THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Cynthia Graham Howe, Master-in-Equity Judge

Appellate Case No.: 2016-001550

Branch Banking and Trust Company .....Respondent

v.

Cindy B. Hunt; Willow Greens

Homeowners Association, Inc.;

CJ Developers, LLC.....Defendant(s),

Of Whom Cindy B. Hunt is .....Appellant

RECORD ON APPEAL: Volume 3 pages 959-1452

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[1] The hearing on the MFS was held 9/17/2014. This appeal does not include the 10/20/2014 Order. The 10/20/2014 Order has an outstanding motion to alter or amend in the lower court.

[2] A hearing was held on several motions on 4/21/2014. This appeal does not include the 10/22/2014 Order. The 10/22/2014 Order has an outstanding motion to alter or amend in the lower court.

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(2) 8/11/2015 Motion: Lack of Jurisdiction, Rule 59 and 60, SCRCP (re 1/13/2015 Order); and

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[5] Under Rule 12(b)(2) and 12(b)(5) FRCP.

[6] HC Public Index - see Pages 1933-1935; and Notice of Withdrawal - see Pages 1936-1938.

[7] No Memorandum was filed with the MTD.

[8] In several documents in the Record - Hunt has mistakenly referred to this document with a file date of 6/23/2014. The correct file date is 6/25/2014.

[9] No Memorandum was filed with the MTD.

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36	5/19/2008 closure of IOLTA & POD	Pages 1515-1518
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40	USCA Orders:	
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	entry # 97 (FN 1) see exhibit # 51	see Pages 1781
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	entry # 105-1 proposed TAC	Pages 1621-1660
	entry # 108 Response	Pages 1661-1672
	entry # 110 Decline Supplemental see exhibit # 41	Pages 1-16
	entry # 114 Reply	None
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	USCA entry # 9 Jurisdictional Statement	None
48	Civil Docket for Case # 4:11-cv-00870[11]	Pages 1673-1678
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	entry # 9-3 Memorandum	see Pages 398-422
	entry # 14 Response to MTD	None
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	entry # 14-2 Mortgage Late Notice	Pages 1683-1684
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[11] Lawsuit # 2.
[12] Lawsuit # 3 – See 1107-1109 Notice of Removal.

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52	Order: Doc. #s 63-64 of 4:11-00870	see Pages 29-44
53	Email: June 17, 2013 Judge Culbertson	Pages 1787-1790

54 Michele Loftis: listed as notary at SC Secretary of State None

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56 Order of Publication Pages 1795-1798

57 Index of exhibits - None

58 Email: Payment History Pages 1799-1802

59 Emails between BIC & attorney for WGHOA Pages 1803-1808

60 Motion to Strike Answer & Answer of WGHOA Pages 1809-1816

61 RR of lawsuit # 3 see Pages 45-49

62 Complaint & index see Pages 233-260

63 Letter to FDIC/OIG Pages 1817-1820

64 9/21/2011 Transcript (60 day stay pgs 27-29)—see Pages 547-556

65 USPTO 2013 Certificate Pages 1821-1824

66 List of IOLTA financial partners Pages 1939-1942

67 Blank

68 CJ Developers, LLC – Dissolved Pages 1825-1828

69 Withdrawal of the Answer of WGHOA Pages 1829-1834

70 5/19/2014 Affidavit of Hunt Pages 1835-1838

71 Blank

72 8/03/2013 Proof of Service re Answer, counterclaims/defenses and summary judgment None

73 9/05/2013 MTD see Pages 423-428

74 – 79 Blank

80	11/10/2014 **Notice of Removal**	see Pages 1110-1118
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82	12/22/2014 Hunt's Response to Remand	Pages 1847-1870
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84	01/13/2015 Order filed in State Court[13]	see Pages 98-112
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87	05/11/2015 **Order of Remand**	see Pages 130-135
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89	9/05/2013 MTD of lawsuit # 4	see Pages 423-428
90	6/25/2014 MTD of lawsuit # 4	see Pages 429-432
91	Documents served on 10/30/2014	None
92	Hunt's Santee Cooper Power Service	Pages 1881-1884
93	SC SOS: RA for WGHOA	None
94	Order filed 10/28/2014 (from BBT)	see Pages 85-90
95	8/27/2015 Email to BBT	Pages 1885-1886
96	Documents served on 8/11/2015	None
97	7/27/2015 Letter to the HC Clerk of Court	Pages 1887-1891
98	Order filed 6/3/2015	see Pages 136-138
99	9/11/2013 Notice [of Motion Scheduling]	Pages 1892-1894
100	Affidavit of Hunt	Pages1895-1898
101	11/25/2014 Order re address	see Pages 91-97
102	Blank	
103	Blank	

[13] Hunt received this document from the HC Clerk of Court on 8/10/2015. See exhibit # 97.

104 6/20/2013 Affidavit of non service Pages 1899-1900

105 7/15/2014 Cert of Service; 9/30/2014 Cert of Service; 9/30/2014 Receipt for MFDJ, etc; and 9/30/2014 Notice of Hearing See Pages 539-546

106 11/2/2015 Amended Notice of Hearing; 11/2/2015 Cert of Service; 11/2/2015 USPS Cert Return Receipt None

107 10/14/2014 Transcript of hearing see Pages 829-958

10. Email: 10/15/2014 between Foerster, Hunt & Miller Page 1901-1902

Email: 10/23/2014 from Judge Howe Pages 1903

Email: 10/28/2014 at 9:38 pm from S Foerster Pages 1904-1905

Email: 06/17/2016 at 1:17 pm from CB Hunt Pages 1906-1928

Email: 02/26/2016 at 1:26 pm from CB Hunt Pages 1929-1932

11. The below ECFs are used in Hunt's response to BBT's motion to remand. See exhibit # 82.

ECF 11-1 see WGHOA affidavit of service at exhibit # 81.

ECF 11-2 see CJ Developers affidavit of service at exhibit # 81.

ECF 14-2 - see Mortgage Late Notice exhibit # 49 entry # 14-2

ECF 22 - see exhibit # 61

ECF 29 - see exhibit # 46

ECF 30-31 - see exhibit # 43

ECF 64 - see exhibit # 52

ECF 97 - see exhibit # 51

ECF 108 - - see exhibit # 47 entry # 108

12. ACRONYMS

AFCB – Attorney Fees and Costs to BBT

AFCH – Attorney Fees and Costs to Hunt

BBT – Branch Banking & Trust

BSA – Banking Service Agreement

BOFD – Breach of Fiduciary Duty

CC – Counterclaims

CD – Certificate of Deposit

CFB – Coastal Federal Bank

CRA – Credit Reporting Agency

FAC – First Amended Complaint / Counterclaims

FDIC – Federal Deposit Insurance Corporation

HC – Horry County

HCPD – Horry County Police Department

IOLTA – Interest on Lawyers Trust Account

MFAFC – Motion for Attorney Fees and Costs

MFDJ – Motion for Default Judgment

MTAOA – Motion to Alter or Amend

MTD – Motion to Dismiss

MTR – Motion to Remand

NOR – Notice of Removal

PD – Punitive Damages

POD – Payable on Death account

RR – Report and Recommendation of the Magistrate of the USDC

SAC – Second Amended Complaint

SCPC - South Carolina Probate Court

SCSC – South Carolina Supreme Court

SC SOS – South Carolina Secretary of State

SOL – Statute of Limitation

TAC – Third Amended Complaint

UFTPA – Unfair Trade Practice Act

USCA - United States Court of Appeals

USPS – United States Postal Service

USDC – United States District Court

USPTO – United States Patent and Trademark Office

WGHOA – Willow Green Homeowners Association

Certification: I hereby certify that the Record on Appeal contains no matter which is irrelevant to this appeal.

Respectfully Submitted,

C B Hunt

Cindy B Hunt (SC Bar # 65408) Date: July 08, 2017

Pro Se

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY COURT OF COMMON PLEAS

BRANCH BANKING and TRUST COMPANY,
Plaintiff,
vs.

CASE NO. 2013-CP-26-2528

CINDY B. HUNT; WILLOW GREENS HOMEOWNERS ASSOCIATION, INC., CJ DEVELOPERS, LLC,
Defendants,

COPY

BEFORE: HONORABLE CYNTHIA GRAHAM HOWE

DATE: November 10, 2015

TIME: 1:30 p.m.

LOCATION: Horry County Justice Center
1301 2nd Avenue, 3C
Conway, SC

REPORTED BY: Bonnie L. Sabados,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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(INDEX AT REAR OF TRANSCRIPT)

THE COURT: All right. This is the case of Branch Banking & Trust Company verses Cindy B. Hunt, Willowgreen Homeowners Association, Inc. and CJ Developers, LLC. It's civil action number 2013-CP-26-2528. There is a general order of reference. It is signed by the Honorable Larry B. Hyman, Jr., dated October 11th, 2013 referring this matter to the Master in Equity's office. Therefore, this court does have jurisdiction of this matter. And I'm going to give this order of reference back to you, Mr. Foerster. As I stated earlier, we only have one portion of the clerk's office file. This file is in three volumes now. And I have volume 3, but not volumes 1 and 2. The order of reference is in volume 1 or 2. And we're getting the other two volumes brought up to us now.

Before us today are two motions filed by --

MS. HUNT: Excuse me, Your Honor. There's three.

THE COURT: Oh, there are three motions?

MS. HUNT: Yes, ma'am.

THE COURT: Okay. There are three motions today filed by -- they're all three filed by you, Ms. Hunt?

MS. HUNT: Yes, ma'am.

THE COURT: All right. Three motions filed by

the defendant, Ms. Cindy B. Hunt. A motion to alter or amend the judgment filed -- or the judgment or order filed January 13th, 2015. And a motion to alter or amend the judgment concerning the October 28th, 2014 order denying entry of default. And is there another motion, Ms. Hunt?

MS. HUNT: Yes, ma'am. The third one is --

THE COURT: Let me find that one though. I'm sorry. Motion concerning lack of jurisdiction. Is that the one?

MS. HUNT: No, ma'am. This one has to do with the order filed on June the 3rd, 2015.

THE COURT: Yes, ma'am, I see it now. The order filed on -- lack of jurisdiction order filed on June 3rd, 2015 that denied Hunt's request for attorney's fees. Is that the one, ma'am?

MS. HUNT: Yes, ma'am. But I filed on 59, 60, and lack jurisdiction.

THE COURT: Yes, ma'am. And that that order should be voided, altered, or amended, and/or should be set aside.

MS. HUNT: Yes, ma'am.

THE COURT: Mr. Foerster, do you have any motions?

MR. FOERSTER: None, Your Honor.

THE COURT: So you are defending those three motions or opposing those three motions today.

MR. FOERSTER: Correct, Your Honor.

THE COURT: Okay. Ms. Hunt, is there any particular order you want to take those motions?

MS. HUNT: Yes, ma'am. I want to take them in -- I think the order that they're listed in. The one for January 13, 2015 first, and then the one for October the 28th, 2014.

THE COURT: Yes, ma'am.

MS. HUNT: And then the one for June 3rd, 2015.

THE COURT: Okay. All right. Then I will hear from you. We do not need to wait, I don't suppose, on the files coming up. You may need to give us a little bit more time to gather all the documents than we did with Stewart, because he was very quick in finding the documents. It might take us a little bit longer to find the documents.

MS. HUNT: And I brought you some more today, Your Honor.

THE COURT: Oh great.

MS. HUNT: I apologize right now, right up front.

THE COURT: That's okay.

MS. HUNT: All right.

THE COURT: That's all we need are more documents, Ms. Hunt.

MS. HUNT: Before we get started or so that you can follow along as we get started, I have some things I want to give to you.

THE COURT: Okay. Very good.

MS. HUNT: On the top of this document is my brief, Your Honor.

THE COURT: Yes, ma'am. I guess I need to put on the record that this case was -- you did remove this case to Federal Court at some point. And then it's been remanded, I do believe, from Federal Court. So we're back together again.

MS. HUNT: Yes, ma'am.

THE COURT: Okay. Very good.

MS. HUNT: The very first document, Your Honor, in your box here is a copy of the brief that I have clocked in today.

THE COURT: Yes, ma'am.

MS. HUNT: And we're going to follow the brief as usual my pattern. The second page of the brief, Your Honor, I have tried to give you a little guide as to where things can be found in the brief. And as you can see on the first -- pages 4 through 9 of statement of

facts and procedural history. Then I have written that I have been prejudiced. That's on page 10 through 15. And then the three motions are listed there. The one for January 13, 2015 that I will be arguing. And then the one from October 28, 2014, and then the June 3rd, 2015 motion, Your Honor. And so then on page 3, Your Honor, we have a list of exhibits that are in that box there that I gave you.

THE COURT: Yes, ma'am.

MS. HUNT: I need to apologize to both you and Sean. They were not stapled, and I meant to, and I just simply forgot to go back and do it. So please accept my apology.

THE COURT: Okay.

MS. HUNT: At any rate, as you indicated, this matter was removed to the U.S. District Court one year ago today, Your Honor, November 10th, 2014. And if you'll go inward a bit there, the very first exhibit, number 80, is a copy of the notice of removal.

THE COURT: Okay. Let me find it.

MS. HUNT: It's in the box that I just gave you.

THE COURT: Okay.

MS. HUNT: Just go in a few documents.

THE COURT: Okay. Yes, ma'am, I see that.

MS. HUNT: Let me talk about the two that are on the top, the two exhibits that were on the top. I think that was Exhibit 46.

THE COURT: Yes, ma'am.

MS. HUNT: And 53, I think. At any rate, they were submitted in the U.S. District Court. They were previously submitted in this court before it was removed, those two exhibits were also submitted in U.S. District Court because I'm using them again today, I resubmitted them to you so that you could see that they were also submitted to U.S. District Court.

And then underneath those two exhibits, we start with Exhibit number 80 in this matter. And Exhibit numbers 80 through 107 are new exhibits, Your Honor. The majority of these exhibits, let's just, if you will, Your Honor, let's just go through the list of exhibits there first, so that you can get a sense of what they are please.

THE COURT: Let me ask you this, Ms. Hunt. I'm sure you were involved in the Federal Court matter. Mr. Foerster, were you involved in the Federal Court matter as well?

MR. FOERSTER: I handled the motion to remand.

THE COURT: Okay. Very good. All right.

MS. HUNT: Okay. At any rate, these exhibits

most of them have to do with the removal, and then exhibits that were submitted in the U.S. District Court, and the transcript from the -- number 107 is a copy of the transcript from the October 14 -- it says 2015, but that should be 14, I'm sorry. It's the very last one, 107, exhibit down there.

And let's talk for a moment about Exhibit number 100. Exhibit number 100 is an affidavit that's being submitted by me, and it's my credit card statements, and it will show that my credit card purchases indicate that I was in Horry County from last October to last November until now. Nothing else pops up.

Sean, if you have any comment about any of -- there are things that have been previously submitted in lawsuit number -- in this lawsuit that we're in right now. And I just wanted them to be readily available to you, Your Honor.

So moving right along. Let's go to the order, Your Honor, on page 15. Also submitted in that box of stuff that I just gave you, Your Honor, is a case called Limehouse v. Halsey, a ruling from the South Carolina Supreme Court. And also, Your Honor, sticking out to the side in your box was Exhibit number 86 and 84. And the point being the case was removed, as you just said,

Your Honor, on November 10th. And in the Limehouse v. Halsey, the court requires that -- the South Carolina Supreme Court requires that before jurisdiction can be reinvested in the state court, that a certified order must be received from the Federal Court. The federal order, certified order is in your packet there, and it's number 87. I had it sticking out to the side. 86 and 87 were sticking out to the side, Your Honor.

THE COURT: Yes, ma'am. I see 86.

MS. HUNT: And right behind it is 87.

THE COURT: Okay. Very good.

MS. HUNT: Now, very briefly, Your Honor. 86 is the order that I received from the U.S. District Court.

THE COURT: Yes, ma'am.

MS. HUNT: If you would please pull it, and I'm going to ask you to compare those two exhibits.

THE COURT: Ask me to do what?

MS. HUNT: Compare them. We need to compare them.

THE COURT: Okay. Yes, ma'am.

MS. HUNT: Exhibit number 86 is the copy of the order that I received from the U.S. District Court. And 87 is the one that I received from the clerk of this court. And I did not receive that exhibit until August

the 10th. But the point is, number 87, based on Halsey were required before jurisdiction can reinvest in this court, there must be a certified order of remand from the Federal Court. And based on 87, that is what you're holding in your hand.

THE COURT: Okay.

MS. HUNT: In my opinion, a certified order of remand from the Federal Court. In Exhibit 86, this is what I received from the U.S. District Court on May 12th of 2015. They sent me a copy of the order, but it is not certified. It is not certified. Okay. If you would go in a few pages.

THE COURT: Did you have to go request a certified copy?

MS. HUNT: I ended up requesting a copy from this court because -- or from the clerk of court in Horry County because I didn't get one. And my understanding pursuant to Rule 77, every time an order is filed, she is to send them out. But I didn't get a copy from the clerk of court until I requested it in July. But at any rate, the point is is that Halsey requires that before jurisdiction can be reinvested in the state court, that a certified copy of the order must be received by the state clerk of court, and that order certified copy was received by Horry County clerk of

court as filed by her office on May 11, 2015.

THE COURT: Is the timeliness an issue?

MS. HUNT: Yes, ma'am, because this is the essence of my motion I'm going to get to.

THE COURT: Okay.

MS. HUNT: You signed and filed the order dismissing all of the first amended counterclaims on January 13, 2015.

THE COURT: Okay.

MS. HUNT: My argument is that this court did not have jurisdiction during the period from November the 11th when I filed the notice of removal until it was revested on May the 11th when the clerk of court filed the certified order from the Federal Court. And that anything in between that time as per Limehouse v. Halsey is required to be void. I provided you with a copy of the Limehouse on page 8. Limehouse is in the front of your materials there. And on page 8 which is really page -- are you at that page, Your Honor?

THE COURT: I'm sorry. No, I'm not. I was writing down the date. Okay. Now, tell me again where you want me to be.

MS. HUNT: I want you to be in case Limehouse verses Halsey.

THE COURT: Can you direct me to that?

MS. HUNT: It was in the top of the documents I gave you in the box.

THE COURT: Okay. And where --

MR. FOERSTER: Your Honor, I have an extra copy of the case if you would like it.

THE COURT: I think I just stuck something where I wasn't supposed to stick it. Okay. I've got my notice of removal. Is it behind that, ma'am?

MS. HUNT: It was in the very top.

THE COURT: Okay. I've taken stuff out, so... Okay. I've got it. I've got it.

MS. HUNT: On page 8 in Limehouse v. Halsey.

THE COURT: Okay.

MS. HUNT: The sequence in which they did things in Limehouse are a little bit different from here. But the bottom line is that Limehouse requires that the court receive a certified order, and on page 8 at the second full paragraph, you know, it says: Because the absence of a certified order precluded jurisdiction from resuming in the state court, we hold that state court proceedings conducted after the Federal Court's entry of remand are void. But at any rate, Halsey is a little bit more complicated than here. They thought they had an order -- a certified order of remand in Halsey when they didn't. And that's why I took the

time to point out to you that the order I received from the U.S. District Court was not certified, but they did send one to the clerk of court. And so it is my position that jurisdiction has resumed in this court at this time. However, from removal through the clerk of court getting the order of remand on May the 11th, the court did not have jurisdiction. However, during that period of time, you did sign the order on January 13, 2015, and it is my position based on Halsey because you did not have jurisdiction during that period of time those few months that that order should be voided. And that is what I discuss in great detail starting on page 15 of the brief, is that that order should be voided based on that case. And there are numerous other cases there, Your Honor, and I have some of them listed there. Halsey I actually cite to it in the brief on page 18. I also cite as I did in the motion, that in the State of South Carolina v. Moore that the court has stated that since the adoption of 14-46 which is one of the statutes, the Federal statutes that speak to this case, 14-46 says: Notice to adverse parties. This is with regard to removal, Your Honor. It indicates that if you're going to remove a case that notice to adverse parties in state court. Then it says: Promptly after the filing of such notice of removal of the civil

action, the defendant or defendants shall give written notice to all adverse parties, I did these things, and shall file a copy of the notice with the clerk of such state court which shall affect the removal, and the state court shall proceed no further unless and until the case is remanded.

THE COURT: Okay. So I understand what you're saying. So you're saying -- when did you file your notice of removal?

MS. HUNT: November the 11th.

THE COURT: November the 11th --

MS. HUNT: 2014. One year ago.

MR. FOERSTER: It's November 10th, Your Honor.

MS. HUNT: Thank you, Sean.

THE COURT: November 10th of 2014.

MS. HUNT: Yes.

THE COURT: And even though I had indicated orally that I would dismiss the case -- well, how did you remove the case? What were you removing the case on the basis of?

MS. HUNT: I removed the case on the basis that, as you said, that day when you made the ruling, I felt as though this Court was treating me unfairly.

THE COURT: Yeah, but what ruling -- I had made the ruling on what?

MS. HUNT: You had dismissed the counterclaims based on statute of limitations and --

THE COURT: Okay. So I had dismissed the counterclaims. I just had not filed this order that I finally filed in January of 2015.

MS. HUNT: Yes, ma'am.

THE COURT: Okay. So I orally had stated -- I orally dismissed them.

MS. HUNT: Yes, ma'am.

THE COURT: But I just hadn't filed the written order.

MS. HUNT: Yes, ma'am.

THE COURT: So the written order should be vacated, but the oral order is not vacated.

MS. HUNT: Your Honor --

THE COURT: Is that really how it goes?

MS. HUNT: No, ma'am.

THE COURT: Because you've already removed the case to Federal Court on the basis that I dismissed your counterclaims otherwise you couldn't have remanded -- I mean you couldn't have removed it.

MS. HUNT: I'm sorry, say it again please, ma'am.

THE COURT: Once I dismissed your counterclaims, that's when you removed it, right?

MS. HUNT: They weren't dismissed until you signed the order. The case law out there indicates that the Court can, you know, retains the ability to do whatever it pleases, but that the order --

THE COURT: Then how are you able to remove it to Federal Court?

MS. HUNT: I don't understand your question, Your Honor. I'm sorry.

THE COURT: How are you able to remove the case to Federal Court?

MS. HUNT: I filed the proper paperwork.

THE COURT: Yes, on what basis though? On the basis that I had dismissed your counterclaims?

MS. HUNT: On the basis that they had jurisdiction.

THE COURT: Because I had dismissed your counterclaims?

MS. HUNT: No, ma'am. Diversity jurisdiction was the basis for the removal, and the dollar amount.

THE COURT: So you could have removed it all along?

MS. HUNT: Well, that was -- except that we were -- I was bottled down with he filed against me, the homeowners association, and a third party.

THE COURT: I'm just trying to get it

straight.

MS. HUNT: Okay. Well, you know, I'm from South Carolina. BB&T is a resident of North Carolina. And I argued that there was diversity jurisdiction based on the dollar amount where the homeowners association had withdrawn and CJ Developers --

THE COURT: Then it wouldn't have been timely. The only way you were able to remove it when you did is because I dismissed your counterclaims.

MS. HUNT: No, ma'am. That was not the basis of my removal. The removal document is right there in front of you at Rule 80.

THE COURT: But then it wouldn't have been timely.

MS. HUNT: That's why he remanded it.

THE COURT: Oh, because you didn't do it timely?

MS. HUNT: Right.

THE COURT: Okay. Okay.

MS. HUNT: He said I should have done it within the first 30 days.

THE COURT: Okay.

MS. HUNT: Are we on the same page now?

THE COURT: Yes, ma'am.

MS. HUNT: At any rate, the cases that I have

cited to you, they were remanded back to state court for whatever reason also, but the rule still holds that during that period that a case has been removed even if it's remanded, that the state court shall not --

THE COURT: Go forward with any proceedings.

MS. HUNT: Yes, ma'am. That's correct. If they do, that those proceedings is void. The order is void.

THE COURT: Let me hear from you, Mr. Foerster.

MR. FOERSTER: Thank you, Your Honor. I don't disagree with her time line. I mean I think she laid it out for you right there. You dismissed all her claims in the October 14th, 2014 hearing. She was unhappy with that, so she decided she was going to go shopping for a new judge. So she tried to remove this up to Federal Court. She had no grounds for removal. You know, a year and a half after this foreclosure action was filed, and you have to remove within 30 days. Her removal petition violated the Home State Defendant rule. It violated the rule of unanimity among defendants consenting to removal. There's a plethora of reasons why it got remanded up pretty quickly by the Federal Court. I don't disagree with her time line. But I do disagree with her argument anything this Court does

during the time of removal is somehow void. Okay. For purposes of this motion, the only relevant portion of the Limehouse verses Halsey case is the part where the Supreme Court held that only in the state courts power to render the particular judgment requested was suspended or held in abeyance until a determination was made as to whether the case involved a federal question, more appropriately decided by the Federal Court. So the state's power to render that decision, that's all that's suspended or held in abeyance during the time of removal. Your Honor had already orally ruled that all her amended counterclaims were going to be dismissed with prejudice as of the October 14th, 2014 hearing. Then Your Honor entered a form four order on 10/28/14 that stated that all the counterclaims were dismissed. And I have an extra copy of that order if Your Honor would like to see it, if I may approach.

THE COURT: It should be here in the file.

MR. FOERSTER: It's a form four order. And in it, Your Honor states: Defendant Cindy B. Hunt's motion for entry of default judgment against plaintiff BB&T is hereby denied as moot. Then it goes on to state: All counterclaims asserted by the defendant in this action were previously dismissed by this court following an October 14th, 2014 hearing regarding plaintiff's motion

to dismiss the first amended counterclaims of defendant Cindy B. Hunt. As such, there are no remaining counterclaims to which the plaintiff could be considered in default.

THE COURT: Yes, sir.

MR. FOERSTER: That's entered October 28, 2014. That's, you know, over ten days before her notice of removal was filed.

THE COURT: I signed that on October 27th.

MR. FOERSTER: Yes, Your Honor. And then I actually submitted a more fleshed out written proposed order to the Court on October 28 by email. And I have a copy of that email where I sent it to the Court and served everybody as well, if I may approach.

THE COURT: All right.

MR. FOERSTER: The reason I'm showing you all this, I'll get to it in a minute, I believe I have a case that's right on point.

THE COURT: Okay, thank you.

MR. FOERSTER: While I couldn't find anything in the South Carolina Federal Courts dealing with this precise situation as to whether a Court can enter a written order during the period of removal when it's already ruled prior to removal. I did find a case from -- it's a published case from the United States

District Court for the district of Utah that I believe is right on point.

THE COURT: Okay. Thank you.

MR. FOERSTER: If I may approach?

THE COURT: Yes, sir.

MR. FOERSTER: I've got a copy for Ms. Hunt. And the case deals with two issues. One of the issues is our issue in this case. In a nutshell, this case is called Pebble Creek Homes verses Upstreet Images. Again, it's a District of Utah, 2007 case. Briefly the facts are this, Your Honor. The state court held a motion hearing two weeks before the notice of removal was filed. Okay. A proposed order was submitted to the state court on the same day as the notice of removal was filed in Federal Court. However, the written order from that motion hearing wasn't signed and entered by the state court until two days after removal. And here's what the District Court of Utah went on to say. It said: The only act that Judge Pulland, who is the state court judge, took steps subsequent to the removal was on July 25th, 2007 when he performed the ministerial function of signing and entering the order reflecting his earlier in court ruling on July 10, 2007. Because this final essentially clerical task in no way affected the merits of the already adjudicated issues by the

parties, the court finds that the state court order does not violate 14-46 (d). The hold otherwise would enable defendants to effectively nullify dispositive rulings made at state court hearings by rushing to remove the case before the administrative entrance of the written version of the decision. And that's exactly what Ms. Hunt is trying to do in this case. She was unhappy with Your Honor's oral ruling, and rushed to file an order of removal so she could go shop around for a new judge. So the entry of this order in January of 2015 was Your Honor merely memorializing a ruling that had already been made, as well as, you know, a fleshing out of the form four that had already been entered on October 14th, 2014. So it was merely a clerical administrative task, and I don't think the notice of removal suspended Your Honor's ability to enter that order in January 2015. So that's my counter argument to the lack of jurisdiction question. But my first argument as well to the extent her motion is a 59 (e) motion. I've got to question the timeliness of it. You have to serve a rule 59 (e) motion within ten days after receipt of written notice of the entry of the order you're disputing.

And if I may approach, I have a letter that I received from Ms. Hunt where I was copied that she was sending a letter to the clerk of court talking about

this issue. I don't know if you have seen this or not. But what she says starting with the second sentence, that first paragraph. She says: A few weeks after the remand order was issued. And again, the remand order was issued on May 8th, 2015 and received by the clerk, she says, on May 11th, 2015. A few weeks after that, I visited the courthouse to file a motion where I also made use of the computers in your office to make a copy of the document and confirm your office had indeed received the remand document. While on your computers, I saw that on January 12th, 2015 that Judge Howe had signed the order dismissing my first amended counterclaims where this order was filed into our computer system on 1/13/2015. And what you'll notice is she's attached a print-out that she took of the public index, I guess, while she was there, showing she was filing a motion on May 27th, 2015. So I think that would indicate that that was the day she was in the clerk's office looking all this information up on the computer. And that's the day where she received a piece of paper notifying her that the order had been entered on January 13, 2015. So I believe her ten days would have run from the date that she printed this public index out and took it with her and learned about the entry of the order. And so she didn't get around to

serving this 59 (e) motion until August 11, 2015. That's what, two months later. So I don't think this motion is timely to the extent it's a 59 (e) motion, Your Honor. That's my second argument. Thank you.

MS. HUNT: All right, Your Honor, first of all, he is incorrect that that was the date that I printed this out. I printed this out sometime later, and also I could not print out, and I state that in the letter -- the July 27th letter. While I was at the clerk of court's office, I could not print out a copy of the order. Rule 77 says that I have to have written receipt coupled with what rule 59 (e) says.

THE COURT: It doesn't say written receipt -- notice of --

MS. HUNT: Yes, ma'am, notice of written receipt of the order.

THE COURT: It doesn't say notice of written receipt. It says notice of entry, I think is what it says. Do you have a copy? Notice of entry of the order.

MS. HUNT: Of written receipt of the order, Your Honor. I don't have it in front of me. I apologize.

MR. FOERSTER: It says not later than ten days after receipt of written notice of the entry of the

order. And we just had a case that came out --

MS. HUNT: I'm not done. You're interrupting. I'm not done yet.

MR. FOERSTER: But I want to speak to that issue as well.

MS. HUNT: I didn't have written receipt of it, and I am required -- the clerk of court is required to send me written notice. I didn't have it. And --

THE COURT: Well, it doesn't really matter how you received notice. I mean you can actually get it yourself. She doesn't actually have to send it to you. You can get it yourself.

MS. HUNT: I understand that, Your Honor. I couldn't print it. And I don't have access to it. And that's one of the issues that I am going to be arguing here in this motion also. I don't have access to anything at my home because the clerk of court has not provided me with read access even though I believe that BB&T does have read and print access to the system of which I do not. But notwithstanding that, I still take the position that this is a subject matter case, and that subject matter jurisdiction can not be waived. And that I can bring that argument at any time. I am not conceding that I had this document on whatever day it is that Sean is asserting. I wrote the clerk of court. I

did not get it until August the 10th. All I could do that day was to see it on the computer. I'm not -- you know, the document is approximately 12, 13 pages. I can't possibly memorize it.

THE COURT: No, that's the entry.

MS. HUNT: I can't possibly memorize it. Okay. You know, you're going to get your opportunity to rule, but with the way that things are with this clerk of court and this document, I mean I even went to see an attorney about my not having access to be able to print that document, because I think that's completely inappropriate. I certainly could see it. There's no doubt about it. I could see it that day. But I could not print it. And at my home I couldn't see it. And the clerk of court did not send me a copy, or I didn't get one. I have outlined that in this brief that I could not print that document that day. And not only that, in the case of Bowman v. Richmond Memorial on page 23 of this brief, it says that even if as contended by the defendant, the trial judge granted an oral divorce to plaintiff, such a pronouncement is not a final ruling on the merits nor is it binding on the parties until it has been reduced to writing and signed by the judge and delivered for being recorded.

THE COURT: What about the fact that I did

send a final -- I did send you a form four, or I did enter a form four.

MS. HUNT: On the motion for default judgment on 10/28?

THE COURT: No, ma'am. It wasn't a default judgment. It was actually dismissing the counterclaims.

MS. HUNT: You didn't sign that until January 13th, 2015.

THE COURT: No, ma'am. I did it before that. 10/27 is when I signed it.

MS. HUNT: That's the motion for default judgment, and you denied the motion for default judgment saying that on October the 14th, that you had in a hearing dismissed the counterclaims, but that's my point is that that was an oral dismissal on October 14, 2014. And based on rule 58 and Bowman v. Richmond, it says that the ruling on the merits, you know, it's not a final ruling on the merits nor is it binding on the parties until it has been reduced to writing, signed by the judge, and delivered for recordation. That's on page 23, Your Honor, of the brief. The decree must be in writing, and until such time the judge may modify, amend, or ascend such an oral order.

THE COURT: No, ma'am. That's not what -- do you have a copy of the order, the form four order?

MS. HUNT: Yes, ma'am. And I have cited to it.

THE COURT: All counterclaims asserted by the defendant in this action were previously dismissed by this court following an October 14th, 2014 hearing.

MS. HUNT: Yes, ma'am, I get that. That's what it said.

THE COURT: Okay.

MS. HUNT: But you didn't sign that order on October 14th.

THE COURT: I signed it on October 27th.

MS. HUNT: I understand that, Your Honor.

THE COURT: It was entered on October 28th.

MS. HUNT: Yes, ma'am. But on the date that you're referring to the claims being dismissed --

THE COURT: But when did you remove this action?

MS. HUNT: On November the 10th.

THE COURT: Okay. So this order was signed before you removed it.

MS. HUNT: Yes, ma'am. I agree with that. That order was signed before I removed it. But you were referring to an October 14th hearing saying that they had been dismissed.

THE COURT: Okay. Now, I'm totally confused.

But this order was signed before you removed anything.

MS. HUNT: Yes, ma'am.

THE COURT: Okay. So I don't understand what the issue is, what the problem is.

MS. HUNT: But you had not -- that order relates to the motion for -- you denied my motion for default judgment in that motion.

THE COURT: It also says all of your counterclaims have been dismissed.

MS. HUNT: It does say that, but what you say is that they were dismissed at a hearing on October 14th, but that October 14th ruling was oral, and it had not been memorialized to writing at that point.

THE COURT: This does memorialize it right here.

MS. HUNT: Your Honor, we have a difference of opinion. It is my position that you were referring to the October 14th hearing.

THE COURT: Yes, ma'am. Was that not the October 14th hearing?

MS. HUNT: At the October 14th hearing, you had dismissed them, but you had not memorialized that.

THE COURT: I memorialized them in this form four order. A more formal detailed order came later. But this memorialized it in a form four order. That

happens all the time.

MS. HUNT: I understand that, Your Honor.

THE COURT: So this enters it. And then there becomes a later more formal order. That happens all the time, Ms. Hunt.

MS. HUNT: Well, Your Honor, you were --

THE COURT: In more flowery words that granted didn't come out of my mouth. It came out of Mr. Foerster's mouth. But this memorializes it.

MS. HUNT: Well, I beg to differ with you, Your Honor.

THE COURT: I mean if you needed to, you could have appealed this order in state court.

MS. HUNT: I made a motion to alter or amend that.

THE COURT: I know you did, but you could have appealed from this order in state court.

MS. HUNT: And I intend to if you make that ruling against me today. I'm going to go to the Court of Appeals.

THE COURT: I know, but you could have appealed this then because this would have been a final order. Now, and the state court would have wanted you later to have come back and attached Mr. Foerster's proposed order that I signed later. But this

memorializes it.

MS. HUNT: Well, Your Honor, we're going to get to that. I mean I made a motion to amend with regard to that order, the 10/28 order. And we're going to get to that in a moment, that motion. I understand what you're saying that that memorialized it.

THE COURT: But do you understand also that as far as the time line goes, this was made -- this was entered before you moved --

MS. HUNT: Removed it to Federal Court.

THE COURT: Before you removed it to Federal Court.

MS. HUNT: Yes, ma'am.

THE COURT: Okay.

MS. HUNT: I just disagree with your interpretation of it.

THE COURT: But it did dismiss your counterclaims. I mean here's what we've got. We've got I orally dismissed them at the October 14th hearing.

MS. HUNT: Yes, ma'am.

THE COURT: Okay. And then my law clerk, Stewart Miller, sat down and typed this for me, and I signed it on October 27th. And I had asked Mr. Foerster to prepare a proposed order. And as we know, Mr. Foerster's email said: I am so sorry, but I have

had a very busy two weeks, and it's taken me longer to prepare the proposed order than I thought. And by the time I reviewed it, the holidays had come up. It took me awhile, I don't know, it took me until what, January something to sign it.

MR. FOERSTER: I believe January 13th.

THE COURT: January 13th. So by the time I signed it, it was January 13th. In the meantime, you had already removed it.

MS. HUNT: Right.

THE COURT: But I had already signed this October 27th order memorializing the fact that I had orally dismissed your counterclaims.

MS. HUNT: And that's the operative word, Your Honor, that you orally dismissed them on October 14th.

THE COURT: October 14th I orally dismissed them. Then I signed a formal order, a form four order dismissing them. Then you removed them, and then I signed Mr. Foerster's proposed order.

MS. HUNT: Your Honor, I hear what you're saying, but again --

THE COURT: What do you think this October 27, '14 order did?

MS. HUNT: I thought that that October 28th order was referring back to the October 14th hearing at

which you orally dismissed the counterclaims, but that it would not take effect until you signed the order that came about as a result of the October 14th hearing.

THE COURT: Why did you think that?

MS. HUNT: Because you indicated that Mr. Foerster and I should try to resolve this, and that you would give me some time.

THE COURT: It doesn't say anything about that in this form.

MS. HUNT: I realize that. But that doesn't change the fact that that wasn't the conversation.

THE COURT: That's why you have form four orders.

MS. HUNT: I understand, Your Honor. I understand that that's your interpretation of it, but I disagree. And so, you know, on that particular date, you had not signed -- in my opinion, you had not signed the order dismissing the counterclaims, and you didn't do that until January the 13th of 2015.

THE COURT: Well, I think that's what I did on October 27th. I signed a short form four order.

MS. HUNT: I understand that. But, you know, what the order says is that you were dismissing my motion for default judgment as moot because you had dismissed the counterclaims at the hearing.

THE COURT: If that's all I was going to do, Ms. Hunt, why didn't I just stop after that first sentence?

MS. HUNT: Your Honor, I'm not in the mind reading business.

THE COURT: I know that, and neither am I. But I don't use a whole lot of words. If that's all I was going to do, I would have just stopped after that first sentence. I'm not a very wordy person. I would have just stopped.

MS. HUNT: I appreciate you telling me that, but I have a different opinion.

THE COURT: Do you think I'm too wordy? I'm not wordy.

MS. HUNT: Your Honor, I didn't come here to debate how wordy you were.

THE COURT: I would have just stopped after that first sentence if that's all I needed to do.

MS. HUNT: I still beg to differ on the interpretation. The other order had not been signed, and you were simply referring to it. That is my interpretation.

THE COURT: I understand that. That's your argument.

MS. HUNT: Yes, ma'am.

THE COURT: All right. Let me hear your other arguments. Do you have anything else to add, Mr. Foerster?

MR. FOERSTER: May I counter some of that still on the same motion. I think just coming back the key word under 28 USC 14-46 is proceed. It says the state court shall proceed no further. Okay. There were no further proceedings after November 10th, 2014. And this case, our case is even better than this Pebble Creek verses Upstreet case. Because in this case, we have an entered form four order memorializing Your Honor's oral ruling prior to removal. So again, I'm just arguing the later fleshing out entry of a more fully written proposed order was just merely memorializing things that had already taken place, proceedings that had already occurred prior to the order.

But again, I just want to revisit this issue of the timeliness of her motion pursuant to rule 59. She brings it pursuant to rule 60 as well. I assume she's bringing it under rule 60 (b)(4) which is the judgment is void. I understand that yeah, she's challenging jurisdiction, that's preserved to the extent she's bringing the 60 (b)(4) motion. But to the extent she's bringing it as a rule 59 (e) motion, you can't

just bring that whenever you want even if the basis is lack of jurisdiction. You have to bring that within ten days of receipt of written notice of entry of that order. And we just had a case come out from the Court of Appeals. Wells Fargo verses Thallon Properties. And in it, if I may approach, what the Court of Appeals said that seeing something in an electronic email form, just a notice that the order has been entered, receiving that by way of an email, that constitutes the starting of the clock for purposes of a 59 (e) motion or appeal. So I don't see the difference between getting an email on your computer screen that says an order has been entered verses going to the clerk's office and looking at her computer screen and seeing that an order has been entered. Either way, I think if that's written notice, well then her seeing that public index in the clerk's office on that computer screen, that's written notice as well and that started her clock. And she admits she was sitting there looking at that computer screen on May 27, 2015. So she needed to serve this motion to the extent it's a 59 (e) motion within ten days of that. And this is very important cause, you know, if you don't timely file a 59 (e) motion, it doesn't toll your time for an appeal. So I think this is a critical issue in this case, Your Honor. Thank you.

MS. HUNT: And as I've already stated, Your Honor, I beg to differ with him. I don't think that, and I haven't read any case that says that if I don't have a written document or something that I can see when I get back to my home to work on that motion, that I'm somehow another bound by seeing something on a screen. It would have been a whole another story if I could have printed the document that day. And I was not able to print the document.

THE COURT: Well, ma'am, read the rule again. Read that out loud to me.

MS. HUNT: As I told you, I didn't bring it today.

THE COURT: Mr. Foerster, can you read it please?

MR. FOERSTER: A motion to alter or amend the judgment shall be served not later than ten days after receipt of written notice of the entry of the order. She is taking the position that receipt means that it has to come to her house. I don't think that's it. I think if you receive it anywhere. She received it in the clerk's office, that starts the clock.

THE COURT: Well, I think she's taking it a little bit further than that. I don't know that she means that it has to be at her house. I think she means

it has to be in some form that she can either print it out --

MS. HUNT: That I can use it.

THE COURT: So she can read the whole thing. Is that what you mean?

MS. HUNT: Yes, ma'am. Instead of being stuck right there --

THE COURT: I don't think that's what it means. I think it means -- it just means that you need to get notice that the final order has been entered. I don't think it means that you have to get a clocked copy of the final order. I don't think that's what it means. I think it means that you have to get notice that the final order has been entered.

MS. HUNT: Well, Your Honor, rule --

THE COURT: I'm sorry. You go ahead.

MS. HUNT: I was going to say that rule 77, if that's the case, then that would absolve the clerk of court of any responsibility of getting orders to someone. In this particular case with me being pro se, I don't have access to that database outside of this building. I don't think that rule 77 requires me to come to this building to have notice of an order.

THE COURT: It might. I mean there are two different rules. There are two entirely different

rules. The clerk is required to send out the orders. But if you get notice that there's been -- if you get written notice that the final order has been entered, let's just suppose you don't get all ten pages of the order. Let's just suppose you only get five pages, or let's suppose you get a copy that you can't read. It's too light. Do you think that doesn't count? It counts. And you have the responsibility to get yourself a good copy. It doesn't mean just because you got a copy that's too light, or it's messed up, or you only got five pages, that still counts. Just because you didn't get a very good copy.

MS. HUNT: But at least in the example you gave me, at least you have a copy.

THE COURT: But it might not be a very good copy. You've still gotten written notice of entry of the order. There are two entirely separate rules. At least, that's how I interpret it.

MS. HUNT: Okay. As I already said, the only time that I could see it was up here. I didn't have print capability.

THE COURT: But I don't think it's required that you have print capability.

MS. HUNT: Your Honor --

THE COURT: It doesn't matter if you have

print capabilities or not.

MS. HUNT: But it should be able to -- how am I going to write a response to it other than --

THE COURT: That's up to you. That's up to you.

MS. HUNT: I don't think those rules were intended to be interpreted that way under these circumstances.

THE COURT: As long as you had written notice of the entry of the order, that's good enough.

MS. HUNT: Well, again, that's something that we disagree on.

THE COURT: There's nothing in that rule that says receipt of a written copy of the order. Now, if that's what the justices wanted, they definitely could have said that, but they didn't. All they said was written notice of entry of the order.

MS. HUNT: Your Honor, I understand that. But also at the same time, I don't think that when that 59 or 77 were written, that we had this over abundance of use of computers.

THE COURT: No. I agree with you there.

MS. HUNT: So I don't think that that statute intended or was written with that in mind, and it certainly I don't think foresaw the position that I was

put in of which we were completely leaving out that that order was filed on January 13, 2015, and I only saw it after I came to the courthouse and was on my way out the door.

THE COURT: I don't think the justices care if you have a computer or not.

MS. HUNT: And I can appreciate that. But that still doesn't change the fact that I didn't have a copy, and I don't think that my time started to run when Sean says that it started to run because there is still other responsibilities in there, and my position is that rule 77 in my case did not free the clerk of court from the responsibility of getting me a copy of that order. That's my position. That's my bottom line.

MR. FOERSTER: Your Honor, I refer you to a case, Canal Insurance verses Caldwell. This just stands for the proposition that it doesn't matter when she receives the actual order. In that case, the attorney received notice of the written notice of the entry of the order by way of a fax letter from the other lawyer saying hey, that order was entered, you know, May 19th, something to that effect. Of course, that's it. That's the date that your ten days started running. That's the date your 30 days to appeal started running. It doesn't matter when she gets the actual order. And I can tell

you from experience, Charleston County sends out, generates this computer form that's just simply a one page notice that an order has been entered in your case. And that's all you get. And starts your clock.

THE COURT: It's up to you to go get a copy of the order?

MR. FOERSTER: Yeah, you don't get an order along with the note. That comes with all my cases. So that starts your clock. And you better file your 59 (e) motion within ten days after that notice. And again, this Wells Fargo Bank verses Thallon Properties, that takes this rule to the 21st century. Now, you get this written notice on your computer screen, and that starts your clock. She took it upon herself to go down there and look at the public index, but, you know, she did it, and that was her receipt of the written notice that an order had been entered. She admitted she did that on May 27, 2015.

MS. HUNT: And I'm also continuing to argue that this is a matter involving subject matter jurisdiction that I can argue at any time, and that is what I'm doing.

MR. FOERSTER: To the extent it's a 60 (b)(4) motion. She can not to the extent it's a 59 (e) motion.

MS. HUNT: Of course, it goes without saying I

disagree with him so that we don't have to rehash this.

THE COURT: I think y'all just about disagree on everything.

MR. FOERSTER: I think so too, Your Honor.

THE COURT: If I recall correctly, and it hasn't been that long since y'all were here before, y'all just about disagree on everything. I recall the nights we were here till almost nine o'clock or 8:30 one night. Yes, y'all disagree on just about everything.

MS. HUNT: Yes, we do, Your Honor.

THE COURT: Yes, ma'am. Because I tried to get y'all to see if y'all could settle before, and I see that y'all haven't.

MS. HUNT: It's not for my lack of trying.

THE COURT: Let me hear about the 60 (b) argument, Mr. Foerster. If in fact this is a 60 (b), the ten day rule wouldn't apply. That's within one year?

MR. FOERSTER: Yeah, I think you can bring a 60 (b)(4) motion at any time. I think it's the 60 (b) 1, 2, 3 have to be brought within one year. 60 (b) (4), she can bring that anytime.

THE COURT: Within reasonable time.

