Lanier presented her standing arguments to the circuit court in two ways—a motion to dismiss the foreclosure and through the affirmative defense in her answer. See Order dated January 17, 2014, attached hereto as Exhibit E; Lanier Objection to Motion to Strike, attached hereto as Exhibit C. The denial of the motion to dismiss is not at issue in this appeal or in this motion. Rather, the order striking the affirmative defenses, including the standing arguments, is the focus of this motion.

The circuit court rejected Lanier's standing arguments and struck Lanier's affirmative defenses. Id. The court found that "Lanier's affirmative defenses should be stricken as 'insufficient defenses' under Rule 12(f), SCRCF" from Lanier's answer, which as shown

above included challenges to Respondent's standing to initiate the foreclosure action. Id. at p.

2.

Lanier did not appeal the grant of the motion to strike her affirmative defenses, including that of standing. Rather, Lanier continued to pursue the litigation and her standing arguments to the circuit court. Lanier filed a motion for summary judgment that again argued Respondent lacked standing to initiate the foreclosure. See Lanier Motion for Summary Judgment, attached hereto as Exhibit F. Respondent also filed a motion for summary judgment and argued that it had standing to initiate the foreclosure action. See Motion for Summary Judgment dated October 19, 2015, attached hereto as Exhibit G ("Plaintiff has standing to foreclose the subject mortgage in this case and the loan is in default. Defendant has not produced any evidence to contradict Plaintiff's standing"); see also Memorandum in Support of Motion for Summary Judgment p. 2, attached hereto as Exhibit H ("The indisputable facts further demonstrate that Plaintiff is the current holder of the Mortgage and entitled to foreclose"). Respondent then refuted each of Lanier's arguments from her motion for summary judgment on the standing issue. Id. at p. 2-4.

The circuit court rejected Lanier's argument that Respondent lacked standing. See Order on Cross Motions for Summary Judgment dated November 5, 2015, attached hereto as Exhibit I. The circuit court granted summary judgment on the standing issue, finding that:

First, there is no genuine issue of material fact that Plaintiff has possession of the original subject note and mortgage, had possession at the time the foreclosure action was filed, and the note is made payable to Plaintiff through an allonge. Thus, Plaintiff has standing to enforce the note and mortgage. S.C. Code Ann. §§ 36-3-301, 36-3-205. Plaintiff's Motion is granted on this issue, and Defendant's Motion is denied.

Id. at p. 1. Lanier did not appeal the ruling granting Respondent summary judgment on standing.

Instead, when the circuit court allowed additional briefing on other issues in the case, Lanier again raised the standing issue. In addressing the remaining issues for which the circuit court sought briefing, the circuit court reiterated that it had ruled on and rejected the standing argument in the November 5th order. The circuit court ruled that:

Following the hearing, the Court issued an Order on Cross Motions for Summary Judgment . . . in which the Court ruled that Plaintiff had possession of the original note and mortgage, and had standing to enforce the notice and mortgage.

See Supplemental Order dated December 15, 2015 p. 1, attached hereto as Exhibit J.

Lanier then filed a motion to reconsider that again raised the standing of Respondent to foreclose. See Motion to Reconsider dated January 13, 2016, attached hereto as Exhibit K. The circuit court denied the motion. See Order dated March 22, 2017, attached hereto as Exhibit L. Lanier appealed that order to this Court. See Notice of Appeal. No final judgment of foreclosure has issued in the action.

Argument

The circuit court ruled on Lanier's standing arguments in two intermediate orders—(1) the order granting the motion to strike the affirmative standing defense and (2) the November 5, 2015 order finding Respondent had standing to maintain the foreclosure action and granting summary judgment to Respondent. Lanier could have immediately appealed either of those orders but did not do so. Therefore, Lanier cannot appeal the adverse standing rulings until after final judgment pursuant to Section 14-3-330 of the South Carolina Code. Because a final judgment of foreclosure has not been entered at this time, this Court must dismiss the appeal.

Section 14-3-330 governs appealability and allows an appellant the option of when to pursue an appeal of an intermediate judgment, order, or decree. That section provides that an appellate court has appellate jurisdiction of:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleadings in any action.

S.C. Code Ann. § 14-3-330(1), (2). Thus, the statute provides an appellant with the option to immediately bring the appeal of the adverse intermediate order or to wait until after final judgment to bring the appeal of the adverse intermediate order.

The January 17, 2014 order granting Respondent's motion to strike and the November 5, 2015 order granting summary judgment to Respondent both ruled definitively on the standing arguments raised by Lanier. Lanier could have immediately appealed from the order granting the motion to strike. See S.C. Code Ann. § 14-3-330(2)(c). Likewise, the November 5th order granting summary judgment to Respondent was immediately appealable. Link v. Sch. Dist. of Pickens Cnty., 302 S.C. 1, 6, 393 S.E.2d 176, 179 (1990) (holding that a party has the option to immediately appeal the grant of summary judgment or waiting until final judgment because an "order granting summary judgment may be appealable under § 14-3-330(2)(c) because it has the effect of striking out a pleading, the order is also appealable under § 14-3-330(1) as 'involving merits' and Section 14-3-330(1) allows a party to wait until

final judgment to appeal intermediate orders ‘necessarily affecting the judgment not before appealed from.’ We have long ago held that the phrase ‘necessarily affecting the judgment’ has the equivalent meaning as the phrase ‘involving the merits,’ and that the legislature meant to use these phrases interchangeably.”).

Lanier did not immediately appeal from either intermediate orders that ruled adversely against her on the standing issue. As a result, Section 14-3-330(1) requires Lanier to wait until after the entry of the final foreclosure judgment to appeal that issue. Final judgment has not issued. Thus, Lanier cannot maintain the current appeal.

Lanier’s decision to continue to raise the standing issue to the trial court (1) at the hearing prior to the Supplemental Order granting Summary Judgment dated December 15, 2015 and (2) via a motion to reconsider that December 2015 order does not change the fact that the appeal must be dismissed. The November 17, 2014 and November 5, 2015 orders contain the operative rulings that would allow an immediate appeal under Section 14-3-330. In fact, the December 15, 2015 order did not rule on the standing arguments again advanced by Lanier. Rather, that order merely reiterated that the circuit court previously ruled on that issue in the November 5, 2015 order.¹

The November 17, 2014 order and the November 5, 2015 orders rejected Lanier’s standing arguments and allowed for an immediate appeal, if Lanier so chose. Lanier did not do so and now must comply with Section 14-3-330(1) that mandates that no appeal can be perfected until after the final foreclosure judgment. Therefore, this appeal is premature. This Court should dismiss.

¹ As a result, there was nothing for Lanier to reconsider in the December 15, 2015 order related to standing, and the order denying the motion for reconsider does not afford an opportunity for an immediate appeal for the same reason.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Michael J. Anzelmo

SC Bar No. 72933

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1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, South Carolina 29201

803.799.2000

Attorneys for Respondent

Columbia, South Carolina

June 7, 2017

EXHIBIT A

COPY

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

DOCKET NO.

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

2013 MAY 17 A 0:28

W. A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Plaintiff,

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Demanded

v.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank;

Defendant(s).

2013CP3201709

(006443-01216)

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Lexington County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101(b)(8) Plaintiff is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.
3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the borrower did not provide all necessary documents after those documents had been requested.
5. Some lien on or interest in the real estate, the subject of this action, may be claimed

by the Defendant(s) herein.

6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.

7. Heretofore, on or about August 2, 2002, Cathy G. Lanier made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of \$582,250.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Cathy G. Lanier made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for Southstar Funding, LLC d/b/a Capital Home Mortgage, its successors and assigns (MIN 100190836100160022) 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, together with improvements thereon, if any situate, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot 19 containing 1.01 Acre in Belle Chase Subdivision, on a plat prepared for Donald P. Jacobsen and Linda T. Jacobsen by Arthur J. Weed, RLS, dated September 2, 1999 and recorded in the Lexington County ROD Office in Book 0288 at Page 0342. Reference to said plat being made for a more complete and accurate description.

This being the same property conveyed to Cathy G. Lanier by deed of Donald P. Jacobsen and Linda Jacobsen, dated August 2, 2002 and recorded August 12, 2012 in Book R7406 at Page 94.

Property Address: 172 Belle Chase Drive
Lexington, SC 29072

TMS# 003428-01-019

9. The Mortgage was signed, witnessed and probated August 2, 2002; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Lexington County on August 12, 2002, in Mortgage Book R7406 at Page 97. This Mortgage was assigned to JPMorgan Chase Bank, National Association by assignment dated March 4, 2012 and recorded March 29, 2012 in Book R15422 at Page 73.

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. After all payments received by the Plaintiff have been credited to the subject loan, the

loan is in default and due for September 1, 2010, 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 September 1, 2010, the principal sum of \$537,182.20, with interest from August 1, 2010, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

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

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

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

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

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

A. Branch Banking and Trust Company, by virtue of a mortgage given by Cathy G. Lanier in the amount of \$150,000.00, dated June 12, 2008, and recorded June 17, 2008 in Book R12973 at Page 336. Also including any other liens they may have.

B. Regions Bank, by virtue of a mortgage given by Cathy G. Lanier in the amount of \$102,842.30, dated September 25, 2008, and recorded September 30, 2008 in Book R13175 at Page 127. Also including any other liens they may have.

C. Branch Banking and Trust Company by virtue of any deficiency they may claim by Case 2010-CP-32-03622. Branch Banking and Trust Company is successor in interest to Branch Banking and Trust Company of South Carolina.

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;

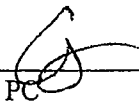
Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

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 Lexington County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(7)

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


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

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Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
William S. Koehler (SC Bar #74935)
Jaclynn B. Goings (SC Bar #77501)
Andrew A. Powell (SC Bar #100210)
Mary Powers (SC Bar #16534)

Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
~~Andrew W. Montgomery (SC Bar #79893)~~
John F. McLeod, IV (SC Bar # 100693)
J. Pamela Price (SC Bar # 014336)

220 Executive Center Drive
Columbia, SC 29210

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

Columbia, South Carolina
May 16, 2013

NOTICE

1. As of April 30, 2013, you owe \$591,312.25. 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. The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4 is the Creditor to whom the debt is owed. JPMorgan Chase Bank, National Association 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 any 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 dispute the debt or any portion thereof or if, in writing, you request 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. 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.

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

DOCKET NO.

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

2013 MAY 17 A 0:28

H. A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Plaintiff,

NOTICE OF FORECLOSURE INTERVENTION
Deficiency Judgment Demanded

v.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank;

Defendant(s).

2013CP3201709

(006443-01216)

PLEASE TAKE NOTICE THAT pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01, you may have a right to Foreclosure Intervention.

To be considered for any available Foreclosure Intervention, you may communicate with and otherwise deal with the Plaintiff through its law firm, Rogers Townsend & Thomas, PC.

Rogers Townsend & Thomas, PC represents the Plaintiff in this action. Our law firm does not represent you. Under our ethical rules, we are prohibited from giving you any legal advice.

You must submit any requests for Foreclosure Intervention consideration within 30 days from the date you are served with this Notice. **IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION, THE FORECLOSURE ACTION MAY PROCEED.**

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
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J. Pamela Price (SC Bar # 014336)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
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Columbia, South Carolina
May 16, 2013

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
11TH JUDICIAL CIRCUIT

FILED

CASE NO.: 2013-CP-32-01709

2013 JUN 20 P 2:08

COPY

The Bank of New York Mellon, f/k/a
The Bank of New York as successor-in-
Interest to JPMorgan Chase Bank, N.A.
As successor-in-interest by merger to
Bank One, N.A. as Trustee for Structured
Asset Mortgage Investments Inc.,
Mortgage Pass-Through Certificates,
Series 2002-AR4,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

ANSWER TO COMPLAINT

Plaintiff,

DEMAND FOR JURY TRIAL

Vs.

Cathy G. Lanier; Branch Banking and
Trust Company; Regions Bank,

Defendants.

Defendant, Cathy G. Lanier (hereafter "Defendant"), hereby files her Verified Answers and Affirmative Defenses as stated herein in response to Plaintiff Complaint and specifically states as follows:

ANSWERS

1. The allegation in Paragraph One (1) of Plaintiff's Complaint is a conclusion of law in which no response is required but if a specific answer is required and after an extensive research and investigation Defendant does not have sufficient knowledge or information, to form a belief as to the truth of the allegation contained in Paragraph One (1) of the Plaintiff's Complaint; and if an answer is required then Defendant hereby **DENIES** specifically the allegation(s) in Plaintiff's Paragraph One (1) and demands strict proof at the time of trial.
2. The allegation in Paragraph Two (2) of Plaintiff's Complaint is a conclusion of law in which

no response is required but if a specific answer is required and after an extensive research and investigation Defendant does not have sufficient knowledge or information, to form a belief as to the truth of the first allegation contained in Paragraph Two (2) of the Plaintiff's Complaint; and if an answer is required then Defendant hereby **DENIES** specifically the allegation(s) in Plaintiff's Paragraph Two (2) and demands strict proof at the time of trial including and not limited to proving their debt-collection and mortgage enforcement status.