MR. FOERSTER: Yeah. But I mean the 59 (e) motion issue is critical because only a 59 (e) motion

states the time to appeal. So if it wasn't timely brought, a 59 (e) motion, her time to appeal has run in this case. So that's why I'm making an issue of it, Your Honor.

MS. HUNT: But it hasn't run -- I disagree with him, his interpretation.

THE COURT: I know you do, Ms. Hunt. Okay. Let's go on to the next one. Your next argument.

Does anyone need to take a break? Does anyone -- Ms. Hunt, do you need a break?

MS. HUNT: I'm fine at this time. Thank you so much.

THE COURT: I understand your argument very well now your argument on that you believe this Court did not have subject matter jurisdiction to enter the formal order in January of 2015 because you had already removed the case to Federal Court. I understand that very well.

MS. HUNT: Okay. Then any other comments that I have I think I have made them in the brief.

THE COURT: Yes, ma'am.

MS. HUNT: And so I'm now going to move on to the next order. The 10/28/2014 order.

THE COURT: And where would your --

MS. HUNT: That starts on page 20 of the

brief, Your Honor.

THE COURT: Okay.

MR. FOERSTER: Your Honor, may I just be clear for the record. That's it in terms of arguments on her motion pursuant to 59 and 60 as to the January 13th, 2015 order?

THE COURT: I think so. Is that correct, Ms. Hunt? I understand those arguments, and I understand your --

MS. HUNT: Well, I don't want him trying to tie me in a loop. I presented you a brief that's 45 pages.

THE COURT: I understand those.

MS. HUNT: And all of those arguments in there.

THE COURT: They're very good arguments. I understand them all, and I understand your con arguments.

MS. HUNT: Then going onto the next motion. That motion the order was filed on 10/28, and I filed my motion on the 30th of October, 2014, two days later. And I certainly hope that Sean is not going to argue that that motion is untimely.

MR. FOERSTER: I can't, because, you know, in this case this is the first motion I had a letter where

she basically said the date on which she received written notice. I don't have it with respect to this motion. So it's the honor system.

THE COURT: Okay.

MS. HUNT: All right. So Your Honor, my position, I think we've already sort of touched on it with regard to this order, which you denied the motion for default judgment as moot based on all of the counterclaims having been dismissed. And as you can see there with my wording on page 20, and I indicate that where at the 10/14, where the ruling from the hearing was filed in the order, the January 13th order that we just -- motion that we just finished, and my position is that that order is void such that the counterclaims were not dismissed. In this motion, the order, the 10/28 order, to me it's what I would call a circular order where you're referring to something else.

THE COURT: You're still talking about the form four order?

MS. HUNT: Yes, ma'am.

THE COURT: Okay.

MS. HUNT: Yes, ma'am. And at any rate --

THE COURT: I'm sorry. Why do you think it's a circular order?

MS. HUNT: Because you refer to another order

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that had not been memorialized yet. You refer to the 10/14 hearing, and that order was memorialized on January the 13th of 2015, and that was during the period that you didn't have jurisdiction. Now, as I said already, I understand what your argument and what Sean's argument is there, but my position continues to be that it didn't happen until later, and based on the case law that I have indicated to you in Bowman, it says that it has to be memorialized. And I understand that the 10/28 order was memorialized and filed with the clerk of court, but the order that in fact dismissed, and you were simply referring to that order in the 10/28 order. You were referring to it, but the actual order with regard to the 10/14 hearing was not put into writing and filed with the clerk of court until January 13, and that that order is void. Now, there is -- and in my estimation, what you were trying to do through the 10/28 order was that you were trying to enforce the order that was to eventually come. It's just that when it came on January 28th, it was during a time when the court did not have jurisdiction. And I handed up to you a case on the back of the one for Limehouse. I think it's Matthis. And in Matthis, it talked about the enforcement of a court's decision through a void, an order when the court didn't have jurisdiction. It would

be on the document, the Limehouse document, it would be at page, I think, 14.

THE COURT: Okay. DeWitt?

MS. HUNT: That's what it's called DeWitt?

THE COURT: DeWitt verses South Carolina Department --

MS. HUNT: Yes, ma'am, that's it.

THE COURT: I have it.

MS. HUNT: This was a case where -- you have yours, Sean?

MR. FOERSTER: I'm fine.

MS. HUNT: Okay. This was a case where the defendant had been convicted of driving under the influence sometime in the past, and then he went to court, and the judge decided well, the case -- that the first conviction was invalid. And he then proceeded to make a ruling in the second case. And he filed an injunction against I think the Department of Motor Vehicles. But the Court, the very last line, the Court says: By issuing an injunction which is in effect enforced an order the lower Court erred and is accordingly reversed. And that goes to my position that you issued the 10/28 order, but it referred back to the January or to the eventual January 13th order, and you were trying to enforce one order through the other, but

one of them turned out to be void for lack of subject matter jurisdiction. That's what my position is with regard to the 10/28 order. That it was a vehicle to reach back, and that order which it referred to is void. And as a result, if that order is void, then the counterclaims are not dismissed, and if the counterclaims are not dismissed, then my motion for default judgment is not moot. And if they are not moot, and that order is void, as to the arguments that Mr. Foerster made in his motion, and he did not preserve the remaining issues of his motion to dismiss, then it is my position that the counterclaims are not dismissed and they still live, for lack of a better word.

THE COURT: Okay.

MR. FOERSTER: I think we're arguing what we just argued at the last hearing. Not the last hearing, I mean the last motion. She's saying this isn't really an order, even though Your Honor put in writing the counterclaims are dismissed, and that there are no pending counterclaims. She is not accepting that this is an actual written order. And so, you know --

THE COURT: Is that what you're arguing is that the form four order is not really an order?

MS. HUNT: Yeah, I'm hesitant to say that out loud because I haven't thought about it in that form.

The way in which I see the 10/28 order is that you were referring back to that hearing on 10/14.

THE COURT: Well, yes, because it was. I was saying this is my written order from the 10/14 hearing. That's exactly what I was doing.

MS. HUNT: But it was your order that spoke to the motion for default judgment that you were denying. And it was only going to be true, it was only going to be true when you signed the other order, the January 13th order.

THE COURT: So you think that this 10/27/14 order that was entered on 10/28/14 was superfluous, it had no meaning?

MS. HUNT: No, Your Honor, that's not what I'm saying.

THE COURT: So what are you saying? You've been to other hearings where other judges have used form four orders, haven't you?

MS. HUNT: Yes, ma'am. But I don't have as much experience as you or Mr. Foerster. But --

THE COURT: I mean a lot of judges use them at the hearings themselves where they actually write them, and they sign them right then and there. And then they'll say -- and I've used them that way, but not as much. Judges use them a lot at say motion hearings

where they'll have 20 motion hearings in the morning, and 20 motion hearings in the afternoon, or 50 motion hearings in the morning or 50 motion hearings in the afternoon. And, you know, they're all stacked up. And they'll have, you know, 20 summary judgment motions scheduled in the morning and 20 summary judgment motions or motions to dismiss in the afternoon. And they'll just write summary judgment motion denied or summary judgment motion granted. Then they'll say Ms. Hunt, prepare that summary judgment -- I want you to prepare the proposed order. I'm going to go ahead and prepare a form four order granting the summary judgment motion. I'm going to put right here, Ms. Hunt to prepare the proposed order. And they do that so they won't forget mainly. But they also go ahead and enter that in the record. That's filed that day or the next day. And as soon as they get your proposed order with all the flowery terms and all the reasons, they'll sign that. You know, you'll draft it. You'll send it to Mr. Foerster, and you'll send it to the judge. Mr. Foerster may make some recommendations. Then you send it to the judge. The judge will make some changes, and it might take a month. But in the meantime, that order has already been filed. And Mr. Foerster, if his summary judgment is granted, could actually go ahead and

appeal that.

MS. HUNT: You said summary judgment?

THE COURT: It's granted. You can appeal from a grant of a summary judgment. He can go ahead and appeal that.

MS. HUNT: There is no summary judgment motion here, just so you understand that.

THE COURT: Pardon?

MS. HUNT: There is no summary judgment motion involved here.

THE COURT: No, this was hypothetical.

MS. HUNT: Okay.

THE COURT: And then when the fancy, full, you know, 15 page summary judgment order is signed a month later, then the Supreme Court would want that order too. But both orders are good. Both orders grant summary judgment. But the Supreme Court wants that other order as well. The form four order grants the summary judgment order, but no reasons are given. The Supreme Court wants the other order as well.

MS. HUNT: Well, to that point, I think that part is reasonable. I'm not conceding anything. All I'm saying is the fact that they want the two orders. In my mind --

THE COURT: So what's the difference here?

What's the difference in this case? Because the Court has orally granted it. The judge said I'm granting the summary judgment order, which is what I did. The judge has signed the form four. And the judge has said I want a proposed order which I got in this case. It just took a little bit longer because of everybody's schedules.

MS. HUNT: I don't think -- I think this is more than schedules, Your Honor. I think that --

THE COURT: What is it?

MS. HUNT: As I said, the way that I see it is that you were referring to an event that them being dismissed, you know -- I don't --

THE COURT: I referred to what I did.

MS. HUNT: Which had not occurred yet.

THE COURT: No, ma'am. I referred to what I did. I dismissed them.

MS. HUNT: You orally dismissed them.

THE COURT: No, ma'am. It's like granting summary judgment. I dismissed them. Let's just say I granted summary judgment in the hypothetical. In your case, I dismissed your counterclaims. In my hypothetical, I granted summary judgment. In your real case, I dismissed your counterclaims, or you could say I orally dismissed your counterclaims.

MS. HUNT: And that's what I say because you

hadn't signed the order yet.

THE COURT: I signed your order on October the -- I signed the order on October 27th, 2014.

MS. HUNT: That I can't dispute, Your Honor. But you were signing an order for a motion to -- denying the motion for default judgment based on the dismissal of the counterclaims at the hearing --

THE COURT: But if you'll recall on that same day, Mr. Foerster argued a motion to dismiss your counterclaims.

MS. HUNT: He did, and his motion went first.

THE COURT: And I granted it.

MS. HUNT: To the best of my recollection, that's a true statement. And after was -- before I had an opportunity to argue that motion for default judgment, everybody dispersed from the courtroom. And when I called back the next day to try to schedule it --

THE COURT: But that's why I put here, it was moot anyway. The reason it was moot is because we dismissed your counterclaims.

MS. HUNT: Orally.

THE COURT: Well, I dismissed them. Whether orally or in writing, I dismissed them. They were gone. Would it have mattered if I had signed this form four on October 14th?

MS. HUNT: Instead of January 13? Is that what you're asking?

THE COURT: No, instead of October the 27th. Because I did sign it on October 27th. You seem to make a big distinction between orally and in writing.

MS. HUNT: Because that's what the case law says.

THE COURT: I did dismiss them on -- I did sign the order on October 27th. I dismissed them --

MS. HUNT: I understand that, and it was filed on the 28th.

THE COURT: Yes, ma'am.

MS. HUNT: And that's the motion for the default judgment of which you refer to another order. And my position is that that order was not signed until January the 28th.

THE COURT: No, ma'am. It was signed -- the form four order dismissing it was signed on October 27th.

MS. HUNT: Well, Your Honor, as we have already said, I just don't see it that way. In my mind, what you did on October 28th was deny the motion for default judgment, and you referred to an event that had not yet occurred.

THE COURT: No, ma'am. I don't understand why

you're having such a hard time understanding this.

MS. HUNT: I understand what you're saying. I just disagree with it. I have another interpretation of it. I hear you.

THE COURT: I dismissed your counterclaims, so your motion to hold the plaintiff in default for failing to reply -- for failing to answer your counterclaims was moot.

MS. HUNT: But, Your Honor, my position is that it was only moot if you signed the order dismissing the counterclaims outside of that window of removal.

THE COURT: I'm sorry, say that again.

MS. HUNT: If you had signed the order dismissing the counterclaims outside of the window of removal/remand. In my mind, if you had signed the order prior to November 10 or after --

THE COURT: I don't really care when I signed it. Because to me, your counterclaims are gone. Your counterclaims make no sense. Your counterclaims are not legal. Your counterclaims are denied. We have gone through them. They are not valid. So therefore, the plaintiff doesn't need to respond to them. Therefore, they are not in default. You see? That's my position. That's my order.

MS. HUNT: I see.

THE COURT: So it doesn't matter. They don't -- the plaintiff doesn't need to respond to the counterclaims because they're not valid counterclaims.

MS. HUNT: Okay. But I continue to disagree, and to try to move along --

THE COURT: I understand that. But that's the Court's position.

MS. HUNT: Okay. But in addition to that, I argued then, and I continue to argue now that you dismissed the counterclaims on statute of limitations and no private right of action.

THE COURT: There was no private right of action.

MS. HUNT: And there were other --

THE COURT: And I can't remember all the other reasons right at this moment.

MS. HUNT: To my recollection and my review, it was just those two things.

THE COURT: Okay.

MS. HUNT: But the rules require that the motion to dismiss should have been in the format of a reply. There were several other rules that it didn't satisfy. I argued them then, and I continue to think they are applicable even though you made the ruling, you know, that you dismissed, and that it was moot. But the

rule required that he was supposed to put this in the form of a reply, and he did not.

THE COURT: Because he made a motion to dismiss which stays the time to respond.

MS. HUNT: That's one of the things that I argued. I don't think that rule 12 was applicable on that second motion. The motion to dismiss that he was making, it was in response to the amended counterclaims. And in my mind, the rule applicable to the amended counterclaims is rule 15 (a).

THE COURT: 15 (a) is amendments.

MS. HUNT: Yes, ma'am. I had made an amendment. My second amended or amended counterclaims, and he was required to respond.

THE COURT: And that's where response is rule 12.

MS. HUNT: Well, I beg to differ that it clicked it back to rule 12. The statute indicates that a person is to respond, and -- I'm sorry, if you'll give me a moment, and I'll cite you a case.

I was indicating that there's a limitation on successive 12 (b) motions, and --

THE COURT: He only made one 12 (b) motion to your amended complaint. You had made several amended complaints.

MS. HUNT: I only made one amended complaint -- I'm sorry, one amended counterclaim. But at any rate, there is a Federal case that indicated that a party is prohibited from filing successive 12 (b) motions.

THE COURT: He didn't make successive 12 (b) motions.

MS. HUNT: Well, he made two. Okay. He made the one he filed on September 5th, 2013, and he made the one he filed on June 26 of 2014.

THE COURT: Mr. Foerster?

MR. FOERSTER: Both were granted. One was to her original counterclaims. The second one addressed only her amended counterclaims.

THE COURT: That's what I thought. One was to the regular counterclaims. The next was to the amended counterclaim. That's permitted.

MR. FOERSTER: The first one was granted with leave for her to amend, fix the problems that led to the dismissal of her first set.

MS. HUNT: Well, my understanding of the rules is that 12 (g) together with 12 (h)(2) prohibit BB&T from filing successive 12 (b)(6) motions where they raise a defense or an objection that was or omitted from an earlier motion. And I went through with particular

detail in this brief showing how these things involved omissions. And it is my position that there were numerous admissions made by BB&T in the -- you know, with regard to the 9/5 motion to dismiss verses the June 25th motion to dismiss. And I indicated then, and I continue to argue that those admissions deprived BB&T of the statute of limitations argument, and there are no private right arguments. And I also continue to argue that any remaining arguments that BB&T had in that second motion to dismiss that were not waived -- I mean that were not preserved are gone because they didn't preserve them under our rule 59 motion.

THE COURT: If there's no private cause of action, there's no private cause of action. I don't understand what you're saying.

MS. HUNT: Well, Your Honor, I think you're now moving onto another argument. You know, my argument is that through omissions when you compare the two motions, what he argued the first go around and what he argued the second go around, my position is that those arguments that he made were gone, you know, because he failed to reply and apply the rules.

Let me put it this way. In my mind, he could have made those same arguments and have possibly been okay if instead of naming the motion a motion to

dismiss, if he had referred to it as a reply.

THE COURT: No, ma'am. He was perfectly fine in doing a motion to dismiss to the original counterclaims, and I granted some of those. And making a motion to dismiss as to the amended counterclaim. That's perfectly allowed.

MS. HUNT: Okay. Your Honor, you never memorialized your rulings from that first motion to dismiss in writing.

MR. FOERSTER: I'll have to go look at the index. I can't recall. I do remember Your Honor giving her free leave to amend, and then I think I got an amended counterclaim a week later. It was a pretty quick turn around.

THE COURT: Okay. But you did amend your counterclaim.

MS. HUNT: I did.

THE COURT: That's moot now. So you amended your counterclaim.

MS. HUNT: Yes, ma'am.

THE COURT: Okay. So we're fine there.

MS. HUNT: Fine that amended them. I don't concede anything else.

THE COURT: Okay. Very good.

MR. FOERSTER: May I respond to some of that?

THE COURT: Yes.

MR. FOERSTER: We jumped around a lot.

THE COURT: Yeah, we did. We jumped around quite a bit.

MR. FOERSTER: I would like to go back to her 59 (e) motion concerning the order denying her motion for her entry of default. Your Honor phrased everything I was going to argue perfectly. On October 14th, at that hearing, you decided that you were going to grant my motion to dismiss and dismiss these counterclaims with prejudice. There was no need to get to the issue of whether default judgment should be entered against BB&T because there were no more counterclaims pending anymore. You had already decided the issue was moot. Why did we have to go through a six hour hearing on that when the issue had already been decided in a different motion. I agree with that. Again, if we go back, what was -- you know, she's asking you to alter or amend that order. Even if you were to agree with her argument that you should have put a more formal written order in earlier, I guess is what she's arguing. You know, go back to the substance of that motion for default judgment. The substance was that BB&T was in default because it filed a motion to dismiss instead of a reply. It's based on a misunderstanding of the Rules of Civil

Procedure. So there is no reason to grant a 59 (e) motion as to that order in this case, Your Honor.

Another issue I have that I want to bring up to the Court and address, I think we need to. Her notice -- her amended notice of hearing for today's motion hearings. When it references this motion where she's attacking the order denying her motion for default judgment, she has this footnote seven. And it says: This motion was filed on 10/30/2014 and objected to several orders. This hearing is only for the 10/28/2014 order denying the motion for default judgment. Okay. The problem is the motion itself she references is also attacking several other orders that were issued in this case. So I guess I'm asking the Court to decide -- she is also attacking the order denying her motion for sanctions and the order denying -- she had about 12 pending motions at one point. We heard them all in one day. Your Honor had this one order denying all 12 motions. Okay. I guess -- so we don't have to come back here for another all day hearing on these other two 59 (e) motions out there, I guess I would ask either hear those today, or Your Honor has a discretion not to have a hearing on a 59 (e) motion at all. I would ask Your Honor to exercise that discretion and not let her have the hearing. It doesn't seem she wants a hearing

because she didn't notice one for today.

THE COURT: There aren't any other pending motions, are there?

MS. HUNT: Yeah, the ones that he just referred to.

THE COURT: Which motions are you talking about? Is there somewhere where they're written down? What footnote are you talking about, Mr. Foerster?

MR. FOERSTER: So she served me with something. I don't know if it's filed or not, but I got it via email. It's called an amended notice of hearing dated October 30th, 2015 in which she's added this motion to be heard today. Originally there was only two motions to be heard. Then she threw a third one on. But then put a footnote on saying: Well, only half of that motion is actually going to be heard.

THE COURT: I don't have that.

MS. HUNT: That isn't true. You're misunderstanding.

MR. FOERSTER: You want to hear all these today?

MS. HUNT: No, that was not what I was trying to say. I only wanted to hear today the last one there on that page that you're holding in your hand.

MR. FOERSTER: She is trying to hear one out

of three motions that are drafted into this one document.

THE COURT: I don't have that, do I, Ms. Hunt?

MS. HUNT: Yes, ma'am, you have it. It was filed on October 30th, 2014.

THE COURT: It's not in the file yet. It's stuck downstairs in the clerk's office somewhere in the to be filed, I would suggest.

MS. HUNT: 2014? That's a year ago.

THE COURT: 2014?

MS. HUNT: Yes, ma'am.

THE COURT: Okay. Let me look then.

MR. FOERSTER: I can bring you my copy.

MS. HUNT: I object. That motion, the one that he's referring to it's argued on -- starting on page --

THE COURT: So that's something you filed before you removed it, and we hadn't heard it yet?

MS. HUNT: That's correct. I filed this 59 (e) motions before it was removed, and it was not heard, you know, and one of those arguments are being heard today. One of those 59 (e) motions.

THE COURT: Denying sanctions?

MS. HUNT: Yes, ma'am, that's correct.

MR. FOERSTER: And two other orders as well.

THE COURT: And the order denying numerous motions?

MS. HUNT: Yeah, that were heard on 4/21.

THE COURT: And denying entry of default. Okay. So we're hearing denying entry of default as moot. But not denying numerous motion or denying sanctions.

MS. HUNT: Yes, ma'am.

THE COURT: And denying sanctions had to do, if I recall, about you never knew who to deal with because there were so many attorneys.

MR. FOERSTER: She claims spoliation of evidence. And there's simply no evidence that BB&T had spoliated any evidence.

MS. HUNT: That was your position, not mine.

THE COURT: I understand. So today you're not hearing anything except -- we're not hearing anything except denying entry of default. Are you saying you want to come back and have these other motions heard at some point?

MS. HUNT: Very possibly, Your Honor. I did not give that any thought process today, and I'm not willing to respond.

THE COURT: But now you understand that there is case law that says we don't actually have to have

hearings on those. Those can be heard on briefs only.

MS. HUNT: I'll be glad to argue on brief if that's what the Court would prefer.

MR. FOERSTER: Your Honor, if I may approach. This is an email from me to Ms. Hunt and Stewart from November 6, 2014. I actually didn't receive a copy of this. Stewart notified me about this 59 (e) motion as of these three orders and just gave me an opportunity to respond. And at that point, I said yeah, I asked the Court not to hold the hearing on them, use its discretion not to hold a hearing on them. And I kind of briefed why I didn't think a hearing was necessary, and my arguments in opposition, if I may approach.

THE COURT: It's probably somewhere in this stack.

MS. HUNT: I have no idea what you're giving her.

MR. FOERSTER: I don't have an extra copy. You were copied on this email. In essence, here's what I'm arguing. It's just basically we don't have much in terms of a guidelines on when it comes to a 59 (e) motion under state law. But the federal courts have developed this three part test on when a 59 (e) motion should be granted or not. And I have a federal case, it's a published District of South Carolina case, if I

may approach.

THE COURT: That Rouse case?

MR. FOERSTER: Yeah, the Rouse case. And I'm only citing to it for the black letter law in terms of their analysis for 59(e) motions. Here's what the federal courts do. First of all --

MS. HUNT: I'm sorry. Sean, please excuse me. Your Honor, I have indicated I set these motions today. I set three motions. You asked him at the beginning of this conversation did he have a motion. I set three motions. I completely object to him trying to bring in the status of these other two motions and what can happen there.

THE COURT: Well, I think he's talking about rule 59 (e) motions in general; is that correct?

MR. FOERSTER: Yeah.

THE COURT: Because this is case law dealing with rule 59 (e) motions in general.

MS. HUNT: Yeah, but he's still trying to make an argument with regard to a motion that I did not schedule to be heard today.

THE COURT: It's not really, if you'll look --

MS. HUNT: Your Honor, I am not prepared to argue --

THE COURT: This is not anything dealing with

any particular motion.

MR. FOERSTER: This is just 59 (e) motions in general.

THE COURT: Right.

MR. FOERSTER: So this would be applicable to any of her motions would kind of be my argument in opposition to any of her 59 (e) motions that attempt to tackle the merits of Your Honor's prior orders.

THE COURT: But he did send you a copy of this little memo dealing with this case law.

MS. HUNT: I don't have any recollection, Your Honor. But if that says that I got it, I'll go back and look at my emails. But that doesn't change the fact that I scheduled hearings today on three motions, and if you're going to look at this information as it relates back to these other two motions, 59 (e) motions that are listed there in this document on October 30th, 2014, then I object cause I'm not prepared.

THE COURT: This deals with one of those anyway. It deals with your motion.

MS. HUNT: Okay. But once again, sort of based on what you have said here today. I don't want this Court to make a ruling with regard to this order denying entry of default and that it also includes the 59 (e) motion on sanctions, and the order denying the

other numerous motions. I'm not prepared to make those arguments today.

THE COURT: I'm not.

MS. HUNT: Okay. Just so we understand.

MR. FOERSTER: In general, I'm just showing the Court what the Federal Courts do when dealing with 59(e) motions in general. And I think it's a proper analysis, and I would ask the Court here to employ this analysis with respect to all her 59 (e) motions where she attempts to tackle the merits of Your Honor's prior orders. It basically says rule 59 (e) are not at the disposal of the unsuccessful party to rehash the same arguments and facts previously presented. They can not be used to raise arguments which could and should have been made before the judgment was issued, or to submit evidence which should have been previously submitted. Instead, a motion under rule 59 (e) is proper for only three reasons. One, there has been an intervening change in the controlling law. Two, evidence not previously available has become available; or three, it is necessary to correct a clear error of law or prevent manifest injustice.

I would say none of her motions, 59 (e) motions presented today meet any of those three elements.

MS. HUNT: And I would beg to differ.

MR. FOERSTER: That's my continuing argument. Your Honor, going back, I guess I just wanted a determination as to whether I'm going to have to come back up here for another all day hearing on these other two motions that are actually built within the same motion that we're here on today, when 59 (e) gives Your Honor complete discretion as to not hold a hearing and just simply deny the motions.

MS. HUNT: First of all, Your Honor, the new information as I've argued to you is that my position is that the Court lacked subject matter jurisdiction. That was not available to me to make that argument back on October 30th when my argument is rooted in what happened on January the 13th of 2015. That's the bulk of my argument here today is that it is my position that the Court lacked jurisdiction whether or not you agree or not disagree. That's my argument.

THE COURT: Okay.

MR. FOERSTER: I understand that argument. But earlier, she started getting into whether Your Honor properly dismissed her counterclaims or not, whether they were time barred. The original reasons that Your Honor dismissed her counterclaims, she started getting into that. She is telling Your Honor to change your

mind on that. And so I think under this three part test, she doesn't satisfy it.

MS. HUNT: I beg to differ, Sean. On October the 14th, as is indicated by minutes from that hearing, a couple pages in the Court said: Well, let me have your brief. We spent the majority of that time, of the remainder of that time of you going through the counterclaims indicating why the statute of limitations and some of your other arguments would not -- would cause the counterclaims to be dismissed. At the end of that conversation, the Court then started going through each one of your arguments, and then summarily said well, I think if we just do it on statute of limitations that ought to do it and then instead of, you know, looking at each one of your arguments. And so that's what the bulk of that time was done that day. I barely got the opportunity to make the arguments that were encapsulated in the brief. And at some point the Court said: Ms. Hunt did you clock this in? And I said no. And she said: Would you like for us to clock it in? And so the brief made those points. But I don't think that my arguments were reflected in the order, and that is one of the things that I have said over and over, is that I want my arguments reflected in the orders that you are drawing up. I understand what you're saying

about 59 (e) motions in general, but if I'm to get to the Court of Appeals, there must be a record of what my arguments are. And if you stop writing these thin orders, maybe I wouldn't be here. But that being as it may, I understand what the rules are for 59, and my argument with the motions that we're here today is not a rehash, certainly pursuant to the brief that I have presented to the Court. But I will address anything, and that's what I'm trying to do is address the various issues that he brings up. And if that requires me to reflect back to a different argument, then that is why I'm doing it.

MR. FOERSTER: Your Honor, I mean you heard it right there. She is basically saying the point of her 59 (e) motion is merely I guess an attempt to preserve her arguments. Okay. But they don't -- 59 (e) motion does not show intervening change in controlling law, doesn't show evidence not previously available to her, and it doesn't show that Your Honor made a clear error of law when it applied the statute of limitations to her counterclaims, or found out one of her counterclaims doesn't even state a cause of action.

MS. HUNT: The new evidence is the January 13, 2015 order was signed during removal. As much as you don't like it, that's what my argument is with regard to

requesting that the Court void the January 13th order is that it was signed during that period. That's new. That did not exist when you wrote the October 30, 2014 order.

THE COURT: I understand that argument.

MS. HUNT: Okay.

THE COURT: I understand that argument. Okay. What's your next argument, Ms. Hunt?

MS. HUNT: The third one, Your Honor, the third one has to do with the June 3rd, 2015 order where you denied my request for attorney fees and costs. And I argued on the brief at pages 40 through 45, Your Honor. And again, this argument -- excuse me, in part hearkens -- if you'll excuse me, Your Honor. I would like to take a drink of water.

THE COURT: Let's take about a ten minute break till about 3:30.

(A recess transpired.)

THE COURT: Okay. Ms. Hunt, I was asking you about your third motion; is that correct?

MS. HUNT: Yes, ma'am.

THE COURT: All right.

MS. HUNT: All right. The third motion, I filed a motion under rule 41 for attorney fees on May 27th, and this Court denied that on June 3rd. I did

not come to the courthouse in the intervening period to look at anything. I had no knowledge of your denying the motion on June 3rd until I received a copy of the order on August 10th from the clerk of court. And I responded the next day with a motion under 59, 60, and for lack of jurisdiction. And my argument here today, Your Honor, is -- I think it comes in two parts. One part is the attorney fees that I was requesting. I paid $8,000 of those attorney fees to two other attorneys that represented me in this matter initially when it got started. And that's indicated in Exhibit 26 at paragraph K. And I cited that to you in the original motion, the May 27th motion. I'm not related to either one of those attorneys by blood or marriage. And it just so happens they are women even though that doesn't seem to matter these days. And then, you know, Attorney Laura Valtorta and Dessa Ballard, Exhibit 26. That would probably be buried deep.

THE COURT: When did you file that motion?

MS. HUNT: May 27, 2015.

THE COURT: That was the motion for attorneys fees?

MS. HUNT: Yes, ma'am. You denied it on June 3rd saying that I was pro se and that pro se --

THE COURT: Okay.

MS. HUNT: If you want to see it while we're here, I can get you mine real quick.

THE COURT: I should be able to find it in here.

MS. HUNT: I gave the Court two different sets of those.

THE COURT: Here it is. I've got it.

MS. HUNT: You've got the exhibit or the order?

THE COURT: The exhibits should be with it, shouldn't they?

MS. HUNT: No, I gave you the exhibits earlier on, Exhibit 26 and 46.

THE COURT: I'm talking about the exhibits that were filed with the motion, shouldn't they be with them?

MS. HUNT: I didn't file any with the motion, Your Honor.

THE COURT: I'm talking about the motion for attorneys fees initially.

MS. HUNT: I didn't file any exhibits with the motion. I just simply referred to it in the motion. You already had the exhibits.

THE COURT: The motion for attorneys fees?

MS. HUNT: Yes, ma'am.

THE COURT: Okay.

MS. HUNT: I referred to Exhibit 26 and 46 is where I made the request for the attorney fees.

THE COURT: Twenty-six, and what was the other one?

MS. HUNT: Forty-six. And Exhibit 26, paragraph K, I indicated that $8,000 was for fees paid to Ballard and Valtorta.

THE COURT: And that was $8,000 were for Attorney Ballard and --

MS. HUNT: It was combined.

THE COURT: And they were involved in this case?

MS. HUNT: In these four lawsuits. I'm sorry. Lawsuits -- they were in lawsuit number one.

THE COURT: Okay. But not in the foreclosure action.

MS. HUNT: No, ma'am. They are not involved in the foreclosure action.

THE COURT: Okay.

MS. HUNT: But 41 is for previously dismissed actions.

THE COURT: But Attorney Ballard -- the $8,000 were not incurred in this particular lawsuit.

MS. HUNT: In the fourth lawsuit, it was not.

THE COURT: Okay.

MS. HUNT: But as I said, rule 41 speaks to previously dismissed actions between the parties.

And now I'll go on to make the other part of my argument. The first part is with regard to those folks that, you know, represented me, and I was not pro se during that period of time. And these attorney fees also relate strictly to the three prior lawsuits because that's what 41 addresses. And it involves -- at all times it involved BB&T and I.

I made the motion at this time, and the Court denied it saying that I was pro se. And as I just said, I had attorneys for part of the time. The other part of the time, I did represent myself. However, my argument is that BB&T did not preserve its argument that I am pro se. In particular, when BB&T made its motion to dismiss the first amended counterclaims, that motion did include an argument against attorney fees to me, but at the 10/14 hearing, BB&T did not assert an argument for denial of attorney fees to me, and the order that was signed on January 13th did not have anything about denying attorney fees to me. My position is that BB&T failed to assert that argument or preserving it on a 59 (e) motion. It is gone. And because they did not preserve it, they can not assert it, and it should not

have been asserted as to regard to me in your motion that was filed on June 3rd.

THE COURT: Well, when did you make a motion for attorneys fees? You didn't make a motion for attorneys fees until --

MS. HUNT: May 27th.

THE COURT: Okay.

MS. HUNT: Of 2015. And you denied it on June 3rd, 2015.

THE COURT: So why do you say BB&T waived its right?

MS. HUNT: Because they didn't preserve the argument.

THE COURT: Well, if you hadn't made the argument until May 27th, then how is it that BB&T waived its right to --

MS. HUNT: I've made it all along. You didn't rule on it, Your Honor. Throughout this matter, my first amended counterclaims. You said they were dismissed for statute of limitations, but -- and they had been dismissed -- 41 deals with previously dismissed actions.

THE COURT: So motion -- so the motion under 41 is only for the $8,000?

MS. HUNT: No, ma'am. $2,668,905.

THE COURT: I thought you said rule 41 is only for previously dismissed matters.

MS. HUNT: Yes, ma'am. Lawsuits one, two, three. This is the fourth one.

THE COURT: Okay.

MS. HUNT: And the dollar amount that I am quoting to you is in affidavit number 46. It's through March of 2013.

THE COURT: Okay. Why do you think you're entitled to attorneys fees when everything has been dismissed?

MS. HUNT: That's what the statute provides for, Your Honor. And I continue to argue that it hasn't been dismissed, but the statute states if a plaintiff who has once dismissed an action in any court commits an action based upon or including the same claim against the same defendant, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper, and may stay the proceedings in the action until the plaintiff has complied with the order.

THE COURT: Well, let me ask you this. What statute or contract allows for you to have attorneys fees in this case?

MS. HUNT: Well, Your Honor, it's like you

cited to me in your order that in South Carolina attorney fees are provided by statute or contract. The statute is the one I just read you.

THE COURT: That's not a statute. That's a rule. And the rule would only allow you to get attorneys fees if there is a contract or a statute that allows it.

MS. HUNT: I understand that you label it as a --

THE COURT: That's a rule of civil procedure.

MS. HUNT: I understand, but it still speaks to attorney fees for previously dismissed action.

THE COURT: But only if you were allowed attorney fees by a contract or a statute.

MS. HUNT: That's not what that rule of civil procedures says, Your Honor.

THE COURT: That's a civil procedure rule. What substantive rule -- what substantive matter allows you to have attorneys fees? What contract or statute allows you to have attorneys fees?

MS. HUNT: Well, it's not provided to my knowledge in any contract that I have with BB&T, but --

THE COURT: And is there a statutory right of proceeding that you have in this case? Are you suing under any statutory right that provides for attorney

fees in this case that has not been dismissed?

MS. HUNT: First of all -- I'm sorry. I argue that it hasn't been dismissed. And if you want to look to those statutes, one of them is the unfair trade practice statute. Another is --

THE COURT: But that one has been dismissed.

MS. HUNT: Well, Your Honor, I'm not going to concede that argument because if that's the position that the Court ends up taking, I will appeal it. And I'm definitely not going to concede it at this time. Okay. So I take the position that the statutes include the ones that were cited breach of fiduciary in the first amended counterclaims and the unfair trade practice statute.

THE COURT: Breach of fiduciary duty is not by statute.

MS. HUNT: That's 62-7-104.

THE COURT: No, ma'am. Breach of fiduciary duty is common law.

MS. HUNT: But I indicated in my first amended counterclaims, I put it on the 67-2-104, whatever. That's what I argued.

THE COURT: But it's not a statute. That's not a statutory right.

MS. HUNT: Your Honor, what's wrong with

62-7-104 not being a statutory right for attorney fees? That's what the statute says.

THE COURT: What statute are you talking about?

MS. HUNT: I'm citing you to --

THE COURT: What statute is that?

MS. HUNT: It's the one that has to do with breach of fiduciary duty.

THE COURT: Breach of fiduciary duty is not a statutory cause of action, as far as I know. Is it, Mr. Foerster, do you know?

MR. FOERSTER: I've never heard of that statute.

MS. HUNT: One moment. I'll read it to you, Your Honor.

THE COURT: Do you have a copy of the statute?

MS. HUNT: I copied the whole thing in the brief. I do have it and I'll refer you to it in a moment please.

Okay. Go to page 38 in the brief please, Your Honor. At the top of the page under A, I speak to 62-7-104. And in particular, I quoted it in the fourth amended counterclaim at paragraphs 288 through 358.

THE COURT: That's for a trustee who commits a breach of trust. And who are you saying is the trustee

and who is the beneficiary?

MS. HUNT: I'm saying that BB&T is the trustee and that the beneficiary was myself and the South Carolina bar. That's the argument I'm making. But also, I want to make clear on the record, Your Honor, I am not conceding that -- I realize that the technical name of South Carolina rule of civil procedure 41 is South Carolina rule of civil procedure 41. I also understand that you have stated that attorney fees are only allowed on statute or contract.

THE COURT: Yes, ma'am.

MS. HUNT: But I take the position that 41 is applicable here.

THE COURT: Rule 41 as a rule of civil procedure.

MS. HUNT: I understand that, Your Honor. I really do. But there is no case law out there interpreting the way you are at this moment.

THE COURT: Pardon me? What did you just say?

MS. HUNT: There is no case law out there interpreting that rule of civil procedure the way that you are. There is very little case law out there on that rule of civil procedure, 41 (d).

THE COURT: I'm not sure what you're saying.

MS. HUNT: It's just that there is very little

case law out there interpreting it. And what little case law there is, it doesn't refer back to another statute in order for it to be applicable.

THE COURT: Well, let me just tell you that all the rules of civil procedure are just that. Rules of civil procedure. They were not substantive rules.

MS. HUNT: I understand, Your Honor.

THE COURT: I mean that's why you have case law and you have statutes. And why you take rules of civil procedure to procedurally apply substantive law. You understand they are two different things with substantive law and civil procedure. Procedural law and substantive law are two entirely different things. But there is all kinds of case law. I mean, you know, I can give you a huge string site if I could put my finger on it that will say unless you have a statute or -- unless you have a statute or a contract that allows for attorneys fees, the Court just can't award them. The Court just can't say I believe you are entitled to attorneys fees, and you've done a great job, and I would love to give your attorney attorneys fees, the Court just can't do that. So, you know, unless you can tell me that there is some case law out there, I mean, some statute or some contract that's available here, I can't award your attorneys fees. And I've already dismissed

your cause of action, your counterclaims entailing this section 62-7-1002 because I don't believe BB&T is a trustee in this case. So I've already dismissed that counterclaim. So is there anything else that would allow you to have attorney fees?

MS. HUNT: As I said --

THE COURT: Otherwise, I mean otherwise you're pro se, so you couldn't get attorneys fees. You say there's $8,000 worth of attorneys fees that should go to some attorney.

MS. HUNT: Yes, ma'am, that I've already paid.

THE COURT: Right. So $8,000 worth of attorneys fees are all we have at issue here.

MS. HUNT: And costs. The $3400 in -- I think it's 3405.

THE COURT: Okay.

MS. HUNT: But, of course, it goes without saying that I disagree with you.

THE COURT: I understand that. I understand that there is a lot you disagree with here.

MS. HUNT: Yes, ma'am. But yes, and that again, that BB&T is estopped from asserting the argument that I am pro se because they waived it. They didn't preserve it.

THE COURT: Okay. I'm going to let

Mr. Foerster -- do you understand the waiver argument, Mr. Foerster, that she's arguing here?

MR. FOERSTER: Not really. I don't see how BB&T can waive. Why would we have any --

MS. HUNT: You didn't preserve it.

MR. FOERSTER: I never heard of that before. You preserve issue for appeals. I've never heard of having to preserve arguments outside of that.

MS. HUNT: I mean I use that language that you didn't preserve it, but my point is the Court didn't rule on it. It's gone. And so if it's gone, it shouldn't be, you know, they shouldn't be allowed to bring it back up on this motion.

MR. FOERSTER: Waiver is an intentional relinquishment of that right. I haven't done anything intentional to waive any argument in this case.

MS. HUNT: Well, it's not included in the order from January 13th. You didn't have anything in there. That order didn't say well, you know, that order was based on statute of limitations and no private right of action. Even though your motion, the original written motion said that Hunt was not entitled to attorney fees.

MR. FOERSTER: I'm confused. I thought we're here today on a 59 (e) motion filed on August 11, 2015

that in essence asked the Court to overturn an order denying a motion filed May 27, 2015. So I don't know why we're arguing about a order from January 2015.

MS. HUNT: Because in that order, you didn't preserve that argument.

MR. FOERSTER: What argument?

MS. HUNT: The argument that I'm not entitled to attorney fees. All that BB&T made was the motion to dismiss. And in it, that dismissal didn't include the dismissal of attorney fees. You dismissed the --

MR. FOERSTER: Because the losing party is never entitled to attorneys fees. Only prevailing parties are entitled to attorneys fees, Your Honor.

MS. HUNT: Not under rule 41.

MR. FOERSTER: Rule 41 might be an exception, but I'm going to get into that. First, my initial argument in response to her motion is it fails that three part test for 59 (e) motions that the federal courts expounded. Her 58 (e) motion doesn't point to any newly discovered evidence. It doesn't cite to any intervening change in controlling law since the order. It doesn't demonstrate any clear error of law by the Court since the time of the order. This is just nothing more than a disagreement with Your Honor's ruling. Okay. So I don't think that's grounds for 59 (e)

motion. It's not grounds for overturning Your Honor's ruling --

MS. HUNT: And I disagree.

MR. FOERSTER: Now, rule 41 is completely inapplicable. What she's trying to do is torture the meaning of the language of that rule. And here's the language of rule 41 (d). It says: If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same of defendant, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceeding action until the plaintiffs comply with the order.

BB&T has only ever been a plaintiff in this foreclosure action. BB&T was a defendant in these three federal lawsuits in which Ms. Hunt sued us years ago.

THE COURT: Rule 41 doesn't mention attorneys fees at all?

MR. FOERSTER: No. That's my next argument. It doesn't even say attorneys fees. Okay. Further, BB&T has never dismissed any claims of its own against her. This foreclosure claim is the first claim we have asserted against her, and it's still pending. We've never served a foreclosure claim in the past. Rule 41 is, I guess, it's meant to compensate a defendant. Say

BB&T filed a foreclosure claim against her and voluntarily dismissed that claim against her, and then refiled another foreclosure claim against her the next day for whatever reason. In that case, maybe BB&T should have to pay her costs for that first action. That's not the case here. This is a completely different situation. Yeah, the rule only says costs. And yeah, contrary to what Ms. Hunt says, there actually is case law right on point on rule 41, if I may approach the Court. This is a case called Schuler verses Crook. And what this case states is that the general rule is that attorneys fees are not included in the term costs in rule 41(d) in the absence of some statutory provision, rule of court, or contract of the parties.

Okay. In essence, this case is saying rule 41 (d) defers to what is known as the American rule which is what South Carolina follows in terms of attorneys fees. And the American rule is that in the absence of a contract or statute entitling you to attorneys fees, the prevailing party doesn't get attorneys fees. You know, in this case, she is not the prevailing party. She hasn't won any motion in any of the four cases she's mentioning much less this case. Okay. She has no statute or contract saying she's entitled to attorneys fees, even if she was the prevailing party. So rule 41

is completely inapplicable here. She has no right to attorney fees.

All that aside, Your Honor's order is absolutely correct that courts typically in South Carolina do not award attorneys fees to prevailing pro se defendants anyway whether they are an attorney or not an attorney. And the idea being that they don't ever incur a fee. In this case, she's talking about this $8,000 she paid to two attorneys back in a 2008 federal lawsuit that has nothing to do with this case. So she has never been represented by an attorney in this case. So I don't see why she would be entitled to their attorneys fees either anyways. So yeah, I would just rely on the same case law that Your Honor cites to in the form four order, specifically Calhoun verses Calhoun which states that a pro se litigant, whether an attorney or lay person does not become liable or subject to fees charged by an attorney. And that's my argument. That 41 (d) is completely inapplicable. That she has no contract or statute saying she's entitled to attorneys fees, and she's a pro se defendant. So all that weighs against Your Honor overturning that order denying her request for attorneys fees. Thank you.

MS. HUNT: Your Honor.

THE COURT: Yes, ma'am.

MS. HUNT: I disagree with his tortured reading of that statute. It says: If a plaintiff who has once dismissed. BB&T is the plaintiff in this lawsuit. And in prior lawsuits, BB&T had those lawsuits dismissed.

THE COURT: But it says costs not attorneys fees. And costs and attorneys fees are two different things.

MS. HUNT: They are, Your Honor, but, and I apologize, I can't remember the name of the case right now, but it has been applied in -- the Federal Rule of Civil Procedure 41 (d) is the same as this. And there is case law out there where it was applied with regard to attorneys fees.

THE COURT: Not in South Carolina. Not South Carolina state law. South Carolina state law is really really clear that costs -- the term costs is a term of art that does not include attorneys fees.

MS. HUNT: Your Honor, again, I don't have the case site, but I beg to differ.

THE COURT: You can beg to differ all you want to. The Appellate Courts of South Carolina beg to differ differently. And they have ruled that costs do not include attorneys fees.

MS. HUNT: Okay. I hear you. I just disagree

with it.

THE COURT: Well, you're not disagreeing with me. You're disagreeing with our Appellate Courts. Because the Appellate Courts have ruled that costs do not include attorneys fees.

MS. HUNT: I'm just saying it to make sure that the Court understands that I am not conceding with his position, and that I am preserving it.

THE COURT: What I'm telling you is it's not my position. It's a position of the Appellate Courts of South Carolina.

MS. HUNT: Okay. Thank you, ma'am.

THE COURT: Apparently, there is one other time when attorneys fees can be awarded, but I know it doesn't apply in this case. And that is when there is an agreement between the parties. I suppose that is somewhat of a contract. But I know there is no agreement between the parties in this case.

MS. HUNT: I would like to add just one or two more comments. On page 45, the last request.

THE COURT: Yes, ma'am. What page?

MS. HUNT: On page 45.

THE COURT: Yes, ma'am.

MS. HUNT: Just for clarity sake, my sentence ends with voiding the 6/3/2015 order. I should have

said voiding it and for an order granting the amount of the attorney fees that I requested. Just, you know, there $2.6 million. I just wanted to make it clear that I wasn't, you know, asking for an order to just be voided without more. As I have said, I think that the Unfair Trade Practice Act statute is applicable. 39-5-140. And in that statute, the language is that the Court shall award to a person bringing this suit, and you know, if violations are found. And so those include my argument. I think that's the only statute that would have provided them, you know, that deals with the mandatory word shall there.

Okay. And I've already mentioned my estoppel argument. I think that's it.

THE COURT: Your estoppel argument?

MS. HUNT: That BB&T was estopped from asserting that I was pro se based on the fact that they did not preserve their argument.

THE COURT: Is that the same as your waiver argument because I don't believe you've made an estoppel argument. You made a waiver argument.

MS. HUNT: I have an argument here I think on page 33 for estoppel and waiver. Yeah, on page 33, I had an argument for waiver and estoppel.

THE COURT: You're using the words

interchangeably, waiver and equitable estoppel?