3. The allegation in Paragraph Three (3) of Plaintiff's Complaint is a conclusion of law in which no response is required but if a specific answer is required and after an extensive research and investigation Defendant does not have sufficient knowledge or information, to form a belief as to the truth of the first allegation contained in Paragraph Three (3) of the Plaintiff's Complaint; and if an answer is required then Defendant hereby **DENIES** specifically the allegation(s) in Plaintiff's Paragraph Three (3) and demands strict proof at the time of trial including and not limited to proving their legal right to enforce an alleged negotiable instrument secured by alleged mortgage and strict proof that they are the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
4. The allegation in Paragraph Four (4) of Plaintiff's Complaint is a conclusion of law in which no response is required but if a specific answer is required and after an extensive research and investigation Defendant does not have sufficient knowledge or information, to form a belief as to the truth of the first allegation contained in Paragraph Four (4) of the Plaintiff's Complaint; and if an answer is required then Defendant hereby **DENIES** specifically the allegation(s) in Plaintiff's Paragraph One (1) and demands strict proof at the time of trial. Defendant further states for the record that there has been no request to provide documents of any kind from Plaintiff, and Defendant was unfamiliar with even the name "The New York Bank of Mellon" prior to receiving this complaint. Plaintiff has not complied with the

HMP program requirements of law in SC.

5. The allegation in Paragraph Five (5) of Plaintiff's Complaint is a conclusion of law in which no response is required but if a specific answer is required and after an extensive research and investigation Defendant does not have sufficient knowledge or information, to form a belief as to the truth of the first allegation contained in Paragraph One (1) of the Plaintiff's Complaint; and if an answer is required then Defendant hereby **DENIES** specifically the allegation(s) in Plaintiff's Paragraph Five (5) and demands strict proof at the time of trial including and not limited to proving the existence of a legal and valid lien or interest in real estate which may be claimed by Plaintiff or anyone.
6. The allegation in Paragraph Six (6) of Plaintiff's Complaint is a conclusion of law in which no response is required but if a specific answer is required and after an extensive research and investigation Defendant does not have sufficient knowledge or information, to form a belief as to the truth of the first allegation contained in Paragraph One (1) of the Plaintiff's Complaint; and if an answer is required then Defendant hereby **DENIES** specifically the allegation(s) in Plaintiff's Paragraph Six (6) and demands strict proof at the time of trial.
7. The allegations contained in Paragraph Seven (7) of Plaintiff's Complaint are conclusions of law and no response is required and if a response is required then Defendant herein categorically **DENIES** all the allegations in Paragraph Seven (7) including and not limited to the allegation that Defendant ever received any value and/or ever executed and delivered any legal note on/or about August 2, 2002 becoming legally indebted to Plaintiff for the sum of \$582,250.00 indebted and hereby demands strict proof at time of trial including and not limited to the genuine executed promissory note, accounting ledgers showing all payments (debits and credits) and all set offs according to GAAP and FAS 140.
8. The allegations contained in Paragraph Eight (8) of Plaintiff's Complaint are conclusions of

law and no response is required and if a response is required then Defendant herein categorically **DENIES** all the allegations in Paragraph Eight (8) including and not limited to the allegation that Defendant ever received any value and/or ever executed and delivered any legal mortgage to parties named in Paragraph Eight (8). Defendant recognizes only one named party from this paragraph, and received no notices of assignments or transfers of a purported mortgage and hereby demands strict proof at time of trial including and not limited to the genuine executed signature of the Defendant and documented proof of involvement of any of the named parties in Paragraph Eight (8). Further Defendant requires proof of an executed mortgage, accounting ledgers showing all payments (debits and credits) and all set offs according to GAAP and FAS 140.

9. The allegations contained in Paragraph Nine (9) of Plaintiff's Complaint are conclusions of law and no response is required and if a response is required then Defendant herein categorically **DENIES** all the allegations in Paragraph Nine (9) including and not limited to the allegation that Defendant ever received any value and/or ever executed and delivered any legal mortgage on/or about August 2, 2002 becoming legally indebted to Plaintiff. Defendant further denies that a legal Mortgage was ever recorded pursuant to the UCC §9203 in the Register of Deeds Office of Lexington County Defendant and recognizes none of the named parties from this paragraph, and received no notices of assignments or transfers of a purported mortgage and hereby demands strict proof at time of trial including and not limited to the genuine executed signature of the Defendant and documented proof of involvement of any of the named parties in Paragraph Nine (9). Nothing presented by Plaintiff proves that the alleged note and/or mortgage were ever in possession of any bank named in the Complaint or were indeed accepted or transferred in any means (such as by a merger or acquisition). That is only hear-say evidence and not admissible in court as

evidence or to prove standing and/or holder in due course status.

10. The allegations contained in Paragraph Ten (10) are nothing but conclusions of law in which no answer is required and if an answer is required then the Defendant, hereby denies that a legal Mortgage even does exist so therefore strict proof is hereby demanded at time of trial including and not limited to the original genuine executed copy of any legal mortgage from any and all Plaintiffs securing such lien on the alleged subject property.
11. The allegations contained in Paragraph Eleven (11) of Plaintiff's Complaint are conclusions of law and no response is required and if a response is required then Defendant hereby categorically **DENIES** all the allegations in Paragraph Eleven (11) including and not limited to the alleged loan that was allegedly past due for \$537,182/20 as reflected by the records of Plaintiff and at time of trial Plaintiff must prove the payable sum of \$537,182.20 plus interest and all other additional costs and further Plaintiff must prove all these allegations at time of trial.
12. The allegations contained in Paragraph Twelve (12) are hereby **DENIED** and Defendant further demands strict proof at time of trial that Plaintiff had the right to invoke foreclosure and the right to seek personal judgment against the Defendant and further demands at time of trial proof of any liability under any such debt.
13. The allegations contained in Paragraph Thirteen (13) are hereby **DENIED** and Defendant further demands strict proof at time of trial that Plaintiff had the right to employ counsel to prosecute this action and demands strict proof at time of trial.
14. The allegations contained in Paragraph Fourteen (14) of Plaintiff's Complaint are conclusions of law and no response is required and if a response is required then Defendant hereby denies all the allegations contained in Paragraph Fourteen (14) and Defendant hereby demands proof that Plaintiff have any legal right to seek sums for taxes and insurance and

costs for securing the property or has any rights to seek monetary relief against Defendant and must prove a legal indebtedness. Defendant currently resides at the property in question, and supplies required insurance and maintenance thereby.

15. The allegations contained in Paragraph Fifteen (15) of Plaintiff's Complaint are conclusions of law and no response is required and if a response is required then Defendant hereby denies all the allegations contained in Paragraph Fifteen (15) and Defendant hereby demands proof that Plaintiff has any legal right to seek or enforce a foreclosure action and subsequent public auction sale. Defendant hereby demands strict proof at trial of Defendant's legal indebtedness and Plaintiff's legal right to foreclose on Defendant's property.
16. The allegations contained in Paragraph Sixteen (16) of Plaintiff's Complaint are conclusions of law and no response is required and if a response is required then Defendant hereby denies all the allegations contained in Paragraph Sixteen (16) and Defendant hereby demands proof at trial that any named junior or subsequent lien is legal and owing to any of the named additional Defendants.

AFFIRMATIVE DEFENSES

At this time, Plaintiff has produced no verifiable proof or evidence to bring this case. Defendant thereby reserves the right to amend, alter and add to Affirmative Defenses based on documentation requested of and produced by Plaintiff. Defendant's defenses are likely to include violations of 15 USC § 1692e, all sections; potential violations of RESPA, TILA, Fair Debt Collections Act; instances of fraud, slander of title and others as evidence is gathered.

WHEREFORE, Defendant respectfully requests the following:

- a. A temporary restraining order, preliminary and permanent injunction preventing Plaintiff, or anyone acting under or in concert with them, from collecting on the alleged subject loan and from causing the Property to be sold or assigned to a third party; and
- b. For an order stating that Plaintiff must not report to any credit reporting agency anything of a negative nature against Defendant, and that they must repair any previously reported negative information.; and
- c. Damages according to outlined violations above; and
- d. Require that the Plaintiff produce the original accounting ledgers to prove any indebtedness on behalf of the Defendant; and
- e. Require that Plaintiff respond fully and timely to Debt Dispute letter/QWR mailed to Plaintiff's attorney by registered mail on June 20, 2013; and
- f. Supply to the Defendant the list and business contact information for their expert and lay witnesses; and
- g. Supply to the Defendant a sworn statement of their statements to be presented in court; and
- h. Force Plaintiff to comply with a good faith effort for discovery; and
- i. Require Plaintiff to produce documentation proving they have not been involved in misconduct regarding the Libor Rate manipulation scheme as evidenced in the ongoing investigation in which Barclays has been fined nearly \$500M, JPMorgan Chase has been sued and this scandal is predicted to implicate other global financial institutions such as Plaintiff¹; and

¹ "In case you haven't heard, 16 banks that help set the London interbank offered rate, or Libor, are being sued by a smaller bank called Berkshire Bank of New York over allegations they conspired to manipulate the rate for short-term

- j. Defendant hereby demands a Trial by Jury; and
- k. Produce any and all accounting records to prove that the Plaintiff complied with their contract the way that their complaint alleges that they do; and
- l. Enforce the South Carolina Rules of Court and the South Carolina Rules of Evidence; and
- m. Allow the Defendant to produce her expert and lay witnesses and other written material to show that the Plaintiff did not comply with any of their terms and conditions for Defendant has never had a loan indebtedness relationship with the Plaintiff; and
- n. Dismiss this case and grant judgment in favor of the Defendant for the Plaintiff lacks sufficient admissible evidence to prove their case.

DATED this 20th day of June, 2013.

Respectfully submitted,


CATHY G LANIER, Pro Se

Cathy G. Lanier
172 Belle Chase Drive
Lexington, SC 29072
803-315-3636
803-359-7031 (fax)
cathy@tsisc.com
Pro Se

Lexington, SC
June 20, 2013

gains on derivatives. Three of those banks, Citi, Bank of America and JPMorgan Chase hold about a quarter of all the deposits in the U.S." *Will Your Bank Be Sued over Libor?, Claes Bell, Bankrate.com*

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 The Bank of New York Mellon, f/k/a)
 The Bank of New York as successor-in-)
 Interest to JPMorgan Chase Bank, N.A.)
 As successor-in-interest by merger to)
 Bank One, N.A. as Trustee for Structured)
 Asset Mortgage Investments Inc.,)
 Mortgage Pass-Through Certificates,)
 Series 2002-AR4,)
)
 Plaintiff,)
)
 Vs.)
)
 Cathy G. Lanier; Branch Banking and)
 Trust Company; Regions Bank,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 11TH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-32-01709

**OBJECTION TO PLAINTIFF'S
 MOTION TO STRIKE AND MOTION FOR
 ORDER OF REFERENCE**

COPY

Defendant, Cathy G. Lanier, hereby objects to Plaintiff's Motion to Strike and Motion for Order of Reference in its entirety, and respectfully requests the court to hear Defendant's Motion to Dismiss filed in this case.

Defendant and Plaintiff have communicated in Defendant's efforts to establish whether or not Plaintiff has standing to bring this case and whether there exists now, or ever existed a creditor/debtor relationship between Plaintiff and Defendant. Pursuant to that communication, Plaintiff invited Defendant to view what Plaintiff represented to be the original note and mortgage held by Plaintiff. Defendant, with a witness, visited the offices of Plaintiff's counsel on October 17, 2013 to view and inspect these documents. Defendant was presented with three (3) documents, represented by Plaintiff's counsel as the original "wet-ink" mortgage and note. There was also a document called an Allonge. Upon examination with a 10 power magnifier, Defendant concludes

that these documents were no more than machine copies, and should Plaintiff choose to continue this case, Defendant will hire a documents expert to testify as to the validity of these documents since they are not originals as represented by Plaintiff and its counsel. Plaintiff and its counsel is hereby cautioned that should they pursue an attempt to claim these are original documents, that Defendant will have no choice but to pursue perjury action against both the Plaintiff and its counsel/agent.

As Defendant has pointed out in her Motion to Dismiss, Defendant has requested and has been provided no proof of any claim or legal indebtedness (i.e. a legal mortgage or note) by Plaintiff and knows of no debtor/creditor relationship between Plaintiff and Defendant.

Plaintiff had no standing at the time of filing Lis Pendens and Foreclosure documents related to this lawsuit. Upon information and belief, if a legal note ever existed, Defendant avers that MERS was merely the nominee and mortgagee for the purpose of recording, and MERS never held the purported note before commencing the foreclosure action. (There is also evidence the mortgage and note were bifurcated, rendering the mortgage void.) MERS then proceeded to file fraudulent assignments to JPMorgan Chase Bank, NA (Exhibit A) and subsequently to the Bank of New York Mellon (Exhibit B). Chase then filed a fraudulent assignment also to Bank of New York Mellon (Exhibit C). "Regardless of practice of recent years, the broad language of the mortgage document purported to have been legally issued (which is still up for debate), cannot overcome the requirement that the foreclosing party be both the holder and assignee of the subject mortgage, and the holder or assignee of the underlying note, at the time the action is commenced."¹ Although MERS (or someone acting on behalf of MERS, and potentially using "robo-signed" documents) rushed to file assignments to JPMorgan Chase and to the Bank of New York Mellon in order to pass

¹ In *re Bank of New York V Silverberg*, Appellate Court, Second Judicial Department, Supreme Court of the State of New York

“under the wire” of the dates of their planned Lis Pendens and Foreclosure actions (thereby manufacturing documents for the purpose of litigation), upon information and belief, Defendant avers MERS was never the lawful holder or assignee of the purported note described and identified in these actions, therefore the assignments are null and MERS was without authority to assign the power to foreclose to the Plaintiff.

Consequently, the Plaintiff failed to show that it had standing to foreclose, if, in fact there was ever a legal note or mortgage associated with the subject property. In *re Bank of New York V Silverberg*, Appellate Court, Second Judicial Department, Supreme Court of the State of New York, the judge wrote, “MERS purportedly holds approximately 60 million mortgage loans (*see Michael Powell & Gretchen Morgenson, MERS? It May Have Swallowed Your Loan*, New York Times, March 5, 2011), and is involved in the origination of approximately 60% of all mortgage loans in the United States (*see Peterson at 1362; Kate Berry, Foreclosures Turn Up Heat on MERS*, Am. Banker, July 10, 2007, at 1). This Court is mindful of the impact that this decision may have on the mortgage industry in New York, and perhaps the nation. Nonetheless, the law must not yield to expediency and the convenience of lending institutions. Proper procedures must be followed to ensure the reliability of the chain of ownership, to secure the dependable transfer of property, and to assure the enforcement of the rules that govern real property.” Therefore, the Court ruled in favor of Defendants and reversed the lower court’s decision. The foreclosure case was dismissed.

Further, in *re Federal Home Loan Mortgage Corporation v. Schwartzwald, et al*, 2012-OHIO-5017, the Ohio Supreme Court reversed the decision of the Court of Appeals. The Court held the standing issue was a jurisdictional one. Because the mortgage had not been properly assigned at the time the foreclosure complaint was filed, the plaintiff did not have standing to file the complaint. Standing is necessary before the Court has jurisdiction to hear the case. Since it is a jurisdictional requirement, standing as of the date the foreclosure complaint was filed is the

determining factor. The later assignments, even if before judgment was entered, does not cure the defect. Standing has to exist at the time the case is filed, and if it does not exist, the jurisdiction of the common pleas court is not invoked. A court without jurisdiction cannot enter any judgment (except one dismissing the case for lack of jurisdiction). In *re Patton v. Diemer*, 35 Ohio St. 3d 68 (1988).

As recently as July 31, 2013, a ruling from the Ninth Judicial Circuit Court of Common Pleas of Charleston, SC drives home the fact that the Plaintiff in a case such as this one must have standing to pursue a foreclosure. In *re Deutsche Bank National Trust Company, et al. v. Heinrich*, (2013). As in the Charleston case, Plaintiff in this case has attempted to promote the idea that the mortgage follows the note. However, as shown in precedent from the United States Supreme Court's decision in *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872) which the Court found "clearly supports the notion that the Plaintiff must own the Note and the Mortgage to foreclose on the property." The Court determined that "Plaintiff failed to show that it owned the Mortgage at the time the Complaint was filed." The Court stated: "It is clear that to have standing in this foreclosure case, Plaintiff must not only be the holder and owner of the original Note, but also the Mortgage as well.

According to preliminary findings in a forensic audit of the note and mortgage Defendant has ordered, Plaintiff's Complaint in this case fails to meet this criteria. Plaintiff lacks standing to initiate and prosecute the foreclosure, and dismissal pursuant to Rule 17(a) and Rule 12(b)(6) SCRCF is appropriate." This ruling is based on foreclosure law from the United States Supreme Court, which trumps any contrary state law which does not require the foreclosing Plaintiff to own both the Note and the Mortgage at the time that the foreclosure Complaint is filed. Defendant would assume this Court would stand in agreement with the U.S. Supreme Court in this case.

Defendant has offered case law and evidence indicating that Plaintiff has no standing in this case, and has asked for this action to be dismissed accordingly. However, should Plaintiff continue to pursue this action, Defendant establishes her right to due process and a trial by a jury of her peers in order to overcome the bias against pro se litigants that has been experienced in the Courts of Lexington County, and to ensure that the fraudulent behavior of the Plaintiff in this, and likely countless other similar, actions is exposed and the citizens of Lexington County are protected from these fraudulent acts.

The Seventh Amendment to the Constitution of the United States preserves the right of a trial by jury. Defendant has properly demanded such. Many states are now considering the constitutionality of jury trial waivers, as they are forced upon consumers pre-litigation. As such, they are unenforceable. They are certainly unenforceable when the entire contract is invalid, or when there are other causes at law to be considered other than the equitable concerns of a foreclosure. In this case, it appears to Defendant that Plaintiffs have no standing, and would commit further fraud in an attempt to prove standing where none exists. This moves the case out of the equitable court, and into a legal court where a jury trial is guaranteed and preserved for the Defendant.

US Bank has a history of attempting to deny jury trials to its Defendants by attempting to pull all facets of its cases into equitable actions, even when they clearly cite legal causes of action and a legal remedy (monetary damages). Even when granted this denial, US Bank has lost in the US Court of Appeals. As an example, in re *Lucas v. U.S. Bank, N.A.*, No. 28S01-1102-CV-78, N.E.2d, US Bank attempted to deny Lucas their right to trial by jury. Citing in re *Songer v. Civitas Bank*, 771 N.E.2d 61, 63, the Court of Appeals concluded that the essential features of the present case were not equitable. *Lucas*, 932 N.E.2d at 245. The court interpreted *Songer* to require courts to

engage in a case-by-case analysis of the various claims and not to use bright-line rules based on specific causes of action. *Id.* at 244. The Court of Appeals first noted that “the vast weight of authority holds that foreclosure actions are essentially equitable.” *Id.* (citing *Songer*, 771 N.E.2d at 69). The court then acknowledged that the Lucases’ first affirmative defense—that U.S. Bank failed to produce the original promissory note and properly executed assignments to prove its security interests—was “so intertwined with a foreclosure action” that it was also a matter of equity. *Id.* But the Court of Appeals reached a different conclusion on the remaining defenses, counterclaims, and third-party claims. It noted that those claims were grounded in federal and state statutory law and state common law and were all legal causes of action, and that the majority of the relief requested was money damages, a legal remedy. *Id.* The Court of Appeals added that the nature of these claims is different from U.S. Bank’s foreclosure action because the claims are based, in part, on consumer protection statutes designed to provide meaningful disclosure of information and to protect borrowers from abusive, unfair debt collection practices. *Id.* at 244–45. The court noted that the purposes behind the consumer protection statutes were —”not only to make the consumer whole, but also to deter practices and behavior that negatively impact society.” *Id.* at 245. The Court of Appeals accordingly reversed the order of the trial court with instructions to grant the Lucases’ motion for a jury trial on the legal claims. *Id.*

Defendant has clearly stated claims that are legal in nature, and for which money damages are warranted. Therefore, Plaintiff’s request that Defendant be denied a jury trial must be denied.

Should this case move forward after the clear jurisdictional and standing issues, Defendant reserves the right to bring forth other issues of irregularity in this case, notwithstanding that Plaintiff has no evidence proving that Defendant ever entered into a business relationship with them. Defendant denies signing any documents referred to by Plaintiffs in their Complaint (UCC 3-308).

Defendant states that she has never executed any legal indebtedness instrument with Plaintiff or its purported predecessors.

WHEREFORE, Defendant respectfully requests that the Court, based on lack of standing of Plaintiff and lack of jurisdiction of this Court, dismiss this case, void any purported mortgage claimed by Plaintiff and award quiet title to Defendant, as well as money damages based on violation of RESPA and TILA laws, Violation of Good Faith and Fair Dealing and other causes as may be discovered as Defendant's forensic audit of Plaintiff's actions and practices continues. Defendant also requests that there be a permanent injunction put in place to prevent Plaintiff and its claimed predecessors from bringing a foreclosure (or other action having the same effect) against this Defendant in the future.

DATED this 28th day of October, 2013.

Respectfully submitted,


CATHY G/LANIER, Pro Se

Cathy G. Lanier
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Lexington, SC 29072
803-315-3636
803-359-5031 (fax)
cathy@tsisc.com
Pro se

EXHIBIT D

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2013-CP-32-01709/4

FILED
JAN 22 P 12:07

BETH A. GARRITT
CLERK OF COURT
LEXINGTON

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-Interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

Plaintiff,

vs.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank,

Defendants.

**PLAINTIFF'S MOTION TO STRIKE
DEFENDANT CATHY G. LANIER'S AMENDED ANSWER TO COMPLAINT**

Pursuant to Rule 12(f), and 15, SCRPC, Plaintiff moves for an order striking Defendant Cathy G. Lanier's ("Defendant") Amended Answer to Complaint dated January 6, 2014 ("Amended Answer").

This is a foreclosure action of residential property owned by Defendant. In response to the Complaint filed by Plaintiff, Defendant filed an Answer on June 20, 2013 ("Answer"), in which she alleged that Plaintiff had failed to produce proof that it had standing to bring this foreclosure action. She also stated that she had defenses to the foreclosure including, "RESPA, TILA, Fair Debt Collection Practices Act, instances of fraud, slander of title, and others as evidence is gathered."

Because Defendant stated no allegations to support her defenses or counterclaim, Plaintiff filed a Motion to Strike Defendant's Answer. Shortly thereafter, Defendant filed a Motion to

Dismiss Plaintiff's Complaint, arguing that Plaintiff had failed to prove that it had standing to pursue the foreclosure. Both motions were heard on December 11, 2013, and at the hearing, the Court orally granted Plaintiff's Motion and denied Defendant's Motion. Plaintiff submitted a proposed order to the Court on or about December 31, 2013, and in response, Defendant filed an "Objection to Proposed Complaint" and her Amended Answer.

However, Defendant did not seek leave of the Court to file the Amended Answer and her opportunity to file an amended pleading has passed. *See* Rule 15(a). Even if Defendant were to file a motion for leave to file the Amended Answer, her request should be denied. Rule 15(a) provides that "leave shall be freely given when justice so requires and does not prejudice the party," but a motion to amend should be denied when the amendment would be futile. Here, Defendant purports to assert at least fifteen (15) defenses or counterclaims against Plaintiff, all of which are based on Defendant's allegation that Plaintiff is not the real party in interest and does not have standing to pursue the foreclosure action. Even if Plaintiff's allegation was true, which it is not, such a fact does not support Defendant's defenses or counterclaims, and her Amended Answer should be stricken as futile.

Based on the foregoing, Plaintiff requests that the Court strike Defendant's Amended Answer, and grant such other and further relief as may be just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

James Y. Becker

Mary M. Caskey

1201 Main Street, Suite 2200

Post Office Drawer 11889 (29211-1889)

Columbia, South Carolina 29201

(803) 779.3080

January 21, 2014

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2013-CP-32-01709

2014 JAN 22 P 12:07

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-Interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

Plaintiff,

vs.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank,

Defendants.

SETH A. CARR
CLERK OF COURT
LEXINGTON

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the addresses shown below.

Document: Plaintiff's Motion to Strike Defendant Cathy G. Lanier's Amended Answer to Complaint

Parties of Record

Cathy G. Lanier
172 Belle Chase Drive
Lexington, SC 29072
Defendant Pro Se

HAYNSWORTH SINKLER BOYD, P.A.

By: Brenda Black
Brenda Black

January 21, 2014

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
Case No. 2013-CP-32-01709

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-Interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

Plaintiff,

vs.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank,

Defendants.

2014
JAN 17 P 2:46
FILED
BETH A. GARRIGG
CLERK OF COURT
LEXINGTON SC

ORDER DENYING DEFENDANT CATHY G. LANIER'S MOTION TO DISMISS AND GRANTING PLAINTIFF'S MOTION TO STRIKE AND MOTION FOR ORDER OF REFERENCE

This matter is before the Court on the motion of Defendant Cathy G. Lanier ("Lanier") to dismiss the foreclosure Complaint by Plaintiff The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-Interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4 ("Plaintiff"), and Plaintiff's Motion to Strike the affirmative defenses and jury demand asserted by Lanier in her Answer filed on June 20, 2013 ("Answer"). Plaintiff also seeks an order of reference to the Master in Equity for Lexington County. A hearing was held before me on December 11, 2013. Plaintiff appeared through its attorney, Mary M. Caskey, and Lanier appeared *pro se*. For the reasons set forth below, Lanier's

Motion to Dismiss is denied, and Plaintiff's Motion to Strike and Motion for Order of Reference is granted.