MS. HUNT: No, the Court in Parker, you know, indicates that sometimes those two doctrines sort of merge into each other. But I recognize and the Court recognizes that -- it's Parker v. Parker there on page 33. It made a distinguishment between waiver. You know, waiver is question of fact with the fact finder. And estoppel occurred when a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do. You know, and it goes on to say even though there was no intention by the party to relinquish or change any existing rights, the essential element is prejudice to the party raising the defense. And I certainly do argue that I have been prejudiced by BB&T, you know, after they -- the only thing the order, the January 13th order included was based on statute of limitations and no private right of action. And as I said, the Court goes on to say, the distinction between waiver and estoppel is close, sometimes the doctrines merge. So I am arguing two separate doctrines.

THE COURT: Okay. Anything else?

MS. HUNT: I would just like to mention even though we didn't go over item by item everything that I had in this brief, I still assert those arguments.

MR. FOERSTER: I'll just address those last two points of hers. She says she has the Unfair Trade Practice Act. It does provide attorneys fees, but only to the prevailing party. She's not the prevailing party. Her claim was dismissed. She would not be entitled to attorneys fees under that statute.

As to whether I waive our arguments in opposition to your request for attorneys fees or I'm estopped from arguing that, I don't see how that's possible. This is the very first hearing where this issue has even come up. I've never taken a position contrary to the position I'm taking now on the issue of attorneys fees before, so I don't see how I would be estopped from arguing what I'm arguing now.

THE COURT: Anything else from either party?

MS. HUNT: Like I said, I was going to say that of course, I disagree. You know, that argument is gone. He's only submitted one document to this Court, and that was his motion to dismiss, and it's not included in the order. The motion is gone, and he didn't preserve anything that wasn't included in the order. His argument is gone.

THE COURT: I'm sorry. You think it should have been included in the order?

MS. HUNT: Well, he objected to attorney fees

to me in his motion to dismiss that was filed on June 25th. Okay. And the order resulting from that motion was filed on January 13th. The only thing that order spoke to was that my first amended counterclaims were dismissed based on statute of limitations and no private right of action. It did not speak to attorney fees.

THE COURT: I'm not sure it needed to mention attorneys fees. If the causes of action were gone, there would be no attorneys fees. Why would it need to address attorneys fees if the causes of action had been dismissed?

MS. HUNT: Well, Your Honor, one of the things that I am asserting that I continue to assert is that, you know, the January 13th order is void.

THE COURT: Let me ask you this. Are you saying that the order needed to go a step further and say and if by chance this order is ever found void, the order should -- the attorneys fees should also be dismissed too?

MS. HUNT: Your Honor, I'm not going to get out there into that land. What my position is that the January 13th order is void. That was my first argument. And so my thing is my position is that if that order is void, then the counterclaims aren't dismissed, and we're

going back to what we've already argued. But understand that that's what my position is.

THE COURT: I know, but I got the impression you thought the order should go further and mention something about even if this order -- even if this order is by chance overturned or found void or something, we need to go ahead and address attorneys fees. Is that what you're saying?

MS. HUNT: In this particular instance because I am arguing that the order is void. Once the order goes away, in my mind, you know, I'm not as smart as you --

THE COURT: I'm not saying that by any means.

MS. HUNT: What I'm saying is if the order is voided, either by you or the Court of Appeals or the Supreme Court, then the counterclaims are back. And if the counterclaims come back, you know, then my request for attorney fees is there. And he didn't preserve that argument. You know, I understand that these are an extremely unusual set of facts. Cause it's hard to get your head around, you know, especially when you start thinking about -- in my mind, the implications of the January 13th order being void. And so there's no argument, and I also take the position that --

THE COURT: See, I don't think it's all that

unusual. Let's just toss out the January 13th order. We have still got the October order. The form four order.

MS. HUNT: In your mind, it still exists. In my mind --

THE COURT: We have still got the form four order which is still good.

MS. HUNT: But see, I think, in my mind, you're trying through the form four --

THE COURT: You can't just throw away the form four order. The form four order is still valid. It's still good. You can't just ignore it, Ms. Hunt. It's still there. It's still valid. It still says what it says. It still does what it does.

MS. HUNT: Okay. Well, I'm not ignoring it, but my interpretation of it is that through your form four 10/28 order, you're trying to enforce a null order, and that being --

THE COURT: No, ma'am. No, ma'am. You can't look backwards. That's what you're trying to do. It's not a void order. It's not void. No, ma'am.

MS. HUNT: I was looking forwards.

THE COURT: No, ma'am.

MS. HUNT: Well, I was looking forward.

THE COURT: No, ma'am. We've been through

this. We had a hearing. We have an oral order. There is nothing wrong with an oral order, is it? Other than you don't like it. But there is nothing wrong with the oral order. Not a thing. Not a thing. It's valid.

MS. HUNT: Well, Bowman said it's not valid, Your Honor.

THE COURT: No, no, no, not a thing. You haven't removed it. It was perfectly fine. This Court had subject matter jurisdiction on that day, did it not?

MS. HUNT: I would agree with that.

THE COURT: Okay. It is valid, is it not? Yes, it's valid. And a week later when I signed the form four order, it is valid. You had not removed it. You had not removed a thing. All I did was reiterate what I did a week earlier. It is valid. Then a week later or so, you remove it. You don't change anything that happened a week earlier or two weeks earlier. Now, whether or not -- and Mr. Foerster makes some very good arguments based on I think it's Utah order, that my order may very well be good in January. In January, I signed a longer, very detailed order which I had asked for at the October 14th hearing. It doesn't change anything from my October 14th hearing. It sets out everything I asked for in the October 14th hearing, does it not? All I do in January is sign it. You say that

that order is not valid. That it is void. But even if, and I don't know that it is, but even if that order is void, the order back in October is not void. It's not void. The order that I signed in January might be. I don't know. It might be. But just because it might be, the one in October is not. And the oral order in October is not. So you don't gain anything by all the research you did finding out that the order in January might be void because you had already removed it. Because all it does is go into a lot of detail, but the bottom line is it does the exact same thing that the order, written order in October and the oral order from October do.

We don't go back like dominoes and void this one and then void that one and void that one. That's not how it works. You might void this one because of the timeliness, but you don't go back and change these because you removed something here. The Federal Court that you removed this one has nothing to do with my subject matter jurisdiction back here. Oh no. The Federal Court can not touch my subject matter jurisdiction here. And it doesn't want to. It's not going to. It doesn't want to.

MS. HUNT: I disagree.

THE COURT: And the Supreme Court of South

Carolina and the Court of Appeals of South Carolina don't want to. They're going to say the Federal Court had every right to jump in here when you removed it, and might have something to do with this order that I didn't do in January. All I did was sign it in January. But I had already made up my mind back here in October. And I had asked for it back here in October. But because of circumstances, I couldn't sign it until January. But it didn't change anything.

MS. HUNT: I hear you.

THE COURT: I did not change one single thing. It's the exact same order, the same decision I had made back in October before you ever thought about giving any subject matter jurisdiction to the Federal Court. It was right here in Horry County.

MS. HUNT: I hear you, Your Honor.

THE COURT: So I don't think the Supreme Court or the Court of Appeals -- I mean they may very well mess with the January order. May very well. But I don't see how they can possibly mess with the October orders.

MS. HUNT: See, in my mind, Your Honor, the two are connected. I don't see how they couldn't.

THE COURT: Because you're doing dominoes. Bump bump bump. That's not how it works. I had subject

matter jurisdiction in October. Did I not? Just because you removed it in November, I mean you may as well go back and say nothing that's happened in the last three years. You may as well say that --

MS. HUNT: That's not what I'm trying to say, Your Honor.

THE COURT: You may as well say that. You may as well say that nothing that you, and Mr. Foerster, and I have done in the last three years has made any difference whatsoever. That all of it is void because you removed it in November of 2014. Because you jerked jurisdiction away from Horry County, South Carolina when you removed it to Federal Court in November of 2014. That's basically what you're saying. Everything we have done here is void.

MS. HUNT: Your Honor, that's not what I'm saying.

THE COURT: Well, I don't know why. You may as well say that.

MS. HUNT: Your Honor, at this point, seems to me that you're a little upset.

THE COURT: I'm not upset.

MS. HUNT: Well, that's what I'm feeling from the bench. But the point is --

THE COURT: I'm a little -- I don't know, I

just don't understand how -- I don't understand how we can get so far afield as to why you think everything that I did in October is void when you hadn't even thought about removing anything, because in October of 2014, when I made my oral order, you hadn't removed anything.

MS. HUNT: I hadn't, but I still take the position, Your Honor, that the October order was tied to the 10/14 hearing, and the 10/14 hearing resulted in the January 13th --

THE COURT: It did.

MS. HUNT: -- order.

THE COURT: It did. It absolutely resulted in that.

MS. HUNT: My position is that that order is void, and it impacts the October order.

THE COURT: Just because it impacts doesn't mean that you go back and bump bump bump like dominoes and take it away.

MS. HUNT: Your Honor, we just see it differently. That's all.

THE COURT: I know we see it differently. But unfortunately in this case, I'm the judge and you're the participant.

MS. HUNT: I get that.

THE COURT: You know what, many, many, many times, more times that not, I have been sitting right there where you are.

MS. HUNT: Getting beat up like I'm getting beat up today?

THE COURT: Well, you're not getting beat up very badly. But yes, ma'am, I have been beaten up many, many, many times.

MS. HUNT: You know, all I can say is I would greatly appreciate if I didn't have to come to a courthouse to see your final written order.

THE COURT: I'm sorry. I didn't get that.

MS. HUNT: I said I would greatly appreciate it that if I didn't have to come to the courthouse to see your final written order. If I, you know, get it in a timely fashion then, cause I just disagree with you.

THE COURT: I know what you're saying. Now, let me ask you, since you have trouble getting a copy before. How is the best way for you to get the Court's orders?

MS. HUNT: Mail them to me. Or you can email to me if you would like. I don't have any problem with that.

THE COURT: I don't usually do the -- usually the clerk's office does it. But Mr. Foerster, you also

serve them, don't you?

MR. FOERSTER: Yeah. Your Honor, the only reason I didn't serve the order in this case when I got it in January 2015, it said on the form four that the clerk had already mailed a copy to her, and we called the clerk's office and said have you emailed a copy to her.

MS. HUNT: It doesn't say that on the form four.

MR. FOERSTER: Yes. If you look at the form four, attached to the top of the January order, it says mailed to the following by the clerk's office, something to that effect. All form fours say that. So we called them to verify they had. And then I think we called back a few months later when I think she started complaining about not receiving a copy of the order, and we double checked and they said actually we hadn't mailed her that copy.

THE COURT: They said they had not?

MR. FOERSTER: They had not. I think it was an oversight. Normally I do also in addition serve every single order on Ms. Hunt. In all my cases, I serve the other parties typically.

MS. HUNT: It says right here on the form four, that place is smudged out. It's blank right there

about me getting a copy of this order. And all clarity, Madame Court Reporter, can you hear me? All right. My address is 195 D as in David, Willowgreen Drive. And I feel like what I have experienced with these three orders that I had to write for is completely unfair.

THE COURT: Well, that's what's on the form four. 195 D as in dog, Willowgreen Drive, Conway, 29526.

MS. HUNT: I'm looking at something here that has Cindy B. Hunt, 195 D Willowcreek Drive. I don't know where that is. I never lived there. I have lived at 195 Willowgreen Drive for approximately 15 years. Maybe something shy of that. But that's what my address is.

THE COURT: What are you looking at there, Ms. Hunt?

MS. HUNT: This is the form four attachment to the January 13th order.

THE COURT: Well, I don't even see it -- well, yes, I do.

MS. HUNT: All I want is copies of the orders so that I can make my informed decision as to what my next step will be.

THE COURT: Well, okay. And the clerk's office is supposed to send one out as well, but whether

they do, it's hard to tell from the clerk's file because their certificates of mailing are not very specific. It's a generic certificate of mailing. So it's hard to tell what they have mailed.

MS. HUNT: And when did the clerk of court's office tell you they had mailed me these documents?

MR. FOERSTER: When I got your letter saying you had never been served, we called them back up.

THE COURT: You know, I can't tell if they mailed them or not based on the file. I can't tell what they have mailed, what they haven't mailed. I don't know.

MS. HUNT: Yeah. Based on what I see there, there is no indication that they mailed me anything. And for me to come back, you know, making -- I also indicated in these documents that I was prejudiced.

THE COURT: You have email though, don't you?

MS. HUNT: Yes, I do, but I've never received a document from the clerk of court via email.

THE COURT: No, they wouldn't send it that way.

MS. HUNT: But my point is that I could have had this order vacated or had it ruled on at a minimum up at the Federal Court during that period of time if I had gotten it back in January while the case was still

up there. And I might have avoided this beating I'm taking in here today.

THE COURT: You haven't taken a beating from me, Ms. Hunt.

MS. HUNT: Well, I'm a big girl so it hasn't been too bad. And I'm not sure, just for the sake of clarity, what exactly are your rulings?

THE COURT: I'm going to deny the motions, but I will send an email out -- tomorrow we're not here. Tomorrow is Veteran's Day, so we're closed tomorrow. But Ms. Nellermo and I will get together and send out an email with the reasons for the motions. So you don't need to appeal. Or your time to appeal is not running from today.

MS. HUNT: Okay.

THE COURT: Your time to appeal will not start running from today.

MS. HUNT: Okay.

THE COURT: Don't worry about that. I will send an email to the both of you at the same time setting out the reasons, and then I will ask for a proposed order.

MS. HUNT: Okay.

THE COURT: Okay.

MS. HUNT: So this is just going to be an

email asking for a proposed order, and then after you file it, that will be the time my time starts to run.

THE COURT: Yes, ma'am.

MR. FOERSTER: Will the email address the timeliness of her 59 (e) motion?

THE COURT: No.

MR. FOERSTER: It will not.

THE COURT: No, because that won't be the entry of the order.

MR. FOERSTER: Oh, I'm sorry. I didn't mean the entry of this particular order. I meant as to my argument concerning her 59 (e) motion from the order of January 2015. My argument is that she learned about that order. She had received written notice of its entry on May 27th. So I don't think that motion is timely. I just want to make sure that your email will rule on that issue.

THE COURT: Yes, it will. It will rule on that, yes.

MR. FOERSTER: The deadline to appeal.

THE COURT: Yes, it will rule on that. Ms. Nellermo has been taking good notes over here, so we're going to sit down together. But everybody's issues will be preserved for appeal. And I will be as anxious to hear what the Appellate Court has to say as

Ms. Hunt will.

MS. HUNT: Yeah, I will.

THE COURT: Very good. So we're adjourned. Thank you very much.

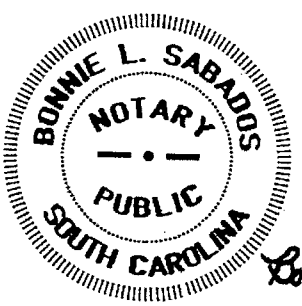
(The hearing was concluded at 4:45 p.m.)

CERTIFICATE OF REPORTER

I, Bonnie L. Sabados, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 19th day of November, 2015, at Conway, Horry County, South Carolina.



Bonnie L. Sabados
Registered Professional Reporter
My Commission expires
May 29, 2025.

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State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2013-CP-26-2528
Branch Banking and	)	
Trust Company	)	Motion to alter or amend the Judgment/Orders
Plaintiff,	)	of the Court under SCRCP 59(e) -
	)	re the Order Denying
vs.	)	Sanctions against BBT; and
Cindy B. Hunt; Willow Greens	)	re the Order Denying the numerous
Homeowners Association, Inc.;	)	Motions heard on 4/21/2014; and
CJ Developers, LLC.	)	re the Order Denying entry of default as moot.
Defendant(s)	)	

HORRY COUNTY
14 OCT 30 PM 1:45
CLERK OF COURT

These motions to alter or amend the judgment under SCRCP 59 (e) are supported by all the exhibits in this matter and the prior pleadings and documents at c/a 4:09-cv-2151-JMC-TER;[1] c/a 4:11-cv-00870-MGL-TER;[2] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[3] and all the pleadings and documents in the present matter at

[1] Here in after referred to as lawsuit # 1. Exhibit #s 1-52 were submitted in the USDC without objection by BBT and included five affidavits from Hunt and Davis. See Hunt's affidavits at exhibit #s 3, 26, 46 and 70; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act (GLBA); and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Lawsuit # 1 - was filed in the USDC by Hunt in 8/2009 – see exhibit # 47. Hunt argues that the USDC at exhibit # 47 entry # 108 ruled on the motion to dismiss at exhibit # 47 entry # 38 resulting in a dismissal of lawsuit # 1 to save the then Defendant BBT and employees from the allegations in the TAC at exhibit # 47 entry #s 105 and 105-1. Lawsuit # 1 was appealed to the USCA. At exhibit # 40 without a finding of subject matter jurisdiction and in an unpublished opinion that lacked substance the USCA affirmed the decision of the USDC. Thereafter, the USCA denied Hunt's request for reconsideration at exhibit # 40 where the USCA said "we have received your applicable request for reconsideration – it is denied.

[2] Here in after referred to as lawsuit # 2 - was filed in the USDC by Hunt in 4/2011 – see exhibit # 48. Lawsuit # 2 was filed before lawsuit # 1 was appealed. Hunt argues that the USDC dismissed lawsuit # 2 to save the then Defendant BBT and employees from the allegations in the FAC at exhibit # 49 entry # 15-8.

[3] Here in after referred to as lawsuit # 3 where the verified complaint in lawsuit # 3 consisted of only state causes of action was filed by Hunt in the Horry County Court of Common Pleas in 7/2012 where Hunt was trying to follow the instructions of the **USCA**; lawsuit # 3 was thereafter removed by BBT based on diversity to the USDC in Florence, SC in 8/2013 where BBT was looking for additional help – see exhibit # 49. **Lawsuit # 3 was not appealed to the USCA.** However, Hunt argues that after the **USCA** reviewed the pleadings in lawsuit # 3 (see bottom right corner of most documents in exhibit # 49) that the USDC dismissed lawsuit # 3 to help the then Defendant BBT bury its misconduct in state court where BBT thereafter filed lawsuit # 4 in state court.

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Case No: 2013-CP-26-2528[4] where this matter has been in dispute/litigation for six years (1/2008 – present day).[5]

Hunt makes a motion to alter or amend the judgment (the order denying Hunt's motion for sanctions – hearing on 9/17/2014; the order denying Hunt's motions - hearing on 4/21/2014 and the order denying entry of default) under SCRCP 59(e):

Procedural history in CASE NO: 2013-CP-26-2528:

BBT filed its **mortgage foreclosure action,** the 4th lawsuit in this matter, on April 16, 2013.

Thereafter, Hunt filed the **original counterclaims** and defenses in this matter with her answer on 8/2/2013 where Hunt has never been served the summons, complaint, lis pendens and intervention by BBT.

Instead of filing a responsive pleading to the counterclaims BBT filed the **9/5/2013 motion to dismiss under SCRCP 12(b)(6).**

In February 2014 a hearing was held where BBT's motion for a **priority scheduling order was heard**. Thereafter, the scheduling order was drafted by the attorney for BBT; signed by Judge Howe on 4/30/2014; clocked by the clerk of court on 5/6/2014 and mailed to Hunt on 6/12/2014.

On 4/21/2014 the court heard Hunt's summary judgment motion and several other motions by Hunt.

On May 20, 2014 this court held a hearing on BBT's **9/5/2013 motion to dismiss** under SCRCP 12(b)(6) where the motion to dismiss was granted in part and several issues were not ruled on and several issues were not argued by BBT.

Thereafter, Hunt filed the **6/6/2014 first amended counterclaims**. [6]

BBT responded to the first amended counterclaims with the **6/23/2014 second motion to dismiss under SCRCP 12(b)(6) in lawsuit # 4 and the seventh motion to dismiss in lawsuits 1-4.**

On 9/17/2014 the Court heard Hunt's motion for sanctions against BBT.[7]

On 10/14/2014 the Court heard **BBT's 6/23/2014 second motion to dismiss** the 6/6/2014 first amended counterclaims against BBT.[8]

On 10/28/2014 the Court filed a form 4 judgment stating that Hunt's motion for entry of default was denied as moot where all first amended counterclaims were dismissed following a hearing on 10/14/2014 for BBT's second motion to dismiss.

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[4] Here in after referred to as lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

[5] Communications with BBT (Fogle, Teal and Craven) were had from 1/22/2008 – 3/2008. An FDIC proceeding was held from 3/2008 – 9/2008. Four lawsuits have been filed from 8/2009 – present.

[6] Hunt reasserts her 8/2/2013 ANSWER.

[7] Hunt submitted a brief in support of the motion for sanctions. BBT did not submit a brief. The court denied Hunt's motion for sanctions against BBT based on the affidavits of Teal and Chestnut.

[8] **Limitations on successive SCRCP 12 (b) motions.**

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The original counterclaims (CC) were filed on 8/2/2013 – the summary judgment motion and numerous other motions were heard on 4/21/2014 – the motion to dismiss under SCRCP 12(b)(6) was heard on 5/20/2014.[9]

Hunt objects to the order denying the summary judgment motion and other motions that were heard on 4/21/2014:

1. **Briefs:** A hearing was held on 4/21/2014 for summary judgment and several other motions. The 8/2/2013 counterclaims were applicable at this hearing. Hunt submitted briefs in support of each of the motions that were heard on 4/21/2014 where the briefs were apart of the motion itself and submitted at the time the motion was filed.

2. **Counterclaims:** The causes of action enumerated in the 8/2/2014 counter claims included: violations of SC Consumer Identity Theft Protection, "Fraud, Constructive Fraud, Fraud in the inducement", "Negligence, Negligence Per Se, Gross Negligence, Negligent Misrepresentation", Conversion, Breach of Fiduciary Duty / Breach of Trust, violations of SC Probate Code, violations of SC UFTPA, mortgage loan fraud, Defamation, Intentional Destruction of Evidence, Slander of Title.

3. Hunt objects to the silence of the order, written by the attorney for BBT[10], denying all of Hunt's motions at the 4/21/2014 hearing where the orders are extremely lacking on the substance of the issues raised by Hunt in her motions and argued at the hearing.

Hunt objects to the wording of the order, written by the attorney for BBT, denying all of Hunt's motions at the 4/21/2014 hearing:

4. BBT summaries Hunt's counterclaims as being based on three main factual allegations. This is incorrect. BBT fails to mention that Hunt accuses BBT of fraud upon the FDIC and that this court on 9/17/2014 at the hearing for sanctions refused to make a ruling on these factual allegations. BBT fails to mention that the FDIC at exhibits #s 17 and 18 stated that BBT had violated the Gramm Leach Bliely Act. BBT fails to mention that long before BBT came up with the affidavits of Teal and Chestnut that BBT provided Hunt with documents that contradicted and refuted the affidavits of Teal and Chestnut to include exhibit # 29 (BBT refers to transfer management and portfolio as loans); exhibit # 44 page 25 of 28 (reporting as disputed to the credit reporting agency); and affidavit of Teal at exhibit # 50 (Teal does not list the 2007 mortgage as one of Hunt's accounts at BBT).
5. The 8/2/2013 CC, 6/6/2014 FAC and exhibits include numerous factual allegations of misconduct by BBT as shown at all pages of the CC and FAC and include factual allegations involving the **9/24/2010**[11] representation of loans; the 10/01/2013 affidavits of Chestnut

[9] At this writing Hunt has not yet received an order re this motion that was heard on 5/20/2014.
[10] Hunt has put into writing via response email to the court Hunt's objection in this matter of allowing the attorney for BBT to write the orders where Hunt was concerned that the orders would not reflect all issues ruled on and all the arguments made by Hunt in her motions, briefs and oral arguments.
[11] These allegations are not barred by statute of limitations (SOL) based on limitations on successive 12(b) motions and or because the representation(s) became false not when BBT wrote "loans" but rather when

and Teal of no loans; and the signed and clocked Orders of this court that the affidavits of Teal and Chestnut are to be treated as true.[12]

a. At exhibit # 28 in September 2010 Hunt wrote to BBT disputing the two loan entries in her customer profile: transfer management and portfolio.

b. BBT represented to Hunt in its 9/27/2010 written response letter to Hunt at exhibit # 29: "We received your letter disputing two loans reported on your account profile from 7/19//2007. According to our records your account profile currently does not reflect these loans. [...]"[13]

c. On 10/3/2010, six days after exhibit # 29 Hunt reported BBT to the HCPD at exhibit # 30 for identity theft and fraud, etc. re the unauthorized **loans** - transfer management and portfolio that was in Hunt's customer profile.

d. On 10/21/2010, twenty four days after exhibit # 29 BBT wrote to the HCPD at exhibit # 32 stating: Subject: **Criminal Subpoena** – Cindy B Hunt, Transfer Management, Portfolio
BBT has received Subpoena requesting information regarding the above referenced client(s) and responds as follows:
We are unable to produce documents as requested. We have no record of accounts with BBT in reference to the account numbers listed on subpoena. [...]."

e. On 10/21/2010, twenty four days after exhibit # 29 BBT wrote to the HCPD at exhibit # 32. At exhibit # 32 BBT did not state that the two loans (transfer management and portfolio) were not loans.

f. On 11/8/2010, 41 days after exhibit # 29 the Horry County Solicitors Office wrote to the FDIC – OIG at exhibit # 63 re the unauthorized **loans** - transfer management and portfolio.

g. In September and October of 2010 at exhibit # 47 (civil docket from lawsuit # 1) Hunt was in the middle of civil lawsuit # 1 with BBT and several employees.

h. On 12/23/2010, about eighty five days after exhibit # 29 BBT filed

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BBT submitted the affidavits on 10/1/2013 of Teal and Chestnut (not loans); and or when the court order was signed and clocked in 2014 where Hunt's motion for sanctions was denied based on the affidavits of Teal and Chestnut that were submitted on 10/1/2013 to this court by BBT.

[12] Hunt argues that these factual allegations of the 8/2/2103 CC and the 6/6/2014 FAC give rise to and satisfy all of the elements of all of the causes of action in the CC and FAC and are not barred by statute of limitations.

[13] In the 9/5/2013 motion to dismiss BBT stated: **"the counterclaims and each and every cause of action stated therein is barred by the applicable statute of limitations, the operative facts having occurred and been discovered (or discoverable) by Defendant Cindy B. Hunt ("Hunt") prior to July 8, 2009."**
In the 6/23/2014 second motion to dismiss BBT stated: **the counterclaims are all barred by their applicable statutes of limitations.** The second motion to dismiss is subject to **limitations on successive SCRCP 12 (b) motions as per** SCRCP 12(g) and 12(h)(2) and 7(a) where BBT has been deprived of its statute of limitations argument.

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documents # 83, 85, 86, 87 into the USDC at exhibit # 47 (civil docket).

i. At documents # 83, 85, 86, 87 of exhibit # 47 (civil docket) BBT did not state that the two loans (transfer management and portfolio) were not loans.

j. On 1/07/2011 Hunt made a motion for partial summary judgment in lawsuit #1. See document # 90 of exhibit # 47 (civil docket). The USDC never made a ruling on this motion.

k. **Four months after exhibit # 29** where BBT had said that transfer management is a loan - subsequently BBT on 1/22/2011 at document # 96 of exhibit # 47 (civil docket) BBT submitted a response in opposition to Hunt's motion for partial summary judgment in the USDC where that response included the affidavit of Chestnut (submitted to this court by BBT on 10/1/2013) - BBT states summarily in the affidavit of Chestnut that the transfer management loan is not a loan.

l. Based on the 10/01/2013 submission date of the affidavit of Chestnut to this court and the courts ruling against Hunt involving the affidavit of Chestnut - BBT **falsely** stated in the letter to Hunt from BBT at exhibit # 29 that the transfer management entry was a loan.[14]

m. **Four months after exhibit # 29** where BBT had said that portfolio is a loan - subsequently BBT on 1/22/2011 at document # 96 of exhibit # 47 (civil docket) submitted a response in opposition to Hunt's motion for partial summary judgment in the USDC where that response included the affidavit of Chestnut (submitted by BBT on 10/01/2013) - BBT states summarily in the affidavit of Chestnut that the portfolio loan is not a loan.

n. Based on the 10/01/2013 submission date of the affidavit of Chestnut to this court and the courts 2014 ruling against Hunt involving the affidavit of Chestnut - BBT **falsely** stated in the letter to Hunt from BBT at exhibit # 29 that the portfolio entry was a loan.[15]

o. The statements in exhibit # 29 that referred to transfer management and portfolio as loans **were material**.

p. The statements of BBT at exhibit # 29 that referred to transfer management and portfolio as loans were **material** in that the IOLTA, POD trust, mortgage, CD and other accounts should have been handled differently from the way BBT in fact treated them. (Cf. exhibit #s 4 & 15; 10 & 28-29; 44 page 6 of 28 & SC Code 62-6-101; SCACR 412)

q. BBT had **knowledge or acted with reckless disregard** of the falsity of the statements in exhibit # 29 that referred to transfer management and portfolio as loans.

[14] Cf. Order denying Hunt's motion for sanctions where the court treats the affidavits of Teal and Chestnut as true.

[15] Cf. Order denying Hunt's motion for sanctions where the court treats the affidavits of Teal and Chestnut as true.

r. Hunt was **ignorant** of the falsity of the statements in exhibit # 29 that referred to transfer management and portfolio as loans.

s. Hunt was and is in a **fiduciary relationship** with BBT and its employees/agents.

t. Hunt was and is in a **confidential relationship** with BBT and its employees/agents.

u. The statements in exhibit # 29 that referred to transfer management and portfolio as loans did not involve an arm's length transaction.

v. The customer profile with the entries transfer management and portfolio were on BBT's computers.

w. BBT had control of Hunt's customer profile.

x. The representations by BBT at exhibit # 29 concerned the presence of unauthorized loans in Hunt's customer profile.

y. BBT had a duty to accurately disclose to customer Hunt and attorney Hunt at exhibit # 29 the correct status of the entries transfer management and portfolio that were in Hunt's customer profile at exhibit # 10. (exhibit #s 44-45 & 66)

z. When opening her accounts Hunt relied on BBT being accurate and honest in its communications with Hunt.

aa. Hunt could not check the loan status of the entries transfer management and portfolio.

bb. Hunt **relied** on the statements in exhibit # 29 that referred to transfer management and portfolio as loans. (exhibit #s 44-45 & 66)

cc. Hunt did all of her banking at BBT from 1993- 2008.

dd. **Hunt had a right to rely on the** statements in exhibit # 29 that referred to transfer management and portfolio as loans. (exhibit #s 44-45 & 66)

ee. BBT **intended** that Hunt act upon its representations at exhibit # 29 that referred to transfer management and portfolio as loans.

ff. Hunt was proximately injured by BBT's false statements at exhibit # 29 that the customer profile entries – transfer management and portfolio were loans to include foreclosure-costs-attorney-fees-job loss, etc.

6. The 8/2/2013 CC, 6/6/2014 FAC and exhibits include numerous factual allegations of misconduct by BBT as shown at all pages of the CC and FAC and include factual allegations involving the 6/4/2012 letter from Hunt to BBT at exhibit # 37 disputing the mortgage; the language in the BSA at exhibit # 44 at page 25 of 28 (accuracy of credit information and notice of furnishing of negative information); and Hunt's credit report at the last page of exhibit # 46 where the mortgage was not reported as

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disputed. Thereafter, BBT filed the foreclosure complaint on **4/16/2013**.[16] Hunt argues that these factual allegations of the 8/2/2103 CC and the 6/6/2014 FAC give rise to and satisfy all of the elements of all of the causes of action in the CC and FAC to include foreclosure damages.

7. The 8/2/2013 CC, 6/6/2014 FAC and exhibits include numerous factual allegations of misconduct by BBT as shown at all pages of the CC and FAC and include factual allegations involving the **10/1/2013**[17] affidavit of Teal[18] that was submitted to this court by BBT (submitted to this court on 10/1/2013) as stated in the order denying Hunts motion for sanctions where all pages of Teal's affidavit is silent as to the foreclosure mortgage and where footnote 1 of exhibit # 51 states that all accounts that are the subject of this action were closed in early 2009; the **4/16/2013** foreclosure complaint; and at the **4/21/2014** Order of the court BBT states: (3) Motion # 6 ("Motion to strike") is denied because BBT's foreclosure claim was not compulsory to the federal lawsuits and the affidavit of Judy Teal did not waive BBT's right to enforce the mortgage against Hunt. Hunt argues that these factual allegations of the 8/2/2103 CC and the 6/6/2014 FAC are not barred by statute of limitations and give rise to and satisfy all of the elements of all of the causes of action in the CC and FAC to include foreclosure damages.

8. The numerous factual allegations of the 8/2/2103 CC give rise to and satisfy all of the elements of all of the causes of action in the CC at pages 1-22 where BBT at its motion to dismiss hearing on 5/20/2014 received a partial grant of dismissal where the court did not rule on BBT's 9/5/2013 statute of limitations argument. (Cf. statute of limitations objection in BBT's 9/5/2013 motion to dismiss to that stated in the 6/23/2014 second motion to dismiss and argued in court where the second motion to dismiss is subject to **limitations on successive SCRCP 12 (b) motions as per** SCRCP 12(g) and 12(h)(2) and 7(a).)

9. Hunt objects to the wording of the order, written by the attorney for BBT, denying all of Hunt's motions at the 4/21/2014 hearing where BBT at pages 1 – 3 of the order summaries law suits 1-4. This is incorrect. BBT summary of law suits 1-3 does not include where Hunt alleges that BBT perpetrated a fraud on the FDIC, that the FDIC at exhibit #s 17-18 found that BBT had violated Gramm Leach Bliely Act, etc. The allegations in this fourth lawsuit are not identical to those in lawsuit #1 that was filed in August 2009.

10. BBT states: (1) Motions # 1-4 are denied as moot. Hunt argues that this is incorrect. Hunt has never been served the summons, complaint, lis pendens and intervention. And Hunt has not made a voluntary appearance in this matter. Hunt is a member of the SC Bar. As such, Hunt is required to respond to all communications from the court. Hunt traveled to the DC area in the Spring and Summer of 2013 for a CLE at the US Patent and Trademark Office when BBT filed the fourth lawsuit. Thereafter, Hunt filed a limited waiver of service of process.

11. BBT states: (2) Motion # 5 ("Motion for default judgment") is denied because BBT is not in default. Hunt argues that this is incorrect.

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[16] These allegations are not barred by statute of limitations (SOL).
[17] These allegations are not barred by statute of limitations (SOL).
[18] Teal in her affidavit goes through a list of Hunt's accounts at BBT. However, the list does not include the 2007 mortgage that BBT later asserts the foreclosure complaint.

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12. BBT states: (3) Motion # 6 ("Motion to strike") is denied because BBT's foreclosure claim was not compulsory to the federal lawsuits and the affidavit of Judy Teal did not waive BBT's right to enforce the mortgage against Hunt. Hunt argues that this is incorrect.

    a. Hunt argues that the issues of fraud, constructive fraud, etc. involving the mortgage is to be distinguished from when BBT says the foreclosure claim arose and or became compulsory where the court denied Hunt's motion to strike based on the affidavit of Teal[19] where the court accepted the affidavit as true and the foreclosure as not compulsory.

    b. This court is accepting the affidavit of Teal as true. **Hunt argues that the affidavit of Teal is either true or false.** As such **WHERE** the court denied Hunt's motion to strike BBT's foreclosure complaint re the 2007 mortgage at the 4/21/2014 hearing based on the affidavit of Teal where Teal's sworn affidavit did not list the 2007 mortgage among Hunt's accounts at BBT. There after this court also denied Hunt's motion for sanctions at the 9/17/2014 hearing based on the affidavits of Teal and Chestnut where the court continues to accept the affidavit of Teal as true. As such **THEN** Hunt argues that this court must grant the motion to strike the foreclosure complaint based on the continued true treatment of the sworn affidavit of Teal where the sworn affidavit does not list the 2007 mortgage loan that the foreclosure complaint is based on. These are another set of factual allegations where the allegations give rise to all the causes of action of the 8/2/2013 CC.

13. BBT states: (4) Motion # 7 ("Objections and Motion for Contempt/motion to strike") is denied because BBT never admitted the allegation in Hunt's federal court complaints [...]. Hunt argues that this is incorrect.

14. BBT states: (5) Motion # 8 ("Motion pursuant to Rule 12(b)(6), SCRCP") is denied because BBT's complaint sets forth sufficient factual allegations to state a claim for foreclosure. Hunt argues that this is incorrect.

15. **BBT states: (6) Motion # 9 ("Motion for summary judgment on counterclaims/defenses") is denied because there is a genuine issue of material fact with respect to Hunt's defenses and counterclaims.**

    a. Hunt argues that this is incorrect where the court denied Hunt's motion for summary judgment based on the affidavits of Teal and Chestnut that were submitted to this court on 10/1/2013 by BBT where the court accepted those affidavits as true while ruling against Hunt's arguments that the affidavits of Chestnut and Teal were sham, defective, etc. and fraudulent where Hunt

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[19] As such, Hunt continues to argue that the affidavits of Chestnut and Teal are sham, defective, etc. and fraudulent where Hunt directs the court to the *4/21/2014 opposition document labeled: Affidavits of Teal and Chestnut.*

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directed the court to the *4/21/2014 opposition document labeled: Affidavits of Teal and Chestnut.*

b. The court also denied Hunt's motion for sanctions at the 9/17/2014 hearing based on the affidavits of Teal and Chestnut that were submitted to this court on 10/1/2013 by BBT where the court accepted those affidavits as true.

c. As such Hunt also argues that: Where the court denied Hunt's motion for summary judgment based on the affidavits of Teal and Chestnut and or where the court denied Hunt's motion for sanctions based on the affidavits of Teal and Chestnut **THEN** this court must grant partial summary judgment to Hunt on the factual allegations involving the loans versus no loans[20] and other allegations and all remaining allegation of the CC where those allegations give rise to all the causes of action of the 8/2/2013 CC and are not barred by statute of limitations.

16. BBT states: (7) Motion # 10 ("Motion to strike Answer of Willow Greens Homeowners Association, Inc.") is denied as moot. Hunt argues that this is correct.

17. BBT states: (8) Motion # 11 ("Motion for Production of Note") is denied because it is not ripe for determination. Hunt argues that this is incorrect. BBT has provided Hunt with a copy of the Note.

18. BBT states: (9) Motion # 12 ("Motion for Continuance of Pre-trial Hearing") is denied as moot. Hunt argues that this is correct.

Hunt requests that this court reverse its orders re the 4/21/2014 hearing and grant Hunt the relief and damages requested against BBT as stated in the summary judgment motion, motion to strike the foreclosure complaint, etc. and the 8/2/2013 CC.

6/6/2014 first amended counterclaims (FAC) filed – motion for sanctions heard on 9/17/2014 – second motion to dismiss[21] under SCRCP 12(b)(6) heard on 10/14/2014 – 10/28/2014 motion for entry of default denied as moot.

Order denying motion for sanctions heard on 9/17/2014:

19. **Brief:** A hearing was held on 9/17/2014 for the motion for sanctions. The 6/6/2014 FAC was applicable at this hearing. Hunt submitted a 36 page brief in support of her motion for sanctions.

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[20] See exhibit # 29 (loans) and the 1/22/2011 affidavits of Teal and Chestnut (not loans) that have been submitted to this court by BBT in opposition to Hunt's motion for summary judgment and motion for sanctions.

[21] At this writing Hunt has not yet received an order re this second motion to dismiss that was heard on 10/14/2014.

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20. First Amended Counterclaims (FAC): The causes of action enumerated in the 6/6/2014 FAC include: Constructive Fraud, Negligence Per Se, Conversion, Breach of Fiduciary Duty violations of SC Probate Code, violations of SC UFTPA and Breach of Contract.

21. Hunt objects to the wording and silence of the order denying sanctions that was written by the attorney for BBT[22] where Hunt argued that BBT through Judy Teal and others has engaged in fraud upon the FDIC and the unauthorized practice of law, etc.

22. Hunt objects to the wording of the order denying sanctions that was written by BBT where BBT summaries Hunts first amended counterclaims (FAC) as being based on three factual allegations. **This is incorrect.** The factual allegations in this matter are stated in the 6/6/2014 FAC and there are more than three factual allegations.

23. The 6/6/2014 motion for sanctions includes numerous factual allegations (with dates from 2003 - 2014), refers to numerous exhibits and includes a 3 page list of damages that Hunt requested as sanctions.

24. In the Order denying sanctions - BBT states that Hunt submitted four documents in support of Hunt's motion for sanctions at the 9/17/2014 hearing. **This is incorrect.**

    a. Hunt submitted all of the 67 plus documents, as stated in the motion for sanctions and the brief in support of the motion for sanctions where all of these documents are in the file. The file contains an index to the numerous exhibits.

25. In the Order denying sanctions - BBT did not submit a brief in opposition to the motion for sanctions. BBT states in the order that it submitted two documents in opposition to Hunt's motion for sanctions at the 9/17/2014 hearing.

    a. **The two documents submitted by BBT are the affidavits of Teal and Chestnut where these affidavits were -** submitted to the USDC in 1/2011 in response to Hunt's motion for partial summary Judgment; submitted to this court in 10/2013 in response to Hunt's motion for summary judgment; and submitted to this court again on 9/17/2014 in response to Hunt's motion for sanctions.

    b. **Affidavits of Teal and Chestnut:**
    Even though Hunt has argued vehemently that the affidavits of Teal and Chestnut are a sham, defective, etc. and or fraudulent where Hunt directed the court to the 4/21/2014 document in opposition labeled: Affidavits of Teal and Chestnut. This court has ruled against Hunt on

[22] Hunt has previously stated to the Court that she was concerned that any and all orders written by BBT would not include all the factual allegations, arguments in Hunt's briefs and those made in court by Hunt. It is Hunt position that these two orders that Hunt is requesting the court to alter or amend have shown her concerns to be valid.

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this motion for sanctions and made at least three ruling based on the truth of the contents of the affidavits of Teal and Chestnut.

c. As such, Hunt argues that: **WHERE** the court denied Hunt's motion for summary judgment based on the affidavits of Teal and Chestnut and or where the court denied Hunt's motion for sanctions based on the affidavits of Teal and Chestnut **THEN** this court must find that Hunt has stated elements that all of the causes of action of the FAC where the affidavits of Teal and Chestnut prove the falsity of BBT's statement at exhibit # 29 of: "We received your letter disputing two loans reported on your account profile from 7/19//2007. According to our records your account profile currently does not reflect these loans. [...]". See below at **not barred by statute of limitations.**

The below 10/14/2014 **admissions/waiver/abandonment** by BBT as argued in this motion re the allegations and causes of action at pages 1-38 of 38 of the 6/6/2014 FAC provide proof that BBT destroyed or altered evidence that was and is relevant to the FAC WHERE Hunt argues that the admissions to the FAC and or waiver / abandonment of the causes of action and all of the allegations of the FAC refute the affidavits of both Teal and Chestnut which was the grounds asserted by BBT where the court denied Hunt's motion for sanctions against BBT.

Such that, Hunt request that this court reverse its order denying sanctions against BBT and impose sanctions against BBT as stated in 6/6/2014 motion for sanctions and the 6/6/2014 brief in support of sanctions where BBT has destroyed or altered evidence that was and is relevant to the CC and FAC.

Hunt objects to the 10/28/2014 order denying Hunt's motion for entry of default re BBT's second motion to dismiss that was heard on 10/14/2014:

26. **Brief:** A hearing was held on 10/14/2014 for the second motion to dismiss. The 6/6/2014 FAC was applicable at this hearing. Hunt submitted a 36 page brief in opposition to the second motion to dismiss.

27. First Amended Counterclaims (FAC): The causes of action enumerated in the 6/6/2014 FAC include: Constructive Fraud, Negligence Per Se, Conversion, Breach of Fiduciary Duty violations of SC Probate Code, violations of SC UFTPA and Breach of Contract.

Hunt request that this court reverse its orders re the 10/28/2014 order denying the motion for entry of default as moot based on the arguments made above and below.

Admissions/waiver/abandonment:

Not barred by statute of limitations: All of the allegations in the original CC, the FAC, causes of action and exhibits are not barred by any statute of limitations

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objections, remain apart of the CC and FAC where they are shown on the face of the CC, FAC, exhibits and orders of this court based on the numerous contradictory statements issued by BBT to include at exhibit # 29 (loans) and the affidavits of Teal and Chestnut (not loans).

SCRCP 12 h(2): BBT's defense or objection of failure to state a cause of action upon which relief can be granted was required to be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

As such,

> Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not any pleading permitted or ordered under Rule 7(a).[23]
>
> Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not a motion for judgment on the pleadings.
>
> Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not being presented at the trial on the merits.
>
> Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not a reply and it was not designated as a reply.

Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not a Rule 12 (c) motion and that the pleadings are not closed.

SCRCP 12 (g) - Limitations on BBT's 6/23/3024 second motion to dismiss under SCRCP 12(b)(6):

The court at the 10/14/2014 hearing on the second motion to dismiss under SCRCP 12(b)(6) granted the 6/23/2014 second motion to dismiss on limited statute of limitations based on arguments made by BBT at the 10/14/2014 hearing where the second motion to dismiss was subject to **limitations on successive SCRCP 12 (b) motions as per** SCRCP 12(g) and 12(h)(2) and 7(a).[24]

> Hunt argues that SCRCP 12(g) and 12(h)(2) are applicable to BBT's entire 6/23/2014 second motion to dismiss under SCRCP 12(b)(6) re **omissions** from the 9/5/2013 motion to dismiss.

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[23] **SCRCP 7(a) Pleadings.** There shall be a complaint and an answer; and a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under Rule 14, and there shall be a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer; and there may be a reply to affirmative defenses as provided in Rule 8(c).

[24] At the 5/20/2014 hearing the court did not rule on statute of limitations, violations of the probate code and breach of fiduciary duty / breach of trust.

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Taken together, Rules 12(g) and 12(h)(2) prohibit [BBT] from filing a successive Rule 12(b)(6) motion "raising a defense or objection that was available to the party but omitted from its earlier motion" unless it is included in their [reply] or in a Rule 12(c) motion after pleadings are closed. **These rules are "intended to eliminate unnecessary delays at the pleading stage of a case by avoiding the piecemeal consideration of pretrial motions."** *Rauch v. Day & Night Mfg. Corp.*, 576 F.2d 697, 701 (6th Cir. 1978).

OMISSIONS by BBT in the 9/5/2013 first motion to dismiss under SCRCP 12(b)(6) vs the 6/23/2014 second motion to dismiss under SCRCP 12(b)(6) are stated below. BBT is deprived of its statute of limitations argument in the second motion to dismiss based on omissions, abandonment, waiver, admissions and or the failure to reply to the FAC.

Objections and defenses that were available to BBT at the 5/20/2014 hearing on the 9/5/2013 motion to dismiss and OMITTED by BBT in the motion, at the hearing on 5/20/2014,[25] and the email to Judge Howe include those as stated at the 6/23/2014 second motion to dismiss of: statute of limitations,[26] [constructive fraud, negligence per se, (fraud in the inducement, negligence, gross negligence)],[27] conversion based on not tangible personal property,[28] breach of fiduciary duty which as a matter of law ...,[29] violations of the SC Probate Code Ann. sections 62-6-101 thru 62-6-106 against BBT,[30] violation of the SC Unfair Trade Practices Act: SC Code sections 39-5-10 thru 39-5-170 against BBT[31] and breach of contract.[32]

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[25] BBT did not submit a brief in support of the first motion to dismiss. The emails to Judge Howe related only to statute of limitations re allegations occurring prior to 2009.