First, Lanier moved to dismiss Plaintiff's foreclosure claim on the grounds *that Plaintiff* did not have standing to pursue the foreclosure claim. At the hearing, Lanier argued that Plaintiff has not submitted sufficient proof that it owns the Note and Mortgage that are the subject of the foreclosure action, that it has the original Note and Mortgage, or that the Assignments of Mortgage that are of record with the Lexington County Register of Deeds are proper. However, the Court finds that Plaintiff has stated sufficient facts in its Complaint to state a claim for foreclosure, having alleged that a note and mortgage from Lanier exists, and that Plaintiff is the current holder of the Note and Mortgage. Thus, Lanier's Motion to Dismiss is denied.

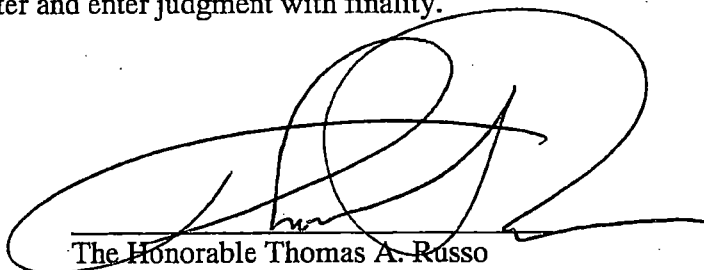
Second, Plaintiff moved to strike the affirmative defenses set forth in Lanier's Answer on the grounds that Lanier failed to allege any facts to support any of the defenses pleaded. Instead, Lanier stated that her defenses were "likely to include" various violations of federal and state law that she intended to obtain proof of during the case. As a result, the Court finds that Lanier's affirmative defenses should be stricken as "insufficient defense[s]" under Rule 12(f), SCRPC.

Lanier also demanded a jury trial in her Answer. However, she has not asserted any claims against Plaintiff that would entitle her to a jury trial, and Plaintiff's claim for foreclosure is an equitable claim. "A mortgage foreclosure is an action in equity," *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) (citing *Collier v. Green*, 244 S.C. 367, 137 S.E.2d 277 (1964)), and "there is no right to a trial by jury for equitable actions," *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Consequently, the Court grants Plaintiff's Motion to strike Lanier's jury demand.

Finally, Rule 53(b), SCRPC, provides that in an action for foreclosure, "some or all of the causes of action . . . may be referred to a master or special referee by order of a circuit court judge or the clerk of court." This case is an action for foreclosure and should thus be referred to the Master in Equity.

IT IS THEREFORE ORDERED the Defendant's Motion to Dismiss Plaintiff's Foreclosure Complaint is DENIED. It is further ORDERED that Plaintiff's Motion to Strike Lanier's affirmative defenses and jury demand is GRANTED, and pursuant to Rule 53, SCRPC, this matter will be referred to The Honorable James O. Spence, Master in Equity for Lexington County, with authority to hear this matter and enter judgment with finality.

AND IT IS SO ORDERED.



The Honorable Thomas A. Russo

Lexington, South Carolina

1, 16, 2014

EXHIBIT F

ORIGINAL

STATE OF SOUTH CAROLINA)
IN THE COURT OF COMMON PLEAS
11TH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON)
2013 AUG 30 PM 1:49

CASE NO.: 2013-CP-32-01709

JM

The Bank of New York Mellon, f/k/a)
The Bank of New York as successor-in-)
Interest to JPMorgan Chase Bank, N.A.)
As successor-in-interest by merger to)
Bank One, N.A. as Trustee for Structured)
Asset Mortgage Investments Inc.,)
Mortgage Pass-Through Certificates,)
Series 2002-AR4,)

MOTION FOR SUMMARY JUDGMENT

Plaintiff,)

Vs.)

Cathy G. Lanier; Branch Banking and)
Trust Company; Regions Bank,)
Defendants.)

Defendant Cathy G. Lanier ("Defendant") hereby moves for Summary Judgment, pursuant to Rule 56, SCRPC, on all claims in this action. This motion is based on the following grounds:

1. It is undisputed that Plaintiff cannot provide complete payment records and is missing three and a half years of payment records. Complete and auditable payment records are required to prevail in a foreclosure action. It is a necessity to show that there is a verified debt owed in order to foreclose:
2. Plaintiff is unable to show they had possession of the note when this case was initiated and therefore lack standing to bring the case.
3. This action was not brought and pursued by the real party in interest, but rather in the name of a party that is not the actual plaintiff in the case.
4. Plaintiff is in violation of Administrative Order 2011-05-02-01. Defendant is currently in negotiations with the purported servicer, JPMorgan Chase (JPM Chase) for a loan modification or some other means of resolution of this matter. The program under which these offers have been tendered fall under the Home

Affordable Modification Program (HMP). Therefore, according to Chief Justice Toal's original Order 2009-05-22-01 and the clarification Order 2011-05-02-01, Plaintiff, by failure to suspend foreclosure proceedings means the Plaintiff is acting in bad faith and in violation of the order. Defendant is being "dual tracked" in this matter.

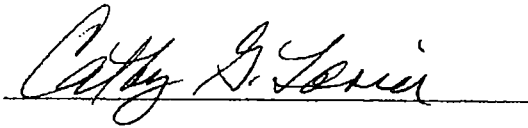
5. Bank of New York Mellon (BNYM) is the trustee and cannot bring suit. The trust's governing documents prove that it could not possibly be engaged in an action concerning an individual loan – a trustee is absolutely prohibited from taking such action by federal IRS laws regarding REMIC trusts.
6. Similarly JPM Chase, the purported servicer, has provided no evidence of how it managed to become the servicer either. But even if it could provide that proof, it did not bring this action in its own name, and is therefore barred from its clear attempt to take over the role of the Plaintiff and prosecute the action.
7. When no valid chain of title exists, a note loses its enforceability, and this case must be dismissed.

WHEREFORE, Defendant prays that this Court grant summary judgment in her favor, dismiss any claims contained within the Complaint, with prejudice against Plaintiff and any associated parties such as JPM Chase, and for such other relief as this Court may deem appropriate.

In the alternative, Defendant requests that this Court temporarily suspend all proceedings from this date forward, until she has had the opportunity to produce the required documentation for the HMP program. In the event the matter is not settled by those negotiations between the purported servicer and Defendant, Plaintiff will not be prejudiced at all, as Defendant currently lives

in the property and is providing for all maintenance and expenses associated with the property, and the case can continue toward trial and a logical conclusion.

Respectfully submitted,



CATHY G LANIER, Pro Se

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cathy@tsisc.com
Pro Se

Lexington, SC
August 20, 2015

FILED
2015 AUG 20 PM 1 49
CLERK OF COURT
LEXINGTON, SC

ORIGINAL

FILED

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) 11TH JUDICIAL CIRCUIT
)
) CASE NO.: 2013-CP-32-01709
)
 The Bank of New York Mellon, f/k/a)
 The Bank of New York as successor-in-)
 Interest to JPMorgan Chase Bank, N.A.)
 As successor-in-interest by merger to)
 Bank One, N.A. as Trustee for Structured)
 Asset Mortgage Investments Inc.,)
 Mortgage Pass-Through Certificates,)
 Series 2002-AR4,)
)
 Plaintiff,)
)
 Vs.)
)
)
 Cathy G. Lanier; Branch Banking and)
 Trust Company; Regions Bank,)
)
 Defendants.)

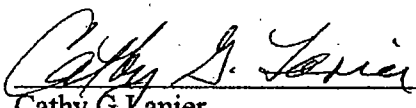
MOTION FOR SUMMARY JUDGMENT

CERTIFICATE OF SERVICE

On or about the date below, Defendant served upon the following the above-referenced document by US Mail:

Haynsworth Sinkler Boyd, P.A.
PO Box 11889
Columbia, SC 29211
Attn: Mary M. Caskey, Attorney

Respectfully Submitted,


 Cathy G Lanier
 172 Belle Chase Drive
 Lexington, SC 29072
 Pro Se Defendant

Lexington, SC
August 20, 2015

SEP012015

Common Pleas
Clerk : Beth A. Carrigg
Lexington County Judicial Center
Lexington, SC 29072
(803) 785-8212

Received From: Lanier, Cathy G
 172 Belle Chase Dr
 Lexington, SC 29072-7945

Date: 8/20/2015
 Receipt #: 186246
 Clerk: jmarshall

Paying for: Self

Transaction Type: Payment

Payment Type: Cash \$25.00

Total Paid: \$25.00

Reference #:
 Comment:
 Non-Refundable

Total Received: \$25.00
 Change Due: \$0.00

<u>Case #</u>	<u>Caption</u>	<u>Previous Balance</u>	<u>Amount Paid</u>	<u>Balance Due</u>
2013CP3201709	Bank of New York Mellon , plaintiff, et al VS Cathy G Lanier , defendant, et al	\$25.00	\$25.00	\$0.00

Total Cases:	1	\$25.00	\$25.00	\$0.00
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STATE OF SOUTH CAROLINA

COUNTY OF Lexington

IN THE COURT OF COMMON PLEAS
11th JUDICIAL CIRCUIT

ORIGINAL

FILED

2015 AUG 20 PM 4:49

CASE NO.: 2013-CP-32-01709

JM

The Bank of New York Mellon, et al

vs.

Cathy G. Lanier, et al

Plaintiff
Defendant

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Haynsworth Sinkler Boyd, PA, Bar No. NA Address: PO Box 11889, Columbia, SC 29211 Phone: 803-779-3080 Fax 803-765-1243 E-mail: mcaskey@hsblawfirm.com Other: _____	Defendant's Attorney: NA, Bar No. NA Address: 172 Belle Chase Drive, Lexington, SC 29072 Phone: 803-315-3636 Fax 803-359-7031 E-mail: cathy@tsisc.com Other: _____
---	---

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

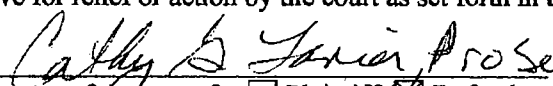
SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

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


 Signature of Attorney for Plaintiff / Defendant

08/20/15
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____

EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE'S SECTION JUDGE CODE _____ Date: _____
--	---

CLERK'S VERIFICATION

Collected by:  Date Filed: 8-10-15

MOTION FEE COLLECTED: \$ 25-
 CONTESTED - AMOUNT DUE: \$ _____

EXHIBIT G

ORIGINAL

KPK

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2013-CP-32-01709

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-Interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

Plaintiff,

vs.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank,

Defendants.

FILED
CLERK OF COURT
SOUTH CAROLINA
LEXINGTON COUNTY

2015 OCT 19 PM 1:58

FILED

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

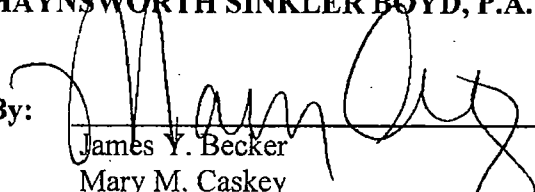
Plaintiff, The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-Interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4 ("Plaintiff"), by and through its undersigned attorney, hereby moves pursuant to Rule 56, SCRCF, for an Order granting summary judgment in Plaintiff's favor as to all claims in its Complaint against Defendant Cathy G. Lanier ("Defendant") on the grounds that there is no genuine issue as to any material fact with respect to the claims asserted by Plaintiff. Defendant's counterclaims were dismissed on January 17, 2014, and the only two remaining contested issues in the case since that time have been the amount of the debt and whether Plaintiff has standing to bring this foreclosure action. As set forth in the Affidavit of Joseph G. Devine, Jr., filed with this Motion, Plaintiff has standing to foreclose the subject mortgage in this case and the loan is in default. Defendant has not produced any evidence to contradict Plaintiff's standing or the

amount claimed by Plaintiff, and there is no material issue of genuine fact that Plaintiff is entitled to an order of foreclosure and judgment against Defendant for any deficiency that remains after the sale of the property.

This Motion is based upon the pleadings filed by the parties, the Affidavit of Joseph G. Devine, Jr., and any memorandum in support that may be later filed by the Plaintiff.

HAYNSWORTH SINKLER BOYD, P.A.

By:



James Y. Becker
Mary M. Caskey

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 Tel
Attorneys for Plaintiff

October 19 2015

FILED
CLERK OF COURT
COLUMBIA, SOUTH CAROLINA

2015 OCT 19 PM 1:58

FILED

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

KPK

COUNTY OF LEXINGTON

Case No. 2013-CP-32-01709

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

Plaintiff,

vs.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank,

Defendants.

FILED
CLERK OF COURT

2013 OCT 19 PM 1:58

FILED

AFFIDAVIT OF JOSEPH G. DEVINE, JR.

I, Joseph G. Devine, Jr., after being duly sworn upon oath, testify as follows:

1. I am an authorized signer with JPMorgan Chase Bank, National Association ("Chase"), who is the servicer and attorney in fact for The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4 ("Plaintiff"), and am duly authorized to make this Affidavit on behalf of Plaintiff. I am over the age of 18 and competent to testify as to the facts contained in this Affidavit.