[26] In the 9/5/2013 motion to dismiss BBT stated: **"the counterclaims and each and every cause of action stated therein is barred by the applicable statute of limitations, the operative facts having occurred and been discovered (or discoverable) by Defendant Cindy B. Hunt ("Hunt") prior to July 8, 2009."**
In the 6/23/2014 second motion to dismiss BBT stated: **the counterclaims are all barred by their applicable statutes of limitations.**

[27] **In its 9/5/2013 motion to dismiss BBT made no mention of these causes of action.**

[28] **In its 9/5/2013 motion to dismiss BBT stated:** the fourth cause of action fails to set forth a claim for relief for conversion as a bank account (a contractual right) cannot be the subject of a conversion action.
In its 6/23/2014 second motion to dismiss BBT stated: the third cause of action fails to set forth a claim for relief for conversion because a bank account is a contractual right, not tangible personal property, and as such, will not support a claim for relief for conversion.

[29] **In its 9/5/2013 motion to dismiss BBT stated:** the fifth cause of action fails to set forth a claim for relief for breach of fiduciary duty as the facts alleged in the counterclaims establish a debtor/creditor relationship between Hunt and BBT which does not give rise to a fiduciary duty.
In its 6/23/2014 second motion to dismiss BBT stated: the fourth cause of action fails to set forth a claim for relief for breach of fiduciary duty because the facts alleged establish nothing more than a typical debtor/creditor relationship between Hunt and BBT, which, as a matter of law, does not give rise to a fiduciary duty.

[30] **In its 9/5/2013 motion to dismiss BBT stated:** the sixth cause of action fails to set forth a claim for relief for as the sections referred to therein do not create a right of action and/or the facts alleged in the counterclaims establish that no actionable violation occurred.
In its 6/23/2014 second motion to dismiss BBT stated: the fifth cause of action fails to set forth a claim for relief for violation of SC Code Ann. sections 62-6-101 thru 62-6-106 because there is no private right of action for violation of those statutes.

[31] **In its 9/5/2013 motion to dismiss BBT stated:** the seventh cause of action for unfair trade practices fails to state facts sufficient to state a claim against BBT for "violation of SC Code Ann. sections 39-5-10 et seq." as the actions of BBT, (a federally insured state banking institution), are not covered by or subject to the provisions of SC Code Ann.

Based on these omissions Hunt argues that BBT's statute of limitations objection and defense as stated in its 6/23/2014 second motion to dismiss under SCRCP 12(b)(6) and argued at the hearing on 10/14/2014 was waived / abandoned in its entirety.

Admissions: Pursuant to SCRCP 8(d), 12(g), 12(h)(2) and 7(a) Hunt argues that BBT has admitted to all of the allegations that make up the 6/6/2014 FAC where those allegations were not denied in a **reply** pleading that was labeled as a reply and/or not argued and ruled on at the hearing on 10/14/2014 for the 6/23/2014 second motion to dismiss.

SCRCP 12(a) not applicable: Hunt argues that SCRCP 12(a) is not applicable to these FAC such that BBT would not be entitled to additional time to reply to any cause of action of the FAC. Hunt also argues that if SCRCP 12(a) is applicable to these FAC such that BBT is entitled to addition time to reply to the FAC then that SCRCP 12(a) has been rendered moot where BBT has admitted to the FAC and or waived/abandoned all objections to the FAC.

As such, Hunt argues that the motion for entry of default is not moot.

The above 10/14/2014 **admissions/waiver/abandonment** by BBT as argued in this motion re the allegations and causes of action at pages 1-38 of 38 of the 6/6/2014 FAC provide proof that all of the causes of action of the FAC survive BBT's limited statute of limitation arguments.

Such that, Hunt request that this court reverse its orders re the 10/28/2014 order denying the motion for entry of default as moot and grant Hunt the relief and damages requested against BBT as stated in the entry of default/default judge and the 6/6/2014 FAC.

Respectfully submitted,

CB Hunt

Cindy B. Hunt
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: October 29, 2014

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sections 39-5-10 et seq. as the actions of federally insured financial institutions are not subject thereto and/or exempt from the provisions thereof pursuant to SC Code Ann. sections 39-5-40.
Additionally, the counterclaims fail to set forth a claim for relief under SC Code Ann section 39-5-10 as the facts alleged in the counterclaims establish only a private dispute between the parties that has no impact upon the public interest of the State of SC.
In its 6/23/2014 second motion to dismiss BBT stated: the sixth cause of action fails to state facts[31] sufficient to state a claim against BBT for violation of the SC Unfair Trade Practices Act because the actions of BBT, a federally-insured state banking institution, are not subject thereto and/or are exempt from its provisions pursuant to SC Code Ann. section 39-5-40. Additionally, the counterclaim fails to set forth a claim for relief as the facts alleged establish only a private dispute between the parties that has no impact upon the public interest of the State of SC.

[32] **In its 9/5/2013 motion to dismiss BBT made no mention of this cause of action.**

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2013-CP-26-2528
Branch Banking and	)	
Trust Company	)	
Plaintiff,	)	
	)	
vs.	)	Motion under SCRCP 41
Cindy B. Hunt; Willow Greens	)	
Homeowners Association, Inc.;)		
CJ Developers, LLC.	)	
Defendant(s)	)	
_____	)	

HORRY COUNTY
2015 MAY 27 PM 2:39
CLERK OF COURT

This motion is supported by all the exhibits[1] in this matter and the prior pleadings at c/a 4:09-cv-2151-JMC-TER; c/a 4:11-cv-00870-MGL-TER;[2] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[3] and all the pleadings in the present matter at Case No: 2013-CP-26-2528[4] aka c/a 4:14-cv-04352-BHH-TER[5] where this matter has been in dispute/litigation for seven years (1/2008 – 5/2015).

[1] See Hunt's affidavits at exhibit #s 3, 26 and 46; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act; and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Exhibits 1-52 were submitted in the USDC without objection by BBT and includes five affidavits. Here in after referred to as Lawsuit # 1 - was filed in the USDC by Hunt in 8/2009 – see exhibit # 47.

[2] Here in after referred to as Lawsuit # 2 - was filed in the USDC by Hunt in 4/2011 – see exhibit # 48.

[3] Here in after referred to as Lawsuit # 3 where the verified complaint in this civil action was filed by Hunt in this court in 7/2012 and removed by BBT to the United States District Court (USDC) in Florence, SC in 8/2013 – see exhibit # 49.

[4] Here in after referred to as Lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

[5] Removed to USDC on 11/10/2014. Remanded to State Court on 5/8/2015.

1. **Statement of relevant facts: There have been four lawsuits involving Hunt's banking relationship with BBT. Hunt asks that this court take judicial notice of these lawsuits. SCRE 201.**

   a. **Lawsuit # 1:** c/a 4:09-cv-2151-JMC-TER (filed 8/9/2009 in the USDC by Hunt against several Defendants involving federal question jurisdiction. The USDC granted BBT's motion to dismiss the federal causes of action and the court declined supplemental jurisdiction over the state law claims.[6] The USDC partially granted BBT's motion to dismiss. Hunt made a motion to alter and amend and Hunt appealed lawsuit # 1 to the USCA.[7]);

   b. **Lawsuit # 2:** c/a 4:11-cv-0870-MGL-TER (filed 4/12/2011 in the USDC by Hunt against several Defendants involving federal question jurisdiction. The USDC granted BBT's motion to dismiss. The 3/13/2013 final judgment of the USDC states: case dismissed without prejudice under FRCP 4(m). Law suit # 2 was not appealed.);

   c. **Lawsuit # 3:** Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL-TER (filed 7/9/2012[8] in Horry County Court of Common Pleas by Hunt against BBT only. Hunt submitted a notice of withdrawal on 8/6/2012 at 10:46 am. Thereafter BBT submitted a notice of **removal**[9] on 8/6/2012 at 13:49 pm based on diversity jurisdiction. In the USDC BBT submitted a motion to dismiss based on withdrawal among other grounds for dismissal. The USDC on 3/13/2013 partially granted BBT's motion to dismiss. BBT did file a motion to alter are amend the judgment. Law suit # 3 was not appealed.); and

   d. **Lawsuit # 4 is ongoing:** Case No: 2013-CP-26-2528[10] aka c/a 4:14-cv-04352-BHH-TER (filed 4/16/2013 in Horry County Court of Common Pleas by BBT against Hunt, Willow Green HOA and CJ Developers). Hunt submitted a notice of **removal** to the USDC on 11/10/2014. BBT did not make any objections to the report and recommendations of the magistrate. The USDC adopted the recommendations of the US magistrate and the case was **remanded** to state court on 5/8/2015. BBT did file a motion to alter are amend the judgment. Law suit # 4 was not appealed.

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[6] The claims of lawsuit # 1 were included in lawsuit #s 2-4; and Hunt timely refiled the claims from lawsuit # 1 in lawsuit #s 2-4.

[7] See case # c/a 4:09-cv-2151-JMC-TER where the USDC dismissed the federal causes of action and declined supplemental jurisdiction. Hunt made a timely motion to alter or amend. Hunt made a timely appeal and request for reconsideration to the USCA. Thereafter, Hunt timely filed law suit # 3.

[8] BBT in its foreclosure complaint in lawsuit # 4 states that the mortgage became delinquent on 7/1/2012.

[9] In its Notice of Removal for lawsuit # 3 in 8/2012 BBT cited to the already delinquent mortgage as the amount in controversy. BBT did not assert a claim for foreclosure in lawsuit #s 2-3.

[10] Here in after referred to as lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

2. **Law of the case, res judicata/claim preclusion, judicial estoppel, etc.:** Hunt argues that all of the elements of law of the case, res judicata/claim preclusion[11], judicial estoppel[12], etc. are satisfied and apply in lawsuit # 4 where BBT did not preserve the grounds that the USDC did not rule on in BBT's motions to dismiss, BBT's motion to remand and BBT did not address in BBT's Reply to Hunt's Response to the motion to Remand, etc. such that BBT is not allowed to make any arguments on the below issues from lawsuit #s 1-4[13] and this court should not consider any arguments from BBT on attorney fees and costs to Hunt.

3. **Previously Dismissed Actions:**

   a. Lawsuit # 1 was filed by Hunt in the USDC on 8/13/2009. Lawsuit #1 arose out of Hunt's banking relationship with BBT. BBT states at exhibit # 51 at footnote # 1 that all of Hunt's accounts were closed in early 2009. Thereafter, the USDC on 3/23/2011 granted partial dismissal of lawsuit # 1 based on BBT's motion to dismiss.[14] Two years after the USDC dismissed lawsuit # 1 on **3/23/2011** at BBT's request - BBT in lawsuit # 4 has taken the inconsistent positions associated with the mortgage of 2013 foreclosure complaint.

   b. **BBT states in its foreclosure complaint of lawsuit # 4 (filed in state court by BBT on 4/16/2013) that the mortgage became delinquent on 7/1/2012.**

   c. Lawsuit # 2 was filed by Hunt in the USDC on 4/12/2011. Lawsuit #2 arose out of Hunt's banking relationship with BBT. Thereafter, the USDC on **3/13/2013** granted dismissal of lawsuit # 2 based on BBT's motion to dismiss.[15] On 4/16/2013, thirty four days after the USDC dismissed lawsuit # 2 at BBT's request BBT in lawsuit # 4 asserts the foreclosure complaint.

   d. Lawsuit # 3 was filed by Hunt in State Court on 7/9/2012. Lawsuit #3 arose out of Hunt's banking relationship with BBT. **BBT removed lawsuit # 3 to the USDC on 8/6/2012 stating that the amount in controversy was the**

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[11] Hunt asserted res judicata in her 8/2/2013 answer; and that answer was reasserted and unchanged as to the first amended counterclaims. The doctrine of res judicata embodies two distinct preclusion concepts: (1) claim preclusion; and (2) issue preclusion. Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 376 n. 1, 105 S.Ct. 1327, 1329 n. 1, 84 L.Ed.2d 274 (1985); Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 77 n. 1, 104 S.Ct. 892, 894 n. 1, 79 L.Ed.2d 56 (1984). Claim preclusion refers to the preclusive effect of a judgment in foreclosing litigation of matters which should have been raised in an earlier suit, while issue preclusion refers to the effect of a judgment in precluding the relitigation of a matter actually litigated and decided. Id. In this case the Court does not need to consider the applicability of issue preclusion and, therefore, bases its decision upon the concept of claim preclusion. Briggs v. Newberry County School Dist., 838 F.Supp. 232 (D.S.C., 1992)

[12] Lowery v. Stovall, 92 F.3d 219, 223 (4th cir. 1996).

[13] BBT did not make a motion to alter or amend the judgment and BBT did not appeal any of the judgments of the USDC in lawsuit #s 1-4.

[14] See exhibit # 41.

[15] See exhibit # 52.

value of the mortgage of the foreclosure complaint. In lawsuit # 3 the USDC at exhibit # 43 **adopted** the Magistrate's report and recommendation[16] and granted BBT's motion to dismiss on **March 13, 2013** based on BBT's argument of withdrawal of the complaint in law suit # 3 from State Court under SCRCP 41[17] prior to removal by BBT where BBT asserted no restrictions on Hunt's voluntary withdrawal.

e. Lawsuit # 4 was filed by BBT in State Court on 4/16/2013, which is thirty four days after the USDC dismissed lawsuit #s 2-3 at BBT's request. Lawsuit #4 arises out of Hunt's banking relationship with BBT. BBT in lawsuit # 4 asserts mortgage foreclosure. In lawsuit # 4 the USDC **adopted** the Magistrate's report and recommendation **that Hunt had been served on 8/2/2013**[18] and granted BBT's motion to remand on **May 8, 2015.**

f. BBT did not assert a claim for foreclosure in lawsuit #s 2-3.

g. In lawsuit #s 1-4 BBT did not make a motion to alter or amend the judgment of the USDC and BBT did not make an appeal to the USCA.

h. In lawsuits #s 1-3 BBT did not alter it position of "all of Hunt's accounts were closed in early 2009."[19]

4. **Costs of Previously-Dismissed Actions:** Hunt makes a request for costs (costs includes attorney fees and costs) based on the previously dismissed actions where BBT requested and was granted dismissals in lawsuit #s 1-3.

   a. **SCRCP 41 (d) states - Costs of Previously-Dismissed Action.** If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of **costs** of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

   b. Hunt argues that Plaintiff BBT requested and was granted dismissals in lawsuit #s 1-3 and thereafter that BBT **commenced** the current lawsuit # 4 on 4/16/2013 and that Hunt was **served** on 8/2/2013[20] – and

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[16] The Magistrate at exhibit # 61 did not rule on the other grounds in BBT's motion to dismiss at exhibit # 49 entry # 9 in lawsuit # 3. Hunt argues that these other issues of BBT's motion to dismiss in law suit # 3 have been waived / abandoned and are unpreserved and that law of the case applies.

[17] BBT did not object to or place any restrictions on Hunt's request for withdrawal under SCRCP 41.

[18] The Magistrate did not rule on the other grounds in BBT's motion to remand re Defendants WGHOA and CJ Developers. Hunt argues that these other issues of the motion to remand in law suit # 4 have been waived / abandoned are unpreserved and that law of the case applies.

[19] See lawsuit # 1 exhibit # 51 at footnote # 1.

i. that as stated above BBT in lawsuit #s 1-3 requested and was granted dismissals of lawsuit #s 1-3 in the USDC; and

ii. that the order of dismissal in lawsuit # 3[21] states that the dismissal was under SCRCP 41, and

iii. that the order of dismissal in lawsuit # 3 (See exhibit # 43 page 1.) states that Hunt is an attorney licensed in SC, and

iv. that the order of dismissal in lawsuit # 3 states that the three prior dismissed lawsuits arose out of Hunt's banking relationship with BBT (See exhibit # 43 page 1.) where the foreclosure complaint of the current lawsuit # 4 is **based upon or included** in the same banking relationship of Hunt at BBT that the three prior dismissed lawsuits arose out of.

c. **The costs of lawsuit #s 1-3 are $2,668,905.00.** Costs were requested in the counterclaims and amended counterclaims; and in exhibit #s 26 and 46[22] of lawsuit #s 1-4 (see exhibit # 46 paragraph # 24 and footnote #s 5/6). Exhibit #s 26 and 46 shows that Hunt submitted uncontested affidavits for **costs** in the amount of $ 2,668, 905.00[23] for the three prior dismissed lawsuit #s 1-3.

Hunt respectfully moves the Court for an Order granting costs to Hunt in the amount of $2,668,905.00; and a stay of these proceedings until BBT has complied with the Court's order.

Respectfully submitted,

C B Hunt

Cindy B. Hunt,
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: May 27, 2015

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[20] See Report and Recommendation of the US Magistrate (Remand) in lawsuit # 4 at pages 4-5.

[21] See exhibit # 43 pages 3-4.

[22] BBT did not object to the affidavits at exhibit #s 26 and 46 re attorney fees / costs at anytime prior and/or during these four lawsuits.

[23] See exhibit # 46 paragraph # 24 and footnote #s 5/6: $2,665,500.00 for attorney fees and $3405.00 for costs.

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

BBT
Plaintiff,)

vs.)

Cindy B. Hunt, et al
Defendant.)

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-26-7528

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney: Rogers Townsend & Thomas, PC , Bar No. ____ Address: PO Box 100200 Columbia, SC 29202 Phone: ____ Fax ____ E-mail: ____ Other:	Defendant's ~~Attorney:~~ CB Hunt , Bar No. ____ Address: 195 D W. Igou Grant Conway, SC 29526 Phone: ____ Fax ____ E-mail: ____ Other: 843488-1131

☐ **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: ____
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.

CB Hunt, Pro Se — 5/27/2015
Signature of Attorney for ☐ Plaintiff / ☒ Defendant — Date submitted

SECTION III: Motion Fee

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

HORRY COUNTY
2015 MAY 27 PM 2:39
CLERK OF COURT

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

1092

CERTIFICATE OF SERVICE BY MAIL

Civil Action # 2013-CP-26-2528

I, the undersigned Pro Se Defendant and attorney, do hereby certify that I have served a copy of the below listed document by US Mail, postage prepaid, on 27 May 2015, at the following addresses:

Document(s) Served:

Motion under SCRCP 41

HORRY COUNTY
2015 MAY 27 PM 2:39
CLERK OF COURT

To:
Judge Cynthia Howe
Master In Equity
PO Box 677
Conway, SC 29526

Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29202

Thank You,
CB Hunt
Cindy B. Hunt, Pro Se.
195 D Willow Green Dr
Conway, SC 29526
843 488-1131

1093

CAROLINA FOREST
4025 POSTAL WAY
MYRTLE BEACH
SC
295799998
05/27/2015 (800)275-8777 3:19 PM

Product Description	Sale Qty	Final Price
First-Class Mail Large Envelope (Domestic) (COLUMBIA, SC 29202) (Weight:0 Lb 1.90 Oz) (Expected Delivery Day) (Friday 05/29/2015)	1	$1.19
Certified (USPS Certified Mail #:70140510 000108832873)	1	$3.30
Return Receipt	1	$2.70
First-Class Mail Large Envelope (Domestic) (CONWAY, SC 29526) (Weight:0 Lb 1.70 Oz) (Expected Delivery Day) (Friday 05/29/2015)	1	$1.19
Total		$8.38
Credit Card Remitd (Card Name:MasterCard) (Account #:XXXXXXXXXXXX7903) (Approval #:08336C) (Transaction #:662)		$8.38

1004

U.S. Postal Service™
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Postage	$ $1.19
Certified Fee	$3.30
Return Receipt Fee (Endorsement Required)	$2.70
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$ $7.19

05/27/2015

7014 0510 0001 0883 2873

Sent To: Rogers Townsend & Thomas, PC
Street, Apt. No., or PO Box No.: PO Box 100200
City, State, ZIP+4: Col, SC 29202

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Rogers Townsend & Thomas
PO Box 100200
Col, SC
29202

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by (Printed Name)
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label)

PS Form 3811, July 2013 Domestic Return Receipt

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2013-CP-26-2528
Branch Banking and	)	
Trust Company	)	
Plaintiff,	)	
	)	
vs.	)	Motion: Lack of Jurisdiction,
Cindy B. Hunt; Willow Greens	)	SCRCP 59 and SCRCP 60
Homeowners Association, Inc.;	)	re Order filed on 1/13/2015.
CJ Developers, LLC.	)	
Defendant(s)	)	
_____	)	

2015 JAN 13 PM 1:18
CLERK OF COURT

This motion is supported by all the exhibits[1] in this matter and the prior pleadings at c/a 4:09-cv-2151-JMC-TER; c/a 4:11-cv-00870-MGL-TER;[2] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[3] and all the pleadings in the present matter at Case No: 2013-CP-26-2528[4] aka c/a 4:14-cv-04352-BHH-TER[5] where this matter has been in dispute/litigation for seven years (1/2008 – 8/2015).

Lack of Jurisdiction, SCRCP 59 and SCRCP 60: The order filed on 1/13/2015 that granted BBT's second motion to dismiss all of Hunt's first amended counterclaims and defenses should be vacated as void based on the following –

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[1] See Hunt's affidavits at exhibit #s 3, 26 and 46; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act; and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Exhibits 1-52 were submitted in the USDC without objection by BBT and includes five affidavits. Here in after referred to as Lawsuit # 1 - was filed in the USDC by Hunt in 8/2009 – see exhibit # 47.

[2] Here in after referred to as Lawsuit # 2 - was filed in the USDC by Hunt in 4/2011 – see exhibit # 48.

[3] Here in after referred to as Lawsuit # 3 where the verified complaint in this civil action was filed by Hunt in this court in 7/2012 and removed by BBT to the United States District Court (USDC) in Florence, SC in 8/2013 – see exhibit # 49.

[4] Here in after referred to as Lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

[5] Removed to USDC on 11/10/2014. Remanded to State Court on 5/8/2015.

1. **Statement of relevant facts: There have been four lawsuits involving Hunt's banking relationship with BBT. Hunt asks that this court take judicial notice of these lawsuits. SCRE 201.**

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   b. **Lawsuit # 2:** c/a 4:11-cv-0870-MGL-TER (filed 4/12/2011 in the USDC by Hunt against several Defendants involving federal question jurisdiction. The USDC granted BBT's motion to dismiss. The 3/13/2013 final judgment of the USDC states: case dismissed without prejudice under FRCP 4(m). Law suit # 2 was not appealed. Hunt argues that res judicata and law of the case applies to law suit # 2);

   c. **Lawsuit # 3:** Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL-TER (filed 7/9/2012[8] in Horry County Court of Common Pleas by Hunt against BBT only. Hunt submitted a notice of withdrawal on 8/6/2012 at 10:46 am. Thereafter BBT submitted a notice of **removal**[9] on 8/6/2012 at 13:49 pm based on diversity jurisdiction. In the USDC BBT submitted a motion to dismiss based on withdrawal among other grounds for dismissal. The USDC on 3/13/2013 partially granted BBT's motion to dismiss. BBT did not file a motion to alter are amend the judgment. Law suit # 3 was not appealed. Hunt argues that res judicata and law of the case applies to law suit # 3.); and

   d. **Lawsuit # 4 is ongoing:** Case No: 2013-CP-26-2528[10] aka c/a 4:14-cv-04352-BHH-TER (filed 4/16/2013 in Horry County Court of Common Pleas by BBT against Hunt, Willow Green HOA and CJ Developers).

   e. **Lawsuit #4 - Procedural history in CASE NO: 2013-CP-26-2528:**

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[6] The claims of lawsuit # 1 were included in lawsuit #s 2-4; and Hunt timely refiled the claims from lawsuit # 1 in lawsuit #s 2-4.

[7] See case # c/a 4:09-cv-2151-JMC-TER where the USDC dismissed the federal causes of action and declined supplemental jurisdiction. Hunt made a timely motion to alter or amend. Hunt made a timely appeal and request for reconsideration to the USCA. Thereafter, Hunt timely filed law suit # 3.

[8] BBT in its foreclosure complaint in lawsuit # 4 states that the mortgage became delinquent on 7/1/2012.

[9] In its Notice of Removal for lawsuit # 3 in 8/2012 BBT cited to the already delinquent mortgage as the amount in controversy. BBT did not assert a claim for foreclosure in lawsuit #s 2-3.

[10] Here in after referred to as lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

i. BBT filed its **mortgage foreclosure action,** the 4th lawsuit in this matter, on April 16, 2013.

ii. Thereafter, Hunt filed the **original counterclaims** and defenses in this matter with her answer on 8/2/2013 where Hunt has never been served the summons, complaint, lis pendens and intervention by BBT.

iii. Instead of filing a responsive pleading to the counterclaims BBT filed the **9/5/2013 motion to dismiss under SCRCP 12(b)(6).**

iv. In February 2014 a hearing was held where BBT's motion for a **priority scheduling order was heard**. Thereafter, the scheduling order was drafted by the attorney for BBT; signed by Judge Howe on 4/30/2014; clocked by the clerk of court on 5/6/2014 and mailed to Hunt on 6/12/2014.

v. On 4/21/2014 the court heard Hunt's summary judgment motion and several other motions by Hunt.

vi. On May 20, 2014 this court held a hearing on BBT's **9/5/2013 motion to dismiss** under SCRCP 12(b)(6) where the motion to dismiss was orally granted in part and several issues were not orally ruled on and several issues were not argued by BBT. The court never made a written order based on the 5/20/2014 hearing.

vii. Hunt filed the **first amended counterclaims on 6/6/2014.** [11]

viii. BBT responded to the first amended counterclaims with the **6/25/2014 second motion to dismiss under SCRCP 12(b)(6) in lawsuit # 4 and the seventh motion to dismiss in lawsuits 1-4.**

ix. On 9/17/2014 the Court heard Hunt's motion for sanctions against BBT.[12]

x. On 10/14/2014 the Court heard **BBT's 6/25/2014 second motion to dismiss** the 6/6/2014 first amended counterclaims against BBT.

xi. On 10/28/2014 the Court filed a form 4 judgment stating that Hunt's motion for entry of default was denied as moot where all first amended counterclaims were dismissed following a hearing on 10/14/2014 for BBT's second motion to dismiss.

xii. Hunt submitted a notice of **removal** to the State Court and USDC on 11/10/2014.

1. **On 1/12/2015 the State Court Judge signed an order dismissing the first amended counterclaims of Defendant Hunt.**
2. The Court on 1/13/2015 made a written order based on the 10/14/2014 hearing.
3. **On 1/13/2015 the Clerk of the Horry County State Court entered the order of dismissal into the computer system.**[13]

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[11] Hunt reasserts her 8/2/2013 ANSWER with defenses.

[12] Hunt submitted a brief in support of the motion for sanctions. BBT did not submit a brief. The court denied Hunt's motion for sanctions against BBT based on the affidavits of Teal and Chestnut.

[13] Over six months elapsed were Hunt had no knowledge of the 1/13/2015 Order. Thereafter, on 5/27/2015 when Hunt learned of the 1/13/2015 from the computers at the Clerk of Court Office Hunt was unable to

4. Thereafter, the Magistrate of the USDC made a Report and Recommendation. No objections were made to the report and recommendations of the magistrate. The USDC adopted the recommendations of the US magistrate and the case was **remanded** to state court on 5/8/2015. BBT did not file a motion to alter are amend the judgment. Law suit # 4 was not appealed. Hunt argues that res judicata and law of the case applies to law suit # 4 as per the removal and remand to State Court.
5. The civil docket of the State Court shows that the **order of remand was received** by the State Court on 5/11/2015.
6. **Hunt received a copy of the 1/13/2015 order on 8/10/2015.**[14]

xiii. **On 5/27/2015 Hunt filed a motion for attorney fees. And this motion was denied in an order filed on 6/3/2015. Hunt received a copy of this order on 8/10/2015 from the clerk of court after a written request to the clerk of court.**

2. **28 USC 1446(d) states:** Notice to Adverse Parties and State Court.— Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and **the State court shall proceed no further unless and until the case is remanded.**

3. **After Removal and Prior to Remand:** The order filed on 1/13/2015 that granted BBT's motion to dismiss all of the counterclaims contained in the first amended counterclaims and defenses **was filed** after the Removal of this matter to the USDC on 11/10/2014 and prior to 5/08/2015 Order of Remand back to State Court which was received by State Court on 5/11/2015.

4. **Lawsuit # 3: BBT's Motion to Dismiss in the USDC (filed 8/9/2012)**[15] **- No preservation of arguments for any issue asserted as to the motion to dismiss that was filed in the USDC:** The USDC on 3/13/2013 granted BBT's motion to dismiss based solely on withdrawal. This was a partial dismissal. BBT did not file a motion to alter are amend the judgment to preserve the other issues not ruled on by the USDC. Law suit # 3 was not appealed.

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print the order from the computer and there was no paper copy of the order in the file. Hunt requested from the clerk of court a copy of all orders filed in 2015. Thereafter, Hunt received from the clerk of court on August 10, 2015 three orders filed on 1/13/2015, 5/11/2015 and 6/3/2015. Hunt argues that this late receipt of this order that was filed after removal and prior to remand was intended to frustrate entry of default/default judgment.

[14] The very late receipt of this order deprived Hunt of submitting the order to the USDC to be vacated.

[15] See exhibit # 49 entry # 9.

5. **Lawsuit # 4: First Motion to Dismiss in State Court[16] (filed 9/6/2013)[17] - No preservation of arguments for any issue asserted as to the first motion to dismiss:** On May 20, 2014 a hearing was held on the first motion to dismiss. The court made oral rulings at the hearing. Thereafter, the court did not make any written order as to the first motion to dismiss. And BBT did not make a motion under SCRCP 59 to preserve any arguments asserted in the first motion to dismiss, at the hearing or in emails to Judge Howe.

6. **Lawsuit # 4: Second Motion to Dismiss in State Court (filed 6/25/2015)[18] - No preservation of arguments:** On October 14, 2014 a hearing was held on the second motion to dismiss. The court made oral rulings at the hearing. Based on the oral rulings the court denied Hunt's request for entry of default/default judgment. After the hearing on BBT's second motion to dismiss the Court did file on 1/13/2015 a written order based on the hearing.

   BBT was silent at the 10/14/2014 hearing and in the 1/13/2015 written order as to attorney fees to Hunt and on several other issues. BBT did not make a motion to preserve the several arguments that were contained in the second motion to dismiss but were not raised at the hearing; and BBT did not make a motion to preserve the several arguments that were not included in the written order that was filed on 1/13/2015.

Hunt argues that the 1/13/2015 Order is void for lack of jurisdiction **where the Order was filed** after the Removal of this matter to the USDC on 11/10/2014 and prior to 5/08/2015 Order of Remand back to State Court. *State of South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir., 1971).*

Hunt respectfully moves the Court for an Order vacating as void the Court's Order that granted BBT's motion to dismiss all of the counterclaims contained in the first amended counterclaims and defenses.

Respectfully submitted,

Cindy B. Hunt,
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: August 11, 2015

[16] The arguments asserted by BBT in the 9/6/2013 motion to dismiss were the same as the unpreserved arguments in the motion to dismiss that was filed in lawsuit # 3 at exhibit # 49 entry # 9.
[17] On 8/2/2013 Hunt filed an answer and defenses, the original counterclaims, etc.
[18] On 6/6/2014 Hunt filed the first amended counterclaims and defenses and Hunt reasserted her answer and defenses.

Blank

State of South Carolina) IN THE COURT OF COMMON PLEAS

County of Horry) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO: 2013-CP-26-2528

Branch Banking and)

Trust Company)

Plaintiff,)

)

vs.) Motion: Lack of Jurisdiction,

Cindy B. Hunt; Willow Greens) SCRCP 59 and SCRCP 60.

Homeowners Association, Inc.;)

CJ Developers, LLC.)

Defendant(s))

_____)

FILED
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
2015 DEC 11 PM 1:18
HORRY COUNTY

This motion is supported by all the exhibits[1] in this matter and the prior pleadings at c/a 4:09-cv-2151-JMC-TER; c/a 4:11-cv-00870-MGL-TER;[2] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[3] and all the pleadings in the present matter at Case No: 2013-CP-26-2528[4] aka c/a 4:14-cv-04352-BHH-TER[5] where this matter has been in dispute/litigation for seven years (1/2008 – 8/2015).

Lack of Jurisdiction, SCRCP 59 and SCRCP 60: The order filed on 6/03/2015 that denied Hunt's request for attorney fees under SCRCP 41 should be voided, altered or amended and or set aside based on the following –

1. **Statement of relevant facts: There have been four lawsuits involving Hunt's banking relationship with BBT. Hunt asks that this court take judicial notice of these lawsuits. SCRE 201.**

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[1] See Hunt's affidavits at exhibit #s 3, 26 and 46; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act; and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Exhibits 1-52 were submitted in the USDC without objection by BBT and includes five affidavits. Here in after referred to as Lawsuit # 1 - was filed in the USDC by Hunt in 8/2009 – see exhibit # 47.

[2] Here in after referred to as Lawsuit # 2 - was filed in the USDC by Hunt in 4/2011 – see exhibit # 48.

[3] Here in after referred to as Lawsuit # 3 where the verified complaint in this civil action was filed by Hunt in this court in 7/2012 and removed by BBT to the United States District Court (USDC) in Florence, SC in 8/2013 – see exhibit # 49.

[4] Here in after referred to as Lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

[5] Removed to USDC on 11/10/2014. Remanded to State Court on 5/8/2015.

1101

a. **Lawsuit # 1:** c/a 4:09-cv-2151-JMC-TER (filed 8/9/2009 in the USDC by Hunt against several Defendants involving federal question jurisdiction. The USDC granted BBT's motion to dismiss the federal causes of action and the court declined supplemental jurisdiction over the state law claims.[6] The USDC partially granted BBT's motion to dismiss. Hunt made a motion to alter and amend and Hunt appealed lawsuit # 1 to the USCA.[7] Hunt argues that res judicata and law of the case applies to law suit # 1);

b. **Lawsuit # 2:** c/a 4:11-cv-0870-MGL-TER (filed 4/12/2011 in the USDC by Hunt against several Defendants involving federal question jurisdiction. The USDC granted BBT's motion to dismiss. The 3/13/2013 final judgment of the USDC states: case dismissed without prejudice under FRCP 4(m). Law suit # 2 was not appealed. Hunt argues that res judicata and law of the case applies to law suit # 2);

c. **Lawsuit # 3:** Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL-TER (filed 7/9/2012[8] in Horry County Court of Common Pleas by Hunt against BBT only. Hunt submitted a notice of withdrawal on 8/6/2012 at 10:46 am. Thereafter BBT submitted a notice of **removal**[9] on 8/6/2012 at 13:49 pm based on diversity jurisdiction. In the USDC BBT submitted a motion to dismiss based on withdrawal among other grounds for dismissal. The USDC on 3/13/2013 partially granted BBT's motion to dismiss. BBT did not file a motion to alter are amend the judgment. Law suit # 3 was not appealed. Hunt argues that res judicata and law of the case applies to law suit # 3.); and

d. **Lawsuit # 4 is ongoing:** Case No: 2013-CP-26-2528[10] aka c/a 4:14-cv-04352-BHH-TER (filed 4/16/2013 in Horry County Court of Common Pleas by BBT against Hunt, Willow Green HOA and CJ Developers).

e. **Lawsuit #4 - Procedural history in CASE NO: 2013-CP-26-2528:**

   i. BBT filed its **mortgage foreclosure action,** the 4th lawsuit in this matter, on April 16, 2013.

   ii. Thereafter, Hunt filed the **original counterclaims** and defenses in this matter with her answer on 8/2/2013 where Hunt has never been served the summons, complaint, lis pendens and intervention by BBT.

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[6] The claims of lawsuit # 1 were included in lawsuit #s 2-4; and Hunt timely refiled the claims from lawsuit #-1 in lawsuit #s 2-4.

[7] See case # c/a 4:09-cv-2151-JMC-TER where the USDC dismissed the federal causes of action and declined supplemental jurisdiction. Hunt made a timely motion to alter or amend. Hunt made a timely appeal and request for reconsideration to the USCA. Thereafter, Hunt timely filed law suit # 3.

[8] BBT in its foreclosure complaint in lawsuit # 4 states that the mortgage became delinquent on 7/1/2012.

[9] In its Notice of Removal for lawsuit # 3 in 8/2012 BBT cited to the already delinquent mortgage as the amount in controversy. BBT did not assert a claim for foreclosure in lawsuit #s 2-3.

[10] Here in after referred to as lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

iii. Instead of filing a responsive pleading to the counterclaims BBT filed the **9/5/2013 motion to dismiss under SCRCP 12(b)(6).**

iv. In February 2014 a hearing was held where BBT's motion for a **priority scheduling order was heard**. Thereafter, the scheduling order was drafted by the attorney for BBT; signed by Judge Howe on 4/30/2014; clocked by the clerk of court on 5/6/2014 and mailed to Hunt on 6/12/2014.

v. On 4/21/2014 the court heard Hunt's summary judgment motion and several other motions by Hunt.

vi. On May 20, 2014 this court held a hearing on BBT's **9/5/2013 motion to dismiss** under SCRCP 12(b)(6) where the motion to dismiss was orally granted in part and several issues were not orally ruled on and several issues were not argued by BBT. The court never made a written order based on the 5/20/2014 hearing.

vii. Hunt filed the **first amended counterclaims on 6/6/2014.** [11]

viii. BBT responded to the first amended counterclaims with the **6/25/2014 second motion to dismiss under SCRCP 12(b)(6) in lawsuit # 4 and the seventh motion to dismiss in lawsuits 1-4.**

ix. On 9/17/2014 the Court heard Hunt's motion for sanctions against BBT.[12]

x. On 10/14/2014 the Court heard **BBT's 6/25/2014 second motion to dismiss** the 6/6/2014 first amended counterclaims against BBT.

xi. On 10/28/2014 the Court filed a form 4 judgment stating that Hunt's motion for entry of default was denied as moot where all first amended counterclaims were dismissed following a hearing on 10/14/2014 for BBT's second motion to dismiss.

xii. Hunt submitted a notice of **removal** to the State Court and USDC on 11/10/2014.

1. **On 1/12/2015 the State Court Judge signed an order dismissing the first amended counterclaims of Defendant Hunt.**
2. The Court on 1/13/2015 made a written order based on the 10/14/2014 hearing.
3. **On 1/13/2015 the Clerk of the Horry County State Court entered the order of dismissal into the computer system.**[13]

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[11] Hunt reasserts her 8/2/2013 ANSWER with defenses.

[12] Hunt submitted a brief in support of the motion for sanctions. BBT did not submit a brief. The court denied Hunt's motion for sanctions against BBT based on the affidavits of Teal and Chestnut.

[13] Over six months elapsed were Hunt had no knowledge of the 1/13/2015 Order. Thereafter, on 5/27/2015 when Hunt learned of the 1/13/2015 from the computers at the Clerk of Court Office Hunt was unable to print the order from the computer and there was no paper copy of the order in the file. Hunt requested from the clerk of court (mailed on 7/27/2015 and filed on 7/31/2015) a copy of all orders filed in 2015. Thereafter, Hunt received from the clerk of court on August 10, 2015 three orders filed on 1/13/2015, 5/11/2015 and 6/3/2015. Hunt argues that the late mailing to Hunt of the orders filed on 1/13/2015 (dismissal of counterclaims) and 6/3/2015 (denial of attorney fees) is intended to frustrate and deprive Hunt

4. Thereafter, the Magistrate of the USDC made a Report and Recommendation. No objections were made to the report and recommendations of the magistrate. The USDC adopted the recommendations of the US magistrate and the case was **remanded** to state court on 5/8/2015. BBT did not file a motion to alter are amend the judgment. Law suit # 4 was not appealed. Hunt argues that res judicata and law of the case applies to law suit # 4 as per the removal and remand to State Court.
5. The civil docket of the State Court shows that the **order of remand was received** by the State Court on 5/11/2015.
6. **Hunt received a copy of the 1/13/2015 order on 8/10/2015.**[14]

xiii. **On 5/27/2015 Hunt filed a motion for attorney fees. And this motion was denied in an order filed on 6/3/2015. Hunt received a copy of this order on 8/10/2015 from the clerk of court after a written request.**

2. **Payment to other attorneys by Hunt:** Attorneys involved in this matter in lawsuit #s 1-3 include Laura Valtorta, Desa Ballard[15] and CB Hunt where at varying times Hunt has been either the Plaintiff or Defendant. Hunt has paid $8,000.00 to attorneys Valtorta and Ballard. The affidavits at exhibit #s 26 and 46 show the attorney fees that were paid to Valtorta and Ballard. The affidavits at exhibit #s 26 and 46 were submitted in this court and the USDC without objection by BBT.

3. **The costs in lawsuit #s 1-3 are $3405.00 as shown at exhibit # 46 footnotes 5 and 6.**

4. **Lawsuit # 3: BBT's Motion to Dismiss in the USDC (filed 8/9/2012)[16] - No preservation of arguments for any issue asserted as to the motion to dismiss that was filed in the USDC:** The USDC on 3/13/2013 granted BBT's motion to dismiss based solely on withdrawal. This was a partial dismissal. BBT did not file a motion to alter are amend the judgment to preserve the other issues not ruled on by the USDC. Law suit # 3 was not appealed.

5. **Lawsuit # 4: First Motion to Dismiss in State Court[17] (filed 9/6/2013)[18] - No preservation of arguments against Attorney Fees to Hunt re first**

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of an entry of default/default judgment based on the order filed on 10/28/2014 (denying entry of default judgment as moot) and Hunt's motion to alter or amend (filed on 10/30/2014).

[14] The very late mailing and receipt of the 1/13/2015 order deprived Hunt of submitting the order to the USDC to be vacated; and caused Hunt to file the 5/27/2015 motion for attorney fees.

[15] See exhibit 46 at paragraph 22 where Hunt states that she has already paid attorney fees of $ 8,000.00; and see exhibit # 26 at page 3 at paragraph k.

[16] See exhibit # 49 entry # 9.

[17] The arguments asserted by BBT in the 9/6/2013 motion to dismiss were the same as the unpreserved arguments in the motion to dismiss that was filed in lawsuit # 3 at exhibit # 49 entry # 9.

motion to dismiss: BBT's first motion to dismiss states: the counterclaims fail to allege any basis for an award attorney fees or costs. At the hearing on the first motion to dismiss BBT was silent as to attorney fees to Hunt. After the hearing on BBT's first motion to dismiss the Court has never made a written order based on arguments contained in the first motion to dismiss or those made or not made at the hearing. Thereafter, BBT has never made a motion to preserve the arguments made or not at the hearing on the first motion to dismiss or those contained in the first motion to dismiss.

6. **Lawsuit # 4: Second Motion to Dismiss in State Court (filed 6/25/2015)[19] - No preservation of arguments:** BBT's second motion to dismiss states: the counterclaims fail to allege any basis for an award attorney fees or costs. On October 14, 2014 a hearing was held on the second motion to dismiss. At the hearing on the second motion to dismiss BBT was silent as to attorney fees/costs to Hunt and several other issues. The court made oral rulings at the hearing. Based on the oral rulings the court denied Hunt's request for entry of default/default judgment in an order filed on 10/28/2014. After the hearing on BBT's second motion to dismiss the Court did file on 1/13/2015 a written order based on the hearing.
   In addition to silence at the hearing on attorney fees/costs to Hunt, the 1/13/2015 order was also silent re attorney fees to Hunt and several other issues. BBT did not make a motion to preserve the several arguments that were contained in the second motion to dismiss but were not raised at the hearing; and BBT did not make a motion to preserve the several arguments that were not included in the written order that was filed on 1/13/2015.

   And Hunt continues to argue that the 1/13/2015 order is void.

7. **BBT did not object to Hunt's request for attorney fees under SCRCP 41 where no hearing was held and BBT did not submit a written response to the motion. The court's ruling has been supplied by the court for BBT.**

8. **Hunt lacked knowledge of the 1/13/2015 Order:**

   a. **After Removal and Prior to Remand: 28 USC 1446(d) states:** Notice to Adverse Parties and State Court.— Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and **the State court shall proceed no further unless and until the case is remanded.**

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[18] On 8/2/2013 Hunt filed an answer and defenses, the original counterclaims, etc.
[19] On 6/6/2014 Hunt filed the first amended counterclaims and defenses and Hunt reasserted her answer and defenses.

Hunt argues that the 1/13/2015 Order is void for lack of jurisdiction **where the Order was filed** after the Removal of this matter to the USDC on 11/10/2014 and prior to 5/08/2015 Order of Remand back to State Court. *State of South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir., 1971).*

b. The order filed on 6/03/2015 that denied attorney fees to Hunt as per the motion that was filed on 5/27/2015 under SCRCP 41 was filed where Hunt had no knowledge of the order filed on 1/13/2015.

Hunt respectfully moves the Court for an Order altering, amending, setting aside and or vacating as void the 6/03/2015 Order that denied Hunt's request for attorney fees/costs under SCRCP 41; and Hunt respectfully moves the Court for an Order granting the attorney fees/costs of $2,668,905.00.

Respectfully submitted,

CB Hunt

Cindy B. Hunt,
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: August 11, 2015

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

CINDY HUNT Plaintiff, vs. BRANCH BANKING AND TRUST COMPANY, Defendant.	NOTICE OF REMOVAL C/A No.

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§1441 and 1446, the below-described action is being removed from the Court of Common Pleas in Horry County to this Court. In support of this Notice, Branch Banking and Trust Company ("BB&T") alleges:

1. On July 9, 2012 an action was filed against BB&T in the Court of Common Pleas of Horry County, State of South Carolina, Civil Action No. 2012-CP-26-5264, and is now pending therein.

2. On July 10, 2012, BB&T was served with a Summons and Complaint in the above-described action. Said Summons and Complaint is attached as Exhibit A hereto and incorporated herein by reference.

3. This Notice of Removal is filed within 30 days after service of said Summons and Complaint on Defendant and an Answer is not yet due.

4. No further proceedings have been had in the Court of Common Pleas of Horry County, State of South Carolina.

1107

5. BB&T is a corporation organized under the laws of the State of North Carolina with its principal place of business in Winston-Salem, North Carolina and is, therefore, a citizen of the State of North Carolina.

6. The Plaintiff is a citizen and resident of Horry County, South Carolina.

7. The amount in controversy, as alleged in the Complaint, is in excess of $75,000.00 (exclusive of interest and costs) as the Complaint, among other remedies, seeks cancellation of a Mortgage with a principal of approximately $140,069.48 (as shown in Exhibit A to the State Court Complaint).

8. This Court would have original jurisdiction in this matter pursuant to 28 U.S.C. §1332.

9. Venue in this District is appropriate under 28 U.S.C. §1391(a)(2) as a substantial part of the events or alleged omissions giving rise to the claim occurred in this District.

10. As a result of the facts stated above, BB&T is entitled to the removal of this action to this Court pursuant to 28 U.S.C. §1441(a) as this Court would have original jurisdiction over the claims set forth in the Complaint pursuant to 28 U.S.C. §1332.

11. A copy of the Notice of this removal which, upon filing of this petition with this Court, will be provided to the Plaintiff and filed with the Horry County, South Carolina Clerk of Court is attached as Exhibit B (without Exhibits).

12. The undersigned counsel for BB&T files this Notice of Removal within the strictures of FRCP 11 and asserts that the same is filed in good faith.

1108

WHEREFORE, BB&T prays that the above-entitled action be removed from the Horry County Court of Common Pleas, State of South Carolina to this Court.

Dated this August 4, 2012.