2. The factual statements contained in this Affidavit are based on my own personal knowledge and my review of Chase's business records for the mortgage loan to Cathy G. Lanier ("Lanier"), originated on or about August 2, 2002 (the "Loan"), which is the subject of this

foreclosure action. The records concerning the Loan are maintained by Chase in the course of its regularly conducted business activities and are made at or near the time of the event, by or from information transmitted by a person with knowledge of the events and information contained in the records. It is the regular practice of Chase to keep such records in the ordinary course of its regularly conducted business activity.

3. As a mortgage servicer, Chase collects payments from borrowers and maintains up-to-date electronic records concerning the loans it services in its electronic record-keeping system. Chase's records that relate to the Loan that I reviewed and relied upon for the statements made in this Affidavit include images of the Note and Mortgage related to the Loan, and Chase's electronic servicing system, MSP.

4. The Loan is evidenced by a promissory Note dated August 2, 2002, from Lanier to Southstar Funding, LLC DBA Capital Home Mortgage in the principal amount of \$582,250.00 (the "Note"). A redacted, but otherwise true copy of the Note is attached hereto as **Exhibit A**.

5. A redacted, but otherwise true copy of the Allonge to Note in favor of Bank One National Association, as Trustee is attached as **Exhibit B**.

6. A redacted, but otherwise true copy of the Allonge to Mortgage Note in favor of The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest of JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4, is attached as **Exhibit C**.

7. The Note is secured by a Mortgage dated August 2, 2002 (the "Mortgage"), from Lanier, whereby Lanier mortgaged to Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Southstar Funding, LLC DBA Capital Home Mortgage, property located at 172

Belle Chase Drive, Lexington, South Carolina 29072 (the "Property"). A redacted, but otherwise true copy of the Mortgage is attached hereto as **Exhibit D**.

8. The Mortgage was assigned by MERS as nominee for Southstar Funding, LLC DBA Capital Home Mortgage, Its Successors and Assigns to Chase by assignment dated March 4, 2012, and recorded on March 29, 2012, in Book 15422, at Page 73, a redacted, but otherwise true copy of which is attached as **Exhibit E**.

9. The Mortgage was assigned by Chase to The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4, the Plaintiff in this action, by assignment dated April 24, 2013, and recorded on May 15, 2013, in Book 16279, at Page 241, a redacted, but otherwise true copy of which is attached as **Exhibit F**.

10. The Note, Allonges, Mortgage, and Assignments of Mortgage are sometimes referred to collectively as the "Loan Documents."

11. Chase is the current servicer of the Loan, and has serviced the Loan since April 1, 2011.

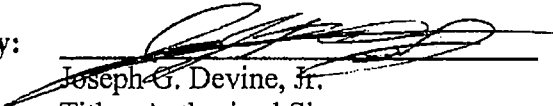
12. Chase, directly or through its attorneys, is in possession of the original Note, Mortgage, and Allonges.

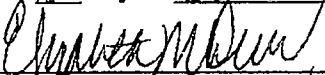
13. Lanier failed to make the payment due for September 9, 2010 under the Loan Documents, and has failed to make subsequent payments to bring the Loan current, and the entire Loan balance is now due and owing to Plaintiff, the current owner of the Loan. Redacted, but otherwise true copies of the Payment Histories in Chase's possession are attached collectively as **Exhibit G**.

14. As of September 22, 2015, Plaintiff seeks to recover the total payoff amount of \$637,127.12. A redacted, but otherwise true copy of a Payoff Quote is attached as Exhibit H.

I swear and believe that the facts set forth in the foregoing are true to the best of my knowledge.

JPMorgan Chase Bank, National Association as attorney in fact for The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4

By: 
Joseph G. Devine, Jr.
Title: Authorized Signer
Date: October 16, 2015

Sworn to and subscribed before me
this 16th day of October, 2015

Notary Public, State of New York
My commission expires June 4, 2019

FILED
2015 OCT 19 PM 1:58
JPM A. CANTON
CLERK OF COUNTY
SHERMAN COUNTY

[NOTARY SEAL]

ELIZABETH MARIE DREW
Notary Public, State of New York
Registration #02DR6167863
Qualified in New York County
Commission Expires June 4 2019

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

KPK

COUNTY OF LEXINGTON

Case No. 2013-CP-32-01709

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-Interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

Plaintiff,

vs.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank,

Defendants.

FILED
CLERK OF COURT
LEXINGTON, SOUTH CAROLINA

2015 OCT 19 PM 1:58

FILED

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the addresses shown below.

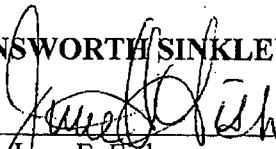
Document: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Parties of Record

Cathy G. Lanier
172 Belle Chase Drive
Lexington, SC 29072
Defendant Pro Se

HAYNSWORTH SINKLER BOYD, P.A.

By:



June F. Fish

Legal Secretary to Mary M. Caskey

October 19, 2015

Common Pleas
Clerk : Beth A. Carrigg
Lexington County Judicial Center
Lexington, SC 29072
(803) 785-8212

Received From:	Caskey, Mary McFarland PO Box 11889 Columbia, SC 29211		Date: 10/19/2015
Paying for:	Bank of New York Mellon,		Receipt #: 187708
Transaction Type:	Payment		Clerk: kkohl
Payment Type:	Check	\$25.00	Reference #: 69248
Total Paid:		\$25.00	Comment: Non-Refundable

Total Received:	\$25.00
Change Due:	\$0.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2013CP3201709	Bank of New York Mellon , plaintiff, et al VS Cathy G Lanier , defendant, et al	\$25.00	\$25.00	\$0.00

Total Cases: 1	\$25.00	\$25.00	\$0.00
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STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

The Bank of New York Mellon, etc.)

Plaintiff)

v.)

Cathy G. Lanier; Et Al.,)

Defendant.)

IN THE COURT OF COMMON PLEAS

ORIGINAL

CASE NO.
2013-CP-32-01709

KPK

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Mary M. Caskey, Bar No. 76198 Address: PO Box 11889, Columbia, SC 29211-1889 phone: 803 779-3090 fax: 803 765-1243 e-mail: mcaskey@hsblawfirm.com	Defendant Cathy G. Lanier, Pro Se , Bar No. Address: 172 Belle Chase Dr., Lexington, SC 29072 phone: fax: e-mail:
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2015 OCT 19 PM 1:50

FILED

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

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion for Summary Judgment
Estimated Time Needed: 30 min Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

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

Signature of Attorney for Plaintiff / Defendant
October 19, 2015
Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION

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

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: KP Kohl

Date Filed:
10-19-15

- MOTION FEE COLLECTED: \$25
- CONTESTED - AMOUNT DUE: _____

CASE # 13-1709

EXHIBITS

NOT

SCANNED

EXHIBIT H

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2013-CP-32-01709

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

Plaintiff,

vs.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank,

Defendants.

BETH A. CANNON
CLERK OF COURT
LEXINGTON, SOUTH CAROLINA

2015 OCT 28 PM 1:29

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4 ("Plaintiff"), by and through its undersigned attorney, hereby submits this Memorandum in support of its Motion for Summary Judgment filed on October 19, 2015, and in opposition to Defendant's Motion for Summary Judgment filed on August 28, 2015.

For over a year and a half, the only two remaining contested issues in the case have been the amount of the debt and whether Plaintiff has standing to bring this foreclosure action. In support of her Motion and in response to Plaintiff's Motion, Defendant has not offered any admissible evidence that demonstrates a disputed material fact. Plaintiff is the real party in interest and it has standing to bring the foreclosure action. The loan is in default, and Defendant

has produced no evidence to dispute Plaintiff's accounting. Plaintiff is not in violation of Administrative Order 2011-05-02-01, in seeking an order of summary judgment in its favor. As a result, Plaintiff is entitled to an order of foreclosure and judgment against Defendant for any deficiency that remains after the sale of the property.

ARGUMENT

1. Plaintiff has standing to pursue this foreclosure, and is the real party in interest.

Defendant has repeatedly argued to the Court without success that Plaintiff does not have standing to pursue this foreclosure. The indisputable facts clearly demonstrate that Plaintiff is the real party in interest and is entitled to enforce the terms of the Note. The Note is endorsed to Bank One National Association as Trustee by the original lender, Southstar Funding, LLC d/b/a Capital Home Mortgage. (Devine Aff. ¶¶ 4-5, Exhs. A-B.) Thereafter, JPMorgan Chase Bank, N.A. successor by merger to Bank One, National Association as Trustee, took possession of the Note and endorsed the Note to Plaintiff. (*Id.* ¶ 6, Exh. C.) Plaintiff, through its attorneys, has physical possession of the original Note and has presented it to Defendant for her inspection.¹ (*Id.* ¶ 12.)

The indisputable facts further demonstrate that Plaintiff is the current holder of the Mortgage and entitled to foreclose. The public records show that Defendant gave a mortgage to Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Southstar Funding, LLC d/b/a Capital Home Mortgage, which was recorded on August 12, 2002, in the Lexington County Register of Deeds. (*Id.* ¶ 7, Exh. D.) The Mortgage was then assigned to JPMorgan Chase Bank, National Association by assignment recorded on March 29, 2012. (*Id.* ¶ 8, Exh. E.)

¹ Defendant claims that Plaintiff's counsel did not have possession of the original note and mortgage when the Complaint was filed based on hearsay statements from Plaintiff's prior counsel and the fact that the Complaint did not include copies of the note and mortgage as exhibits. (Lanier Aff. ¶ 5.) There is no requirement that Plaintiff's counsel ever take possession of the original note and mortgage, and no requirement that the Complaint have copies of the note and mortgage attached. In fact, this Court has already held that Plaintiff stated sufficient facts in its Complaint to state a claim for foreclosure. (*See* Order Denying Defendant Cathy G. Lanier's Motion to Dismiss and Granting Motion to Strike and Motion for Order of Reference, filed on January 7, 2014.)

JPMorgan Chase Bank, N.A., then assigned the Mortgage to Plaintiff by assignment recorded on May 15, 2013. (*Id.* ¶ 9, Exh. F.) Plaintiff, through its attorneys, has physical possession of the original Mortgage and has presented it to Defendant for her inspection. (*Id.* ¶ 12.)

Despite the proven facts above, Defendant alleges that Plaintiff does not have standing to bring this foreclosure action based on a variety of theories. She argues that Plaintiff is not the real party in interest for the foreclosure because the loan is being serviced by JPMorgan Chase Bank, N.A. ("Chase"). (See Def. Mem. in Support of Motion for Summ. Judg., at pp. 6-8; Return to Pltff. Motion for Summ. Judg. at pp. 2-3.) As set forth in the Affidavit of Joseph G. Devine, Jr., Chase is the servicer and attorney in fact for Plaintiff, and as servicer, Chase collects payments from borrowers and maintains information concerning the loans it services. (Devine Aff. ¶¶ 2-3.) Thus, much of the information relevant to this case has been produced from Chase's business records, and Mr. Devine, as an employee of Chase, is the appropriate person to offer testimony concerning payment records, assignments, and the amount due on the debt. The fact that Plaintiff utilizes a servicer to manage the loans it owns has nothing to do with its ability to enforce the security for those loans. Plaintiff, as the holder of the Note and Mortgage, has the right to collect the debt.

Defendant also argues that Plaintiff does not have standing to enforce the Mortgage because the Assignment of Mortgage was not recorded within thirty days after the transfer of the Note. However, South Carolina law does not even require assignments of mortgages to be recorded to show proof of ownership. *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008) (quoting *Cook*, 110 S.C. 99, 96 S.E. at 486); *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549 (Ct. App. 2012). Instead, to have standing to foreclose, South Carolina law requires only that an assignment of mortgage into the plaintiff be recorded before

any foreclosure complaint is filed. Because the Assignment of Mortgage into Plaintiff was recorded before the Complaint in this action was filed, Defendant's argument has no merit.

Defendant also argues that Plaintiff does not have standing because its trust documents do not authorize it to bring a foreclosure. Even if this were true, which it is not, Defendant has not offered any *admissible* evidence of any trust document that contains such a prohibition. Under Rule 56, materials used to refute a motion for summary judgment must be those which would be admissible in evidence. Rule 56(e), SCRPC; *see Hall v. Fedor*, 349 S.C. 169, 175, 591 S.E.2d 654, 657 (Ct. App. 2002). "A genuine issue of fact . . . can only be created by evidence which would be admissible at trial." *Hansen v. DILL Labs, Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (Ct. App. 1994), *aff'd*, 319 S.C. 79, 549 S.E.2d 850 (1995). Defendant's memoranda and affidavits are replete with hearsay and testimony that could not be possibly be within the personal knowledge of the affiants, which is required by Rule 56(e), SCRPC. (*See, e.g.*, Lanier Aff. ¶ 7, discussing the validity and timing of signatures on documents to which she was not a signatory); McCaffrey Aff. at pp. 3-4 (discussing documents apparently used in Mr. McCaffrey's "research.") Simply, there is no evidence whatsoever that Plaintiff does not have authority to bring this foreclosure action, or that there is any agreement to which Defendant is a party that limits Plaintiff's rights in this regard. Instead, Plaintiff is the record holder of the Note and Mortgage, and has possession of the original loan documents. As a result, Plaintiff is entitled to an order finding that it has standing to bring this foreclosure action.