LAW OFFICE OF STEVEN B. LICATA, P.C.
9365 Two Notch Road, Suite C
Post Office Box 23407
Columbia, South Carolina 29224-3407
Phone: (803) 699-6550
Facsimile: (803) 699-9858
E-Mail: Slicata@sc.rr.com

s/ Steven B. Licata
Steven B. Licata
District Court ID No. 2682
Attorneys for BB&T

Columbia, South Carolina

1109

Case No.: 2013-CP-26-2528

Exhibit # 80

Notice of Removal to the USDC

CERTIFICATE OF SERVICE BY MAIL

State Civil Action # 2013-CP-26-2528

USDC c/a:

2014 NOV 10 PM 1:17

I, the undersigned Pro Se Defendant and attorney, do hereby certify that I have served a copy of the below listed document by US Mail, postage prepaid, on 10 November 2014, at the following addresses:

Document(s) Served:

Notice of Removal of Civil Action # 2013-CP-26-2528 to the USDC.

To:

The Honorable Melanie Huggins-Ward
Clerk of Court for Horry County
PO Box 677
Conway, SC 29526

Hand Delivered

FILED
HORRY COUNTY
2014 NOV 10 PM 2:56
MELANIE HUGGINS-WARD
CLERK OF COURT

Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29202

Thank You,

C B Hunt

Cindy B. Hunt, Pro Se.
195 D Willow Green Dr
Conway, SC 29526
843 488-1131

1111

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

2014 NOV 10 PM 1:17

Branch Banking and)
Trust Company)
Plaintiff,)
)
vs.)
Cindy B. Hunt; Willow Greens)
Homeowners Association, Inc.;)
CJ Developers, LLC.)
Defendant(s))

NOTICE OF REMOVAL TO THE USDC

C/A No.:

FILED
HORRY COUNTY
2014 NOV 10 PM 2:56
MELANIE HUGGINS-WARD
CLERK OF COURT

This notice of removal is supported by all the exhibits in this matter and the prior pleadings and documents at c/a 4:09-cv-2151-JMC-TER;[1] c/a 4:11-cv-00870-MGL-TER;[2] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[3] and all the pleadings

[1] Here in after referred to as lawsuit # 1. Exhibit #s 1-52 were submitted in the USDC without objection by BBT and included five affidavits from Hunt and Davis. See Hunt's affidavits at exhibit #s 3, 26, 46 and 70; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act (GLBA); and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Lawsuit # 1 - was filed in the USDC by Hunt in 8/9/2009 – see exhibit # 47. Hunt argues that the USDC at exhibit # 47 entry # 108 ruled on the motion to dismiss at exhibit # 47 entry # 38 resulting in a dismissal of lawsuit # 1 to save the then Defendant BBT and employees from the allegations in the TAC at exhibit # 47 entry #s 105 and 105-1. Lawsuit # 1 was appealed to the USCA. At exhibit # 40 without a finding of subject matter jurisdiction and in an unpublished opinion that lacked substance the USCA affirmed the decision of the USDC. Thereafter, the USCA denied Hunt's request for reconsideration on June 26, 2012 at exhibit # 40 where the USCA said "we have received your applicable request for reconsideration – it is denied.

[2] Here in after referred to as lawsuit # 2 - was filed in the USDC by Hunt on 4/12/2011 – see exhibit # 48. Lawsuit # 2 was filed before lawsuit # 1 was appealed. Hunt argues that the USDC dismissed lawsuit # 2 to save the then Defendant BBT and employees from the allegations in the FAC at exhibit # 49 entry # 15-8.

[3] Here in after referred to as lawsuit # 3 where the verified complaint in lawsuit # 3 consisted of only state causes of action was filed by Hunt in the Horry County Court of Common Pleas on 7/9/2012 where Hunt was trying to follow the instructions of the USCA; lawsuit # 3 was thereafter removed by BBT based on diversity jurisdiction to the USDC in Florence, SC on 8/6/2012 where BBT was looking for additional help – see exhibit # 49. **Lawsuit # 3 was not appealed to the USCA.**

and documents in the present matter at Case No: 2013-CP-26-2528[4] where this matter has been in dispute/litigation for six years (1/2008 – present day).[5]

TO: **THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA**

1. PLEASE TAKE NOTICE that, pursuant to 28 USC 1441, 1446 and Donovan v. Dallas, 377 U.S. 408, 411, 84 S.Ct. 1579, 12 L.Ed.2d 409 (1964), the below – described action is being removed from the Court of Common Pleas / Master in Equity Horry County to this Court.

In support of this Notice, Hunt alleges:

2. This is the 4th law suit between Hunt and BBT.

    a. **Law suit # 1:** c/a 4:09-cv–2151-JMC-TER (filed 8/9/2009 in the USDC)
    b. **Law suit # 2:** c/a 4:11-cv-0870-MGL-TER (filed 4/12/2011 in the USDC)
    c. **Law suit # 3:** Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL-TER (filed 7/9/2012[6] in Horry County Court of Common Pleas and **removed** to the USDC by BBT[7] on 8/6/2012 at 13:49 pm)

3. Hunt filed law suits #s 1-2 in the USDC. Law suit # 1 was appealed to the USCA.[8] Law suit # 2 was not appealed.

4. Hunt filed law suit # 3 in the Horry County Court of Common Pleas, State of South Carolina on 7/9/2012; Hunt filed a notice of voluntary withdrawal on 8/6/ 2012 at 10:46 am in law suit # 3. Thereafter, **BBT removed law suit # 3 to the USDC based on diversity jurisdiction.** After removal to the USDC – BBT filed a motion to dismiss under FRCP 12(b)(6). The Magistrate Judge recommended that the Court grant BBT's motion to dismiss (ECF No. 22 of law suit # 3). The USDC adopted the Magistrate's report and recommendation and granted BBT motion to dismiss based on withdrawal of the complaint in law suit # 3 from State Court under SCRCP 41(a)(1)[9] prior to removal by BBT. The Magistrate did not rule on the other issues in BBT's motion to dismiss.[10] BBT did not make a motion to alter or amend re the other issues in the motion to dismiss that were not ruled

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[4] Here in after referred to as lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

[5] Communications with BBT (Fogle, Teal and Craven) were had from 1/22/2008 – 3/2008. An FDIC proceeding was held from 3/2008 – 9/2008. Four lawsuits have been filed from 8/2009 – present.

[6] BBT in its foreclosure complaint in law suit # 4 states that the mortgage became delinquent on 7/1/2012.

[7] In its Notice of Removal for law suit # 3 in 8/2012 BBT cited to the mortgage as the amount in controversy.

[8] See case # c/a 4:09-cv–2151-JMC-TER where the USDC dismissed the federal causes of action and declined supplemental jurisdiction. Hunt made a timely motion to alter or amend. Hunt made a timely appeal and request for reconsideration to the USCA. Thereafter, Hunt timely filed law suit # 3.

[9] BBT did not object to or place any restrictions on the dismissal under SCRCP 41(a)(1).

[10] Hunt argues that these other issues of the motion to dismiss in law suit # 3 have been waived and abandoned and are law of the case.

on. Law suit # 3 was not appeal. The exclusive jurisdiction of the USDC had attached.[11] Hunt (Plaintiff in law suit # 3) had a right to have her case heard in the USDC. Donovan v. Dallas, 377 U.S. 408, 411, 84 S.Ct. 1579, 12 L.Ed.2d 409 (1964).

5. Hunt alleges that BBT **disliked the outcome of law suit # 3** where the Magistrate did not rule on the other issues (statute of limitations, objections to punitive damages, attorney fees, costs, each cause of action, etc.) in BBT's motion to dismiss in law suit # 3. Thereafter, BBT went forum shopping for a forum that would allow BBT to file motions to dismiss under Rule 12(b)(6) involving the issues that the Magistrate did not reach in law suit # 3. Hunt alleges that BBT took steps in law suit # 4 to make it look like the USDC lacked diversity jurisdiction where BBT named sham defendants, etc. in its efforts to avoid facing the USDC and the law of the case from law suit # 3.

6. **Law suit # 4:** On April 16, 2013 BBT filed an action against Hunt, Willow Greens HOA and CJ Developers in the Court of Common Pleas / of Horry County, State of South Carolina, Civil Action No 2013 CP 26 2528, where law suit # 4 is now pending therein.

7. **Jurisdiction:** The USDC has exclusive jurisdiction in this matter based on law suits #s 1-3 being filed in or removed to the USDC after notice of voluntary dismissal under SCRCP 41(a)(1). Donovan v. Dallas, 377 U.S. 408, 411, 84 S.Ct. 1579, 12 L.Ed.2d 409 (1964).

8. **Jurisdiction:** This Court would also have original jurisdiction in this matter pursuant to 28 USC 1332.

9. On July 30, 2013, in law suit # 4, Hunt filed objections to the affidavits of non service that were submitted by BBT.

10. On 8/2/2013, **in law suit # 4**, Defendant Hunt filed an answer, defenses, counterclaims[12] and a motion for summary judgment where Hunt stated that she did not waive service of process.

11. Among other things, so far in **law suit # 4**, instead of answering or replying to the counterclaims / amended counterclaims BBT has been able to file at least two motions to dismiss under Rule 12(b)(6) involving the now waived and abandoned issues that the Magistrate did not reach in law suit # 3.

[11] Hunt just came to realize that the USDC had exclusive jurisdiction in this matter.
[12] These counterclaims in law suit # 4 are the same as the causes of action in the Complaint of law suit # 3.

12. Hunt's 8/13/2013 waiver of service of process in law suit # 4 states:

a. The Horry County Clerk of Court has signed an Order for Publication in this matter on August 12, 2013 for the summons, [notice of foreclosure] intervention and [notice of filing of the complaint].[13]

b. As such, based on the signed Order of Publication Hunt now **waives service of process** by BBT where the waiver is effective when the answer, counterclaims/defenses and summary judgment were filed on August 2, 2013.

c. Based on Hunt's waiver of service – service has now been accomplished by other means such that there is no need for service by publication as stated in the signed order of publication.

d. Hunt reserves all arguments under SCRCP, SC statutory, common laws, etc.; and Hunt continues to dispute the complaint, intervention, lis pendens and the affidavits of non service/service, affidavit in support of the order for publication, order for publication by the Court; and all other documents submitted by BBT in this matter.

13. Hunt continues to argue that the order of publication in law suit # 4 was defective and fraudulent.

14. Hunt has never been served with the summons and complaint in the above described pending action in law suit # 4.[14]

15. This Notice of Removal is timely filed where this USDC has exclusive jurisdiction in this matter based on law suits #s 1-3. Donovan v. Dallas, 377 U.S. 408, 411, 84 S.Ct. 1579, 12 L.Ed.2d 409 (1964).

16. This Notice of Removal is timely filed where Hunt has never been served with the summons and complaint in the above described pending action of law suit # 4.

17. This Notice of Removal is timely filed where defendant BBT in law suit # 3 timely removed law suit # 3 to the USDC based on diversity of jurisdiction where law suit # 3 was dismissed pursuant to SCRCP 41(a)(1). As such, through law suit # 3 BBT agreed that the next lawsuit involving the subject matter of lawsuit # 3 would be subject to the jurisdiction of the USDC.

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[13] The order for publication did not include the lis pendens.

[14] BBT has never served Hunt via the US postal service.

18. This Notice of Removal is timely filed where Hunt alleges that BBT has engaged in bad faith, abuse of legal process, fraud upon the state court, violation of the court's order in law suit # 3 where BBT asked the Court through its motion to dismiss to dismiss law suit # 3 under SCRCP 41(a)(1) and improper forum shopping in the above described pending action of law suit # 4.

19. The state court in law suit # 4 has asserted personal jurisdiction over Hunt based on "appearance."

20. BBT is a corporation organized under the laws of the State of North Carolina with its principal place of business in Winston - Salem, North Carolina and is therefore, a citizen of the State of North Carolina.

21. Hunt is a citizen and resident of Horry County, South Carolina.

22. CJ Developers as per the SC Secretary of website was dissolved in 2006. CJ Developers has not filed any documents in this matter. CJ Developers is in default. No claims have been asserted against CJ Developers. CJ Developers was a sham defendant.

23. Willow Greens is a corporation organized under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina and is therefore, a citizen of the State of South Carolina.

24. Willow Greens Home Owners Association filed an answer on 5/6/2013. Hunt was not served with a copy of the answer of Willow Greens. And the attorney for Willow Greens told Hunt that he did not file an answer. Willow Greens withdrew its answer on 11/05/2013. The attorney for Willow Greens never made a court appearance. Willow Greens is in default. No claims have been asserted against Willow Greens. Willow Greens was a sham defendant.

25. The amount in controversy, as alleged in the Complaint, is in excess of $75, 000.00 (exclusive of interest and costs), as the Complaint, of a Mortgage with a principal of approximately $137, 166.75.48 (as shown on the face of the State Court Complaint at paragraph 11.).

26. The amount in controversy, as alleged in the counterclaims, is in excess of $75, 000.00 (exclusive of interest and costs), as the counterclaims, of a Mortgage with a principal of approximately $137, 166.75.48 (as shown on the face of the counterclaims at paragraph # 290); and coastal gold benefits of $150,000.00 (as shown on the face of the counterclaims at paragraph # 16).

27. Copies of the record: Hunt requests that this USDC obtain the records from the state court by issuing a writ of certiorari. 28 USC 1447(b).

amended lis pendens

Attachments to the Notice of Removal: The objection to affidavit of non service, affidavit for order of publication, order of publication, affidavits of service / non service, waiver of service of process, summons, complaint, intervention; lis pendens, answer with defenses, counterclaims, first amended counterclaims and **orders** re: emergency hearing, order of reference, scheduling order, hearing held on 4/21/2014, sanctions for spoliation of evidence and default are attached to the Notice of Removal.

28. Venue in this District is appropriate under 28 USC 1391(a)(2) as a substantial part of the events or alleged omissions giving rise to the claims occurred in this District. The property in the complaint and counterclaims is located in Horry County, South Carolina.

29. As a result of the facts stated above, Defendant Hunt is entitled to the removal of this action to this Court pursuant to 28 USC 1441(a) as this Court would have original jurisdiction and or exclusive jurisdiction over the claims set for in the foreclosure complaint and or the counterclaims pursuant to 28 USC 1332 and or pursuant to Donovan v. Dallas, 377 U.S. 408, 411, 84 S.Ct. 1579, 12 L.Ed.2d 409 (1964) based on lawsuits 1-3.

30. A copy of the Notice of Removal which upon filing of this petition with this Court will be provided to the Plaintiff BBT and filed with the Horry County, South Carolina Clerk of Court, without exhibits.

31. The undersigned, pro se defendant, files this Notice of Removal within the strictures of FRCP 11 and asserts that the same is filed in good faith.

Wherefore, Hunt prays that the above entitled action be removed from the Horry County Court of Common Pleas / Master In Equity, State of South Carolina to this Court.

Respectfully submitted,

CB Hunt

Cindy B. Hunt, Defendant
Pro Se
195 D Willow Green
Drive Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: November 10, 2014

Blank

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2013-CP-26-2528
Branch Banking and	)	
Trust Company	)	
Plaintiff,	)	
	)	BRIEF in opposition to the
vs.	)	motion to dismiss
Cindy B. Hunt; Willow Greens	)	
Homeowners Association, Inc.;	)	
CJ Developers, LLC.	)	
Defendant(s)	)	
	)	

FILED
HORRY COUNTY
2014 OCT 16 PM 12:50
MELANIE HUGGINS-WARD
CLERK OF COURT

On the first page of the counterclaims the following was written:

These counterclaims are supported by the prior pleadings at c/a 4:09-cv-2151-JMC-TER; c/a 4:11-cv-00870-MGL; and CASE NO: 2012-CP-26-5264 which was removed to the USDC as c/a 4:12-cv-02216-MGL. FN 1: Hunt asserts that all of these counterclaims have been admitted by BBT where the USDC states that BBT did not answer Hunt's complaint at exhibit 43 (Doc. # 30 on page 4). SCRCP 12(a) and SCRCP 8(d).

Affidavits by Hunt: See attached exhibit # 46; and in CASE NO: 2012-CP-26-5264 see exhibit #s 3 and 26.

Hunt has not been served by BBT.

Hunt objects to this hearing on the motion to dismiss as follows:

Hunt has never been served the summons, complaint, lis pendens and intervention by BBT in this matter.

Hunt argues that if this court hears the motion to dismiss where Hunt has never been served the summons, complaint, lis pendens and intervention by BBT in this matter that Hunt will be deprived of due process involving foreclosure on Hunt's home for the past eleven years.

The motion to dismiss filed by BBT on 9/05/2013 and scheduled to be heard on 5/20/2014 violates the order of the SCSC at In re Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (S.C. 2011) where the order states -

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"In all mortgage foreclosure actions filed after May 9, 2011,[1] the Mortgagee's attorney shall serve on the Mortgagor, **along with the summons and complaint, a notice of the Mortgagor's right to foreclosure intervention.**

No foreclosure hearing[2] may be held in the foreclosure action until the Mortgagee's attorney certifies[3] that the Mortgagee has complied with the requirements of paragraphs B(1)(a) through (e) [].[4]

If within thirty days after having been served[5] with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify[6] that fact to the Court, and the foreclosure action may proceed." [7]

---

[1] This barred foreclosure action was filed on April 16, 2013.

[2] This motion to dismiss hearing is a **foreclosure hearing** where the dismissal of any one of the counterclaims will impact Hunts ability to defend the foreclosure complaint.

[3] The attorneys for mortgagee BBT – through the attorney certification that is currently in the file - are falsely certifying that the mortgagee BBT has complied with the requirements of paragraphs B(1)(a) through (e) of In re Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (S.C. 2011).

[4] (a) that the Mortgagor has been served with a notice of the Mortgagor's right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation;
(b) that the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention;
(c) that the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee;
(d) that after completion of the foreclosure intervention process, the Mortgagor does not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process; and, (e) that notice of the denial of loan modification or other means of loss mitigation has been served on the Mortgagor by mailing such notice to all known addresses of the Mortgagor; provided, that such notice shall also state that the Mortgagor has 30 days from the date of mailing of notice of denial of relief to file and serve an answer or other response to the Mortgagee's summons and complaint.

If within thirty days after having been served with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify that fact to the Court, and the foreclosure action may proceed.

[5] The attorneys for mortgagee BBT have never served Hunt the summons, complaint or notice of the Mortgagor's right to foreclosure intervention. Such that, the condition of "within thirty days after being served" can not be satisfied.

[6] The attorneys for mortgagee BBT are falsely certifying that the mortgagee BBT has complied with the requirements of paragraphs B(1)(a) through (e).

[7] As stated here BBT has failed to satisfy the requirements of the SCSC as stated at In re Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (S.C. 2011) where the absence of the satisfaction of those requirements applies to all of the pleadings, motions, hearings etc submitted by BBT.

Lawsuit # 1:

When this matter was in the USDC the active complaint, the second amended complaint (SAC), in lawsuit # 1 included seven Defendants and is as shown at exhibit # 47 entry # 38. Some of the seven Defendants were lawyers.

In September 2010 Hunt asserted in a hearing before Magistrate Judge Rogers that BBT had "pulled a fast one on the FDIC".

Proposed TAC at exhibit # 47 entry # 105-1: Thereafter, in an effort to show Judge Rogers how BBT had pulled a fast one on the FDIC Hunt filed a motion to amend and a third amended complaint (TAC) at exhibit # 47 entry #s 105 & 105-1.

The motion to amend and the TAC at exhibit # 47 entry #s 105 and 105-1 had federal and state causes of action labeled A through S. The allegations in those causes of action included fraud upon the FDIC and unclean hands, etc.

At exhibit # 47 entry # 108 BBT filed a **required response**[8] to the motion and proposed TAC in lawsuit # 1. Hunt argues that the allegations in the proposed TAC caused the Defendants to seek the immediate shut down of the proposed TAC where the Defendants had already waived service or been served.

The Deal: Hunt argues that BBT in its **required response** at exhibit # 47 entry # 108 to the TAC cut a deal with the USDC without consulting Hunt. Hunt argues that the deal suggested by BBT through it's **required response** at exhibit # 47 entry # 108 as to the SAC and the proposed TAC at exhibit # 47 entry # 105-1 included the following scheme –

> Dismissal of the three federal causes of action in SAC: 18 USC 1005, 18 USC 1030 and 12 USC 1972 in the SAC based on the pending motion to dismiss in lawsuit # 1;
>
> Decline supplemental jurisdiction as to the remaining six causes of action (first, fourth, fifth, sixth, seventh and eight causes of action) in the SAC;
>
> And a finding that the proposed TAC was untimely.
>
> **Admissions:** However, at exhibit # 47 entry # 108 BBT did not deny any of the allegations in the TAC at exhibit # 47 entry #s 105 and 105-1.
>
> As such, Hunt argues that BBT admitted all of the allegations at exhibit # 47 entry #s 105 and 105-1 where at exhibit # 47 entry # 108 BBT did not deny any of the allegations in the TAC to the TAC.

Lawsuit # 4:

To some degree all of the causes of action in lawsuit # 4 come from and are the same as the admitted allegations asserted in lawsuit # 1 at exhibit # 47 entry #s 105 and 105-1. Such that the objections to the counterclaims in the motion to dismiss are moot where the counterclaims have been admitted. Thus, in lawsuit # 4 Hunt argues that BBT has failed to appear, plead or otherwise defend the

[8] See FRCP 8(b).

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counterclaims where the counterclaims have been admitted. Therefore, BBT is now in default. As such, in this matter where to date Hunt has not had any discovery Hunt requests that this court refuse to hear, deny the motion to dismiss and dismiss the foreclosure complaint with prejudice and grant default judgment to Hunt.

BBT in its motion to dismiss the counterclaims argue the statute of limitations: where BBT states "the counterclaims and each and every cause of action stated therein is barred by the applicable statute of limitations, the operative facts having occurred and been discovered (or discoverable) by Defendant Cindy B. Hunt ("Hunt") prior to July 8, 2009."

BBT does not cite to any case law or exhibits or counterclaims to support its position.

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Timeline of all four cases:

S1 Lawsuit # 1 End1

S2 Lawsuit #2 End2

FDIC[9]--s1[10]-ST[11]---am105[12]-R[13]d1[14]s2[15]-a1[16]----u1-r1-e1[17]-s3[18]---e2e3[19]-s4[20]-ans4[21]

S3 #3 End3 S4 # 4 >

FDIC = federal deposit insurance corporation
S1 = start of lawsuit # 1
ST = Stay 60 days effective 9/21/2010.
Am105 = proposed TAC at exhibit # 47 entry # 105/105-1.
R = admissions as per required response to proposed TAC by BBT at exhibit # 47 entry # 108.
D1 = dismissal of SAC by USDC
S2 = start of law suit # 2
A1 = motion to alter or amend the judgment in lawsuit # 1
U1 = appeal to the USCA.
R1 = request for reconsideration to the USCA in lawsuit # 1 (see exhibit # 40)
E1 = end of lawsuit # 1.
S3 = start of lawsuit # 3.
E2 = end of lawsuit # 2.
E3 = end of lawsuit # 3.
S4 = start of lawsuit # 4.
Ans4 = answer and counterclaims in lawsuit # 4.

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[9] The FDIC proceeding: 3/24/2008 – 9/2/2008 (see exhibit #s 14 and 35).
[10] 1111111111111Lawsuit # 1 was filed on 8/13/2009.
[11] 1111111 Lawsuit #1: 60 day STAY effective 9/22/2010 – 11/23/2010 (see exhibit # 47 entry # 136 p 28.)
[12] 11111111Lawsuit # 1 TAC at # 105 was filed on 2/23/2011.
[13] 1111Lawsuit # 1 exhibit # 47 entry # 108 was filed on 3/11/11.
[14] **1111111Lawsuit # 1 was dismissed by the USDC on 3/23/2011.**
[15] **22222222222222222222222Lawsuit # 2 was filed on 4/12/2011 & summons issued on 6/10/2011.**
[16] In lawsuit # 1 Hunt filed the motion to alter or amend on 4/20/2011.
[17] 1111111111111111111111111Lawsuit # 1 was dismissed on 6/26/2012.
[18] 333333333333333333333333333333Lawsuit # 3 was filed on 7/09/2012.
[19] 22222222222222333333333333333Lawsuit #s 2 & 3 were dismissed on 3/13/2013.
[20] 44444444444444444444444444444444444444444Lawsuit # 4 was filed on 4/16/2013 and is ongoing.
[21] 444444444444444444444444444444444444Lawsuit # 4 Hunt filed her answer on 8/2/2013.

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LS#1 = Lawsuit # 1 see exhibit #38; exhibit # 47 entry #s 105/105-1 and exhibit # 47 entry # 108

LS#2 # 9 = Lawsuit # 2 see exhibit # 49 entry # 15-8.

LS#3 = Lawsuit # 3 see exhibit # 49 entry # 1 (complaint in 2012-26-CP-05264).

Counterclaims In this action LS#4	**Cause of Action**	**Fed LS#1 #38**	**Fed LS#1 105-1**	**Fed LS#1 108**	**Fed LS#2 9**	**LS#3**
First	37-20-170 and 37-20-200	1	FS	FN#	GT	1
Second	Fraud, etc.	4	E	16	F	2
Third	Negligence, etc.	5	OS	26	Q	3
Fourth	Conversion	6	H	19	I[21]	4
Fifth	Breach of Fiduciary Duty, etc.	7	ABN	12/13	ADPQ	5
Sixth[22]	SC Probate Code 62-6-101	8	N	25	PQ	6
Seventh[23]	UNFAIR TRADE PRACTICES[24]	*	NO	25	PQ	7
Eighth	Mortgage loan fraud	*	Q	28	S	8
Ninth	Defamation	*	D	15	E	9
Tenth	Intentional Destruction of E	*	K	22	N	10
Eleventh	Slander of all titles	*[25]	MPQ	xx	RS	11

Hunt argues that the above charts, counterclaims, BSA, exhibits, affidavits, statutes, pleadings, documents, case law etc. show that the counterclaims and each and every cause of action stated therein is not barred by statute of limitations and the operative facts are ongoing as stated above and below:

[22] For treatment of these statutes see: Vaughn v. Bernhardt, 339 S.C. 125, 528 S.E.2d 82 (S.C.App. 2000); and Kemp v. Rawlings, 358 S.C. 28, 594 S.E.2d 845 (S.C. 2004).

[23] *: These claims (7-11) relate back and or supplemental as per FRCP/SCRCP 15; and were asserted in federal court in LS#1 @ #38; LS#1 @ # 105-1, LS#2 @#9, LS#3 @ 2012-26-CP-05264.

[24] See 39-5-150 for 3 year Statute of Limitations after **discovery.**

[25] See other admitted allegations at exhibit # 47 entry # 107 to include unclean hands, etc. & relief requested at exhibit # 47 entry # 105/105-1.

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Legal Standard for motion to dismiss the counterclaims:[26]

A motion to dismiss a counterclaim must be based solely on the allegations set forth in the counterclaim. *See* Rule 12(b)(6), SCRCP; *Baird v. Charleston County,* 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

"A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the [complainant] to any relief on any theory of the case." *Stiles v. Onorato,* 318 S.C. 297, 300, 457 S.E.2d 601, 602-3 (1995).

The question is whether in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief. *Toussaint v. Ham,* 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The counterclaim should not be dismissed merely because the trial court doubts the complainant will prevail in the action. *Id.*

All causes of action in this matter have a statute of limitations of three years or more. The counterclaims in this matter are not barred by the statute of limitations for the above and below reasons.

Due Diligence: As shown in the timeline, civil dockets and exhibits this matter has been diligently pursued by Hunt from 1/22/2008 through the present time. At no time did Hunt have an intent to abandon the case.

Equitable Tolling: Equitable tolling is applicable in this matter to ensure fundamental practicality and fairness where the USDC through out lawsuits # 1 and # 2[27] helped BBT and its employees out by forcing Hunt to sue only BBT in state court. And when Hunt finally did sue only BBT in state court (as Hunt was instructed to do by the USCA) in lawsuit # 3 BBT thereafter removed the case to the USDC looking for more help. See above at **The Deal.**

Tolling: The SAC from lawsuit # 1[28] is at exhibit # 38. The FAC from lawsuit # 2 is at exhibit # 49 entry # 15-8. Both of these complaints included causes of action involving federal question and state causes of action. As such, while lawsuits # 1 and 2 were pending the state causes of action were tolled. **28 USC 1367**

The state causes of action in lawsuit # 4 were also filed and pending in lawsuits # 1, 2 and 3. At the above timeline and chart it can be seen that the state causes of action in lawsuit # 4 were tolled where they were pending in lawsuit # 1, 2 and or lawsuit # 3. Also, there are recent facts that give rise to some of the causes of action with the result that a particular cause of action maybe rooted in a recent injury and for example an injury that was discovered in 2009.

---

[26] Hunt argues that the counterclaims include facts that satisfy each element of all the causes of action that is being asserted.

[27] The USDC only gave Hunt 2 months to serve the BBT and its employee. Thereafter, BBT dodged service of process and the USDC helped BBT out for second time by dismissing the case.

[28] **In law suit # 1 on 9/21/2011 the case was stayed for sixty days.**

Tolling: Prior to the filing of lawsuit # 1 Hunt reported BBT to the FDIC where a proceeding were had from 3/24/2008 – 9/2/2008.

Also, While this matter was in the USDC – the HCPD sent a search warrant to BBT and the HC Solicitor's Office asked the FDIC-OIG to investigate BBT.

Overlap: The timeline shows that there was much overlap as to when lawsuits 1-3 were pending.

Amendments, Relation Back and Supplemental Pleadings: FRCP 15 was applicable in lawsuits 1-3 as to Amendments, Relation Back and Supplemental Pleadings.

Stay: Exhibit # 64 at page 28 of 40 shows that the USDC stayed lawsuit # 1 for sixty days.

Stay: Lawsuit # 3 was filed while lawsuit #2 was pending at the USDC - providing for a stay of proceedings in the federal court, pending the final determination of a suit in the state courts, involving the validity and construction of a state statute.

Order of protection, out of State and CLE: Hunt was granted an order of protection from the Horry County Courts in 2009 to return to school to work on a degree in electrical engineering. On 5 April 2013 Hunt was granted an externship with the USPTO. Hunt traveled to the Virginia area on April 11, 2013 where she remained until 26 July 2013 working at the USPTO. The SC Bar accepted the patent training as CLE credit.

Continous Tort: In this matter BBT has never provided Hunt with a updated copy of her customer profile to show that the tortious act producing injury has been eliminated.

Forum Non Conveniens: Federal Land Bank of Columbia v. Davant, 292 S.C. 172, 355 S.E.2d 293 (S.C.App. 1987): The doctrine of forum non conveniens is a well established doctrine which allows a court with proper jurisdiction to dismiss an action when the convenience of the parties and the ends of justice would be better served if the action were tried elsewhere. *Braten Apparel Corp. v. Bankers Trust Company,* 273 S.C. 663, 259 S.E.2d 110 (1979); *Del Rio v. Ballenger Corp.,* 391 F.Supp. 1002 (D.S.C.1975).

The decision to invoke the doctrine of forum non conveniens is within the discretion of the trial court. Braten, supra. The doctrine is generally invoked whenever the forum has little or no relationship to a cause of action. *Nienow v. Nienow,* 268 S.C. 161, 232 S.E.2d 504 (1977). A court should not dismiss an action under the doctrine unless the balance of factors strongly favors the defendant. Id.

Fiduciary Relationship:[29] Hunt argues that she and BBT and the employees/agents of BBT have an active fiduciary relationship based on the following:

[29] See paragraphs 9-13 of the counterclaims.

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a. Hunt had her Interest on Lawyers Trust Account (IOLTA) at BBT from 4/1996 to 5/19/2008 where the SC Bar is the beneficiary of this account [SCACR 412];
b. Hunt imposed a special confidence in Defendant BB&T and its employees where they actively sought and did gain her trust and confidence; and
c. The residual trust described at the Breach of Trust cause of action remains at BBT.

First Cause of Action: Violations of Privacy under SC Code sections 37-20-170 and 37-20-200 of the Consumer Identity Theft Protection by engaging in conduct that is prohibited by 37-20-110 (5, 9, 12 and 15), 130, 160, 170, 180, 200 and ET FF against BBT.

BBT argues that the counterclaims do not involve a consumer reporting agency within the coverage of S.C. Code Ann. § 37-20-110.

BBT does not cite to any case law or exhibits or counterclaims to support its position.

Admitted: This cause of action as argued above at the Deal has been admitted by BBT in lawsuit # 1.

Hunt argues that the counterclaims, BSA, exhibits, statute, etc. show that BBT is a consumer reporting agency within the coverage of S.C. Code Ann. § 37-20-110 as follows:

Paragraph 67 of the counterclaims state: At all relevant times, BBT was a "Consumer credit-reporting agency" or "consumer reporting agency" as that term is defined by 37-20-110 (2).

S.C. Code Ann. § 37-20-110 (2) states: "Consumer credit-reporting agency" or "consumer reporting agency" means a person that, for monetary fees or dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information about consumers for the purpose of furnishing consumer reports to third parties.

And paragraph 42 of the counterclaims state: BBT has at least two Banking Service Agreements (BSA).

BBT summarily states in its BSA at exhibit # 44 on pages 27-28 of 28 (consumer privacy) that it regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information about consumers for the purpose of furnishing consumer reports to third parties. **Hunt argues that this is the same as what is stated at S.C. Code Ann. § 37-20-110 (2).**

Hunt also, argues that BBT is a consumer reporting agency where BBT has reported Hunt at paragraph 78 to a credit reporting agency (also see exhibit # 46 last page) and at paragraph 30 of the counterclaims has reported Davis to a credit reporting agency (also see exhibit # 6 at pages 2-5).

Hunt also, argues that the language at S.C. Code Ann. § 37-20-190(C)(1) in not applicable to BBT where in May 2008 at paragraph 90 of the counterclaims the FDIC found that BB&T had violated the Gramm-Leach-Bliley Act (GLBA).[30]

BBT argues that the first cause of action fails to state facts which fall under the subject matter of that statute (S.C. Code Ann. § 37-20-110).

Chapter 20 of Title 37 of the SC Code deals with CONSUMER IDENTITY THEFT PROTECTION.

SC Code 37-20-110 deals with definitions. At paragraphs 65-104 of the counterclaims Hunt has stated facts based on the definitions at SC Code 37-20-110 and the other sections of chapter 20.

Some additional facts that impact the definitions that fall under the subject matter of this statute include:

1. **S.C. Code Ann. § 37-20-110(2, 5), etc.:** At exhibit # 49 at entry # 14 -2 BBT has notified Hunt that her mortgage is delinquent and BBT has threatened to report Hunt to a credit reporting agency; at exhibit # 56 BBT has reported Hunt to a credit reporting agency. (see page 1 of the counterclaims)

2. **S.C. Code Ann. § 37-20-110(3, 5), etc.:** At exhibit # 4 of the Counterclaims BBT Hunt requested a POD account naming herself trustee and Davis the payee at her Death; (see paragraphs 15 & 108 of the counterclaims)

3. **S.C. Code Ann. § 37-20-110(3, 5), etc.:** At exhibit #s 5 and 16 of the Counterclaims Hunt alleges that BBT has engaged in two improper setoffs to the POD account; (see paragraphs 21 & 38 of the counterclaims)

4. **S.C. Code Ann. § 37-20-110(3, 5), etc.:** At exhibit # 6 on pages 4-5 of the Counterclaims BBT reported Davis to a credit reporting agency for a past due mortgage payment where Hunt's alleges that Hunt's assets were pledged as collateral for the Davis mortgage and BBT did not send Hunt a discrepancy notice of this incident; (see paragraphs 22-32 of the counterclaims)

5. **S.C. Code Ann. § 37-20-110(3, 5), etc.:** At exhibit #s 10 and 15 of the Counterclaims BBT placed at least three unauthorized loans into Hunt's customer profile: the Davis mortgage, transfer management and portfolio with Hunt's IOLTA,[31] POD account, CD, savings and other accounts which also contained Hunt's social security number and BBT did not send Hunt a discrepancy notice of these incidents; (see paragraphs 22-32 of the counterclaims)

6. At exhibit # 12 in paragraph 4 of the Counterclaims Davis states that Ms. Sansbury did not ask Davis for any ID when she disclosed Hunt's account balance to Davis and Hunt's customer profile at exhibit # 10 of the Counterclaims contains at least two unauthorized mortgage loans where the identification of those borrowers was not that of Hunt; (see paragraphs 22-32 of the counterclaims)

[30] See exhibit #s 17/18.

[31] Hunt is an attorney and is required to avoid even the appearance of impropriety. See DR 9-101 and EC 9-2, Supreme Court Rule 32.

7. **S.C. Code Ann. § 37-20-110(3, 5), etc.:** At exhibit #s 14 and 28 (letters to the FDIC) Hunt has disputed the accuracy of her customer profile; (see paragraphs 33, 38, 91, 132 & 142-146 of the counterclaims and exhibit # 26)

8. **S.C. Code Ann. § 37-20-110(3, 5), etc.:** At exhibit # 15 Hunt alleges that she is unable to have the record to reflect her innocence as the victim of identity theft of the alleged crimes committed using her identity in court records to the person that would be convicted of committing identity theft using Hunt's identity where BBT has made admissions in the TAC at exhibit # 47 entry # 108 to include unclean hands; (see paragraphs 22-32 & 247-262 of the counterclaims)

9. **S.C. Code Ann. § 37-20-110(3, 5), etc.:** At exhibit # 15 of the Counterclaims BBT created an unauthorized Beneficiary profile with joint account status to the POD account for Davis which included the Davis mortgage; (see paragraphs 77 of the counterclaims and Hunt's affidavit at exhibit # 26)

10. **S.C. Code Ann. § 37-20-110(3, 5), etc.:** At exhibit #s 17 and 18 of the Counterclaims the FDIC found that BBT had violated the Gramm Leach Bliley Act (GLBA) and pursuant thereof Hunt alleges that hundreds[32] of separate incidents of security breaches of unauthorized access to and acquisition of records or data of Hunt's customer profile has occurred; (see paragraphs 90 & 81 of the counterclaims)

11. **S.C. Code Ann. § 37-20-110(2, 3, 5, 8), etc.:** At exhibit # 23 at pages 27-28 of the Counterclaims Hunt alleges that BB&T is a credit reporting agency, consumer reporting agency and or other person where BBT has reported Davis to a credit-reporting agency as being late on a mortgage payment and BBT has threatened to report Hunt to a credit reporting agency for a late mortgage payment;[33] (see paragraph 42 (BSAs) of the counterclaims and exhibit # 44 on pages 27-28 of 28 (consumer privacy))

12. **S.C. Code Ann. § 37-20-110(3, 5, 9), etc.:** At exhibit #s 28-33 of the Counterclaims Hunt reported BBT to the HCPD for identity theft for the unauthorized transfer management and portfolio mortgages loans in Hunt's customer profile at exhibit # 10; (see paragraphs 1 & 51-54 of the counterclaims)

13. **S.C. Code Ann. § 37-20-110(3, 5), etc.:** At exhibit #s 28-29 of the Counterclaims Hunt alleges that BBT failed to provide Hunt with an updated customer profile; (see paragraphs 47-49 of the counterclaims)

14. **S.C. Code Ann. § 37-20-110(3, 5, 16), etc.:** Hunt alleges that she needed to place a security freeze notice in her consumer credit report/customer profile based on the above listed unauthorized access to Hunt's customer profile and that she was deprived of a security freeze notice by BBT; (see paragraphs 83-84 of the counterclaims)

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[32] Hunt argues that each incident of security breach should include all transactions of the unauthorized profile of Davis to include the Davis mortgage, the borrowers of the at least two unauthorized mortgage loans in Hunt's customer profile and all transactions of Hunt where each transaction was a new and different incident of security breach occurring on different days with different daily account balances with the resulting magnitude of material risk of harm to Hunt different everyday.

[33] BBT in *Saunders v. Equifax Information Services, L.L.C., 469 F.Supp.2d 343, 347 (E.D.Va. 2007)* as in the present action have rebuffed each attempt by Hunt to address these matters involving Hunts mortgage and other claims for the past five years (2008-2013).

15. **S.C. Code Ann. § 37-20-110(3, 5), etc.:** Based on the above admissions of unauthorized transactions that are stated here and in the Counterclaims involving Hunt's IOLTA Hunt argues that BBT's conduct posed a substantial risk to the safety or soundness of the depository institution or the financial system generally with the result that BBT is not a financial institution as defined in the Gramm-Leach-Bliley Act[34] where at exhibit #s 17 and 18 the FDIC found that BBT had violated the Gramm Leach Bliley Act (GLBA) and pursuant thereof Hunt alleges that hundreds[35] of separate incidents of security breaches of unauthorized access to and acquisition of records or data of Hunt's customer profile has occurred. (see paragraph 90 of the counterclaims)

As such, Hunt argues that the allegations of the counterclaims at the first cause of action state facts which fall under the subject matter of S.C. Code Ann. § 37-20-110.

Second Cause of Action: Fraud, constructive fraud and fraud in the inducement against BBT.

BBT in its motion to dismiss states that Hunt has failed to allege any facts which would establish either the right to rely or actual reliance on the allegedly fraudulent statements.

BBT in its motion to dismiss concerning the second cause of action cites to no case law, statutes or exhibits.

Admitted: This cause of action as argued above at the Deal has been admitted by BBT in lawsuit # 1.

Hunt argues that she had a right to rely and in fact did rely as follows:

BBT is a Bank. (see paragraph 167 of the counterclaims)

BBT has at least two BSA. (see paragraph 42 of the counterclaims)

BBT mailed and provided Hunt numerous documents and monthly statements. (see paragraph 106 of the counterclaims)

BBT told Hunt that during her life that she and she alone would have access to the monies of the POD trust. (see paragraphs 107 & 42 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

BBT told Hunt that the monies of the POD trust would only be made available to Davis at her death and at the time of Hunt's death that Davis must provide the Bank with identification of herself and proof of Hunt's death. (see paragraphs 108 & 42 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

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[34] See 15 U.S.C. 6809 (3) (A) and 12 U.S.C. 1843 (k).

[35] Hunt argues that each incident of security breach should include all transactions of the unauthorized profile of Davis to include the Davis mortgage, the borrowers of the at least two unauthorized mortgage loans in Hunt's customer profile and all transactions of Hunt where each transaction was a new and different incident of security breach occurring on different days with different daily account balances with the resulting magnitude of material risk of harm to Hunt different everyday.

BBT knew or should have known that their statements were false. (see paragraph 109 & exhibit #s 12 & 15 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

BBT statements were material in that the IOLTA, POD trust and other accounts should have been handled differently from the way BBT in fact treated them. (see paragraph 110 & exhibit #s 12 & 15 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

BBT said and wrote of one type of treatment and did another to include improper and or illegal treatment of Hunt's accounts. (see paragraph 111 & exhibit #s 12 & 15 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

BBT had knowledge of the falsity of their statements or acted with reckless disregard for the truth. (see paragraph 112 & exhibit #s 12 & 15 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

BBT intended for Hunt, the FDIC, HCPD and or other third parties to act upon their statements. (see paragraph 113 & exhibit #s 12 & 15 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

Hunt was ignorant of the falsity of these statements. (see paragraph 114 & exhibit #s 12 & 15 of the counterclaims & BSA at exhibit # 44 page 6 of 28 (Payable on Death))

Hunt and other third parties **relied** on these statements. (see paragraph 115 & exhibit #s 12 & 15 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

Hunt and other third parties **had a right to rely** on these statements. (see paragraph 116 & exhibit #s 12 & 15 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

BBT also argues that the second cause of action for fraud fails to detail the circumstances required to be pled with particularity under SCRCP 9(b).

To sustain a claim of fraud, all of the following elements must be proven:(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Armstrong v. Collins, 366 S.C. 204, 218-219, 621 S.E.2d 368 (S.C.App. 2005)

To establish constructive fraud, all elements of actual fraud except the element of intent must be established. Armstrong v. Collins, 366 S.C. 204, 219, 621 S.E.2d 368 (S.C.App. 2005)

Fraud in the inducement is demonstrated by: (1) a representation, (2) its falsity, (3) its materiality, (4) knowledge of its falsity or reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury. *M.B. Kahn Const.*

Co. v. South Carolina Nat. Bank of Charleston, 275 S.C. 381, 271 S.E.2d 414 (1980).

Hunt argues that the purpose of the heightened pleadings requirements of Rule 9(b) is to "deter the filing of charges of fraud as a pretext for discovery of unknown wrongs." Fraud admissions, however, "remain subject to the liberal pleading standard of SCRCP 8, which requires only a 'short and plain' statement of a claim or defense," the purpose of which is to place the opposition on notice of the misconduct charged.

Hunt argues that she has used an alternative means of injecting precision and substantiation[36] into the allegations of fraud, constructive fraud and fraud in the inducement sufficient to satisfy SRCP (9)(b) as follows:

BBT made **known false material representations** to Hunt that the POD account relationship is established by the form of the account as designated on the signature card as is shown at exhibit # 4 where Fogle and Lambert echoed the language of the BSA with the result that that during Hunt's life that she and she alone would have access to the monies of the POD trust.[37] The **falsity** of these representations are shown at paragraphs 15, 22, 44 & exhibit #s 12 & 15 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death).

Exhibit #s 5 and 16 of the Counterclaims show two checks paid to Hunt for legal services done by Hunt. BBT at exhibit #s 5 and 16 made setoffs against Hunt's POD account. (see paragraphs 21 & 38 of the counterclaims)

BBT at exhibit # 10 has placed at least two unauthorized loans in her customer profile along with Hunt's IOLTA, CD, mortgages and other accounts. (see paragraphs 28, 48 & 54 of the counterclaims)

BBT **intended that Hunt act on** its recommendation to open a POD account; BBT **intended that Hunt act** on its statement that the POD account relationship is established by the form of the account as designated on the signature card as is shown at exhibit # 4 where Fogle and Lambert echoed the language of the BSA; [38] BBT **intended that Hunt accept as true** that the

[36] Through the Counterclaims, affidavits, exhibits to include the BSA, the numerous documents of Hunt's accounts and letters to the FDIC, items incorporated by reference, etc Hunt argues that she has sufficiently alleged in satisfaction of SRCP 9(b) causes of action for fraud, constructive fraud and fraud in the inducement. BBT has been put on notice as follows: BBT is the author of its two banking service agreements (BSA), affidavits, exhibits, letters to the FDIC, etc. BBT has submitted these documents to the public (exhibit #s 44 & 45), CRA (exhibit #s 6, 56 & 44), the FDIC (exhibit #s 15 & 21), the USDC (exhibit # 50) and BBT has submitted its BSA to this court on 4/21/2014. Also, BBT in lawsuit # 3 (exhibit # 49 entry # 1) compiled an index of 42 of Hunt's exhibits and thereafter removed those exhibit with these counterclaims to the USDC. e first cause of action indicate that they have particular notice of the misconduct charged where BBT cites to the exhibits supplied by Hunt.

[37] Hunt relied on the statements of Fogle and Lambert. And see the BSA at exhibit # 44 page 6 at paragraph B.3.; and the affidavit of Hunt at exhibit 26, p. 3 at paragraph 3.g. where Hunt read and relied on the BSA.