2. Defendant has not produced any admissible evidence to dispute the amount of the Debt.

Defendant alleges that Plaintiff has failed to prove the amount of the debt because it has not produced adequate payment histories. (Def. Return at pp. 6-9.) In support of her position, Defendant filed an affidavit from herself and an affidavit from a CPA, Michael L. Williams.²

First, Defendant claims that Plaintiff is not entitled to foreclose because Plaintiff has not produced itemized payment history records for 2002 to 2005. However, Plaintiff's records date back to 2002 when the loan was originated, and show the amounts due by year, and the total payments received. (Devine Aff. at Exh., G.) These records demonstrate the amount received on the loan for each year, and based on the payment records maintained by Chase, the amount due on the loan through September 22, 2015, is \$637,127.12. (*Id.* at Exh. H.) The fact that Plaintiff has not produced an itemized payment history is not dispositive as to whether or not the claimed amount of the debt is accurate or not. Instead, Plaintiff submitted Mr. Devine's affidavit which testifies as to the amount due on the loan based on payment records maintained for over 13 years. The Plaintiff has the initial burden of pointing to the absence of genuine issue of material fact, but then the burden shifts to Defendant, as the nonmoving party, to come forward with facts sufficient to create triable issues of fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

Here, Defendant has failed to provide a single payment record to rebut Plaintiff's calculation of the amount of the debt. In her Affidavit, she claims that she was told by someone at EMC that the balance was zero in 2010 and that she stopped making payments. (Lanier Aff. ¶ 3.) She also claims that she made "large amounts of principle[sic] toward the subject loan" in the early years of the loan, which are not reflected in Plaintiff's payment histories. (Def. Mem.

² Defendant has never identified Mr. Williams as a witness. In her Interrogatory Answers, she identified only herself, William McCaffrey, and Medina Dzaferovic. A true copy of Defendant's Interrogatory Answers are attached hereto as Exhibit I.

in Support of Summary Judgment at pp. 2-3.) However, Defendant's statements directly contradict her sworn statement in her Bankruptcy schedules that over \$500,000 was owed in 2011. In schedules filed in her Chapter 13 Bankruptcy, Case No. 11-06936-jw, Defendant stated that the amount due on the loan was \$557,051.22 as of November 8, 2011.³ (See Exhibit 2, a true copy of the Voluntary Petition and Schedules filed by Debtor, at Schedule D.) Defendant's Voluntary Petition and Schedule were signed under penalty of perjury. (*Id.* at p. 3.) Defendant never identified any claim or defense related to the Debt in her Schedules, which Debtors are required to do. *USInternetworking, Inc. v. General Growth Management (In re USInternetworking, Inc.)*, 310 B.R. 274, 282 (Bankr. D. Md. 2004) (quoting *Browning Mfg. v. Mims (In re Coastal Plains, Inc.)*, 179 F.3d 197, 207-08 (5th Cir. 1999)). Defendant cannot claim that the balance on her loan is zero without disputing her own sworn testimony that the balance was over \$500,000, a year after she claims she stopped making payments. She cannot create a material issue of fact by citing conflicting versions of her own statements. *Rohrough v. Wyeth Labs., Inc.*, 916 F.2d 970, 975 (4th Cir. 1990) (quoting *Barwick v. Celotex Corp.*, 736 F.2d 946, 960 (4th Cir. 1984) ("A genuine issue of material fact is not created where the only issue of fact is to determine which of the two conflicting versions of the plaintiff's testimony is correct."))

Additionally, Plaintiff has produced itemized payment records for the loan from November 2011, forward, but Defendant has not offered any evidence at all that those records or the amounts claimed due since that time are incorrect or incomplete. She has not produced a single document reflecting any payment from her other than a summary document purporting to be "from Lanier Records." None of the "records" are attached to Defendant's affidavit and none of them have been produced. Instead, Defendant expects the Court to take her word for what her records show, which is simply hearsay and inadmissible. See Rule 801(c), SCR; *Deep Keel*,

³ It is worth noting as well that Plaintiff filed an Objection to Defendant's Chapter 13 Plan, further confirming that Defendant has been on notice that Plaintiff is the real party in interest. Defendant did not contest Plaintiff's right to treatment under the plan in her Bankruptcy Case, however, the Case was dismissed.

LLV v. Atlantic Private Equity Group, LLC, 413 S.C. 58, 70-71, 773 S.E.2d 607, 613 (Ct. App. 2015). Further, her CPA's testimony is not based on personal knowledge or a review of the documents Defendant claims support her position. (See Williams Aff. ¶ 6 (acknowledging that his conclusions are not based on any cancelled checks or other documents provided by Lanier other than a summary she prepared).)

Because Defendant has not offered any reliable or admissible evidence to rebut Plaintiff's proof of the amount owed on the debt, Plaintiff is entitled to judgment in its favor against Defendant in the amount of \$637,127.12 as of September 22, 2015. (Devine Aff. ¶ 14, Exh. II.)

3. Plaintiff is not in violation of the Supreme Court's Administrative Orders.

Defendant argues that Plaintiff is in violation of Administrative Order 2011-05-02-01 ("2011 Administrative Order"), which requires counsel for a foreclosing mortgagee to serve a mortgagor with a notice of the right to foreclosure intervention. She also argues that Plaintiff failed to comply with Administrative Order 2009-05-02, which required that for all actions filed after May 4, 2009, the foreclosure complaint must state whether or not the Home Affordable Modification Program ("HMP") was applicable to the action, and whether or not the process had been completed. However, Plaintiff has complied with both administrative orders.

The Complaint in this action was filed on May 17, 2013, and included a statement that the Plaintiff's Servicing Agent (Chase) was participating in HMP, but that Defendant had failed to provide all necessary documents after those documents had been requested. (Compl. ¶ 4.) Defendant was served with a Notice of Foreclosure Intervention filed May 17, 2013, but she never provided the required financial documents necessary to be considered for a loan modification or other foreclosure intervention. Instead, Defendant informed Plaintiff's counsel by letter dated August 28, 2013, that she did not intend to apply for foreclosure intervention at this time. Plaintiff filed a Certification of Counsel on October 13, 2013, confirming that the

Foreclosure intervention process had been completed based on the Defendant's response. Copies of the Notice of Foreclosure Intervention, Defendant's response, and the Certification of Compliance are attached collectively as Exhibit 3.

In the summer of 2015, the parties engaged in settlement discussions to resolve the loan. As part of those settlement discussions, Plaintiff offered Defendant the opportunity to apply for a modification of the loan, which she had previously declined to do. She requested an extension of time to provide the documents necessary to be considered for a modification. To date, Defendant has not provided any documents to Chase to be considered for a loan modification, and there is no active or pending review.

The 2011 Administrative Order provides that no foreclosure hearing may be held until the certification has been made by Plaintiff's counsel that the foreclosure intervention process is complete. Here, Defendant has never provided any documents to be considered for foreclosure intervention, and she is not entitled to further delay, much less an order of dismissal of this case based on a stated intent to provide documents at some point in the future. Even if she were to provide documents, the 2011 Administrative Order merely prevents a final hearing on the merits setting the property for sale, and would not affect the ability of the Court to grant summary judgment as to the amount of the debt and the standing of Plaintiff.

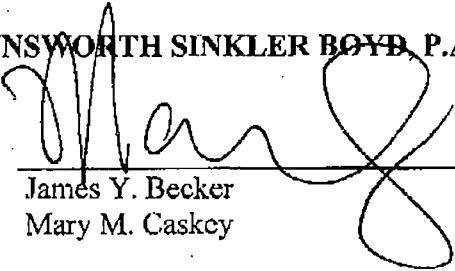
CONCLUSION

This case has been pending since May 17, 2013. Defendant's counterclaims were dismissed on January 17, 2014, and the only two remaining contested issues in the case since that time have been the amount of the debt and whether Plaintiff has standing to bring this foreclosure action. Despite the length of the case, Defendant has failed to produce any evidence that rebuts the proof offered by Plaintiff that it has standing to pursue this foreclosure, that the loan is in default, and that the amount of the debt is correct. Based on the foregoing, Plaintiff

requests that the Court deny Defendant's Motion, grant Plaintiff's Motion and enter judgment in its favor, and grant such other and further relief as may be just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By:



James Y. Becker
Mary M. Caskey

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 Tel
Attorneys for Plaintiff

October 28, 2015

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, VA

2015 OCT 28 PM 1:29

ORIGINAL

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2013-CP-32-01709

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-Interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

Plaintiff,

vs.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank,

Defendants.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2015 OCT 28 PM 1:29

CERTIFICATE OF SERVICE

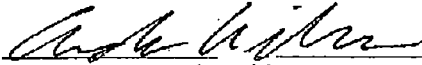
I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the addresses shown below.

Document: Memorandum in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment

Parties of Record

Cathy G. Lanier
172 Belle Chase Drive
Lexington, SC 29072
Defendant Pro Se

HAYNSWORTH SINKLER BOYD, P.A.

By: 
Amanda Willoughby
Paralegal to Mary M. Caskey

October 28, 2015

EXHIBIT I

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2013-CP-32-01709

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-Interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

Plaintiff,

vs.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank,

Defendants.

FILED
NOV 12 2015
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ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

This matter comes before the Court on cross Motions for Summary Judgment filed by Plaintiff and Defendant Cathy G. Lanier's ("Defendant"). A hearing was held on October 29, 2015. Plaintiff appeared through its attorney, Mary M. Caskey, and Defendant appeared *pro se*.

First, there is no genuine issue of material fact that Plaintiff has possession of the original subject note and mortgage, had possession at the time the foreclosure action was filed, and the note is made payable to Plaintiff through an allonge. Thus, Plaintiff has standing to enforce the note and mortgage. S.C. Code Ann. §§ 36-3-301, 36-3-205. Plaintiff's Motion is granted on this issue, and Defendant's Motion is denied.

Second, Defendant's Motion for Summary Judgment is denied with respect to her demand that the case be dismissed because Plaintiff has failed to prove the amount of the debt due on the subject note. The Court has not yet determined whether there is a genuine issue of

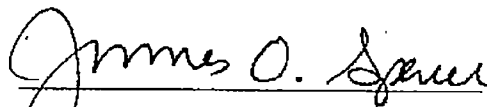
1-

material fact as to the amount of the debt secured by the mortgage, but even if there was a dispute, dismissal would not be the appropriate remedy. Instead, if there is a genuine issue of material fact as to the amount of the debt, the Court will resolve the dispute at trial.

All other arguments and issues raised in the parties' Motions for Summary Judgment are held in abeyance pending further submissions by the parties.

AND IT IS SO ORDERED.

Nov. 4
_____, 2015


The Honorable James O. Spence
Master in Equity, Lexington County

DM: 4269285 v.1

FILED
NOV 5 2015
5:27 PM

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP3201709

Bank of New York Mellon	Bank of New York	Branch Banking and Trust Company	Regions Bank
JPMorgan Chase Bank NA Structured Asset Mortgage Investments Inc	Bank One NA		

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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:

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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

11/10/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 11/5/2015, and a copy mailed first class or placed in the appropriate attorney's box on 11/9/2015, to attorneys of record or to parties (when appearing pro se) as follows:

Mary McFarland Caskey, Esq.
mcaskey@hsblawfirm.com
PO Box 11889
Columbia, SC 29211

Joseph Ernest Brown, Esq.
Joseph.brown@hannalawoffice.com
220 North Main Street Suite 500
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg

Court Reporter

Beth A. Carrigg - Clerk of Court

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

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

EXHIBIT J

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Case No. 2013-CP-32-01709

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-Interest to JPMorgan Chase Bank, N.A. as successor-in-interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,

Plaintiff,

vs.

Cathy G. Lanier; Branch Banking and Trust Company; Regions Bank,

Defendants.

FILED
2015 NOV 10 10:01 AM
CLERK OF COURT

SUPPLEMENTAL ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

This matter comes before the Court on cross Motions for Summary Judgment filed by Plaintiff and Defendant Cathy G. Lanier's ("Defendant"). A hearing was held on October 29, 2015. Plaintiff appeared through its attorney, Mary M. Caskey, and Defendant appeared *pro se*. Following the hearing, the Court issued an Order on Cross Motions for Summary Judgment filed on November 5, 2015, in which the Court ruled that Plaintiff had possession of the original note and mortgage, and had standing to enforce the note and mortgage. The Court denied Defendant's Motion for summary Judgment with respect to her request that the case be dismissed because Plaintiff had failed to prove the amount of the debt, but held all other issues from the Parties' Cross Motions in abeyance pending further briefing by the Parties. As set forth below, the Court grants Plaintiff's Motion for Summary Judgment and denies Defendant's Motion for Summary Judgment on all issues related to standing and denies both Parties' cross motions for

1-

summary judgment on the amount of the debt. This matter will be set for a final hearing to determine the amount of the debt due under the subject note, the only remaining disputed matter in this case.