[38] Hunt relied on the statements of Fogle and Lambert. Also, see the BSA at exhibit # 44 page 6 at paragraph B.3.; and the affidavit of Hunt at exhibit 26, p. 3 at paragraph 3.g. where Hunt read and relied on the BSA.

setoffs had been made from the proper account. (see paragraphs 15, 21-22, 28, 44 & exhibit # 15 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

Hunt had a **right to rely** and treat the statements of Fogle, Lambert, the POD signature card and the BSA as the **truth**. Employees of BBT occupied a superior position to Hunt in the knowledge of how the bank operated internally in setting up POD accounts that would result in the treatment as stated at exhibit # 4 and in the BSA; Hunt did not bargain for the terms of the POD account; Fogle recommended the POD account to Hunt; the **truth** of how BBT was treating the POD account was not easily within Hunt's reach; and or Hunt was and is in a fiduciary relationship with BBT and its employees/agents; Hunt had a **right to rely** that BBT would not place unauthorized mortgages/loans into Hunt's customer profile; (see paragraphs 11-13, 15, 21-22, 28, 44 ,115-116 & exhibit #s 12 & 15 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death) & exhibit # 44 page 13 of 28 (law governing your account) & exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) & exhibit # 44 page 27-28 of 28 (consumer privacy))

SCACR 412 requires that only attorneys within a law firm will have access to the firm's IOLTA. Davis and the other borrowers have never been an employee of Hunt's law firm. The unauthorized profile at exhibit # 15 of the Counterclaims gave Davis access to the IOLTA; the unauthorized loans at exhibit # 10 of the Counterclaims gave those borrowers access to the IOLTA; provided collateral for the mortgage loans of Davis and the others; and **subjected Hunt to financial ruin** where Davis and the others had access to the all monies of the customer profile and the CD; and subjected Hunt to financial ruin where Davis defaulted on her mortgage. Hunt, an attorney, is required to avoid even the appearance of impropriety.[39] For the safety of her IOLTA and reputation and other accounts Hunt at exhibit # 36 closed the IOLTA and POD accounts.[40] (see paragraphs 14, 16, 19, 24-32, 88, 137, 151, 183 & exhibit #s 6, 10, 12 & 15 of the counterclaims & exhibit # 45 page 11 of 15 (Interest Bearing Checking Accounts) & exhibit # 45 page 11 of 15 (law governing your account) & exhibit # 45 page 12 of 15 (certificates of deposit) & exhibit # 45 page 8 of 15 (right of setoff) & exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) & exhibit # 44 page 27-28 of 28 (consumer privacy))

At exhibit #s 6 and 12 of the Counterclaims Davis describes the events that occurred on 1/19/2008 when she went to BBT to check on why BBT had reported her to a credit reporting agency for being late on her mortgage payment. At exhibit # 15 of the Counterclaims Judy Teal wrote to the FDIC that it was the **procedure of CFB/BBT to set up the beneficiary of a POD account with a beneficiary profile**. Upon receipt of Judy Teal's letter from the FDIC Hunt realized that the POD account relationship was not established by the form of the account as designated on the signature card as is shown at exhibit # 4. (see paragraphs 15, 28-37, 43 & exhibit #s 6, 12 & 15 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

Hunt was **ignorant of the fact** that BBT set Davis up with a beneficial profile to her POD account where this was not what Hunt agreed to at exhibit # 4. Hunt **was ignorant of the fact** that BBT used her assets to justify extending a mortgage to Davis and loans to at least two others unauthorized borrowers. Hunt had **no knowledge of this conduct** by BBT and never

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[39] See DR 9-101 and EC 9-2, Supreme Court Rule 32.

[40] As shown at exhibit # 10 on page 4 Hunt's POD account had benefits in excess of $160,000.00. Upon the forced closure of the POD account Hunt suffered losses in excess of $160,000.00 as a result of her reliance on the BSA where Fogle and Lambert echoed the statements of the BSA. Also, the closure of the accounts was recommended at BBT website as per exhibit #s 32-33.

ratified this conduct. (see paragraphs 15, 28-37, 42-43, 135 & exhibit #s 6, 12, 15, 28-33 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

Hunt argues that BBT had **knowledge of the falsity** of the language in the BSA regarding the treatment of POD accounts or acted in **reckless disregard of its truth or falsity** as follows: BBT sent Hunt annual letters stating that it was in compliance with the GLBA.[41] (see paragraphs 75, 15, 28-37, 42-43, 135 & exhibit #s 6, 12, 15, 28-33 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))

In 2004, four years after BBT set up the POD account (at exhibit # 15) with the unauthorized beneficiary profile BBT gained additional knowledge of **material facts** which would affect Hunt's interest, BBT had an opportunity to correct the joint account status for Davis that resulted from the beneficiary for Davis in May of 2000 where at the time of the Davis mortgage loan in 2004 Davis stated twice in writing that she had no other accounts at BBT.[42]

Based on the events of 1/19/2008 as described in exhibit #s 6, 12 and 15 BBT did not make the correction. At exhibits #s 13, 15, 19, 21, and 31 BBT failed to disclose this information to Hunt, the FDIC and the HCPD. (see paragraphs 15, 28-37, 42-43, **110**, 134-135 & exhibit #s 6, 12, 15, 28-33 of the counterclaims & exhibit # 44 page 6 of 28 (Payable on Death) & exhibit # 44 page 6 of 28 (Joint) & exhibit # 44 page 7 of 28 (correction of errors))

Hunt argues that she has alleged that the authors of the false statement(s) were/are employees/agents of BBT.[43] Thus, "[a] duty to exercise reasonable care in giving information exists when there is a pecuniary interest in the transaction."[44] Also, a duty to exercise reasonable care arose from the statutes[45] and the fiduciary relationship.[46]

In the Counterclaims, affidavits and other documents of this matter Hunt has made statements of justified **reliance** where BBT occupied a superior position to Hunt in the knowledge of how the bank would internally treat Hunt's POD and all of accounts.

Hunt has **suffered a pecuniary loss** as the result of her **reliance** on the representations about the POD account relationship by BBT to include but is not limited to the loss of the monies deposited in the POD account to include the setoff monies, IOLTA, savings account, CD, POD account, $160K plus of benefits, BBT has filed three mortgages against Hunt's homes, a lien against Hunt's car, BBT has reported Hunt to the CRA without notice of a dispute[47] and see exhibit #s 26 and the Counterclaims for other relief sought. (see paragraphs 11-16, 19, 28-37, 42-43, 62, 64, 134-135 & exhibit #s 6, 10, 12, 14-15, 20, 26, 28-33, 36-37, 46, 49 entry #s 14-1 thru 14-6, 49 entry #s 15-1 thru 15-8 of the counterclaims & exhibit # 44 page 6 of 28 (Payable

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[41] Compare to the FDIC at exhibit #s 17 and 18 made a finding that BBT had violated GLBA.

[42] See exhibit # 6 pages 6-7 of the Counterclaims where when asked if Davis wanted the mailing address of the mortgaged property to be the address on all accounts at BBT Davis wrote N/A (not applicable).

[43] See paragraphs 11-15, 22-37 of the counterclaims. Also, "[t]he fact that the information is given in the course of the defendant's business, profession or employment is a sufficient indication that he has a pecuniary interest in it, even though he receives no consideration for it at the time." Winburn v. Insurance Co. of North America, 287 S.C. 435, 339 S.E.2d 142, 146-147 (S.C.App. 1985). Also, Hunt argues that pecuniary interest includes stock where BBT is publicly traded, avoiding FDIC fines at 12 USC 1818, avoiding legal liability re federal claims, to keep Hunt's business where Hunt had multiple accounts at BBT where all accounts listed on the 7/19/2007 customer profile including the CD were opened after the 5/2000 POD account which listed an unauthorized beneficiary profile for Davis, at least two unauthorized loans, etc.

[44] Winburn v. Insurance Co. of North America, 287 S.C. 435, 339 S.E.2d 142, 146 (S.C.App. 1985).

[45] GLBA and SC Code Ann. 37-20-110 through 37-20-200).

[46] See paragraph 11 of the Counterclaims.

[47] This caused Hunt to not be hired by the USPTO in the fall of 2013.

on Death) & exhibit # 44 page 13 of 28 (law governing your account) & exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) & exhibit # 44 page 27-28 of 28 (consumer privacy))

Hunt argues that BBT at exhibits #s 13, 15, 19 and 21 failed to disclose about the at least two additional mortgages in Hunt's customer profile; and Hunt argues that BBT continues to withhold information that is exclusively within its control. That information includes the borrowers of the unauthorized the mortgage loans in Hunts customer profile: transfer management and portfolio and the amount of loans and profits made from these accounts, the amount of profits made by the unauthorized beneficiary profile for Davis to include the Davis mortgage, and the amount of profits made from all the other accounts in Hunt's customer profile including the CD and Hunt continues to argue that BBT has engaged in numerous failures to disclose, etc. (see paragraphs 1, 11-14, 20-37, 58, 61-62 in the counterclaims & exhibit #s 10, 13, 15, 19 & 21)

Hunt argues that the Counterclaims, exhibits and affidavits, etc., places BBT on notice of Hunt's claims with the required specificity and demonstrates that Hunt did not bring a case in which all the facts will come out only after the commencement of discovery. As such, Hunt argues that the allegations stated in the Counterclaims establish all the elements in the causes of action to satisfy SCRC 9 for the fraud, constructive fraud and fraud in the inducement.

Also, in this matter involving non disclosure and concealment at every turn - Hunt argues that she reasonably expects that this court will apply SCRCP 9(b) with some flexibility so that Hunt is not required to plead issues which have been concealed by BBT.

Third Cause of Action: Negligent misrepresentation, negligence, negligence per se and gross negligence against BB&T.

BBT argues that a duty based in contract will not support a recovery in negligence.

BBT does not cite to any case law, statutes or exhibits in making this assertion.

In making this argument BBT is saying that there was no <u>duty</u> on the part of BBT, aside from the contract, to perform the acts complained of by Hunt. Hunt begs to differ with BBT as follows:

Hunt's counterclaims contain allegations that BBT was negligent in making certain representations which induced Hunt to make the mortgage, open the POD, etc. And that BBT negligently misused and improperly accessed Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and customer profile; negligently setup the POD account and negligently failed to disclose these events that are independent of the contract.[48]

Also, at exhibit # 66 BBT is a financial partner to the SC Bar Foundation/IOLTA. And Hunt is a member of the SC Bar. As such, Hunt argues that BBT owes the SC Bar Foundation, Hunt and her IOLTA duties aside from the contract where there is a relationship that gives rise to a tort duty aside from the contract.

Admitted: This cause of action as argued above at **the Deal** has been admitted by BBT in lawsuit # 1.

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[48] See **Gilliland v. Elmwood Properties, 301 S.C. 295 300, 391 S.E.2d 577, 580 (S.C. 1990).**

In The Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 734 S.E.2d 161, 163-164 (S.C. 2012) at page 164 the court said: The law does not impose a duty on the bank to explain to an individual what [she] could learn from simply reading the document."

Unlike in this matter Hunt never had the opportunity to read the unauthorized loans on her loan (exhibit # 7) applications where BBT did not list the Davis mortgage and the at least two additional loans at transfer management and portfolio (exhibit # 10) on any of Hunt's loan applications. Here only BBT had the knowledge of the existence of its unauthorized conduct and BBT filled in the loan application.

No contracts: Hunt argues that a valid contract is a prerequisite to a breach of contract cause of action.[49] As such, Hunt argues that this matter does not involve any contractual rights as follows:

Hunt argues that BBT's misconduct in this matter includes but is not limited to

1) the POD account was set up with Davis having a beneficiary profile while Hunt is still alive as opposed to Davis being the beneficiary at the death of Hunt;

2) the use of Hunt's assets as collateral for the Davis mortgage was unauthorized;

3) the two setoffs against the POD account were improper;

4) the use of Hunt's assets as collateral for the at least two additional loans in Hunt customer profile along with Hunt's IOLTA, CD, mortgages, POD account and other accounts was unauthorized;

5) the unauthorized disclosure to Davis and;

6) Reporting Hunt's mortgage as delinquent without giving notice of a dispute, etc.

As such, Hunt argues

That the POD account as setup by BBT as described by Teal at exhibit 15 and Davis at exhibit # 12 – **violated** BBT's banking service agreement[50] and - **violated** SCACR 412[51] (Davis and the other borrowers had access to the IOLTA through setoff, etc.), **violated** SC Code Ann. 62-6-103(b) (Davis had access to the POD account during Hunt's lifetime and improper setoffs), **violated** SC Code Ann. § 36-4-401(a) (Hunt did not authorize payments under these circumstances);

[49] Pennell & Harley, Inc. v. Hearon, 168 S.E. 188, 189, 169 S.C. 16 (S.C. 1933).

[50] See exhibit # 44 at page 6 of 28 and exhibit # 44 at page 27-28 of 28 (law governing your account) cf. exhibit # 15 where Teal states it was the procedure to set up the POD with a beneficiary profile; and at exhibit 12 while checking on her delinquent mortgage BBT told Davis that she was the owner of the POD and BBT never found the Davis mortgage, however Hunt had two unauthorized loans in her customer profile at exhibit # 10. Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).

[51] Hunt is an attorney licensed in SC. See footnote 1 in exhibit # 43.

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That the two setoffs at exhibit #s 5 and 16 against the POD account as set up by BBT – **violated** BBT's banking service agreement;[52]

That the lack of notice to Hunt prior to deleting the beneficiary profile for Davis from the POD account – **violated** BBT's banking service agreement[53]

That the unauthorized POD account disclosure to Davis - **violated** GLBA[54] and BBT's banking service agreement;[55]

That the lack of notice of a mortgage dispute when the mortgage was reported to the credit bureau – **violated** BBT's banking service agreement[56]

That BBT has – **violated** its banking service agreement where BBT used Hunt's assets as collateral for the Davis mortgage and as collateral for at least two additional loans;[57]

That BBT has – **violated** its mortgage security agreement where BBT used Hunt's assets as collateral for the Davis mortgage and as collateral for at least two additional loans and where BBT did not list these loans on Hunt's mortgage application, etc.;[58]
That BBT has – **violated** its banking service agreement where BBT has stated that it has not saved and or deleted the record of Hunt's accounts (see exhibit # 15, 36, 29 and 32 and SC 34-3-510);[59]

That BBT through the affidavits of Teal and Chestnut has – **violated** its banking service agreement where BBT has stated that Hunt's accounts shall be governed by the BSA, federal and state law;[60]

That BBT has – **violated** its banking service agreement where BBT at exhibit # 47 entry #36 has responded to the FDIC with the unauthenticated letter of Teal;[61]

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[52] See exhibit # 44 at page 10 of 28 (Right of Setoff). Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).
[53] See exhibit # 15 and exhibit # 44 at page 8 of 28 (Right to close account). Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).
[54] See exhibit #s 17 and 18.
[55] See exhibit # 44 at page 27-28 of 28 (Consumer Privacy) and exhibit # 44 at page 27-28 of 28 (law govering your account). Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).
[56] See exhibit # 44 at page 25 of 28 (accuracy of credit information and notice of furnishing of negative information) and exhibit # 44 at page 27-28 of 28 (law govering your account). Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).
[57] See exhibit # 44 at page 27-28 of 28 (Consumer Privacy). Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).
[58] See exhibit # 44 at page 27-28 of 28 (Consumer Privacy). Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).
[59] See exhibit # 44 at page 27-28 of 28 (law govering your account) and exhibit # 45 at page 11 of 15 (law govering your account). Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).
[60] See exhibit # 44 at page 27-28 of 28 (law govering your account) and exhibit # 45 at page 11 of 15 (law govering your account). Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).
[61] See 12 CFR 308.7 and exhibit # 44 at page 27-28 of 28 (law govering your account) and exhibit # 45 at page 11 of 15 (law govering your account). Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).

That BBT has – **violated** its banking service agreement where BBT has admitted to violating federal and state laws at exhibit # 47 entry # 108 where BBT did not deny any of the allegations at exhibit # 47 entry # 105-1);[62]

Hunt argues that all of these violations amount to more than mere breaches of contract based on BBT's role of financial partner of the IOLTA and the BAR. As such, Hunt argues that there are **no contracts** in this matter where all of the agreements for all loans, cards and deposit accounts between BBT and Hunt are **void ab initio**[63] as a result of BBT **violating** its own banking service agreements (BSA), SCACR 412, SC Code Ann. 62-6-103(b), SC Code Ann. § 36-4-401(a), GLBA, and SC 34-3-510 where these violations are against public policy.

Also, BBT argues that Hunt has failed to set forth a claim for negligent misrepresentation.

BBT cites to no case law, exhibits or statutes in support of its position.

Legal Standard for negligent misrepresentation: the party must prove (1) the defendant made a false representation to the plaintiff, (2) the defendant had a pecuniary interest in making the statement, (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff, (4) the defendant breached that duty by failing to exercise due care, (5) the plaintiff justifiably relied on the representation, and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation. Armstrong v. Collins, 366 S.C. 204, 219-220, 621 S.E.2d 368 (S.C.App. 2005)

Hunt argues that she has alleged above in this cause of action that BBT **negligently made false statements and or negligently made misrepresentations of material fact** that related to a present or pre-existing fact of when Hunt opened the POD account in May 2000 that the POD account relationship is established by the form of the account as designated on the signature card as is shown at exhibit # 4 where Fogle and Lambert echoed the language of the BSA.[64]

Theafter at exhibit # 15 of the Counterclaims Judy Teal wrote to the FDIC that it was the procedure of CFB/BBT to set up the beneficiary of a POD account with a beneficiary profile. Upon receipt of Judy Teal's letter from the FDIC Hunt realized that the POD account relationship was not established by the form of the account as designated on the signature card as is shown at exhibit # 4 of the Counterclaims where Davis (the beneficiary) got access to the POD account at the moment that it was opened as is shown at exhibit #s 6, 12 and 15 of the Counterclaims. Hunt, an attorney, for the safety of her accounts and reputation closed the IOLTA and POD accounts.[65]

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[62] See exhibit # 44 at page 27-28 of 28 (law govering your account) and exhibit # 45 at page 11 of 15 (law govering your account). Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).

[63] *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004); and Hunt, an attorney, is required to avoid even the appearance of impropriety.

[64] See the BSA at exhibit # 44 page 6 at paragraph B.3. Hunt read and relied on the BSA.

[65] As shown at exhibit # 10 on page 4 the POD account had benefits in excess of $160,000.00. Upon the forced closure of the POD account Hunt suffered losses in excess of $160,000.00 as a result of her reliance on the BSA where Fogle and Lambert echoed the statements of the BSA. Also, closure of the accounts was recommended at BBT website as per exhibit #s 32-33 of the Counterclaims.

In the Counterclaims, affidavits and other documents of this matter Hunt has made statements of justified reliance where BBT occupied a superior position to Hunt in the knowledge of how the bank would treat Hunt's POD account.[66] Hunt has suffered a pecuniary loss as the result of her reliance on the representations about the POD account relationship by BBT to include slander of mortgage and vehicle titles; loss of the POD account benefits at exhibit # 10 and see the Counterclaims for other damages.

As such, Hunt argues that the counterclaims for the negligent misrepresentation cause of action satisfy SCRCP 8 and 9[67] where the counterclaims, exhibits and affidavits, etc. establish liability for these causes of action where the affidavits, exhibits and the Counterclaims include the time, place, content and the pecuniary interest of BBT.

Fourth Cause of Action: Conversion against BB&T.

BBT argues that a bank account (a contractual right) cannot be the subject of a conversion action.

BBT has cited to no statutes, exhibits or case law in support of its position.

Admitted: This cause of action as argued above at the Deal has been admitted by BBT in lawsuit # 1.

Legal Standard: Conversion is a wrongful act and has been defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789, 792 (S.C. 1990)

Legal Standard: Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property. Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

> The facts in Owens, supra at 493 & 497-498 are: *Under the Christmas Club account plan, the Bank transferred $20.00 per week from a joint account, which plaintiff had with her husband, to her Christmas Club account. The husband was not a party to this Christmas Club account. A total of $879.00 was transferred in this manner to plaintiff's Club account over a period of months.*
>
> *Under the plan, the Club account was closed and checks prepared for all members, including plaintiff, on November 14, 1973. The check made payable to plaintiff was sent to the Bank's Georgetown branch for delivery to her sometime in November. It is admitted that the check was not delivered with the others; the Bank says it was mailed in February; the plaintiff testified that she has never received it.*
>
> *Plaintiff's husband was obligated to the Bank under certain financing arrangements. The Georgetown branch manager (Benton) admitted that he*

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[66] Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 419 S.E.2d 795, 800 (S.C.App. 1992).

[67] Hunt argues that the Counterclaims and exhibits satisfy SCRCP 9. However, Hunt also argues that the fraud requirement at SCRCP 9 does not apply to negligent misrepresentation. Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 419 S.E.2d 795, 799 (S.C.App. 1992).

held up delivery of the check in order to pressure the husband into making good his personal obligation.

If the facts in this case established nothing more than that the Bank had refused to pay plaintiff funds which she had on general deposit, then we would be disposed to say that the above authority precluded an action based on conversion.

However, the facts before us establish conduct on the part of the Bank, through its agent Benton, much more onerous than a simple breach of contract. Benton's actions, in withholding delivery of plaintiff's check and using this check to pressure her husband, constituted a wrongful and illegal misuse of plaintiff's funds and amounted to a misappropriation of the same to the Bank's own use and benefit.

The counterclaims show that the facts here are: Hunt did all of her banking at BBT from 1993 – 2008. Hunt did not authorize any joint accounts, the beneficiary profile, the at least two unauthorized accounts: transfer management and portfolio, etc. All of Hunts accounts at BBT were held in Hunt's name only. Davis did not contribute to any account of Hunt at BBT. Only Hunt made deposits into her accounts at BBT.

The unauthorized Davis beneficiary profile to include the unauthorized Davis mortgage loan, the at least two unauthorized loans in Hunt's customer profile with her IOLTA and other accounts, the two checks for legal services that were improperly setoff against the POD account, the disclosure to Davis and reporting Hunt as delinquent on the 2007 mortgage without notice of a dispute are much more onerous than a simple breach of contract[68] where Hunt is an attorney,[69] and is required to avoid even the appearance of impropriety.[70]

BBT's claim that Hunt's funds are contractual is another way of saying that the funds are commingled and confused with all other funds on deposit resulting in a relationship of debtor and creditor.

However, here as in Owen, supra at 498 - that argument by BBT is without merit.

Hunt argues that this matter does not involve any contractual rights as argued above in the third cause of action at: **No Contracts.**

BBT specifically identified and designated the setoff monies in the debit slips.

Hunt wrote to BBT at exhibit # 20 demanding the return of the setoff monies. BBT refused to deliver the setoff monies of the POD account upon demand to Hunt. (see paragraph 39 of the counterclaims and at exhibit #s 5 & 16).

BBT's banking service agreement (BSA) at exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) states: after we receive your letter, we can not try to collect any amount you question or report you as delinquent. BBT's use of the setoff monies for its own wrongful and illegal purpose to Hunt's detriment, constituted the tort complained of.

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[68] *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

[69] BBT has known that Hunt was an attorney since 1996 when Hunt opened the IOLTA.

[70] See DR 9-101 and EC 9-2, Supreme Court Rule 32.

BBT specifically identified and designated the IOLTA, POD, CD, savings and other account monies in monthly statements.

Hunt argues that it cannot be contended that BBT had a legal right to apply Hunt's funds or use them in the manner it did as stated in the counterclaims, BSA, exhibits, etc where there was no mutuality of demands between Hunt and Davis/the other borrowers. [71]

Such that pursuant to *Owens v. Andrews Bank & Trust Co.,* 265 S.C. 490, 497-498, 220 S.E.2d 116, 119-120 (1975) the conduct on the part of BBT as stated in the counterclaims, BSA, exhibits, etc. constitute wrongful and illegal misuse of Hunt's funds and amounted to a misappropriation of the same to the Bank's own use and benefit.

As such, Hunt argues that the facts of this case support claims for conversion of all of Hunt's accounts at BBT. [72]

Fifth Cause of Action: Breach of Fiduciary Duty / Breaches of Trust for Violations of SC Common Law and SC Code Ann. section 62-7-1001(a) by engaging in conduct that is prohibited at 62-7-801 thru 62-7-817 against BB&T.

Admitted: This cause of action as argued above at the Deal has been admitted by BBT in lawsuit # 1.

BBT argues that the facts as alleged in the fifth cause of action establish a creditor-debtor relationship which does not give rise to a fiduciary duty

BBT has cited to no statutes, exhibits or case law in support of its position.

Legal Standard: Gary v. People's Nat. Bank, 26 S.C. 538, 2 S.E. 568 (S.C. 1887);[73] and SC Code Ann. section 62-7-1001(a) and SC Code 62-7-801 thru 62-7-817. [74]

All contracts are void ab initio as the result of mistreatment of the accounts of Hunt through the BSA:[75]

The counterclaims at paragraphs 9-13 state that Hunt and BBT are in a fiduciary relationship. Also, paragraph 42 of the counterclaims state: BBT has at least two BSA.

The BSA at exhibit # 44 page 12 of 28 (relationship of bank and depositor) states: when you open any account with the Bank, a debitor/creditor relationship is created.

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[71] *Owens v. Andrews Bank & Trust Co.,* 265 S.C. 490, 498, 220 S.E.2d 116, 120 (1975).

[72] [Also, u]pon the conversion of her property, a cause of action for its value arose in Hunt's favor, which could not have been defeated by tender of a return of the property. Alderman v. Cooper, 257 S.C. 304, 310 185 S.E.2d 809, 811 (S.C. 1971).

[73] Hunt has shepardized this case and it has never been modified or overturned.

[74] Verenes v. Alvanos, 387 S.C. 11, 690 S.E.2d 771 (S.C. 2010).

[75] See the third cause of action in this brief where Hunt has argued that BBT based on the allegations contained in the counterclaims and exhibits has violated its own BSA at least twelve times.

Opening an account with the Bank does not create a fiduciary relationship between the Bank and depositor...

As such, BBT in its objection to this cause of action is looking for the court to apply its BSA in this matter with the result that the court would be treating BBT better than BBT, as per its BSA, has treated all of the accounts of Hunt in this matter.

At the third cause of action in this brief Hunt has argued that BBT based on the allegations contained in the counterclaims and exhibits has violated its own BSA at least twelve times.

As such, Hunt argues that BBT comes to this court looking for a helping **hand** where BBT has previously violated its own BSA as to the accounts of Hunt at least twelve times. And while this dispute has been ongoing BBT has violated its BSA again and again as follows:

> At page 22 of the counterclaims and exhibit # 47 entry # 105-1 pages 22-30 Hunt has accused BBT of unclean hands in reporting this matter to the FDIC.
>
> At page 22 of the counterclaims and exhibit # 47 entry # 105-1 pages 22-30 Hunt has accused BBT of the unauthorized practice of law.[76]
>
> At exhibit # 47 entry # 105-1 pages 22-30 Hunt has accused BBT of fraud upon the FDIC.
>
> Paragraph 46 of the counterclaims state: [Hunt] wrote to Trustee BBT on 9/24/2010 disputing the at least two unauthorized loans in her customer profile.
>
> Paragraph 52 of the counterclaims state: After disputing the at least two unauthorized loans in a letter to trustee BBT on Oct. 3, 2010 Hunt filed a police report with the Horry County Police Department (HCPD).
>
> Hunt wrote to BBT during these three lawsuits (see the mortgage fraud cause of action at exhibit # 47 entry # 105-1) and as stated at paragraph 64 of the counterclaims on 6/4/2012 via certified mail return receipt and exhibit # 37 where Hunt disputed the 2007 mortgage and Hunt requested satisfaction of the mortgage.
>
> BBT's banking service agreement (BSA) at exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) states: "after we receive your letter, we can not try to collect any amount you question or report you as delinquent.
>
> ... However, if our explanation does not satisfy you ..., we must tell anyone that we report you to that you have a question about your statement. And we must tell you the name of anyone we report you to."
>
> BBT at the last page of exhibit # 56 has completed its threat from exhibit # 49 entry #14-2 where BBT has reported Hunt to the credit reporting agency (CRA) as being delinquent on her 2007 mortgage. As such, not only has BBT

[76] Like in Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 746 S.E.2d 35 (S.C. 2013) Hunt argues that BBT has unclean hands where BBT has engaged in the unauthorized practice of law as described at exhibit # 47 entry # 105-1 pages 22-30.

reported Hunt as delinquent - BBT also did not include notice that the debt was disputed.

Hunt spent the summer of 2013 at the United States Patent and Trademark Office (USPTO) doing an internship. In the fall of 2013 Hunt was denied employment at the USPTO because BBT did not indicate that the mortgage was disputed.

None the less BBT comes with its hand out where BBT wants to benefit from the unilateral language contained in its BSA as stated above where all of Hunt's accounts were opened prior to the merger with Coastal Federal Bank.

Also, at exhibit # 44 page 13 of 28 (law governing your account) BBT states that the law governing all accounts includes the law of South Carolina.

Hunt has never been served the summons, complaint, lis pendens and intervention by BBT in this matter.

Thereafter, BBT has falsely certified – through the notice of denial of foreclosure intervention and attorney certification that are currently in the file - that the mortgagee BBT has complied with the requirements of paragraphs B(1)(a) through (e) of In re Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (S.C. 2011).

In ***Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975)** the court states: [...M]oney deposited, unless put into a special account or specifically designated to be kept separate, becomes the property of the bank and goes into its general account.

The counterclaims at paragraphs 9-13 state that Hunt and BBT are in a fiduciary relationship. Also, Hunt argues that in this matter all the monies deposited by Hunt were put into special accounts or specifically designated to be kept separate:

POD Account - Special Account and Opened on the Advice of BBT: Hunt did all of her banking at BBT from 1993-2008.

Exhibit # 4 shows the special designation of the POD trust account where Hunt named herself trustee and Davis the beneficiary-payee at her death. (see paragraph 15 of the counterclaims)

Hunt argues as stated above that the setup and transactions involving the POD account violated BBT's banking service agreements (BSA).[77]

BBT's employee, Danny Fogle, in May 2000 recommended that Hunt open the POD account at BBT. The POD account involved no bargaining by Hunt. The POD account was opened by Cathy Lambert at exhibit 4 of the Counterclaims, an employee of BBT. (see paragraph 15 of the counterclaims)

[77] Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005) and Ward v. West Oil Co., Inc., 387 S.C. 268, 692 S.E.2d 516 (S.C. 2010). Also, Hunt argues that BBT has violated Title 62 Article 6 of the SC Code Annotated which provides the foundational law for the payable on death (POD) trust.

Lambert and Fogle told Hunt that the POD monies would not be made available to the beneficiary Davis until after Hunt's death.[78] At exhibit # 4 Hunt signed up for a POD account where Hunt relied on the information provided to her by Lambert and Fogle and repeated in the BSA. Hunt read and relied on the BSA at exhibit #s 44-45; and the yearly statements from BBT that it was in compliance with the GLBA.

Hunt never bargained with BBT for the unauthorized POD beneficiary profile for Davis which included the Davis mortgage. Hunt never bargained with BBT for the at least two additional unauthorized mortgage loans in her customer profile. And Hunt never consented to this misconduct by BBT and Hunt has never ratified the misconduct of BBT.

Hunt argues that it was reasonable for her to believe that BBT would set up the POD account as per its signature card and banking service agreement (BSA) with the result that Davis would not have access to the POD account until after the death of Hunt based on exhibit #s 4 and 44 at page 6 of 28; and under these unique circumstances where Hunt is an attorney and where BBT is the co-trustee of the IOLTA; BBT recommended that Hunt open the POD account and based on the trust and confidence that she imposed in BBT where BBT was in a superior position to know how it treated its POD accounts.

Hunt argues that her level of education and experience should not be a factor in these unique circumstances where the misconduct that Hunt complains of was created solely by BBT and concealed from Hunt by BBT where BBT profited from the mortgages and loans that it would not have gotten but for the unauthorized Davis beneficiary profile to include the unauthorized Davis mortgage loan, the at least two unauthorized loans in Hunt's customer profile with her IOLTA and other accounts and the two improper setoffs against the POD account.

The profits made by BBT were at the expense of Hunt: where BBT forced Hunt to close the POD account where Hunt loss $160K in benefits; where BBT caused Hunt's titles (mortgages and car) to be slandered; where BBT caused the titles of Davis and the other borrowers to be slandered; where BBT caused Hunt to suffer public humiliation, mental and emotional distress, embarrassment and subjected Hunt to financial ruin, violations of the SC Professional Rules of Conduct to include disbarment and Hunt has been unable to sit for the Patent Bar exam (BBT has repeatedly threaten a Rule 11 violation), caused Hunt to not be hired at the USPTO and caused attorney fees (as of 3/2013- $2,665,500.00).[79]

Hunt argues that the above described events created a fiduciary relationship between Hunt and BBT involving all of her accounts at BBT.[80] (see paragraphs 9-14 of the counterclaims)

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[78] See the BSA of BBT at exhibit # 44 on page 6 of 28 paragraph B.3.

[79] Matter of Bowers, 303 S.C. 282, 286, 400 S.E.2d 134, 137-138 (S.C. 1991).

[80] Island Car Wash, Inc. v. Norris, 358 S.E.2d 150, 152, 292 S.C. 595, 599 (S.C. App. 1987).

Hunt further argues that any and all charges by BBT against all of the void ab initio accounts (IOLTA, POD account, CD, Savings, mortgages, loans, credit card, etc.) of Hunt were not authorized by Hunt and or not in accordance with any agreement between Hunt and BBT. SC Code Ann. § 36-4-401(a).

Pursuant to the trust that Hunt reposed in BBT and the conduct by BBT that rendered all accounts of Hunt void ab initio Hunt argues that a trust (constructive trust ex maleficio)[81] was born and that this trust holds all the monies delivered by Hunt to BBT for all of Hunt's accounts at BBT.

Hunt argues that this trust (constructive trust ex maleficio) was intended to be kept separate or constituted a specific intact fund[82] that gave rise to a fiduciary relationship and that subsequently BBT breached its fiduciary duty by commingling the monies of the trust (constructive trust ex maleficio) with the monies of other customers where BBT did use the trust monies in its daily business.

Hunt argues that these facts take the situation before the Court out of a creditor-debtor relationship where the POD account was intended to be a special trust account that was intended to be kept separate or constituted a specific intact fund and became a constructive trust ex maleficio.[83] As such, Hunt argues that the facts in this matter created a fiduciary relationship that arises from separate or specific intact fund and or the constructive trust ex maleficio.

As such, Hunt argues that her non POD accounts became draped in the cloth of the fiduciary relationship of the POD account.

IOLTA - Special Account:

Hunt is an attorney. Hunt had her attorney-client IOLTA at BBT from 1996-2008. The IOLTA is a fiduciary account.[84]

The South Carolina Appellate Court Rule (SCACR) 412 states that IOLTA means a trust account benefiting the South Carolina Bar Foundation established in an eligible institution for the deposit of pooled nominal or short-term funds of clients or third persons. And defines attorney participation as a law firm of which the lawyer is a member may maintain the account on behalf of any or all lawyers in the firm.

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[81] BBT has made admissions in the Counterclaims (FRCP 8 (b) applied to exhibit # 47 entry # 108; and where BBT did not appeal the ruling on only one issue of its motion to dismiss at exhibit # 49 entry # 22 applied to exhibit # 49 entry # 9) to include fraud, constructive fraud, mortgage fraud, failure to disclose, concealment, slander, libel, conversion, two improper setoffs, improper disclosure to Davis, three unauthorized mortgages, breach of fiduciary duty, and statutory violations, etc.

[82] *Owens v. Andrews Bank & Trust Co.,* 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

[83] Cowburn v. Leventis, 619 S.E.2d 437, 449, 366 S.C. 20 (S.C.App. 2005), *Owens v. Andrews Bank & Trust Co.,* 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975), Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005) and Ward v. West Oil Co., Inc., 387 S.C. 268, 692 S.E.2d 516 (S.C. 2010).

[84] See SC Code Ann. § 62-6-101 (14).

BBT and Hunt were co-trustees to Hunt's IOLTA. Hunt and BBT had and have[85] a fiduciary relationship[86] as co-trustees of the IOLTA[87] (see paragraphs 9-14 of the counterclaims) and the POD-constructive trust ex maleficio.

As such, the IOLTA was intended to be kept separate or constituted a specific intact fund.[88] As argued above the creditor-debtor relationship is not applicable here where the IOLTA funds were deposited into a special account or specifically designated to be kept separate[89] as can be seen at exhibit # 10 and as stated at SCACR 412.

Thus, Hunt argues that the fiduciary relationship of the IOLTA governed all non IOLTA account transactions with BBT; and or upon opening the IOLTA in 1996 that thereafter the fiduciary relationship of the IOLTA governed all existing and new non IOLTA account transactions with BBT.

Hunt further argues that any and all charges by BBT against all of the void ab initio accounts (IOLTA, POD account, CD, Savings, mortgages, loans, credit card, etc.) of Hunt were not authorized by Hunt and or not in accordance with any agreement between Hunt and BBT. SC Code Ann. § 36-4-401(a).

Pursuant to the conduct by BBT that rendered all accounts of Hunt void ab initio Hunt argues that a trust (constructive trust ex maleficio)[90] was born and that this trust holds all the monies delivered by Hunt to BBT for all of Hunt's accounts at BBT.

Hunt argues that this trust (constructive trust ex maleficio) was intended to be kept separate or constituted a specific intact fund[91] where subsequently BBT breached its fiduciary duty by commingling the monies of the trust (constructive trust ex maleficio) with the monies of other customers where BBT did use the trust monies in its daily business.

Also, Hunt argues that the non IOLTA accounts became draped in the cloth of the fiduciary relationship of the IOLTA. Such that, Hunt argues that the IOLTA and all that it draped was intended to be kept separate or constituted a specific intact fund.[92] Hunt argues that these facts take the situation before the Court out of a creditor-debtor relationship.

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[85] Hunt 2007 mortgage loan remains at BBT where during this time period Hunt also had her IOLTA (1996-2008) at BBT.

[86] Island Car Wash, Inc. v. Norris, 358 S.E.2d 150, 152, 292 S.C. 595, 599 (S.C. App. 1987).

[87] Matter of Bowers, 303 S.C. 282, 286, 400 S.E.2d 134, 136 (S.C. 1991) – Cone matter.

[88] *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975); and SCACR 412.

[89] Cowburn v. Leventis, 619 S.E.2d 437, 449, 366 S.C. 20 (S.C.App. 2005).

[90] Hunt has made admissions in the Counterclaims to include fraud, constructive fraud, failure to disclose, concealment, slander, libel, conversion, two improper setoffs, improper disclosure to Davis, three unauthorized mortgages, breach of fiduciary duty, and statutory violations, etc.

[91] *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

[92] *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

Certificate of Deposit (CD) opened by Fogle: Hunt did all of her banking at BBT from 1993-2008.

Exhibit # 9 shows the special designation of the CD account for the benefit of Hunt and others. As argued herein at exhibit # 10 (transfer management and portfolio); exhibit # 15 (Davis mortgage) and exhibit # 46 at paragraph 6 (Davis mortgage, Sherman mortgage and Allen car loans) BBT has admitted to placing several unauthorized loans into the customer profile of Hunt.

This conduct by BBT – Hunt argues resulted in violations of SCACR 412[93] and SC Code Ann. 62-6-103(b)[94]; and was against public policy with the result that all[95] agreements (past, present and future) involving Hunt accounts at BBT was void ab initio.[96]

Hunt argues that all of her accounts had no contracts as a result of being void ab initio where this takes the situation before the Court out of a contractual creditor-debtor relationship.

Hunt further argues that any and all charges by BBT against all of the void ab initio accounts (IOLTA, POD account, CD, Savings, mortgages, loans, credit card, etc.) of Hunt were not authorized by Hunt and or not in accordance with any agreement between Hunt and BBT. SC Code Ann. § 36-4-401(a).

Pursuant to the conduct by BBT that rendered all accounts of Hunt void ab initio Hunt argues that a trust (constructive trust ex maleficio)[97] was born and that this trust holds all the monies delivered by Hunt to BBT for all of Hunt's accounts at BBT. Hunt argues that this trust (constructive trust ex maleficio) was intended to be kept separate or constituted a specific intact fund[98] where subsequently BBT breached its fiduciary duty by commingling the monies of the trust (constructive trust ex maleficio) with the monies of other customers where BBT did use the trust monies in its daily business.

Unusual Circumstances: At exhibit # 15 BBT created an unauthorized beneficial profile for Davis which was contrary to the intent of Hunt at exhibit # 4 where Davis was the beneficiary-payee at the death of Hunt.

This conduct by BBT resulted in violations of the BSA, SCACR 412[99] and SC Code Ann. 62-6-103(b)[100]; and was against public policy with the result that all[101] agreements (past, present and future) involving Hunt accounts at BBT was void ab initio.[102]

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[93] Through setoff and or joint account status persons that were not a member (Davis and the others) of Hunt's law firm had access to the IOLTA. See the BSA at exhibit # 44 at page 6 paragraph B.2

[94] See the Response for the POD account at the sixth cause of action.

[95] IOLTA, POD and Savings account, CD, all mortgages, car loan, all other loans, setoff, down payments, other payments, etc.

[96] *White v. J.M. Brown Amusement Co.,* 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004).

[97] Hunt has made admissions in the Counterclaims to include fraud, constructive fraud, failure to disclose, concealment, slander, libel, conversion, two improper setoffs, improper disclosure to Davis, three unauthorized mortgages, breach of fiduciary duty, and statutory violations, etc.

[98] *Owens v. Andrews Bank & Trust Co.,* 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

[99] Through setoff and or joint account status persons that were not a member (Davis and the others) of Hunt's law firm had access to the IOLTA. See the BSA at exhibit # 44 at page 6 paragraph B.2

[100] See the Response for the POD account at the sixth cause of action.

Hunt further argues that any and all charges by BBT against the IOLTA, POD account, CD, Savings were not authorized by Hunt and or not in accordance with any agreement between Hunt and BBT. SC Code Ann. § 36-4-401(a).

Hunt argues that all accounts had no contracts as a result of being void ab initio where this takes the situation before the Court out of a contractual creditor-debtor relationship.

Pursuant to the conduct by BBT that rendered all of the accounts of Hunt void ab initio Hunt argues that a trust (constructive trust ex maleficio)[103] was born and that this trust holds all the monies delivered by Hunt to BBT for all of Hunt's accounts at BBT. Hunt argues that this trust (constructive trust ex maleficio) was intended to be kept separate or constituted a specific intact fund.[104] As such, these facts take the situation before the Court out of a creditor-debtor relationship.

Hunt further argues that subsequent to the conduct by BBT that rendered all accounts of Hunt void ab initio and placed the monies of Hunt in trust (constructive trust ex maleficio) [105] that BBT did breach its fiduciary duty by commingling these trust monies; and that BBT did with these trust monies engage in the unauthorized Davis mortgage loan, the additional at least two unauthorized loans in Hunt's customer profile, two unauthorized setoffs against the POD account, the unauthorized disclosure to Davis, loans to Hunt and loans all to other customers and use the trust monies as its own.

Hunt argues that these facts take the situation before the Court out of a creditor-debtor relationship where BBT's actions were unauthorized by Hunt, concealed from Hunt, never ratified by Hunt and are more onerous than a simple breach of contract.[106] As such, Hunt argues that she has shown that the facts do give rise to a fiduciary duty and that BBT has breached that fiduciary duty.

Hunt argues that BBT's entire motion to dismiss be denied based on unclean hands and Hunt be granted default judgment.

Hunt argues that BBT's equitable foreclosure complaint be dismissed based on unclean hands, etc.

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[101] IOLTA, POD and Savings account, CD, all mortgages, car loan, all other loans, setoff, down payments, other payments, etc.

[102] *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004).

[103] Hunt has made admissions in the Counterclaims to include fraud, constructive fraud, failure to disclose, concealment, slander, libel, conversion, two improper setoffs, improper disclosure to Davis, three unauthorized mortgages, breach of fiduciary duty, and statutory violations, etc.

[104] *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

[105] BBT has made admissions in the Counterclaims to include fraud, constructive fraud, failure to disclose, concealment, slander, libel, conversion, two improper setoffs, improper disclosure to Davis, three unauthorized mortgages, breach of fiduciary duty, and statutory violations, etc.

[106] *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

Sixth Cause of Action: Violations of SC Probate Code Ann. sections 62-6-101 thru 62-6-106 against BB&T.

Admitted: This cause of action as argued above at the Deal has been admitted by BBT in lawsuit # 1.

BBT argues that the sixth cause of action fails to set forth a claim for relief for violations of the Probate Code as sections referred to therein do not create a right a right of action and/or the facts alleged in the counterclaims establish that no actionable violation occurred.

In support of this position BBT cites to no case law; no statutes, affidavits and no exhibits.

The POD account as stated at paragraphs 15-16 of the counterclaims was authorized by Hunt at exhibit # 4 and is an account that is subject to Title 62 Article 6 of the SC Code Annotated.[107]

Also, the term payment as applied to the POD account is defined at SC Code Ann. 62-6-101(8)[108] and where SC Code Ann. § 62-6-103 defines ownership during lifetime.

> Based on these definitions Hunt argues that BB&T through setoff,[109] etc made Hunts' IOLTA,[110] and other accounts subject to setoff and accessible by persons that were not employed in Hunt's law firm.[111]
>
> Hunt further argues that by setting up the POD account with a beneficial customer profile for Davis when the account was set up in May 2000 gave Davis the POD payee, a non attorney and a person that has never been employed by Hunt-Attorney access to POD account during the life of Hunt and gave Davis and others access to the IOLTA (and other accounts).[112]
>
> Also, when the at least two unauthorized mortgage loans were placed into Hunt's customer profile these loans (transfer management and portfolio) gave those unknown borrowers, whom have never been employed by Hunt-Attorney access to the POD account and IOLTA (and other accounts).
>
> Hunt argues that the unauthorized Davis mortgage, an unauthorized beneficiary profile for Davis, two improper setoffs and at least two unauthorized loans: transfer management and portfolio [113] resulted in

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[107] See SC Probate Code Ann. section 62-6-101(10).

[108] Section 62-6-101(8) states: "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge.

[109] See the BSA at exhibit # 44 at page 10 at paragraph 13; and exhibit # 45 at page 8 at paragraph 15.
[110] Hunt is an attorney and is required to avoid even the appearance of impropriety.
[111] See paragraph 137 of the Counterclaims.
[112] See exhibit # 12 paragraph 4; and see the customer profile at exhibit # 10 pages 2-3.
[113] See exhibit #s 7 and 10.

violations of SCACR 412[114] and SC Code Ann. 62-6-103(b)[115]; and was against public policy with the result that all[116] agreements (past, present and future) involving Hunt accounts at BBT was void ab initio.[117]

Hunt further argues that any and all charges by BBT against the IOLTA, POD account, CD, Savings were not authorized by Hunt and or not in accordance with any agreement between Hunt and BBT. SC Code Ann. § 36-4-401(a).

Pursuant to the conduct by BBT that rendered all accounts of Hunt void ab initio Hunt argues that a trust (constructive trust ex maleficio)[118] was born and that this trust holds all the monies delivered by Hunt to BBT for all of Hunt's accounts at BBT. Hunt argues that this trust (constructive trust ex maleficio) was intended to be kept separate or constituted a specific intact fund.[119]

Hunt further argues that subsequent to the conduct by BBT that rendered all accounts of Hunt void ab initio and placed the monies of Hunt in trust (constructive trust ex maleficio)[120] that BBT did breach its fiduciary duty by commingling these trust monies; and that BBT did with these trust monies engage in the unauthorized Davis mortgage loan, the additional at least two unauthorized loans in Hunt's customer profile, two unauthorized setoffs against the POD account, the unauthorized disclosure to Davis, loans to Hunt and loans all to other customers and BBT did use the trust monies as its own.

Hunt argues that all accounts including the POD trust had no contracts as a result of being void ab initio where this takes the situation before the Court out of a contractual creditor-debtor relationship.

Hunt closed the POD at exhibit # 36 on May 19, 2008. (see paragraph 16 of the counterclaims)

Hunt, an attorney, is required to avoid even the appearance of impropriety.[121]

Case law interpreting Title 62 Article 6 of the SC Code Annotated include Vaughn v. Bernhardt, 339 S.C. 125, 528 S.E.2d 82 (S.C.App. 2000); and Kemp v. Rawlings, 358 S.C. 28, 594 S.E.2d 845 (S.C. 2004).