First, there is no genuine issue of material fact that Plaintiff is the real party in interest and has standing to pursue this foreclosure action. Plaintiff has demonstrated that it was the owner of the note and the mortgage at the requisite time, and there is no evidence that any other entity is claiming ownership of the note and mortgage.

First, the affidavit Defendant relies on to support her claim that Plaintiff lacks standing contains impermissible hearsay. In support of her Motion, Defendant relies on the Affidavit of William McCaffrey, which includes as exhibits a document titled "Prospectus Supplement to Prospectus dated October 29, 2002", listing Structured Asset Mortgage Investments, Inc., as Seller, and Structured Asset Mortgage Investments Trust 2002-AR4 as the Issuer ("Prospectus") and a letter from US Bank to Defendant concerning the ownership of her loan ("US Bank Letter"). Both the Prospectus and the US Bank Letter are inadmissible hearsay and cannot be considered by the Court. Rule 56(e), SCRCP; *see Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002). Rule 801, FRE, provides that "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Here, Defendant is offering the Prospectus and US Bank Letter as proof that Plaintiff does not have standing to bring the loan because of alleged statements or requirements in those documents. Neither of those documents is admissible unless they are offered by the party that made them, or if they are subject to one of the exceptions in Rule 803. Defendant has not offered any affidavit or other testimony to authenticate either document, and none of the exceptions in Rule 803 apply.

Not only are the exhibits to Mr. McCaffrey's affidavit inadmissible, but the testimony in his affidavit is also inadmissible. Several of his statements are legal conclusions and are not proper for expert testimony. *See Dawkins v. Field*, 354 S.C. 58, 65, 580 S.E.2d 433, 437 (2003) (in general, expert testimony on issue of law is inadmissible). For example, Mr. McCaffrey testifies that it is a requirement that to obtain REMIC classification, "within three months after the trust's startup date substantially all of its assets must be assigned to the trust and qualified mortgages." (McCaffrey Aff. at p. 2.) This is a legal conclusion. It is also an incorrect statement of the law. 26 U.S.C. § 860D(a)(4) defines a REMIC, and provides that in order to obtain REMIC classification, within three months after the trust's startup date, substantially all of its assets must be qualified mortgages (as opposed of other types of assets). There is nothing in the statute that states that all assets must be transferred into a trust within three months of the trust's startup date.

Nevertheless, Mr. McCaffrey continues, testifying that the recorded assignments of mortgage prove that Defendant's loan was not timely transferred into the Structured Asset Mortgage Investments Inc., Mortgage Pass-Through Certificates, Series 2002-AR4 (the "Trust"). (McCaffrey Aff. at p. 2.) Specifically, he testified that since the assignments were not recorded until 2012 or 2013, the loan was not timely transferred into the Trust. However, a recorded assignment of mortgage is not required in order for a note or mortgage to be transferred. South Carolina law does not even require assignments of mortgages to be recorded to show proof of ownership. *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008) (citation omitted); *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549 (2012). Instead, to have standing to foreclose, South Carolina law requires only that an assignment of mortgage

into the plaintiff be recorded before any foreclosure complaint is filed, which was indisputably done in this case.

Based on the foregoing, the Court will not consider Mr. McCaffrey's affidavit or the Prospectus and US Bank Letter. The testimony and exhibits are inadmissible and do not create any issue of fact that Plaintiff is the current owner and holder of the subject note and mortgage, and has standing to foreclose.

Moreover, even if the court were to consider Mr. McCaffrey's affidavit, the Court rejects the legal argument it supports based on *Glaski v. Bank of Am., Nat'l Ass'n*, 218 Cal App. 4th 1079, 1099, 160 Cal. Rptr. 3d 449, 464 (2013). In *Glaski*, the court held that the alleged failure by the mortgagor to transfer the borrower's mortgage in compliance with the terms of the PSA rendered a prior foreclosure void, as opposed to merely voidable at the election of the actual parties to that secondary market transaction. The *Glaski* court found that, as a result of the void nature of the foreclosure sale, the borrower had standing to challenge the foreclosure of his property based upon an alleged violation of the PSA. The court finds the holding and reasoning in *Glaski* uncontrolling and unpersuasive,¹ and inconsistent with well-settled South Carolina law that "a third person not in privity of contract with the contracting parties has no right to enforce a contract." *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 445, 494 S.E.2d 827, 833 (Ct. App. 1997). Even if the trust agreement was breached as Defendant alleges, it was not made for her benefit and she cannot enforce it.

¹ Most other courts that have considered the holding in *Glaski* have declined to follow its holding. See, e.g., *In re Sandri*, 501 B.R. 369, 374-75 (Bankr. N.D. Cal. 2013) (describing *Glaski* as an "outlier"); *Rajamin v. Deutsche Bank Nat'l Trust Co.*, 757 F.3d 79, 90 (2d. Cir. 2014) (rejecting *Glaski* as inconsistent with New York law and other courts' interpretation of New York law).

The Court further finds that there is no evidence to support Defendant's contention that the allonge was supplied after the lawsuit was filed. During the hearing, Defendant questioned whether the allonge in Plaintiff's possession was adequate to indorse the note to Plaintiff. An allonge is simply a paper affixed to the note so as to become a part of the note. 27 S.C. Jur. *Mortgages* § 165. Defendant argued that the allonge was not valid because there was adequate room on the note itself to indorse the note, but S.C. Code Ann. § 36-3-204(a) expressly contradicts that argument by providing: "For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument." The reporter's comments further state: "An indorsement on an allonge is valid even though there is sufficient space on the instrument for an indorsement." Thus, Defendant's arguments that the note is not properly indorsed fail as a matter of law.

Defendant also argued that the foreclosure action should be dismissed because the note and mortgage were not attached to the original complaint filed with the Court. However, there is no requirement that the original or even a copy of the note and mortgage must be attached to the Complaint, or that the law firm representing a foreclosing plaintiff must physically possess the note and mortgage when filing a foreclosure action. Thus, Defendant's arguments that Plaintiff does not have standing based on those allegations are without merit.

In sum, there is no genuine issue of material fact that Plaintiff has standing to foreclose. The policy behind proving ownership of the note and mortgage is to ensure a defendant is not sued multiple times with the same note. Given that the original note and mortgage have been, and is in the possession of Plaintiff, and there is no claim by any other party that they own the note or mortgage, or any permissible proof offered by Defendant that anyone else claims rights to the note, the underlying policy protection is in play to safeguard Defendant. Therefore, on the

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP3201709

Bank of New York Mellon	Bank of New York	Branch Banking and Trust Company	Regions Bank
JPMorgan Chase Bank NA Structured Asset Mortgage Investments Inc	Bank One NA		

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	<input type="checkbox"/> 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.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if an 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.**

12/15/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 12/14/2015, and a copy mailed first class or placed in the appropriate attorney's box on 12/15/2015, to attorneys of record or to parties (when appearing pro se) as follows:

Mary McFarland Caskey, Esq.
PO Box 11889
Columbia, SC 29211

Joseph Ernest Brown, Esq.
220 North Main Street Suite 500
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg

Court Reporter

Beth A. Carrigg - Clerk of Court

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

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

EXHIBIT K

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 The Bank of New York Mellon, f/k/a)
 The Bank of New York as successor-in-)
 Interest to JPMorgan Chase Bank, N.A.)
 As successor-in-interest by merger to)
 Bank One, N.A. as Trustee for Structured)
 Asset Mortgage Investments Inc.,)
 Mortgage Pass-Through Certificates,)
 Series 2002-AR4,)
 Plaintiff,)
 Vs.)
)
 Cathy G. Lanier; Branch Banking and)
 Trust Company; Regions Bank,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 11TH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-32-01709

DEFENDANT'S
 MOTION TO RECONSIDER
 ORDER

FILED

Defendant, Cathy G. Lanier respectfully requests reconsideration of several items listed in the Supplemental Order on Cross Motions for Summary Judgment. This document, as of mail service on January 12, 2016, has still not been served to Defendant, so she has based her motion on the scanned and emailed copy sent to her by opposing counsel approximately a week ago. If the served copy differs from that received from opposing counsel, she reserves her right to amend and/or correct this motion accordingly. She believes the court has erred in granting Summary Judgment on several of these matters, and that these would be overturned on appeal.

1. Plaintiff has still not provided any legitimate and admissable proof that it is the real party in interest. In fact, the affidavit of Joseph G. Devine, Jr. supplied by Plaintiff indicates Mr. Devine, a JPMorgan Chase Bank, NA ("Chase") employee, claims to be "attorney in fact" for the Plaintiff. There has been nothing produced showing that the Plaintiff, Bank of New York Mellon ("BNYM"), has authorized in any way this lawsuit, or representation by Mr. Devine as its attorney in fact. Defendant has repeatedly requested such proof, but Plaintiff has provided none. Mr. Devine also verifies that the note and

mortgage are in the possession of Chase – not the party who has brought this lawsuit, BNYM. Therefore, it appears that the real Plaintiff in this case is not BNYM, but Chase, and this case has been brought by the wrong party as per SCRCP Rule 17. Based on that fact alone, this case must be dismissed. “A Court of law can know no other persons as parties, than those whose rights are made to appear by the record” M’Elwee v. House, 17 S.C.L. (1 Bail.) 108, 109 (1828).

Additionally, there has been no proof provided that any party to this lawsuit, the Plaintiff or the Servicer, were in possession of the note and mortgage as of the inception of this case, as is required by law. Further, Plaintiff cannot show, as required by SC §36-3-310 that it is a holder, a non-holder with the rights of a holder, or a person not in possession but who has the right to enforce a lost, destroyed, or stolen instrument or an instrument paid by mistake.

2. Plaintiff characterizes the Prospectus and Pooling and Servicing Agreement provided as an exhibit to Mr. McCaffrey’s affidavit as hearsay. This document was pulled from the Securities & Exchange Commission’s website (www.SEC.gov) after many requests by Defendant to have Plaintiff produce this document in discovery, and having those requests ignored. It is a publicly available document, and therefore meets the criteria for admissible evidence under Rule 803(8). The document also affects an interest in property, and meets the exception under Rule 803(14) and (15).
3. Plaintiff also indicates that some of Mr. McCaffrey’s statements are legal conclusions. They use as an example his statement that in order for the trust he investigated to obtain REMIC status, all the assets must be assigned to the trust within three months. This is a direct requirement for the specific trust referenced in this case, and is clearly spelled out in the Prospectus and Pooling and Servicing Agreement. See Defendant’s Exhibit C to

her Memorandum filed into the case on November 13, 2015, pages S-21 through S-22. Additionally the Prospectus and Pooling and Servicing Agreement grants no authority to the Trustee to collect on a mortgage loan or effect a foreclosure. That authority is granted only to the servicer, and they must bring the action (in their own name, as per Rule 17). The Trustee, by acting in a capacity as Plaintiff in this case, triggers REMIC penalties with the IRS, resulting in a 100% tax penalty on all proceeds from the trust. It is highly unlikely that BNYM would risk its reputation and profits over a simple foreclosure such as this one. This is further evidence that BNYM likely has no knowledge their name has been used to pursue this matter, as has been the case in numerous foreclosure cases, including the Deutsche Bank v. Heinrich et al., 2011-CP-10-1060, Court of Common Pleas of the 9th Judicial Circuit, (decision July 31, 2013) case. Quite simply, the named Plaintiff, BNYM, cannot be the Plaintiff in this foreclosure action. See Defendant's Exhibit C to her Memorandum filed into the case on November 13, 2015, pages S-60 through S-63 and pages 74 through 101. These are not legal conclusions – they are facts, stated in black and white in the trust's contracts, specific to the subject trust of this case. Whether the State of South Carolina has time limits on filing assignments is irrelevant, as the trust bringing this case by BNYM has very specific and easily interpreted limits on these filings. However, even SC law, § SC 30-7-10 applies limitations on the time for filing assignments and Plaintiff's assignments did not meet those.

4. The (created for the purpose of litigation) assignments filed into the county records before the foreclosure case showed a party with no authority or chain of title to the property assigning to another party. A party without authority to assign, cannot assign a mortgage. Ms. Caskey provided answers to chain of title of the note questions in the last

hearing as represented by the transcript. According to Page 13, beginning on line 25 and proceeding through the first few lines of page 14, "And in this case the ownership has been transferred from South Star Funding to Bank One; and then it was transferred by Chase, which was the successor to Bank One by merger, so there is no allonge from Bank One to Chase; to the Bank of New York Mellon." There seems to be an admission that there is nothing transferring from Chase, who "may" have acquired ownership via the merger with Bank One, to the actual Plaintiff, BNYM. Page 28, lines 17 through 21 has Ms. Caskey telling us, "The Note was transferred to ownership to Bank One as evidenced by the allonge. Bank One through JPMorgan Chase's successor transferred the Note to the Bank of New York Mellon." There has been no evidence provided of a transfer from Chase's successor to BNYM. However, Page 10 of the transcript shows an area where there was a statement that indicates that the Motion for Summary Judgment was, in fact filed by Chase, not the Plaintiff, BNYM. That emphasizes the problem illustrated in Item 1 of this document, that the wrong plaintiff has sued because clearly, due to the fact that it is impossible to depose or get any sort of affidavit or testimony from the actual Plaintiff, it is Chase who has brought this case and is litigating it under the name of an unrelated (and likely uninformed) party, BNYM. The real party in interest has not brought this case. Further, the various gyrations described by Plaintiff or that would have had to take place to put them into a position to bring this case, most certainly indicate the note and mortgage have been bifurcated, thereby rendering the mortgage invalid. See *Deutsche Bank v. Heinrich et al.*, 2011-CP-10-1060, Court of Common Pleas of the 9th Judicial Circuit, (decision July 31, 2013), based on the Supreme Court ruling in *Carpenter v. Longan*, 83 U.S. 271, 16 Wal. 271, 21 L.Ed 313 (1872)).