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[114] Through setoff and or joint account status persons that were not a member (Davis and the others) of Hunt's law firm had access to the IOLTA. See the BSA at exhibit # 44 at page 6 paragraph B.2

[115] See the Response for the POD account at the sixth cause of action.

[116] IOLTA, POD and Savings account, CD, all mortgages, car loan, all other loans, setoff, down payments, other payments, etc.

[117] *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004).

[118] BBT has made admissions in the Counterclaims to include fraud, constructive fraud, failure to disclose, concealment, slander, libel, conversion, two improper setoffs, improper disclosure to Davis, three unauthorized mortgages, breach of fiduciary duty, and statutory violations, etc.

[119] *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

[120] BBT has made admissions in the Counterclaims to include fraud, constructive fraud, failure to disclose, concealment, slander, libel, conversion, two improper setoffs, improper disclosure to Davis, three unauthorized mortgages, breach of fiduciary duty, and statutory violations, etc.

[121] See DR 9-101 and EC 9-2, Supreme Court Rule 32.

As such, Hunt argues that SC Probate Code Ann. Sections 62-6-101 and 62-6-103 do create a cause of action against BBT where no payments were made to Hunt as follows:

Pledge of sums on deposit: Hunt argues that unauthorized payments were made to Davis and other borrowers in violation of SC Code Ann. § 62-6-103(b) and § 62-6-101(18) where at paragraph 135 of the Counterclaims - Hunt states: BB&T used Hunts' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to show regulatory authorities that the BBT's exposure due to default on the unauthorized beneficiary profile (Davis mortgage) and the at least two unauthorized loans was replaced by the value of monies/assets held by the Bank that belonged to Hunt.

Hunt argues that BBT made unauthorized pledge payments to Davis and the borrowers of the loans transfer management and portfolio where it pledged the sums of Hunt monies on deposit for the Davis mortgage and the at least two unauthorized loans that was in Hunt's customer profile along with Hunt's IOLTA, CD, mortgages, POD account and other account.

Hunt further argues that any and all pledges by BBT against the IOLTA, POD account, CD, Savings and all of Hunt's other accounts were not authorized by Hunt and or were not in accordance with any agreement between Hunt and BBT. SC Code Ann. § 36-4-401(a).

As such, Hunt argues that BBT has not been relieved of liability pursuant to sections 62-6-108 to 62-6-113[122] for the unauthorized pledges.

SETOFFS: At exhibit # 44 at page 10 of 28 (right of setoff) BBT states: "our right of setoff ... can follow the proceeds to any other account held at the Bank". This language in the BSA permits BBT to setoff the IOLTA . This language violates SCACR 412. At exhibit # 66 BBT is listed as a financial partner for the IOLTA with the SC Bar Foundation.

In this matter the POD account was in fact setoff twice.[123] Both of the setoffs were for checks written to Hunt's business for legal services.[124] And the setoffs occurred against the non business POD account at a time that was not immediately before Hunt's death where Hunt still

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[122] SC Code Ann. § 62-6-103(b); § 62-6-102; § 36-4-401(a); Vaughn v. Bernhardt, 339 S.C. 125, 528 S.E.2d 82 (S.C.App. 2000); and Kemp v. Rawlings, 358 S.C. 28, 594 S.E.2d 845 (S.C. 2004).

[123] See exhibit #s 5 and 16. Also, the POD account was subject to setoff if there was a default on the Davis mortgage (Counterclaims exhibit # 6 pages 4-5 where BBT reported Davis to a CRA for a late mortgage payment) as a result of the unauthorized beneficial profile for Davis on the POD account and was subject to setoff if there was a default on the at least two unauthorized loans in Hunt's customer profile.

[124] CB Hunt and CB Hunt trustee of the POD, argues that she was not indebted to BBT. See SC Code Ann. **§ 62-6-113; and Gary v. People's Nat. Bank, 26 S.C. 538, 2 S.E. 568, 572 (S.C. 1887).**

lives and the account had the special designation of POD. Hunt has never ratified the setoffs from the unauthorized[125] and or authorized POD account by BBT.

Hunt argues that these acts of self help involving these unauthorized setoffs by BBT violated SC Code Ann. § 62-6-101(18); and § 62-6-113.

Hunt further argues that these acts of self help involving these setoffs against the POD account as setup by BBT as described by Teal at exhibit 15 and Davis at exhibit # 12 – **violated** BBT's banking service agreement[126] and - **violated** SCACR 412[127] (Davis and the other borrowers had access to the IOLTA through setoff, etc.), **violated** SC Code Ann. 62-6-103(b) (Davis had access to the POD account during Hunt's lifetime and improper setoffs), **violated** SC Code Ann. § 36-4-401(a) (Hunt did not authorize payments under these circumstances).

Hunt further argues that any and all setoffs by BBT against the IOLTA, POD account, CD, Savings and all of Hunt's other accounts were not authorized by Hunt and or were not in accordance with any agreement between Hunt and BBT. SC Code Ann. § 36-4-401(a).

Hunt argues that BBT has not been relieved of liability pursuant to sections 62-6-108 to 62-6-113[128] for the unauthorized setoffs.

PAYMENTS: Hunt argues that unauthorized payments were made in violation of SC Code Ann. § 62-6-103(b), § 62-6-101(18) and § 36-4-401(a) as follows:

Hunt, as trustee of the POD account argues that she did not authorize that her monies be deposited into the unauthorized POD account described by Teal at exhibit # 15. Hunt argues that all monies deposited into the account referred to as a POD account at BBT were for the account as per exhibit # 4 and as described at exhibit # 44 paragraph B.3. of the BSA where that account never existed. Such that,

> Hunt further argues that any and all payments (withdrawals, payments on checks or other directives, pledge of sums on deposit, setoffs and reductions or other dispositions of all or part of an account pursuant to a pledge) by BBT against the IOLTA, POD account, CD, Savings and all of Hunt's other accounts were not authorized by Hunt and or were not in accordance with any agreement between Hunt and BBT. SC Code Ann. § 36-4-401(a) and § 62-6-103(b).

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[125] See exhibit # 15 where Teal states that the POD account was set up with a beneficiary profile for Davis at the inception in May 2000. This was contrary to Hunt's intent as indicated at exhibit # 4 of the Counterclaims.

[126] See exhibit # 44 at page 6 of 28 (payable on death) and exhibit # 44 at page 27-28 of 28 (law governing your account) cf. exhibit # 15 where Teal states it was the procedure to set up the POD with a beneficiary profile; and at exhibit 12 while checking on her delinquent mortgage BBT told Davis that she was the owner of the POD and BBT never found the Davis mortgage, however Hunt had two unauthorized loans in her customer profile at exhibit # 10. Armstrong v. Collins, 366 S.C. 204, 224, 621 S.E.2d 368, 378 (Ct.App.2005).

[127] Hunt is an attorney licensed in SC. See footnote 1 in exhibit # 43.

[128] SC Code Ann. § 62-6-103(b); § 62-6-102; § 36-4-401(a); Vaughn v. Bernhardt, 339 S.C. 125, 528 - S.E.2d 82 (S.C.App. 2000); and Kemp v. Rawlings, 358 S.C. 28, 594 S.E.2d 845 (S.C. 2004).

As such, Hunt argues that all payments by BBT were made from an POD account with an unauthorized beneficiary profile for Davis where this was contrary to the intent manifested by the terms of the account or the deposit agreement[129] violations SCACR 412 and SC Code Ann. section 62-6-103(b) and were against public policy. And Hunt has never ratified the use of the unauthorized accounts by BBT.

Thus, it is Hunt's position that BBT has never made a single payment to or for Hunt. And that BBT has not been relieved of its liability pursuant to SC Code Ann. sections 62-6-108 to 62-6-113.

In the **Seventh Cause of Action** Hunt alleges violations of the SC UNFAIR TRADE PRACTICES ACT under SC Code Ann. § 39-5-10 thru 39-5-170 against BB&T.

Admitted: This cause of action as argued above at the Deal has been admitted by BBT in lawsuit # 1.

Legal Standard: "An act or practice is ' "unfair" when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is "deceptive" when it has a tendency to deceive.'"[130]

Legal Standard: Exemptions from the SC UTPA are governed by SC Code Ann. § 39-5-40,[131] § 39-5-160[132] and Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310 (S.C. 1991).

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[129] See exhibit # 4 and SC Code Ann. **§ 62-6-103(b).**

[130] Johnson v. Collins Entertainment Co., Inc., 88 F.Supp.2d 499, 517 (D.S.C. 1999)

[131] **S.C. Code § 39-5-40** states:

Nothing in this article shall apply to:

(a) Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law.

(b) Acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and did not have a direct financial interest in the sale or distribution of the advertised product or service.

(c) This article does not supersede or apply to unfair trade practices covered and regulated under Title 38, Chapter 57, Sections 38-57-10 through 38-55-320.

(d) Any challenged practices that are subject to, and comply with, statutes administered by the Federal Trade Commission and the rules, regulations and decisions interpreting such statutes.
For the purpose of this section, the burden of proving exemption from the provisions of this article shall be upon the person claiming the exemption.

[132] **S.C. Code § 39-5-160** states: The powers and remedies provided by this article shall be cumulative and supplementary to all powers and remedies otherwise provided by law.

BBT argues in its motion to dismiss that the seventh cause of action in the counterclaims fails to state facts sufficient to state a claim against BBT for violation of SC Code Ann. § 39-5-10 et seq as the actions of BBT, (a federally insured state banking institution), are not covered by or subject to the provisions of SC Code Ann. § 39-5-10 et seq. as the actions of federally insured financial institutions are not subject thereto and/ or are exempt from the provisions thereof pursuant to SC Code Ann. § 39-5-40.

BBT does not cite to any statutes, affidavits, exhibits or case law in support of its position.

Hunt argues that the exemptions under SC Code Ann. § 39-5-40 do not apply to BBT for the following reasons:

> **SC Code Ann. 39-5-40 (a)[133] states:** Nothing in this article shall apply to:
>
> (a) Actions or transactions **permitted** under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law.

There is no cause of action in the counterclaims that accuses BBT of misconduct that is permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law.

Exhibit # 2 states that: BBT is a North Carolina state charted commercial bank.[134] And that the articles of merger are approved by the NC State Banking Commission.

The counterclaims at paragraph 33 state: Hunt complained to the Federal Deposit Insurance Corporation (FDIC) on March 24, 2008 about the disclosure to Davis. BBT wrote four letters to the FDIC: two from Judy Teal, one from David Craven and one from Mark Booz. (see exhibit #s 14 and 20)

The counterclaims at paragraphs 90 and 228 state: In May 2008 the FDIC found that BBT violated GLBA. (see exhibit #s 17 and 18) This limited finding by the FDIC shows that the actions or transactions of BBT **were not permitted** under laws administered by a regulatory body or officer of the US – the FDIC.

Next, BBT in its motion to dismiss concerning the seventh cause of action does not cite to any cases or statutes or any document submitted by BBT in support of its position that its activities as a federally insured state banking institution do not fall within the coverage of SC Code Ann. § 39-5-10, et seq.[135]

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[133] Also, SC Code Ann. 39-5-40 (b), (c) and (d); and 39-5-160 are no applicable to BBT.
[134] See exhibit # 49 at entry # 14 (2).
[135] As argued above this assertion by BBT is broad and conclusory. And this court should treat it as abandoned.

Again, BBT is a North Carolina Corporation[136] and is regulated by the NC Commission on Banking.

Federal Reserve System Avoided and Regulation By FDIC Avoided:

In this matter Hunt reported BBT to the FDIC twice for conduct that Hunt alleges was unfair and deceptive practices, etc. where Hunt had her IOLTA with BBT from 4/1996-5/19/2008.[137] And while Hunt had her IOLTA at BBT at least three (Davis mortgage and the loans: transfer management and portfolio) unauthorized loans were placed into Hunt's customer profile. (See exhibit #s 15 and 10 of the Counterclaims)

At exhibit # 13 of the Counterclaims attorney Trustee David Craven failed to disclose the at least two unauthorized loans in Hunt's customer profile and falsely stated that no fiduciary relationship was ever established between Hunt and BBT.[138]

Judy Teal in her April 11, 2008 (see exhibit # 15) letter to the FDIC also sent Craven's letter at exhibit # 13 to the FDIC. Mark Booz in his letter (see exhibit # 19 of the Counterclaims) to the FDIC also failed to disclose the at least two unauthorized loans in Hunt's customer profile along with Hunt's IOLTA.

Hunt alleges that through exhibit #s 13, 15, 19 and 21 that BBT was able to conceal conduct that Hunt alleges constitutes unfair and deceptive practices.

The above described misconduct allowed BBT to avoid the authority of the Federal Reserve System to promulgate and enforce regulations to define and prevent unfair or deceptive acts or practices by banks under 15 U.S.C. Sec. 57a(f) (Supp.1986) with enforcement and compliance under 12 USC 1818.

As such, to date as to these matters Hunt's argues that BBT has avoided regulation by a federal banking agency, the FDIC.

Additionally BBT argues that the counterclaims fail to set forth a claim for relief under SC Code Ann. § 39-5-10 as the facts alleged in the counterclaims establish only a private dispute between the parties that has no impact upon the public interest of the state of South Carolina. [139]

Impact upon the public interest and capable of repetition: Hunt argues that counterclaims establish that this dispute will impact the public as follows:

The counterclaims at paragraph 42 state: BBT has at least two Banking Service Agreements (BSA).

The counterclaims at paragraph 167-168 state: BBT is a Bank/financial institution. BBT is engaged in businesses that affect public interest.

The counterclaims at paragraph 10 state: The SC Bar is a beneficiary to the

[136] See exhibit # 49 at entry # 14 (2).
[137] As argued herein BBT at paragraph 11 of the counterclaims has admitted that Hunt and BBT had and have a fiduciary relationship.
[138] See exhibit 13.
[139] BBT does not cite to any statutes, affidavits, exhibits or case law in support of its position.

IOLTA.

Exhibit # 44 page 6 of 28 (general legal agreement) the first sentence states: This agreement governs all accounts between BBT and its clients/depositors.

Exhibit # 45 page 4 of 15 (general legal agreement) the first sentence states: This agreement governs all accounts between BBT and its clients/depositors.

At page 22 of the counterclaims and exhibit # 47 entry # 105-1 pages 22-30 Hunt has accused BBT of unclean hands in reporting this matter to the FDIC.

At page 22 of the counterclaims and exhibit # 47 entry # 105-1 pages 22-30 Hunt has accused BBT of the unauthorized practice of law.

At exhibit # 47 entry # 105-1 pages 22-30 Hunt has accused BBT of fraud upon the FDIC.

At the third cause of action in this brief Hunt has argued that BBT based on the allegations contained in the counterclaims and exhibits has violated its own BSA at least twelve times.

Prior similar misconduct, ongoing misconduct and capable of repetition: In this matter Hunt has cited to Saunders: BBT in *Saunders v. Equifax Information Services, L.L.C., 469 F.Supp.2d 343, 347 (E.D.Va. 2007)* as in the present action has reported a client/ Hunt to the CRA without indicating that the debt is being disputed by the client.

Hunt wrote to BBT at paragraph 46 of the counterclaims: [Hunt] wrote to Trustee BBT on 9/24/2010 disputing the at least two unauthorized loans in her customer profile.

Paragraph 52 of the counterclaims state: After disputing the at least two unauthorized loans in a letter to trustee BBT on Oct. 3, 2010 Hunt filed a police report with the Horry County Police Department (HCPD).

Hunt wrote to BBT during these three lawsuits (see the mortgage fraud cause of action at exhibit # 47 entry # 105-1) and as stated at paragraph 64 of the counterclaims on 6/4/2012 via certified mail return receipt and exhibit # 37 where Hunt disputed the 2007 mortgage and Hunt requested satisfaction of the mortgage.

BBT's banking service agreement (BSA) at exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) states: "after we receive your letter, we can not try to collect any amount you question or report you as delinquent.

... However, if our explanation does not satisfy you ..., we must tell anyone that we report you to that you have a question about your statement. And we must tell you the name of anyone we report you to."

BBT at the last page of exhibit # 56 has completed its threat from exhibit # 49 entry #14-2 where BBT has reported Hunt to the credit reporting agency (CRA) as being delinquent on her 2007 mortgage. As such, not only has BBT

reported Hunt as delinquent - BBT also did not include notice that the debt was disputed.

Hunt spent the summer of 2013 at the United States Patent and Trademark Office (USPTO) doing an internship. In the fall of 2013 Hunt was denied employment at the USPTO because BBT did not indicate that the mortgage was disputed.

In Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310, 311 (S.C. 1991) Justice Toal of the South Carolina Supreme Court said: If we were to accept this contention [that section 39-5-40 excludes from the Act any activity which is regulated by state or federal agencies or other state statutes] however, the UTPA would be rendered without meaning. Almost every business is subject to some [] type of regulation.

Justice Toal in Ward v. Dick Dyer went on to adopt the position of the Tennessee Court in *Skinner v. Steele,* 730 S.W.2d 335 (Tenn.App.1987) of:

> "The purpose of the exemption [under SC Code Ann. 39-5-40] is to insure that a business is not subjected to a lawsuit under the Act when it does something required by law, or does something that would otherwise be a violation of the Act, but which is allowed under other statutes or regulations. It [SC Code Ann. 39-5-40] is intended to avoid conflict between laws, not to exclude from the Act's coverage every activity that is authorized or regulated by another statute or agency. Virtually every activity is regulated to some degree. The defendant's interpretation of the exemption would deprive consumers of a meaningful remedy in many situations. We find this reasoning persuasive and applicable to our statutory exemption. In addition we find that this conclusion is buttressed by the fact that § 39-5-160 of the Act provides that "[t]he powers and remedies provided by this article shall be cumulative and supplementary to all powers and remedies otherwise provided by law."[140]

Hunt argues that applying the reasoning of Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310, 312 (S.C. 1991) to this matter yields the following:

> The certain specified practices and transactions of this case include all the counterclaims, affidavits and exhibits in the present case where Hunt alleges that the failure to disclose and concealment by BBT are offensive to public policy, immoral, fraudulent, unethical, or oppressive and deceptive practices.
>
> Hunt argues that the deception and other actions have been repeated multiple times and have caused injury to the **public**[141] to include Davis where BBT put Davis under water with the mortgage and thereafter reported Davis to a CRA as delinquent of her mortgage at exhibit #s 6 and 12.[142]
>
> As such, the certain specified practices and transactions of this case that are alleged against BBT are a violation of the Act.

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[140] Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310, 312 (S.C. 1991).

[141] See exhibit # 46 at paragraph 6 re the SC Bar, Davis, Allen and Sherman.

[142] Also, Hunt argues that the conduct of BBT violates SCACR 412.

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Also, BBT's conduct which is alleged to violate the UTPA is neither an action nor a transaction which is specifically authorized by any regulatory agency.

And BBT is not required by law to do any of the certain specified practices and transactions of this case that are alleged against BBT by Hunt.

Hunt argues that the certain specified practices and transactions of this case that are alleged against BBT are not allowed or permitted under other statutes, regulations or BBT's own Banking Service Agreements.[143]

As such, there is no conflict between the state and federal statutes. As previously stated BBT is a North Carolina Corporation. Thus, BBT is not regulated by a SC regulatory body or officer. BBT was able to avoid regulation by the FDIC. As such, for all of these reasons no exemption under 39-5-40 should apply to BBT and the SC UTPA should apply to BBT in these unique set of circumstances where attorneys doing business in SC are required to deposit client funds into a financial institution. BBT is a financial institution that is recommended by the SC Bar.

Eighth Cause of Action: Mortgage loan fraud under SC Code Ann. 37-22-190 and 37-5-108 and 29-3-310 against BBT.

Admissions by BBT: Hunt argues that BBT on 3/11/2011 has admitted to mortgage loan fraud at exhibit # 47 entry # 108 where BBT did not deny any of the allegations at exhibit # 47 entry # 105-1 which included mortgage loan fraud on pages 34-35.

BBT argues that SC Code Ann. 37-22-190 does not apply to it because BBT is exempt as a federally insured financial institution that it is not subject to SC Code Ann. 37-22-190.

SC Code Ann. 29-3-310: The Eighth Cause of Action in the counterclaims clearly state - Mortgage loan fraud under SC Code Ann. 37-22-190 and 37-5-108 and **29-3-310** against BBT.

However, BBT in its motion to dismiss re this cause of action is silent on SC Code Ann. 29-3-310. Hunt argues again that BBT has admitted, waived and or abandoned this argument.

As such, Hunt also argues that it has been more than ninety days since she made the request via certified mail return receipt for the BBT to mark her mortgage as satisfied.[144] To date BBT has not marked Hunt's mortgage as paid. Hunt seeks the Title free of mortgage and damages stated in the Counterclaims which includes statutory damages under SC Code Ann. 29-3-320.

[143] See paragraph 43 of the counterclaims and the documents at exhibit #s 44 and 45.
[144] See exhibit # 37.

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SC Code Ann. 37-22-190

SC Code Ann. 37-22-190 (A) provides that "[i]n addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person **licensed** pursuant to this chapter, in the course of a mortgage loan origination, to [...]"

The question thus becomes is BBT licensed pursuant to SC Code Ann. 37-22-190?

Hunt argues that BBT is licensed pursuant to SC Code Ann. 37-22-190 as follows:

BBT is licensed with Nationwide Mortgage Licensing System and Registry: The issue under SC Code Ann. 37-22-190 is whether BBT is a person licensed pursuant to Chapter 22. At exhibit # 49 entry # 15 on page 3 of 4 is a copy of the identifier assigned by protocols to BBT pursuant to its registration with Nationwide Mortgage Licensing System and Registry under SC Code Ann. 37-22-110(31) and (41).[145]

Hunt argues that BBT waived any and all exemptions under 37-22-110 when it satisfied the licensing requirements under SC Code Ann. 37-22-120.

Hunt argues that BBT is a person[146] licensed pursuant to Chapter 22, when in the course of Hunt's **mortgage loan** origination,[147] BBT did unlawfully engage in the conduct alleged in the Counterclaims, exhibits, affidavits and pleadings in violation of SC Code Ann. 37-22-190.

Hunt has alleged that BB&T used Hunts' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to show regulatory authorities that the BBT's exposure due to default on the unauthorized beneficiary profile to include the Davis mortgage loan and at least two unauthorized mortgage loans in Hunt's customer profile was replaced by the value of monies/assets held by BBT that belonged to Hunt.

At exhibit #s 28-33 Hunt wrote to BBT on 9/24/2010 stating that Hunt did not apply for and did not receive the proceeds of the at least two unauthorized mortgage loans in her customer profile.

Thereafter, Hunt argues that BBT in September 2010 concealed and failed to disclose the contents of Hunt's customer profile[148] by refusing to provide Hunt with an updated copy of her

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[145] 37-22-110 (31) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators of licensees licensed pursuant to this chapter.

[146] 37-22-110 (33): "Person" means a natural person, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

[147] 37-22-110 (30) "Mortgage loan" means a loan made to a natural person primarily for personal, family, or household use, primarily secured by a mortgage, deed of trust, or other security interest on residential real property or security interest arising under an installment sales contract or equivalent security interest against the borrower's dwelling and: (i) located in South Carolina, (ii) negotiated, offered, or otherwise transacted within this State, in whole or in part, or (iii) made or extended within this State.
BBT does not argue that Hunt and other mortgages fail to satisfy 37-22-110(30).

[148] See exhibit #s 28-29 of the Counterclaims.

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customer profile in violation of SC Code Ann. sections 37-22-190 and 37-20-170; and 15 U.S.C. 1681i(6)(A)/(B).

Hunt argues that operative events are ongoing:
In 2011 BBT wrote at exhibit #s 50 (affidavit of Teal does not list the 2007 mortgage) – exhibit # 51 (footnote 1 - all of Hunts loans were paid off in early 2009; in June 2012 at exhibit # 37 Hunt wrote to BBT requesting satisfaction of her mortgage where more than 90 days has gone by; in July 2012 at exhibit # 49 at entry # 14 (2) BBT wrote to Hunt stating that Hunt's 2007 mortgage loan at BBT was past due as of July 1, 2012; from 7/9/2012 – 3/13/2013 BBT did not file a compulsory counterclaim in CASE NO: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL; in 2013 BBT reported Hunt to credit reporting agency re the 2007 mortgage; and in April 2013 BBT filed a foreclosure complaint against Hunt where the USDC had filed a final order at exhibit # 43.

Hunt argues that the alleged violations under SC Code Ann. 37-22-190 involving the mortgage loans of Hunt, Davis and the at least two unauthorized mortgage loans in Hunt's customer profile are ongoing and continues to present day. [149]

SC Code Ann. 37-5-108:

In this matter attorney Foerester has submitted a copy of Wells Fargo Bank, NA v. Smith, 398 S.C. 487, 730 S.E.2d 328 (S.C.App. 2012) where Wells Fargo filed the action for foreclosure and Smith asserted the counterclaim of unconscionability.

However, in this matter BBT argues that Hunt's mortgage loan is a "first mortgage on real estate is not a consumer loan subject to SC Code 37-5-108."[150]

BBT does not cite to any case law or statutes to support its position.

SC Code Ann. 37-22-190 (A)(8) states: engage in a transaction, practice, or course of business in connection with the making or servicing of, or purchase or sale of, a mortgage loan that is not in good faith or fair dealing, that is unconscionable, as set forth in Section 37-5-108, or that constitutes a fraud upon a person.

Mortgage loan is defined at SC Code Ann. § 37-22-110 (30): "Mortgage loan" means a loan made to a natural person primarily for personal, family, or household use, primarily secured by a mortgage, deed of trust, or other security interest on residential real property or security interest arising under an installment sales contract or equivalent security interest against the borrower's dwelling and: (i) located in South Carolina, (ii) negotiated, offered, or otherwise transacted within this State, in whole or in part, or (iii) made or extended within this State.

Hunt asserts that her 1993, 2003 and 2007 loans on her homes were and are mortgage loans[151] where each component of SC Code Ann. § 37-22-110 (30) is satisfied in this matter.

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[149] See cause of action for intentional destruction of evidence; BBT refused to provide documents to the HCPD in 10/2010 at exhibit #s 28-33; there has been no discovery and Hunt continues to allege that BBT has failed to disclose where there is a fiduciary relationship.

[150] BBT has failed to cite any authority, documentation or exhibit for this position.

[151] Hunt directs the Court to exhibit # 10 where BBT refers to the 2003 and 2007 mortgages as Conventional Mortgages. For the 1993 mortgage see exhibit # 49 at page 2of 3. Copies of the 2003 and 2007 mortgages are at exhibit # 49 at page 2 of 4 at entry # 2-4.

Hunt argues that the mortgage loans included in this matter are Hunt's three mortgage loans; the Davis mortgage loan and the at least two unauthorized mortgage loans in Hunt's customer profile under the names transfer management and portfolio.

The application of SC Code Ann. 37-5-108[152] arises in this matter as the eighth item at 37-22-190(A): In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person licensed pursuant to this chapter, in the course of a mortgage loan origination, to: engage in a transaction, practice, or course of business in connection with the making or servicing of, or purchase or sale of, a mortgage loan[153] that is not in good faith or fair dealing, that is unconscionable, as set forth in Section 37-5-108, or that constitutes a fraud upon a person.

Hunt argues that all Hunt's pleadings (counterclaims, documents, exhibits and affidavits) of these civil actions, those incorporated by reference state and or show that the transactions, practices, or course of business in connection with the making or servicing of, or purchase or sale of, mortgage loans[154] that **were not** in good faith or fair dealing, that are unconscionable, as set forth in Section 37-5-108, or that constitutes a fraud upon Hunt , Davis and the at least two unauthorized borrowers of the mortgage loans in Hunt's customer profile.

Hunt argues that she has shown through the counterclaims documents, exhibits and affidavits that SC Code Ann. 37-22-190 does apply to BBT and that Hunt's mortgage loan is a loan that is subject to SC Code 37-5-108.

Ninth Cause of Action: Defamation - libel per se and or slander per se against BB&T.

BBT in its motion to dismiss concerning this cause of action cites to no statutes and no case law.

BBT asserts that there is no allegation of a false statement or message causing harm to Hunt reputation in the Counterclaims.

BBT in its motion to dismiss concerning the ninth cause of action cite to no case in support of its position that there is no allegation of a false message about Hunt in the Counterclaims.

The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either action ability of the statement irrespective of special harm or the existence of special harm caused by the publication.[155]

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[152] The BBT also argues, without citing an authority, that Hunt's mortgage loan is a "loan secured by a first lien or equivalent security interest in real estate" such that 37-5-108 is not applicable as per 37-3-105. Hunt directs the Court to exhibit # 10 of the where BBT refers to the 2003 and 2007 mortgages as Conventional Mortgages. For the 1993 mortgage loan see exhibit # 3 (Hunt's affidavit paragraph 3.a.) of the verified counterclaims. Thus, Hunt argues that 37-3-105 is not applicable to these facts where Hunt's mortgages, the Davis mortgage and the at least two unauthorized loans in Hunt's customer profile are mortgage loans as defined at 37-22-110 (30).

[153] See 37-22-110 (30).

[154] See 37-22-110 (30).

[155] Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (S.C. 1998).

Hunt argues that the Counterclaims, exhibits and affidavits contain numerous false statements and messages about Hunt where Hunt is an attorney.[156]

Hunt argues that some of the numerous false statements/messages that have and continue to be written and or spoken by BBT include those at paragraphs 264-268 of the Counterclaims:[157]

> BB&T published the false and unauthorized beneficiary profile in its computers to Costella Davis, Karen Butcher, Kaci Sansbury, Tamara Cannon and others;
>
> BB&T published the at least two false and unauthorized loans in its computers to Karen Butcher, Tamara Cannon and Kaci Sansbury, in the printout of the customer profile dated 7/19/2007, and to others;
>
> BB&T spoke of the false, unauthorized beneficiary profile and at least two unauthorized loans in its computers to Costella Davis, Karen Butcher, Kaci Sansbury, Tamara Cannon and others; and
>
> BB&T excessively and improperly published the unauthorized beneficiary profile and at least two unauthorized loans since the computer entry was available to the staff at large.
>
> Also, at exhibit # 46 on the last page BBT reported Hunt to the CRA as delinquent on the 2007 mortgage where this is a false statement as argued herein.

False statements published to CRA, USPTO and the world:

> Hunt wrote to BBT at paragraph 46 of the counterclaims: [Hunt] wrote to Trustee BBT on 9/24/2010 disputing the at least two unauthorized loans in her customer profile.
>
> Paragraph 52 of the counterclaims state: After disputing the at least two unauthorized loans in a letter to trustee BBT on Oct. 3, 2010 Hunt filed a police report with the Horry County Police Department (HCPD).
>
> Hunt wrote to BBT during these three lawsuits (see the mortgage fraud cause of action at exhibit # 47 entry # 105-1) and as stated at paragraph 64 of the counterclaims on 6/4/2012 via certified mail return receipt and exhibit # 37 where Hunt disputed the 2007 mortgage and Hunt requested satisfaction of the mortgage.

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[156] Hunt is required to avoid even the appearance of impropriety. DR 9-101 and EC 9-2, Supreme Court Rule 32.

[157] 'And as a logical matter it should be immaterial whether the commission of a crime is charged positively and directly by words of clear and unmistakable meaning or only indirectly and by means of innuendo. So long as the words are understood by third persons to make the charge, the effect from the standpoint of damage done may be calculated to be the same. 'It has, in fact, been noted several times by the South Carolina courts that a hidden charge made by insinuation and innuendo may inflict graver injury and injustice than a direct and specific accusation which, if false, may be more easily met and refuted.' Lesesne v. Willingham, 83 F.Supp. 918, 921 (E.D.S.C. 1949).

BBT's banking service agreement (BSA) at exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) states: "after we receive your letter, we can not try to collect any amount you question or report you as delinquent.

... However, if our explanation does not satisfy you ..., we must tell anyone that we report you to that you have a question about your statement. And we must tell you the name of anyone we report you to."

BBT at the last page of exhibit # 56 has completed its threat from exhibit # 49 entry #14-2 where BBT has reported Hunt to the credit reporting agency (CRA) as being delinquent on her 2007 mortgage. As such, not only has BBT reported Hunt as delinquent - BBT also did not include notice that the debt was disputed.

Hunt spent the summer of 2013 at the United States Patent and Trademark Office (USPTO) doing an internship. In the fall of 2013 Hunt was denied employment at the USPTO because BBT did not indicate that the mortgage was disputed.

The counterclaims at the eighth cause of action for mortgage loan fraud state:

Each previous paragraph and exhibits are repeated herein as if verbatim.

Hunt refinanced her 2003 BBT mortgage with BBT in May 2007.

Hunt's 7/19/2007 customer profile listed two unauthorized loans: transfer management and portfolio.

Hunt 2007 mortgage application did not list the at least two unauthorized loans in Hunt's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts.

Judy Teal in her 4/11/2008 letter to the FDIC stated that the events of the 1/19/2008 disclosure to Costella Davis occurred as the result of BBT setting up Hunt's POD trust from the beginning (May 2000) to share an unauthorized beneficiary profile with Costella Davis.

Judy Teal stated in her 4/11/2008 letter to the FDIC that BBT had created a beneficiary profile for Davis that was connected to Hunt's POD account.

Hunt disputed the loan entries "transfer management" and "portfolio" in her customer profile in a 9/24/2010 letter of dispute to BBT.

BBT stated in there 9/27/2010 response letter: the two loans listed on the 7/19/2007 profile are not currently in your profile.

On 10/21/2010 BBT wrote to the HCPD: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena."

Hunt complained to the FDIC in 3/2008.

David Craven wrote to Hunt in 3/2008.

David Craven falsely stated in his letter that no fiduciary relationship had ever been

established between Hunt and BBT.

Judy Teal sent the letter of David Craven to the FDIC.

BBT has not issued a satisfaction of mortgage to Hunt.

At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

Admissions by BBT: Hunt argues that BBT on 3/11/2011 has admitted to mortgage loan fraud at exhibit # 47 entry # 108 where BBT did not deny any of the allegations at exhibit # 47 entry # 105-1 which included mortgage loan fraud on pages 34-35.

Hunt also argues that more false statements/messages that have been and continue to be written and or spoken by BBT include those at the eleventh cause of action for Slander of Title:[158]

Hunt alleges that the false messages include where all the loans Hunt had with BBT when her assets were being misused are awash in loan fraud; and thereafter BBT published by filing mortgages/liens on the property of Hunt.[159]

Hunt further argues that the false messages include where BBT used Hunt's assets to qualify Davis and others for loans and thereafter published by filing mortgages/liens on the property of Davis and other borrowers where there is and was no mutuality between these parties.

Thus, Hunt argues that the Davis mortgage, the two improper setoffs, the unauthorized beneficiary profile and the at least two unauthorized loans in Hunt's customer profile are false statements where they where omitted from the loan application by BBT where BBT and Hunt are and were in a fiduciary relationship.[160]

As such, at paragraphs 88 and 183 of the Counterclaims Hunt states: that, on account of the BBT's conduct of exceeding the use of, improperly using and or illegally using Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan and other accounts where Hunt never ratified this conduct - the BB&T has subjected Hunt, an attorney, to financial ruin, criminal prosecution for mortgage loan application fraud,[161] violations of the SC Professional Rules of Conduct to include disbarment,[162] the inability to earn a living (BBT has repeatedly threaten a Rule 11 violation) and public humiliation; all of which continues each day.

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[158] See above cite re Lesesne v. Willingham, 83 F.Supp. 918, 921 (E.D.S.C. 1949).
[159] As an attorney Hunt is required to avoid even the appearance of impropriety.

[160] See The Bank of Nashville v. Chipman, M2010-01581-COA-R3-CV (TNCIV) for treatment of false statements on the loan application where borrower is delinquent on the loan. At exhibit # 49 at entry # 14 (2) BBT writes to Hunt stating that she is delinquent on her mortgage.

[161] See 18 U.S.C. § 1014.
[162] See SCACR 412.

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Hunt argues that she has shown that the Counterclaims, exhibits and affidavits contain numerous false statements and messages about Hunt where Hunt is an attorney.[163]

Tenth Cause of Action: Intentional destruction of evidence (IDE) against BB&T.

BBT in its motion to dismiss concerning this cause of action cites to no statutes and no case law.

BBT argues that SC does not recognize an independent cause of action for spoliation of evidence.

In Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537 (S.C. 2011) the SC Supreme Court found that the tort of negligent spoliation of evidence is not cognizable under South Carolina law.

The Court in Cole, supra made no statements about the intentional destruction of evidence.

Here Hunt is not alleging the tort of negligent spoliation of evidence. Hunt here is alleging the tort of intentional destruction of evidence.[164]

Hunt requested that BBT preserve evidence at exhibit # 26. Also, under SC Code Ann. section 62-7-810 and 34-3-510[165] BBT is required to preserve records.

However, BBT's response to the HCPD search warrant was as stated at paragraph 54 of the counterclaims: On 10/21/2010 BBT returned the search warrant to the HCPD with zero documents stating: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena." (also see exhibit # 32 at page 2.)

Hunt argues that BBT has deleted evidence,[166] failed to disclose[167] the unauthorized beneficial profile and the at least three unauthorized loans in Hunt's customer profile to Hunt, the HCPD and the FDIC; and BBT returned the search warrant to the HCPD with zero documents. Thus, BBT leaves Hunt with the inability to clear her name and reputation of any wrong doing while allowing BBT to save its own reputation and avoid most of the fallout associated with this misconduct.

Hunt as a remedy for the destruction of evidence by BBT pursuant to Cole, supra at 541 (S.C. 2011) has requested that this court **strike all present and future pleadings of the**

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[163] McBride v. School Dist. of Greenville County, 389 S.C. 546, 560, 698 S.E.2d 845 (S.C.App. 2010).

[164] BBT makes no argument as to the intentional destruction of evidence in its motion to dismiss. Also, BBT does not deny that it engaged in the intentional or the negligent destruction of evidence. As such, Hunt's position is that BBT has **twice admitted** to this cause of action for the intentional destruction of evidence where BBT was required to answer and BBT did not deny this cause of action. SCRCP 8(d).

[165] **§ 34-3-510. Records shall be retained:** Every bank shall retain its business records for such periods as are or may be prescribed by or in accordance with the terms of this article. Each bank shall retain permanently the minute books of meetings of its shareholders and directors and all records which the State Board of Bank Control shall, in accordance with the terms of this article, require to be retained permanently. All other bank records shall be retained for such periods as the Board shall, in accordance with the terms of this article, prescribe.

[166] See exhibit #s 15 and 36. Note: The deletion of a record does not mean that the information can not be recovered.

[167] Hunt and BBT had and have a fiduciary relationship. See paragraph 11 of the counterclaims.

Defendants; default judgment[168], actual and punitive damages and see relief sought else where in the counterclaims. Also, there has been no settlement in this matter.

Invocation of the spoliation rule: "Spoliation refers to the destruction or material alteration of evidence or to the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation. West v. Goodyear Tire & Rubber Co., 167 F.3d 776, 779 (2d Cir. 1999) (citing Black's Law Dictionary 1401 (6th ed. 1990)).[169]

[A] party seeking **an adverse inference instruction** based on the destruction of evidence must establish (1) that the party having control over the evidence had an obligation to preserve it at the time it was destroyed; (2) that the records were destroyed "with a culpable state of mind;" and (3) that the destroyed evidence was "relevant" to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense."[170]

Hunt argues that BBT has engaged in the intentional spoliation of evidence[171] as follows:

1. **BBT's Control:** The evidence about all of Hunt's accounts and transactions were in the control of BBT on its protected computers.[172]

2. Obligation to preserve: The allegations in this matter involve Hunt's IOLTA. BBT is required to keep adequate records of the administration of the IOLTA.[173]

3. This litigation was pending and or reasonably foreseeable when Hunt notified BBT of the disclosure to Ms. Davis on 1/22/2008 and requested that their legal department call Hunt.[174] And thereafter,

4. Attorney Craven wrote to Hunt on 3/10/2008.[175]

5. Teal in her April 11, 2008 letter to the FDIC states from Feb 1, 2008 through March 17, 2008: "I have had numerous conversations with Ms. Hunt." [176]

6. Culpable state of mind: Teal in her April 11, 2008 letter to the FDIC stated that the beneficiary profile for Davis had been deleted.[178]

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[168] Hunt requests a damages hearing.

[169] Silvestri v. Gen. Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001).

[170] Johnson v. Metropolitan Government of Nashville and Davidson County, 10-6102, 11-5174 (FED6).

[171] The spoliation rule "leads to the exclusion of evidence or the admission of negative evidence". Vodusek v. Bayliner Marine Corp., 71 F.3d 148, 156 (4th Cir. 1995).

[172] Adkins v. Wolever, 554 F.3d 650, 653 (6th Cir. 2009).

[173] See SC Code 62-7-810 and paragraph 9 of the counterclaims where Hunt had her IOLTA at BBT from 1996 – 2008; and **Fifth Cause of Action:** Breach of Fiduciary Duty / Breaches of Trust for Violations of SC Common Law and SC Code Ann. section 62-7-1001(a) by engaging in conduct that is prohibited at 62-7-801 thru 62-7-817 against BB&T. Also, see SC Code 34-3-510.

[174] See exhibit # 20. And cf. Silvestri v. Gen. Motors Corp., 271 F.3d 583, 585 (4th Cir. 2001).

[175] See exhibit # 13.

[176] See Teal's letter to the FDIC at exhibit # 15.

7. At the time of Hunt's involuntary closure of the IOLTA and POD trust account, on 5/19/2008, BBT indicated on the exit interview form that it had not saved the account histories of the POD and IOLTA.[179] Hunt argues that this evidence was in the control of BBT on its protected computers.

8. Culpable state of mind: BB&T deleted the additional at least two unauthorized loans in Hunt's customer profile.[180] Hunt argues that this evidence was in the control of BBT on its protected computers.

9. Culpable state of mind: BBT refused to provide Hunt with an updated copy of her customer profile.[181] Hunt argues that she has a continuing and ongoing fiduciary relationship with BBT as argued herein.

10. Culpable state of mind: BBT returned the search warrant to the HCPD with zero documents and interfered with a criminal investigation of identity theft, criminal libel, bank fraud, computer fraud and false entry, etc.

12. The destroyed evidence was "relevant": BB&T has subjected Hunt, an attorney, to financial ruin, criminal prosecution for mortgage loan application fraud, violations of the SC Professional Rules of Conduct to include disbarment, the inability to earn a living (Hunt has been unable to sit for the Patent Bar) and public humiliation, all of which continues each day.

13. The destroyed evidence was "relevant": BBT has avoided an on site inspection and the evidence thereof, improperly avoided 15 USC 57a(f) and 12 USC 1818, harassed Hunt, caused unnecessary delay and needless increase in the cost of litigation, improperly concealed and destroyed evidence of the unauthorized beneficiary profile with the unauthorized mortgage and the at least two unauthorized loans in Hunt's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts of Hunt, the FDIC and the HCPD.

14. Prejudice and Injury suffered: BBT's conduct evaded safeguards relied upon by the FDIC, SC Bar, Hunt and the public. Hunt has been permanently and materially prejudiced and injured by the conduct of BBT in the FDIC proceeding/investigation and the proceeding before this Court where BBT have avoided an on site inspection and the evidence thereof, avoided 15 USC 57a(f) and 12 USC 1818, avoided investigation by the HCPD, harassed Hunt and to cause unnecessary delay and needless increase in the cost of litigation as to the unauthorized beneficiary profile; and to divert Hunt, the FDIC and the police away from the at least three unauthorized loans in Hunt's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts; and to cause unnecessary delay; and needless increase in the cost of litigation as to the at least two unauthorized loans in Hunt's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts, Hunt has suffered as stated at exhibit #s 26 and 46 to include loss of POD benefits, loss of income, needless increase in the time and cost of litigation, etc.

15. As such, Hunt argues that the conduct described above and elsewhere in the record constitutes the intentional spoliation of evidence such that this court should

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[177] Which also included the Davis mortgage where Hunt alleges that her assets were used as collateral/setoff for the Davis mortgage.
[178] See Teal's letter to the FDIC at exhibit # 15.
[179] See the exit interview statement at exhibit # 36.
[180] See the 9/27/2010 letter from BBT at exhibit # 29 & see letter to the HCPD at exhibit #s 30 -32.
[181] See exhibit # 28 and exhibit # 29.

invoke its inherent power to control the judicial process and litigation by imposing the sanction of summary judgment[182] on BBT.

16. "The right to impose sanctions for spoliation arises from a court's inherent power to control the judicial process and litigation, but the power is limited to that necessary to redress conduct "which abuses the judicial process." Chambers v. Nasco, Inc., 501 U.S. 32, 45-46 (1991) (recognizing the inherent power of the courts to fashion appropriate sanctions for conduct that disrupts the judicial process); see also United States v. Shaffer Equip. Co., 11 F.3d 450, 462 (4th Cir. 1993) (recognizing "that when a party deceives a court or abuses the process at a level that is utterly inconsistent with the orderly administration of justice or undermines the integrity of the process, the court has the inherent power to dismiss the action"); cf. Fed. R. Civ. P. 37(b)(2) (authorizing sanctions for violations of discovery orders).

17. The policy underlying this inherent power of the courts is the need to preserve the integrity of the judicial process in order to retain confidence that the process works to uncover the truth."[B]ecause no one has an exclusive insight into truth, the process depends on the adversarial presentation of evidence, precedent and custom, and argument to reasoned conclusions -all directed with unwavering effort to what, in good faith, is believed to be true on matters material to the disposition." Shaffer Equipment, 11 F.3d at 457. The courts must protect the integrity of the judicial process because,"[a]s soon as the process falters . . . the people are then justified in abandoning support for the system." Id." Silvestri v. Gen. Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001).

18. In Silvestri v. Gen. Motors Corp., 271 F.3d 583, 593-4 (4th Cir. 2001) the Court dismissed the Plaintiff's case against the Defendant GMC for spoliation of evidence by the Plaintiff stating: In the case before us, the conduct of the spoliator may have been either deliberate or negligent. We know that Silvestri's attorney knew that the vehicle was the central piece of evidence in his case against General Motors and that he had been reminded that this piece of evidence should be preserved or that General Motors should be notified. As it turned out, the vehicle was not preserved, and neither Silvestri nor his attorneys notified General Motors of Silvestri's claim until almost three years after the accident; by then, the evidence had been destroyed by the repair of the vehicle. Whether Silvestri's counsel believed he was securing advantage to his client's case by deliberately remaining silent for three years or whether he simply ignored his responsibilities through carelessness is not revealed in the record. But what is revealed is a level of culpability that was at least negligent and may have been deliberate. Accordingly, it is not clear whether Silvestri's conduct alone would justify dismissal. When we turn to the prejudice suffered by General Motors, we agree with the district court's finding that the spoliation was "highly prejudicial." It denied General Motors access to the only evidence from which it could develop its defenses adequately. First, by not having access to the vehicle, General Motors could not develop a "crush" model to prove that the airbag properly failed to deploy. In order to establish this model, General Motors needed crush measurements taken at several places on the automobile. These measurements would reveal not only the speed at impact, but also the direction of forces imposed on the car. This information would lead to an ability to

[182] A district court could impose many different kinds of sanctions for spoliated evidence, including dismissing a case, granting summary judgment, or instructing a jury that it may infer a fact based on lost or destroyed evidence. Adkins v. Wolever, 554 F.3d 650, 653 (6th Cir. 2009).

determine whether the airbag device acted as designed and therefore was critical to the central issue in the case.

19. BBT's in their motion to dismiss under SCRCP 12(b)(6) states: "The Tenth Cause of Action for "**Intentional Destruction of Evidence**" fails to state facts sufficient to state a claim against BBT as South Carolina does not recognize an independent cause of action for spoliation of evidence."