5. There have been other cases besides *Glaski V. Bank of America*, 218 Cal.App.4th 1079, 160 Cal Rptr. 3d 449, that have allowed a borrower, the responsible party for creating the note and mortgage in the first place, to argue and show proof of a breach of the trust's governing documents. One such case is *Wells Fargo v. Erebo* 39 Misc.3d 1220(A), 972 N.Y.S.2d 147 (N.Y.Sup. 2013). Others include *US Bank v. Ibanez* 458 Mass. 637 (Mass. 2011) and a case consolidated with *US Bank v. Ibanez*, *Wells Fargo Bank v. LaRace*. All these cases revealed the fatal defects in the securitization of the loans that led the judge to overturn the foreclosures, and certainly the borrowers had standing to challenge the securitization of the trusts involved, as well as their governing documents. Another is a case determined two months ago on November 10, 2015, *Wolf v. Wells Fargo*, 2011-36476, in the 151st Judicial District of Texas (decision November 10, 2015). In the *Wolf* case, the jury was shown the "true sales" that were necessary to properly securitize the *Wolf*'s mortgage. Once the jury understood the requirements of the Mortgage Loan Purchase Agreement and the Pooling & Servicing Agreement, they were able to see why the Transfer of lien (in SC that is the same as an assignment of mortgage) was fraudulent. The jury also found that even though Wells Fargo was in physical possession of the original note, it did not own the mortgage loan because it was never securitized into the Mortgage Loan Trust over which Wells Fargo serves as the Trustee (just as in the instant case). The *Wolfs* were awarded clear title to their property, and real and punitive damages totaling nearly \$5.4 million. "The jury verdict in the *Wolf v. Wells Fargo* trial is epic. Among other things, it demonstrates that when given all the facts, average people can distinguish the difference between "deadbeat borrowers" and a family who fell upon hard times and always tried to do the right thing.

This case should send a message of hope for others; it also provides a road map for cutting through the complexities of modern finance to arrive at a just result.”¹

Additionally, US Bank’s (another large bank engaged in the same business as Plaintiff, BNYM) very clear description of REMIC trusts, as shown in Defendant’s Exhibit J to her Memorandum filed into the case on November 13, 2015, lists the borrower as a party to the transactions that create the trust. This hardly describes the role of a third party. The borrower certainly has standing to discuss such matters that impact the disposition of their property and the ownership of any liens on their property.

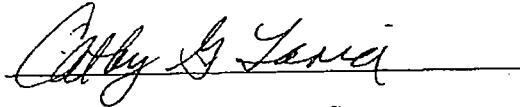
Plaintiff continues to misrepresent the facts of this case, and now this court appears to support them in their arguments without requiring even minimal proof of their statements. “Because they say so” does not provide a legal basis for this order, and it is certain that an appeals court would also require proof of these claims. If evidence has been provided to this Court to dispute these issues, this evidence must be provided to Defendant as well. It appears that some level of bias may exist, in that Defendant has been required to provide strict evidentiary proof of her defenses, while Plaintiff has not been required to provide evidentiary proof of its claims by the same standards to which Defendant has been held. For this reason, Defendant respectfully requests, rather than holding another hearing on this matter, that this Court issue written responses to each of the five (5) items in this motion, providing or referencing the evidence it used to determine its decision in the instant order.

Therefore, Defendant respectfully requests that these items be reviewed for correction or adjustment and require that Plaintiff provide actual and real proof of their chain of title, their

¹ Quote from Marie McDonnell who served as expert witness in the case. Marie McDonnell is Founder and President of *McDonnell Property Analytics*, in Brewster, Massachusetts, a leading provider of title and securitization forensic reports and expert services to attorneys, consumers, registries of deeds, and other governmental agencies.

standing to bring this case, and the status of the trust and the clear manipulation of the trust's rules that has taken place.

Respectfully submitted,



CATHY G LANIER, Pro Se

Cathy G. Lanier
172 Belle Chase Drive
Lexington, SC 29072
803-315-3636
803-359-7031 (fax)
cathy@tsisc.com
Pro Se

Lexington, SC
January 12, 2016

FILED
JAN 12 2016
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 The Bank of New York Mellon, f/k/a)
 The Bank of New York as successor-in-)
 Interest to JPMorgan Chase Bank, N.A.)
 As successor-in-interest by merger to)
 Bank One, N.A. as Trustee for Structured)
 Asset Mortgage Investments Inc.,)
 Mortgage Pass-Through Certificates,)
 Series 2002-AR4,)
 Plaintiff,)
 Vs.)
)
 Cathy G. Lanier; Branch Banking and)
 Trust Company; Regions Bank,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 11TH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-32-01709

DEFENDANT'S
 MOTION TO RECONSIDER
 ORDER

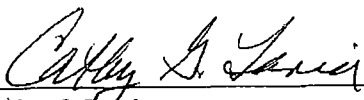
FILED
 10 01 11

CERTIFICATE OF SERVICE

On or about the date below, Defendant served upon the following the above-referenced document by US Mail:

Haynsworth Sinkler Boyd, P.A.
 PO Box 11889
 Columbia, SC 29211
 Attn: Mary M. Caskey, Attorney

Respectfully Submitted,


 Cathy G Lanier
 172 Belle Chase Drive
 Lexington, SC 29072
 Pro Se Defendant

Lexington, SC
 January 12, 2016

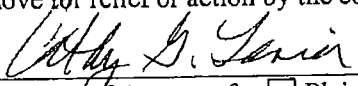
STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 The Bank of New York Mellon, et al)
 Plaintiff,)
 vs.)
 Cathy G. Lanier, et al)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 11th JUDICIAL CIRCUIT

CASE NO.: 2013-CP-32-01709

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

FILED

Plaintiff's Attorney: Haynsworth, Sinkler, Boyd, PA, Bar No. NA Address: PO. Box 11889, Columbia, SC 29211-1889 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: NA, Bar No. NA Address: 172 Belle Chase Drive, Lexington, SC 29072 Phone: 803-315-3636 Fax 803-359-7031 E-mail: cathy@tsisc.com Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion for Reconsideration of Interlocutory Order Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	
1/13/16 Date submitted	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

Common Pleas
 Clerk : Beth A. Carrigg
 Lexington County Judicial Center
 Lexington, SC 29072
 (803) 785-8212

Received From: Montgomery, Andrew William
 PO Box 100200
 Columbia, SC 292023200

Date: 1/13/2016
 Receipt #: 189796
 Clerk: jparker

Paying for: Lanier, Cathy G

Transaction Type: Payment

Reference #:

Payment Type: Cash \$25.00

Comment:

Non-Refundable

Total Paid: \$25.00

Total Received: \$40.00

Change Due: \$15.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2013CP3201709	Bank of New York Mellon , plaintiff, et al VS Cathy G Lanier , defendant, et al	\$25.00	\$25.00	\$0.00

Total Cases: 1

\$25.00

\$25.00

\$0.00

EXHIBIT L

ORIGINAL

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS

COUNTY OF LEXINGTON) 2017 MAR 22 C/A 2017-CP-32-01709

BNY MELLON,)

Plaintiff,)

v.)

Lanier et al.,)

ORDER

This court granted partial summary judgment to Plaintiff against Pro se, (SRL) defendant Lanier. Thereafter, Lanier filed a motion for reconsideration and hired counsel to represent her at that hearing. At the scheduled hearing, Plaintiff's and Defendant's counsel agreed to submit proposed Orders rather than argue the case.

Plaintiff's submitted Order, in essence, stated early order controls, motion is simply repeating and rearguing previously argued and decided matters. This Order supplements previously filed Order.

Defendant's submitted Order basically argues court erred in granted partial summary judgment as to liability because (1) there is question of fact if Plaintiff owns or owned the note and (2) question of facts about underlying pooling and service agreement.

Defendant argues:

- (1) the note appears to be a laser copy.
- (2) Plaintiff failed to attach original (or copy) of note and mortgage to complaint,
- (3) gap between date of assignment and recordation of assignment, and
- (4) questions of fact about underlying pooling agreement.

These arguments are not persuasive.

The transcript reveals that:

(1) Lanier does not deny signing the note. See page 12 lines 19-13 line 16. She simply states she believes what was shown to her as the original note is a laser copy. See page 6 lines 8- 19. " So, later, after Ms. Caskey's firm got the case, I also went to her office to look at the documents....."

1-

(2) Plaintiff's proof of possession of note. Page 19 Line 23. -Page 20 lines 21 lines 2. "Ms. Caskey....is there any evidence to show that you did not have possession of the Note when the lawsuit was filed?

The court will not restate earlier ruling and law relating to (3) gap between assignment date and recordation or (4) underlying pooling agreement .

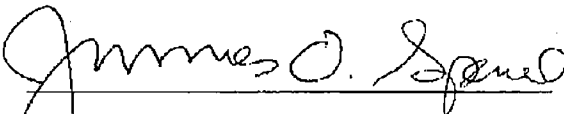
Proper ownership of the note is a critical issue since it protects the Defendant from the possibility of either paying multiple parties who present claims of ownership or being involved in multiple litigations involving different parties claiming ownership of the note.

The court notes that while the complaint alleges Lanier signed the note and mortgage August 2, 2002 and made payments until on or about September 2010, neither Plaintiff nor Defendant have brought to the court's attention (1) any action brought by a third party claiming note ownership nor (2) any allegation that while Lanier has not paid Plaintiff since 2010, Lanier has been making mortgage payments to another entity claiming ownership.

Motion denied.

AND IT IS SO ORDERED.

March 21, 2017



JAMES O. SPENCE
MASTER-IN-EQUITY

FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP3201709**

Bank of New York Mellon Structured Asset Mortgage Investments Inc	Bank of New York Bank One NA	Branch Banking and Trust Company	Regions Bank
---	---------------------------------	-------------------------------------	--------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

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

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

3/22/2017

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on 3/22/2017, and a copy mailed first class or placed in the appropriate attorney's box on 3/23/2017, to attorneys of record or to parties (when appearing pro se) as follows:

Charles Stuart Gwynne Jr. PO Box 100200 Columbia, SC
29202-3200

Joseph Ernest Brown 220 North Main Street Suite 500
Greenville, SC 29601
S. Jahue Moore PO Box 5709 West Columbia, SC 29171

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lisa A. Comer/ppb

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Master-In-Equity

The Honorable James O. Spence

Civil Action No. 2013-CP-32-01709

Appellate Case No. 2017-000874

RECEIVED

JUN 07 2017

SC Court of Appeals

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments, Inc., Mortgage Pass-Through Certificates, Series 2002-AR4,.....

Respondent,

v.

Cathy C. Lanier; Branch Banking and Trust Company, Regions Bank,.....

Defendants,

Of Whom Cathy C. Lanier is the Appellant,

Appellant.

PROOF OF SERVICE

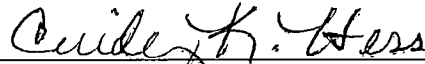
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for JPMorgan Chase Bank, N.A., do hereby certify that I have served all counsel in this action with copies of the pleading(s) hereinbelow specified to the following address(es):

Pleadings: **Respondent's Motion to Dismiss Appeal**

Counsel Served:

U.S. Mail

S. Jahue Moore, Esquire
Moore Taylor Law Firm
1700 Sunset Blvd. (29169)
Post Office Box 5709
West Columbia, SC 29171



Cindy K. Hess
Sr. Administrative Assistant

June 7, 2017

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9024
www.nelsonmullins.com

Michael J. Anzelmo
Tel: 803.255.9312
Fax: 803.255.9024
michael.anzelmo@nelsonmullins.com

June 7, 2017

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
JUN 07 2017
SC Court of Appeals

RE: The Bank of New York Mellon v. Cathy C. Lanier, et al.
Civil Action No. 2013-CP-32-01709
Appellate Case No. 2017-000874
Our File No. 11281/02473

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter please find the original and seven copies of Respondent's Motion to Dismiss Appeal, along with a check for the filing fee. Please return a clocked-in copy to us via our courier.

By copy of this letter to counsel of record, we are serving them with copies of this document.

Very truly yours,



Michael J. Anzelmo

MJA:ckh
Enclosures
cc: S. Jahue Moore, Esquire