20. The South Carolina Supreme Court states: "we decline to adopt the tort of negligent spoliation in this State. Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537, 538 & 540 (S.C. 2011)." The Court made no statements about the intentional destruction of evidence.

22. Hunt argues that BBT has admitted the Tenth Cause of Action for "Intentional Destruction of Evidence" as discussed herein.

23. As such, based on

a. Silvestri v. Gen. Motors Corp., 271 F.3d 583; and

b. The admission of "Intentional Destruction of Evidence;" and

c. Hunt argues that this court should invoke its inherent power to control the judicial process and litigation by imposing the sanction of summary judgment on BBT.

24. Hunt argues that [...] the authority to impose sanctions for spoliated evidence arises not from substantive law but, rather, "from a court's inherent power to control the judicial process."

Eleventh Cause of Action: Slander of all titles (mortgages and car as to Hunt and all other borrowers) against BB&T.

BBT in its motion to dismiss concerning this cause of action cites to no statutes and no case law.

BBT in its motion to dismiss argues that Hunt has failed to allege facts which would support the elements of said cause of action.

Hunt argues that the counterclaims sufficiently state all the elements for the slander of title cause of action.

Legal Standard: [T]o maintain a claim for slander of title, Hunt must establish (1) the publication of (2) a false statement (3) derogatory to Hunt's title (4) with malice (5) causing special damages (6) as a result of diminished value in the eyes of third parties.[183]

The counterclaims at the eighth cause of action for mortgage loan fraud state:

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[183] Huff v. Jennings, 319 S.C. 142, 459 S.E.2d 886,889 (S.C.App. 1995) and Solley v. Navy Federal Credit Union, Inc., 397 S.C. 192, 723 S.E.2d 597, 603 (S.C.App. 2012).

Each previous paragraph and exhibits are repeated herein as if verbatim.

Hunt refinanced her 2003 BBT mortgage with BBT in May 2007.

Hunt's 7/19/2007 customer profile listed two unauthorized loans: transfer management and portfolio.

Hunt 2007 mortgage application did not list the at least two unauthorized loans in Hunt's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts.

Judy Teal in her 4/11/2008 letter to the FDIC stated that the events of the 1/19/2008 disclosure to Costella Davis occurred as the result of BBT setting up Hunt's POD trust from the beginning (May 2000) to share an unauthorized beneficiary profile with Costella Davis.

Judy Teal stated in her 4/11/2008 letter to the FDIC that BBT had created a beneficiary profile for Davis that was connected to Hunt's POD account.

Hunt disputed the loan entries "transfer management" and "portfolio" in her customer profile in a 9/24/2010 letter of dispute to BBT.

BBT stated in there 9/27/2010 response letter: the two loans listed on the 7/19/2007 profile are not currently in your profile.

On 10/21/2010 BBT wrote to the HCPD: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena."

Hunt complained to the FDIC in 3/2008.

David Craven wrote to Hunt in 3/2008.

David Craven falsely stated in his letter that no fiduciary relationship had ever been established between Hunt and BBT.

Judy Teal sent the letter of David Craven to the FDIC.

BBT has not issued a satisfaction of mortgage to Hunt.

At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

Admissions by BBT: Also, Hunt argues that BBT on 3/11/2011 has admitted to mortgage loan fraud at exhibit # 47 entry # 108 where BBT did not deny any of the allegations at exhibit # 47 entry # 105-1 which included mortgage loan fraud on pages 34-35.

The counterclaims at the **eleventh cause of action for Slander of Title** state:

Each previous paragraph and exhibits are repeated herein as if verbatim.

Hunt financed her 2003 mortgage with BBT.

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In May 2007 the balance of the 2003 mortgage was about $91,000.00.

Hunt refinanced her 2003 mortgage in May 2007 with BBT.

In 2007 the property appraised for about $190,000.00.

BBT recorded the 2007 mortgage with the register of deeds for Horry County.

Today the balance of the 2007 mortgage is about $140, 000.00.

Hunt 2007 mortgage application did not list the two unauthorized loans in Hunt's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts.

BBT has not issued a satisfaction of mortgage to Hunt.

Hunt's interest rate on the 2007 mortgage is 6.375%.

Hunt must discharge the 2007 mortgage before she can complete refinancing.

At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt, mortgages and her other accounts.

Special Damages: removal of mortgage on title, return of down payment, return monies paid, pre and post judgment interest, legal interest, costs, attorney fees and punitive damages; and ***See below for other relief sought.***

The counterclaims also state:

BBT placed at least two unauthorized mortgage loans (transfer management and portfolio) into Hunt's customer profile along with Hunt's mortgages, IOLTA, CD and other accounts; (see paragraph1, 22-37, 45, 160, 166, 204-212, ... and 253 of the counterclaims)

BBT also provided an unauthorized beneficiary profile for Davis to include the Davis mortgage loan; (see paragraphs 1, 15, 22-25, 77, 84, 90-95, etc of the counterclaims)

BBT did engage in two improper setoffs to Hunt's POD account; (see paragraphs 1, 21, 38-41, etc of the counterclaims) and

BBT did engage in an unauthorized disclosure to Davis. (see paragraphs 1, 33-34, 59, 77, 86, 90-95, 128, etc of the counterclaims)

Also, Hunt argues that BBT as stated elsewhere in this brief has violated its own BSA at least a dozen times where BBT is currently engaging in a violation of its BSA as follows:

> Hunt wrote to BBT in commencing these three lawsuits (see the mortgage fraud cause of action at exhibit # 47 entry # 105-1) and as stated at paragraph 64 of the counterclaims and exhibit # 37 where Hunt disputed the 2007 mortgage and Hunt requested satisfaction of the mortgage.

BBT's banking service agreement (BSA) at exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) states: "after we receive your letter, we can not try to collect any amount you question or report you as delinquent.

... However, if our explanation does not satisfy you ..., we must tell anyone that we report you to that you have a question about your statement. And we must tell you the name of anyone we report you to."

BBT at the last page of exhibit # 56 has completed its threat from exhibit # 49 entry #14-2 where BBT has reported and **published** Hunt to the credit reporting agency (CRA) as being delinquent on her 2007 mortgage. As such, not only has BBT reported Hunt as delinquent - BBT has **falsely** reported Hunt where the report did not include notice that the debt was disputed.

Hunt spent the summer of 2013 at the United States Patent and Trademark Office (USPTO) doing an internship. In the fall of 2013 Hunt was denied employment at the USPTO because BBT did not indicate that the mortgage was disputed.

Hunt's original 1993 mortgage loan on her home on Cultra Road was with BBT. Hunt's original 2003 mortgage loan on her home at Willow Green Drive was with BBT. In 5/2007 Hunt refinanced the 2003 mortgage loan with BBT on her home at Willow Green Drive.

BBT filed mortgages against Hunt's titles to her homes.

Hunt paid the monthly mortgage payments through July 2012[184] thus keeping at bay any cloud on the property so that she could refinance or sell the property, etc. However, Hunt argues as stated above that BBT has engaged in at least two wrongful recording of an unfounded claim against the property of Hunt.

These ongoing false publications by BBT are derogatory to Hunt's titles, was done with malice, in violation of its BSA and is retaliatory where it has caused Hunt special damages and has resulted in a diminished value of the property in the eyes of third parties.

Hunt argues that based on Huff v. Jennings, 319 S.C. 142, 459 S.E.2d 886,889 (S.C.App. 1995) and Solley v. Navy Federal Credit Union, Inc., 397 S.C. 192, 723 S.E.2d 597, 603 (S.C. App. 2012) that the counterclaims sufficiently state all the elements for the slander of title cause of action.

Also, the 8/2002 car loan application, the 1992, 2003 and 2007 mortgage applications and all other loan applications presented by BBT to Hunt for her signature did not include the unauthorized Davis mortgage, an unauthorized beneficiary profile for Davis, two improper setoffs and at least two unauthorized loans: transfer management and portfolio.[185] Hunt argues that this conduct was in violation of SCACR 412 and SC Code Ann. section 62-6-103(b) and against public policy[186] with the result that all loan agreements were void ab initio.[187]

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[184] Hunt has not worked since this dispute began in January 2008.
[185] See exhibit #s 7 and 10.
[186] See the arguments at the sixth cause of action.
[187] See S.C. Code Ann. § 32-3-10.

Thereafter, Hunt argues that BBT wrongfully recorded[188] (1) the 2002 car lien against the title to Hunt's car; (2) the 1993, 2003 and 2007 mortgages against Hunt's title to her home; and (3) these arguments also would apply to Davis and the other borrowers.

Hunt argues that BBT knew or should have known that the lien/mortgages were void ab initio.[189] Such that, Hunt alleges that the 2002 lien against her car, the 1993, 2003 and 2007 mortgages[190] against her home and the mortgages and liens of Davis and the other borrowers are and were published false statements.

Hunt has alleged that BBT used her assets to engage in loan fraud through the Davis mortgage and the at least two unauthorized loans in Hunt's customer profile where during this period of time Hunt received several loans from BBT including the 2002 lien against her car; and the 1993, 2003 and 2007 home mortgage loans.

Hunt argues that all the loans Hunt had with BBT when her assets were being misused are awash in fraud and breach of trust, etc. where Hunt and BBT are and were in a fiduciary relationship; and as an attorney Hunt is required to avoid even the appearance of impropriety.[191]

Hunt argues that more false statements were published again and again where BBT used Hunt's assets to qualify Davis and others for loans and thereafter published by filing mortgages/liens on the property of Davis and other borrowers where there is and was no mutuality between those parties and or their debt and Hunt.[192]

Thereafter, BBT has refused to accept responsibility for the unauthorized beneficiary profile, the Davis mortgage, the two improper setoffs, and the at least two unauthorized loans; and BBT has refused at paragraphs 45-61, 78, 83-84 of CASE NO: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL and the counterclaims; and at exhibit #s 28-33 to cooperate with the HCPD by returning the search warrant to the HCPD with none of the requested documents.

At exhibit #49 at entry # 14 (2) and exhibit # 46 (at page 6) BBT has gone from threatening to in fact engaging in additional publication of false statements by reporting Hunt to a CRA for a past due mortgage loan payment where Hunt argues that the mortgage is void ab initio and violates SCACR 412 among other things.[193]

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[188] In the Horry County public records and the SC Motor Vehicle Dept.

[189] Huff v. Jennings, 319 S.C. 142, 149-150, 459 S.E.2d 886,889 (S.C.App. 1995).

[190] The lien and mortgages were filed and published against Hunt's title to her car and home as per exhibit # 49 at entry #s 14-15.

[191] See The Bank of Nashville v. Chipman, M2010-01581-COA-R3-CV (TNCIV) for treatment of false statements on the loan application where borrower is delinquent on the loan. At exhibit # 49 at entry # 14 (2) BBT writes to Hunt stating that she is delinquent on her mortgage and Hunt's loan application at exhibit # 7 does not list the loans: transfer management and portfolio.

[192] The lien and mortgages were filed and published against the title of two cars of Allen and the title to the homes of Davis and Sherman as per exhibit # 49 at page 3 at # 15.

[193] See exhibit #s 50-51 where in c/a # 4:09 – 2151 BBT submitted verified pleadings and affidavits at exhibit # 50 (affidavit by Judy Teal does not list the 2007 mortgage) and exhibit # 51 at footnote 1 (verified pleading) to the USDC. In these documents BBT states that Hunt had no loans at BBT where all loans where paid off in early 2009.

Such that Hunt argues that this conduct by BBT shows that the publication of the false statements by BBT was and continues to be made in reckless or wanton disregard to the rights of [Hunt], or without legal justification.

Special Damages: removal of mortgages on titles, return of down payments, return monies paid,[194] pre and post judgment interest, legal interest, costs, attorney fees and punitive damages; and **See Counterclaims for other relief sought.**

Punitive Damages: BBT argues that the Counterclaims fails to allege any factual or legal basis for any claim for punitive damages. BBT does not cite to any authority.

Hunt argues that through the counterclaims, prior cases, affidavits, exhibits and documents incorporated by reference that she has shown by clear and convincing evidence that BBT's conduct was and is willful, wanton, or in reckless disregard of Hunt's rights where BBT's conduct includes:

Unclean hands as argued below at "BBT's request for attorney fees under its BSA and for sanctions under SC Code 15-36-10 and SCRCP 11 should be denied as follows:"

Also, the counterclaims state that:

BBT placed at least two unauthorized mortgage loans (transfer management and portfolio) into Hunt's customer profile along with Hunt's mortgages, IOLTA, CD and other accounts; (see paragraph1, 22-37, 45, 160, 166, 204-212, ... and 253 of the counterclaims)

BBT also provided an unauthorized beneficiary profile for Davis to include the Davis mortgage loan; (see paragraphs 1, 15, 22-25, 77, 84, 90-95, etc of the counterclaims)

BBT did engage in two improper setoffs to Hunt's POD account; (see paragraphs 1, 21, 38-41, etc of the counterclaims) and

BBT did engage in an unauthorized disclosure to Davis. (see paragraphs 1, 33-34, 59, 77, 86, 90-95, 128, etc of the counterclaims)

Hunt argues that these acts were committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of Hunt's rights.[195]

As previously stated - exhibit # 4 clearly shows Davis was the beneficiary-payee of the POD account at the death of Hunt. A review of the Davis mortgage application at exhibit # 6 shows

[194] To include all monies paid to on the Cultra Road house mortgage loan; all monies paid to BBT on the 2003 mortgage loan; all monies paid to BBT on the 2007 mortgage loan; all monies paid to BBT for the car loan; all monies paid to BBT for the Davis mortgage; all monies paid to BBT for the loans of the at least two unauthorized loans in Hunt's customer profile all monies paid on any loan from BBT.

[195] Rogers v. Florence Printing Co., 233 S.C. 567, 577-78, 106 S.E.2d 258, 263 (1958); see also Berberich v. Jack, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011) (quoting Rogers).

that Hunt's name is not on the application anywhere. And at the time of the Davis mortgage loan in 2004 Davis stated twice in writing that she had no other accounts at BBT.[196]

Hunt argues that this repeated misconduct by BBT showed and shows an intentional malice, trickery, or deceit and a "[...] present consciousness of wrongdoing that justifies the assessment of punitive damages against [BBT] .... In other words, at the time of [BBT's] act or omission to act [BBT was] conscious, or chargeable with consciousness, of [its] wrongdoing."[197]

BBT agreed to punitive damages at exhibit # 47 at entry # 108 where BBT did not deny the allegations at exhibit # 47 at entry # 105-1.

Hunt argues that the punitive damages are the law of the case and can not be re-litigated where BBT did not preserve any objections to punitive damages at exhibit # 47 at entry # 108; where the orders of the USDC at exhibit #s 43 (lawsuit # 1) and 52 (lawsuit # 2) are the law of the case.

Attorney Fees: [198] In this complex and protracted matter involving Hunt's IOLTA Hunt has put in thousands of hours of work to uncover BBT's misconduct and to provide this Court with legal support for all admissions made by BBT.

All eleven of the causes of action in this matter involve Hunt's IOLTA. Pursuant to oath, statute[199] and responsibility Hunt is required to protect and defend the IOLTA. All four of the state statutory causes of action provide for attorney fees; and the Courts of South Carolina under the slander of title common law cause of action allows attorney fees.[200]

Hunt asks that the Court allow Hunt the fees paid to the two attorneys of $8,000.00 to be reimbursed in full under one or more of the statutory provisions.[201]

As a trustee (and a licensed attorney in SC) of the IOLTA Hunt asks that the Court allow the full amount of the attorney fees asserted in the affidavits[202] and counterclaims where this dollar amount is for about 30% of the total hourly legal work done by Hunt over the past almost six years where this drawn out matter is the direct result of the misconduct of BBT.

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[196] See exhibit # 6 pages 6-7 where when asked if Davis wanted the mailing address of the mortgaged property to be the address on all accounts at BBT Davis wrote N/A (not applicable).

[197] Cody P. v. Bank of America, N.A., 720 S.E.2d 473, 480 395 S.C. 611 (S.C. App. 2011)

[198] Of these fees $8,000.00 was paid to attorneys Valtorta and Ballard; and the remaining fees are for services provided by Hunt an attorney where these matters involved the IOLTA. Hunt can find no case law re these unique set of facts. As such, Hunt would request that if this Court is inclined to deny the requested attorney fees in part or total that they Court submit this issue to the SC Supreme Court. Hunt would request a damages hearings.

[199] See SC Code Ann. § 62-7-811.

[200] Solley v. Navy Federal Credit Union, Inc., 397 S.C. 192, 723 S.E.2d 597, 604-605 (S.C.App. 2012).

[201] See Hunt's affidavit at exhibit # 26 at pg. 4 of the Counterclaims where Hunt has paid attorneys Valtorta and Ballard $8,000.00.

[202] The fees in the affidavit at exhibit # 46 are through 3/2011. Hunt argues that the rates for complex banking litigation like that involved here greatly exceeds the quoted rate of Hunt.

Also, BBT agreed to attorney fees and costs in lawsuit # 1 when BBT in its response at exhibit # 47 entry # 108 failed to deny any of the allegations of the proposed TAC at exhibit # 47 entry # 105-1.

The attorney fees in exhibit # 47 entry # 105-1 are at pages 13 and 33; and on pages 37-38; and at the affidavits at exhibit # 26 at page 3 and exhibit # 46 at paragraphs 20-25.

And the attorney fees are in the counterclaims at paragraphs 88, 245, 296; and on pages 20-22; and at the affidavits at exhibit #s 26 at page 3 and 46 at paragraphs 20-25.

BBT did not object to these affidavits, documents and exhibits when they were submitted in the USDC.

The attorney fees and costs are the law of the case and can not be relitigated.

BBT's request for attorney fees under its BSA and for sanctions under SC Code 15-36-10 and SCRCP 11 should be denied as follows:

Hunt continues to argue that BBT has engaged in unclean hands during the FDIC proceeding involving Teal and the unauthorized practice of law as stated at exhibit # 47 entry # 105-1 on pages 22 - 25.

Hunt also continues to argue unclean hands where BBT has violated its own BSA at least a dozen times where BBT is currently engaging in a violation of its BSA as follows:

Hunt wrote to BBT in commencing these three lawsuits (see the mortgage fraud cause of action at exhibit # 47 entry # 105-1) and as stated at paragraph 64 of the counterclaims and exhibit # 37 where Hunt disputed the 2007 mortgage and Hunt requested satisfaction of the mortgage.

BBT's banking service agreement (BSA) at exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) states: "after we receive your letter, we can not try to collect any amount you question or report you as delinquent.

... However, if our explanation does not satisfy you ..., we must tell anyone that we report you to that you have a question about your statement. And we must tell you the name of anyone we report you to."

BBT at the last page of exhibit # 56 has completed its threat from exhibit # 49 entry #14-2 where BBT has reported Hunt to the credit reporting agency (CRA) as being delinquent on her 2007 mortgage. As such, not only has BBT reported Hunt as delinquent - BBT also did not include notice that the debt was disputed.

Hunt spent the summer of 2013 at the United States Patent and Trademark Office (USPTO) doing an internship. In the fall of 2013 Hunt was denied employment at the USPTO because BBT did not indicate that the mortgage was disputed.

BBT continues to threaten Hunt in its numerous motions to dismiss in its efforts through intimidation to make this matter go away.

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Conclusion:

Hunt respectfully requests that the motion to dismiss be denied in its entirety; that the equitable foreclosure complaint be dismissed and that the motion for default judgment be granted.

Respectfully submitted,

C B Hunt

Cindy B. Hunt,
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: May 20, 2014

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State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2013-CP-26-2528
Branch Banking and	)	
Trust Company	)	
Plaintiff,	)	
	)	Brief in opposition to
vs.	)	Plaintiff's 6/23/2014 Second Motion
Cindy B. Hunt; Willow Greens	)	To Dismiss the First amended
Homeowners Association, Inc.;	)	Counterclaims; Brief in support of
CJ Developers, LLC.	)	entry of default and default judgment
Defendant(s)	)	
	)	

FILED
HORRY COUNTY
2014 OCT 16 PM 12:50
MELANIE HUGGINS-WARD
CLERK OF COURT

This brief, affidavits of default and response to BBT's motion to dismiss the first amended counterclaims are supported by the exhibits[1] in this matter and the prior pleadings at c/a 4:09-cv-2151-JMC-TER; c/a 4:11-cv-00870-MGL-TER;[2] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[3] and all the pleadings and documents in the present matter at Case No: 2013-CP-26-2528.[4]

[1] See Hunt's affidavits at exhibit #s 3, 26, 46 and 70; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act (GLBA); and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Exhibit #s 1-52 were submitted in the USDC without objection by BBT and included five affidavits from Hunt and Davis. Here in after referred to as lawsuit # 1 - was filed in the USDC by Hunt in 8/2009 – see exhibit # 47. Hunt argues that the USDC dismissed lawsuit # 1 to save the then Defendant BBT and employees from the allegations in the TAC at exhibit # 47 entry # 105-1.

[2] Here in after referred to as lawsuit # 2 - was filed in the USDC by Hunt in 4/2011 – see exhibit # 48. Hunt argues that the USDC dismissed lawsuit # 2 to save the then Defendant BBT and employees from the allegations in the FAC at exhibit # 49 entry # 15-8.

[3] Here in after referred to as lawsuit # 3 where the verified complaint in this civil action was filed by Hunt in this court in 7/2012 and removed by BBT to the United States District Court (USDC) in Florence, SC in 8/2013 where BBT was looking for additional help – see exhibit # 49. Lawsuit # 3 was not appealed to the USCA. However, Hunt argues that after the USCA reviewed the pleadings (see bottom right corner of most documents in exhibit # 49) in lawsuit # 3 that the USDC dismissed lawsuit # 3 to help the then Defendant BBT bury its misconduct in state court where BBT thereafter filed lawsuit # 4 in state court.

[4] Here in after referred to as lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

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Legal Standard for second motion to dismiss the first amended counterclaims:

A motion to dismiss a counterclaim must be based solely on the allegations set forth in the counterclaim. *See* Rule 12(b)(6), SCRCP; *Baird v. Charleston County,* 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

"A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the [complainant] to any relief on any theory of the case." *Stiles v. Onorato,* 318 S.C. 297, 300, 457 S.E.2d 601, 602-3 (1995).

The question is whether in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief. *Toussaint v. Ham,* 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The counterclaim should not be dismissed merely because the trial court doubts the complainant will prevail in the action. *Id.*

Procedural history in CASE NO: 2013-CP-26-2528:

BBT filed its **mortgage foreclosure action** in this matter on April 16, 2013.

Thereafter, Hunt filed the **original counterclaims** in this matter with her answer on 8/2/2013 where Hunt has never been served the summons, complaint, lis pendens and intervention.

Instead of filing a responsive pleading to the counterclaims BBT filed the **9/5/2013 motion to dismiss under SCRCP 12(b)(6).**

In February 2014 a hearing was held where BBT's motion for a **priority scheduling order was heard.** Thereafter, the scheduling order was drafted by the attorney for BBT; signed by Judge Howe on 4/30/2014; clocked by the clerk of court on 5/6/2014 and mailed to Hunt on 6/12/2014.

On May 20, 2014 this court held a hearing on BBT's **9/5/2013 motion to dismiss** under SCRCP 12(b)(6) where the motion to dismiss was granted in part and several issues were not ruled on.

Thereafter, Hunt filed the **6/6/2014 first amended counterclaims.**

BBT responded to the first amended counterclaims with the **6/23/2014 second motion to dismiss under SCRCP 12(b)(6) in lawsuit # 4 and the seventh motion to dismiss in lawsuits 1-4.**

Hunt objects to this hearing on this sixth motion to dismiss as follows:

BBT does not cite to any case law or exhibits to support any of the arguments stated in the second motion in lawsuit #4 and the seventh motion to dismiss in lawsuits 1-4.

Hunt has never been served the summons, complaint, lis pendens and intervention by BBT in this matter.

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Hunt argues that if this court hears the second motion to dismiss where Hunt has never been served the summons, complaint, lis pendens and intervention by BBT in this matter that Hunt will be deprived of due process involving foreclosure on Hunt's home for the past eleven years.

Hunt argues that the second motion to dismiss filed by BBT on or about 6/23/2014 and scheduled to be heard on 10/14/2014:

(1) **Violates the order of** this court in the matter of BBT vs CB Hunt, et al – SCHEDULING ORDER - signed by Judge Howe on 4/30/2014; clocked by the clerk of court on 5/6/2014 and mailed to Hunt on 6/12/2014 where the scheduling order includes the statements –

> Motions to join other parties and amend the pleadings shall be served no later than April 10, 2014.[5]
> [...]
> This case shall be subject to being called for trial on or after September 15, 2014. AND IT IS SO ORDERED;[6] and

(2) **Violates the order of** the SCSC at In re Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (S.C. 2011) where the order states -

> "In all mortgage foreclosure actions filed after May 9, 2011,[7] the Mortgagee's attorney shall serve on the Mortgagor, **along with the summons and complaint, a notice of the Mortgagor's right to foreclosure intervention.**
>
> No foreclosure hearing[8] may be held in the foreclosure action until the Mortgagee's attorney certifies[9] that the Mortgagee has complied with the requirements of paragraphs B(1)(a) through (e) [].[10]

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[5] To date none of the parties have filed a motion to amend the pleadings.
[6] On September 18, 2014 BBT has submitted an amended notice of hearing on its second motion to dismiss the first amended counterclaims with a hearing date of 14 October at 2pm. Prior to filing the second motion to dismiss the counterclaims BBT did not file a motion for permission to act outside of the time limits set out in the scheduling order that BBT requested, wrote and was granted.
[7] This barred foreclosure action was filed on April 16, 2013.
[8] This motion to dismiss hearing is a **foreclosure hearing** where the dismissal of any one of the counterclaims will impact Hunts ability to defend the foreclosure complaint.
[9] The attorneys for mortgagee BBT – through the attorney certification that is currently in the file - are falsely certifying that the mortgagee BBT has complied with the requirements of paragraphs B(1)(a) through (e) of In re Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (S.C. 2011).
[10] (a) that the Mortgagor has been served with a notice of the Mortgagor's right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation;
(b) that the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention;
(c) that the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee;
(d) that after completion of the foreclosure intervention process, the Mortgagor does not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process; and, (e) that notice of the denial of loan modification or other means of loss mitigation has been served on the Mortgagor by mailing such notice to all known addresses of the Mortgagor; provided, that such notice shall also state that the Mortgagor has 30 days from the date of

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If within thirty days after having been served[11] with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify[12] that fact to the Court, and the foreclosure action may proceed." [13]

Six motions to dismiss -

1) BBT responded to the complaint at entry # 5 of the civil docket at exhibit # 47 with the motion to dismiss at entry # 20 of the civil docket at exhibit # 47.

2) BBT responded to the amended complaint at exhibit # 38 with the motion to dismiss at exhibit # 47 entry # 41.

3) BBT responded to the complaint at exhibit # 47 entry # 105-1 with the response at exhibit # 47entry # 108.

4) BBT responded to the amended complaint at exhibit # 49 entry # 15-8 with the **6/19/2012** motion to dismiss at exhibit # 48 entry # 34.

5) *BBT responded to the 7/9/2012 complaint of case no: 2012-cp-26-5264 with the **8/9/2012** motion to dismiss at exhibit # 49 entry # 9.*[14] **BBT removed this case to the USDC.**

6) *BBT responded to the 8/2/2013 counterclaims of case no: 2013-cp-26-2528*[15] *with the **9/5/2013** motion to dismiss;* and

7) *BBT responded to the 6/6/2014 first amended counterclaims of case no: 2013-cp-26-2528 with the **6/23/2014** motion to dismiss.*

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mailing of notice of denial of relief to file and serve an answer or other response to the Mortgagee's summons and complaint.

If within thirty days after having been served with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify that fact to the Court, and the foreclosure action may proceed.

[11] The attorneys for mortgagee BBT have never served Hunt the summons, complaint or notice of the Mortgagor's right to foreclosure intervention. Such that, the condition of "within thirty days after being served" can not be satisfied.

[12] The attorneys for mortgagee BBT are falsely certifying that the mortgagee BBT has complied with the requirements of paragraphs B(1)(a) through (e).

[13] As stated here BBT has failed to satisfy the requirements of the SCSC as stated at In re Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (S.C. 2011) where the absence of the satisfaction of those requirements applies to all of the pleadings, motions, hearings etc submitted by BBT.

[14] On 9/17/2012 Hunt filed a 42 page response objecting to the motion to dismiss.

[15] These counterclaims are the same as the causes of action in the *7/9/2012 complaint of case no: 2012-cp-26-5264 where on* 9/17/2012 Hunt filed a 42 page response objecting to the motion to dismiss the complaint.

Counterclaims -

Constructive Fraud: *Hunt asserted a claim for constructive fraud in the complaint / counterclaims at #s 3-7. BBT opposed the claim for constructive fraud in the motion to dismiss at # 7 only.*[16]

> BBT **omitted** the objection re constructive fraud from three earlier motions to dismiss: #4 (6/19/2012), #5 (8/9/2012), #6 (9/5/2013). Hunt argues that the 6/23/2014 objection by BBT has been waived and abandoned by BBT.

Negligence Per Se: *Hunt asserted a claim for* ***Negligence Per Se*** *in the complaint / counterclaims at #s 3-7. BBT opposed the claim for* ***Negligence Per Se*** *in the motion to dismiss at # 7 only.*[17]

> BBT **omitted** the objection re negligence per se from three earlier motions to dismiss: #4 (6/19/2012), #5 (8/9/2012), #6 (9/5/2013). Hunt argues that the 6/23/2014 objection by BBT has been waived and abandoned by BBT.

Conversion: *Hunt asserted a claim for conversion in the complaint / counterclaims at #s 1-7. BBT opposed the claim for conversion in the motions to dismiss at # 1-2 and 5-7.*

> *An* objection re **conversion** was included in BBT's its earlier 9/5/2013 motion to dismiss and ruled on by the court. Through the first amended counterclaims Hunt has satisfied the 9/5/2013 objection re conversion.
>
> Also, if the 6/23/2014 objection is different **(not tangible personal property)** from the objection asserted in the 9/5/2014 motion to dismiss then Hunt argues that the 6/23/2014 objection has been waived and abandoned.

Breach of fiduciary duty: *Hunt asserted a claim for* ***Breach of fiduciary duty*** *in the complaint / counterclaims at #s 1-7. BBT opposed the claim for* ***Breach of fiduciary duty (BOFD)*** *in the motions to dismiss at # 1-2 and 5-7.*

> *An objection re* ***breach of fiduciary duty*** was included in BBT's its earlier 9/5/2013 motion to dismiss and not ruled on by the court.
>
> Through the first amended counterclaims Hunt has satisfied the 9/5/2013 objection re BOFD.

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[16] **Fraud:** Hunt asserted a claim for fraud in the complaint / counterclaims at #s 1-6. BBT opposed the claim for fraud in the motions to dismiss at #s 1-2 and 4-6. **Fraud in the inducement:** Hunt asserted a claim for fraud in the inducement in the complaint / counterclaims at #s 3-6. BBT opposed the claim for fraud in the inducement in zero motions to dismiss.

[17] **Negligent Misrepresentation:** Hunt asserted a claim for **Negligent Misrepresentation** in the complaint / counterclaims at #s 1-2 and 5-6. BBT opposed the claim for **Negligent Misrepresentation** in the motions to dismiss at #s 1-2 and 5-6.

Negligence and Gross Negligence: Hunt asserted a claim for **Negligence and gross negligence in** the complaint / counterclaims at #s 3-7. BBT opposed the claims for **Negligence and gross negligence** in zero motions to dismiss.

Also, if the 6/23/2014 objection is different (as a matter of law) from the objection asserted in the 9/5/2014 motion to dismiss then Hunt argues that the 6/23/2014 objection has been waived and abandoned.

Violations of SC Probate Code: *Hunt asserted a claim for* ***Violations of SC Probate Code*** *in the complaint / counterclaims at #s 1-7. BBT opposed the claim for* ***Violations of SC Probate Code*** *in the motions to dismiss at # 1-2 and 5-7.*

An objection re ***violations of SC Probate Code (SCPC)*** was included in BBT's its earlier 9/5/2013 motion to dismiss and not ruled on by the court.

Through the first amended counterclaims Hunt has satisfied the 9/5/2013 objection re SCPC.

Also, if the 6/23/2014 objection is different **(the fifth cause of action fails to set forth a claim for relief for violation of SC Code Ann. sections 62-6-101 thru 62-6-106 because there is no private right of action for violation of those statutes.)** from the objection asserted in the 9/5/2014 motion to dismiss then Hunt argues that the 6/23/2014 objection has been waived and abandoned.

Violations of SC UFTPA: *Hunt asserted a claim for* ***Violations of SC UFTPA*** *in the complaint / counterclaims at #s 3-7. BBT opposed the claim for* ***Violations of SC UFTPA*** *in the motions to dismiss at #s 5-7.*

An objection **re *violations of SC UFTPA*** was included in BBT's its earlier 9/5/2013 motion to dismiss and ruled on by the court. Through the first amended counterclaims Hunt has satisfied the 9/5/2013 objection re SC UFTPA.

Also, if the 6/23/2014 objection is different from the objection asserted in the 9/5/2014 motion to dismiss then Hunt argues that the 6/23/2014 objection has been waived and abandoned.

SC Code Ann. § 39-5-40 states in part: For the purpose of this section, the burden of proving exemption from the provisions of this article shall be upon the person claiming the exemption.

BBT is claiming an exemption from **SC Code Ann. § 39-5-40.**

However, BBT in its motion to dismiss concerning the unfair trade practice cause of action cites to no cases in support of its position that its activities as a federally insured banking institution do not fall within the coverage of SC Code Ann. § 39-5-40.

At the 5/20/2014 hearing BBT cited to: **Anderson v. Citizens Bank, 294 S.C. 387, 365 S.E.2d 26 (S.C.App. 1987)**[18] where Hunt argues that this case is not applicable to the facts in this matter where at paragraph #s 17-20 of the first amended counterclaims

[18] Anderson v. Citizens Bank, 294 S.C. 387, 365 S.E.2d 26 (Ct.App.1987) [is] overruled to the extent that the result was based upon the "general activity" test. Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310, 313 (S.C. 1991).

state that BBT is not regulated by the SC Board of Banks as BBT is a North Carolina Corporation.[19]

Breach of Contract: *The allegations in the complaint / counterclaims at #s 1-7 gave rise to a breach of contract cause of action.[20] BBT opposed the claim for breach of contract in the motion to dismiss at # 7 only.*

BBT omitted an objection re **breach of contract** from five earlier motions to dismiss and during the 5/20/2014 hearing BBT made no objections when the court stated that this matter included a breach of contract.

Through the original counterclaims and the first amended counterclaims Hunt has satisfied all elements of the breach of contract causes of action.

Also, the 6/23/2014 objection is different from the objection asserted in the 9/5/2014 motion to dismiss such that Hunt argues that the 6/23/2014 objection has been waived and abandoned.

Attorney fees and costs to Hunt (AFCH): *Hunt asserted a claim for attorney fees and costs in the complaint / counterclaims at #s 1-7. BBT opposed the claim for attorney fees and costs to Hunt in the motions to dismiss at # 1-2 and 5-7.*

An objection re AFCH was included in BBT's its earlier 9/5/2013 motion to dismiss and ruled on by the court.

Through the first amended counterclaims Hunt has satisfied the 9/5/2013 objection re AFCH.

Also, if the 6/23/2014 objection is different from the objection asserted in the 9/5/2014 motion to dismiss then Hunt argues that the 6/23/2014 objection has been waived and abandoned.

Punitive Damages (PD): *Hunt asserted a claim for PD in the complaint / counterclaims at #s 1-7. BBT opposed the claim for PD to Hunt in the motions to dismiss at # 1-2 and 5-7.*

An objection re PD was included in BBT's its earlier 9/5/2013 motion to dismiss, which was ruled on and denied by the court.

Through the first amended counterclaims Hunt continues to satisfy the 9/5/2013 objection re PD.

Also, if the 6/23/2014 objection is different from the objection asserted in the 9/5/2013 motion to dismiss then Hunt argues that the 6/23/2014 objection has been waived and abandoned.

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[19] Anderson is not applicable here where Defendant BBT is a North Carolina Corporation (See exhibit 2 of the Complaint). As such, is not regulated by a SC regulatory body or officer. Also, see where the BBT in 2012 removed this case from State Court based on diversity under 28 U.S.C. 1332.

[20] The first page of the civil dockets of the USDC at exhibit #s 47, 48 and 49 indicated breach of contract.

Assertions by BBT:

Attorney fees and costs to BBT (AFCB): *BBT asserted a claim for attorney fees and costs in the motions to dismiss at # 1-2 and 5-7.*

> *An objection re AFCB* was included in Hunt's 5/20/2014 brief in opposition to the 9/5/2013 motion to dismiss re AFCB. The court did deny AFCB.
>
> If the 6/23/2014 assertion is different from the assertion asserted in the 9/5/2013 motion to dismiss then Hunt argues that the 6/23/2014 assertion has been waived and abandoned.

Statute of limitations: After putting forth three motions to dismiss from 10/2009 – 6/2012 where BBT was looking for help from the USDC *BBT argued statute of limitations (SOL) in the motions to dismiss at #s 5[21]-7.*

> The argument re statute of limitations by BBT was included in BBT's earlier 8/9/2013 and 9/5/2013 motion to dismiss and not ruled on by the USDC or this court.
>
> Through the first amended counterclaims Hunt has satisfied the 9/5/2013 objection re SOL.
>
> Also, if the 6/23/2014 objection is different from the objection asserted in the 9/5/2014 motion to dismiss then Hunt argues that the 6/23/2014 objection has been waived and abandoned.
>
> *Also, Hunt reasserts all arguments put forth in the 5/20/2014 Brief in opposition to the 9/5/2013 motion to dismiss, arguments made at the 5/20/2014 hearing and emails to the Judge.*

SCRCP ignored by BBT:

In this long going dispute between Hunt and BBT – **Hunt reminds the court that in addition to multiple motions to dismiss - BBT has requested and been granted a priority scheduling order in this matter** where over the life of this dispute BBT has filed a total of six[22] motions to dismiss in response to the causes of action that are before this court with the result that this matter has dragged on for almost seven years.

As such, there are **limitations on successive SCRCP 12 (b) motions** where BBT has failed to follow the procedure provided in the SCRCP for

(1) preserving arguments ruled on and not ruled on by the court; and
(2) "raising a defense or objection that was available to BBT but **omitted** from its earlier motion."

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[21] Above at #5 BBT removed this case to the USDC where it was looking for additional help through the motion to dismiss to cover up its misconduct but the USDC kicked BBT out. Such that BBT filed this matter in circuit where BBT has filed two motions to dismiss and been granted a priority scheduling order.
[22] In lawsuit # 1 BBT filed 3 motions to dismiss. In lawsuit # 2 BBT filed 1 motion to dismiss. In lawsuit # 3 BBT filed 1 motion to dismiss. In lawsuit # 4 BBT filed 2 motions to dismiss.

Arguments ruled on by the court: Below at paragraphs 1 – 12 Hunt states each argument that BBT included in its 9/5/2013 motion to dismiss and compares it to the corresponding arguments in the 6/23/2014 motion to dismiss.

Hunt argues that to avoid piecemeal consideration of pretrial motions, as is encouraged by the scheduling order, where any argument in the 6/23/2014 motion to dismiss was previously asserted by BBT in its 9/5/2013 motion to dismiss and ruled on by the court at the 5/20/2014 hearing that to preserve those ruling that BBT was required to argue res judicata in a responsive pleading where:

SCRCP 8(c) states:

> **(c) Affirmative Defenses; Reply.** In pleading to a preceding pleading, a party **shall set forth affirmatively** the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality, injury by fellow servant, laches, license, misrepresentation, mistake, payment, plene administravit or the administration of the estate is closed, recrimination, release, **res judicata**, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation. A party may file a reply to any of the foregoing affirmative defenses.

However, instead of asserting res judicata in a responsive pleading BBT submitted the 6/23/2014 second motion to dismiss under SCRCP 12(b)(6).

Hunt argues that all arguments by BBT that were **previously asserted in the 9/5/2013 motion to dismiss and ruled on at the 5/20/2014 hearing** and where BBT did not assert res judicata in a responsive pleading or the 6/23/2014 second motion to dismiss that those arguments are unpreserved and waived by BBT.

Arguments not ruled on: Below Hunt states each argument that BBT included in its 9/5/2013 motion to dismiss and compares it to the corresponding arguments in the 6/23/2014 motion to dismiss.

To the extent that any argument in the 6/23/2014 motion was not ruled on by the court as per the 9/5/2013 motion to dismiss Hunt argues that to avoid piecemeal consideration of pretrial motions that BBT must preserve those arguments that were not ruled on where BBT is required to file a motion under SCRCP 59(e).

SCRCP 59(e) states:

> **(e) Motion to Alter or Amend a Judgment.** A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.

However, a motion under SCRCP 59(e) was not included or mentioned any where in BBT's 6/23/2014 second motion to dismiss under SCRCP 12(b)(6).

Hunt argues that all arguments by BBT that were **previously asserted in the 9/5/2013 motion to dismiss and not ruled on at the 5/20/2014 hearing** and where BBT did not make a SCRCP 59(e) motion in a responsive pleading or the

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6/23/2014 second motion to dismiss that those arguments are unpreserved and waived by BBT.[23]

Admissions/Waiver - Omitted from 9/5/2013 and other motions to dismiss:[24]

> Hunt argues that SCRCP 12(g) and 12(h)(2) are applicable to BBT's entire 6/23/2014 second motion to dismiss under SCRCP 12(b)(6) re omissions from the 9/5/2013 motion to dismiss such that BBT's defense or objection of failure to state a cause of action upon which relief can be granted was required to be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.
>
> As such,
>
> Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not any pleading permitted or ordered under Rule 7(a).[25]
>
> Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not a motion for judgment on the pleadings.
>
> Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not being presented at the trial on the merits.
>
> Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not a reply and it was not designated as a reply.
>
> Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not a Rule 12 (c) motion and that the pleadings are not closed.

Taken together, Rules 12(g) and 12(h)(2) prohibit [BBT] from filing a successive Rule 12(b)(6) motion "raising a defense or objection that was available to the party but omitted from its earlier motion" unless it is included in their [reply] or in a Rule 12(c) motion after pleadings are closed.

These rules are "intended to eliminate unnecessary delays at the pleading stage of a case by avoiding the piecemeal consideration of pretrial motions." *Rauch v. Day & Night Mfg. Corp.*, 576 F.2d 697, 701 (6th Cir. 1978).

The entire contents of all thirty eight pages of the 6/6/2014 first amended counterclaims **does not include any new matter** where the contents were included in all the prior complaints and counterclaims that were submitted in this matter.

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[23] To date the court has not issued a final written order based on the 5/20/2014 hearing.

[24] Hunt argues that any objection and or defense that have been omitted from the 9/5/2013 and or 6/23/2014 motions to dismiss are waived and admitted.

SCRCP 7(a) Pleadings. There shall be a complaint and an answer; and a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under Rule 14, and there shall be a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer; and there may be a reply to affirmative defenses as provided in Rule 8(c).

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Note that: the 7/9/2012 complaint (removed by BBT to the USDC) and the 8/2/2013 original counterclaims and exhibits are one and the same.

Hunt argues that BBT's entire 6/23/2014 second motion to dismiss should be denied where BBT has failed to file a reply and has failed to appear, plead or otherwise defend all thirty eight pages of the 6/6/2014 first amended counterclaims within the time allowed of 15 days.

Pursuant to SCRCP 8 Hunt argues that BBT has admitted to all of the allegations that make up the original 8/2/2013 counterclaims where those allegations were not denied in a **reply** pleading that was labeled as a reply and/or not argued in the 9/5/2013 motion to dismiss.

Pursuant to SCRCP 8 Hunt argues that BBT has admitted to all of the allegations that make up the first amended 6/6/2014 counterclaims where those allegations were not denied in a **reply** pleading that was labeled as a reply and/or not argued in the 6/23/2014 second motion to dismiss.

SCRCP 15(a) states in part: **Amendments.** [] A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within **fifteen days** after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders; and where

> The certificate of service in the file shows that BBT was mailed the first amended counterclaims on 6/6/2013 where during the past 120 plus days BBT has not made the responsive pleading of a **reply** to the amended counterclaims as argued above at **SCRCP ignored; and where**
>
> The averments[26] in this matter consist of all thirty eight pages of the document labeled the first amended counterclaims, as such, pursuant to SCRCP 8 Hunt argues that BBT has admitted to all of the averments that make up the first amended counterclaims where those averments were not denied in a required **reply** responsive pleading that was labeled as a reply.

Avoiding a trial on the merits:

As such, Hunt argues that BBT in its 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6), as to the entire motion, that BBT is using the second motion to dismiss to avoid a trial on the merits of Hunts counterclaims and prolong this where all of the objections/defenses in the 6/23/2014 motion to dismiss was either omitted or heard at the 5/20/2014 hearing on the 9/5/2014 motion to dismiss and where BBT has requested and been granted a priority scheduling order in this matter.

The allegations that make up the first amended counterclaims have been the subject of the above six motions to dismiss: #s 1-2 and #s 4-7 where -

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[26] SCRCP 8(d) **states - Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

Hunt argues that the entire contents of BBT's 6/23/2014 second motion to dismiss under SCRCP 12(b)(6) in response to the first amended counterclaims were either **omitted** by BBT from its earlier 9/5/2013 and other motions to dismiss; or **heard** at the 5/20/2014 hearing where the court either ruled on or did not rule on the objections/defenses put forth by BBT in its 9/5/2013 motion to dismiss such that the 6/23/2014 motion to dismiss is an abuse of the time of Hunt and the court where BBT requested and was granted a priority scheduling order in this matter.

Hunt asks that the court –

Find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) was not permitted where BBT has had its day in court as to the objections raised to the causes of action/counterclaims in this matter; and

deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in its entirety where BBT has had its day in court as to the objections raised to the causes of action/counterclaims in this matter.

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1. **No motion required:** SCRCP 15(a) states: **Amendments.** A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading[27] is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster,[28] he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within **fifteen days** after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders.

At the May 20, 2014 hearing on the 9/5/2013 motion to dismiss under SCRCP 12(b)(6) Judge Howe directed Hunt to replead the counterclaims without a motion.

The 6/6/2014 first amended counterclaims were filed without a motion.

Thereafter, BBT in the 6/23/2014 second motion to dismiss states: **Hunt has failed to assert these [first amended] counterclaims within a pleading as required by the SCRCP.**

In the 6/23/2014 second motion to dismiss BBT does not argue that it was prejudiced by Hunt's filing of the first amended counterclaims without a motion.

See above at all paragraphs of pages 1-12.

Available to BBT but omitted from its 9/5/203 motion to dismiss: Hunt argues that the first amended counterclaims were not submitted within a pleading as per the instructions of Judge Howe in the May 20, 2014 hearing on the 9/5/2014 motion to dismiss where BBT did not object to these instructions by the court on May 20, 2014. Also, BBT did not object to Hunt's email stating the same and BBT in its email to Judge Howe re statute of limitations did not object to Judge Howe's instruction that the first amended counterclaims could be submitted without a motion.

Hunt argues that BBT's failure to object to Hunt's emails, in open court and in its emails to Judge Howe is binding such that BBT can not change its mind at this time by asserting an objection under a second motion to dismiss under SCRCP 12(b)(6).

Hunt argues that the objection that is currently being asserted by BBT was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6) and at the hearing for the same on May 20, 2014 and the emails to the Judge thereafter on the same motion and that BBT is engaging in piecemeal consideration of pretrial motions.

SCRCP 15: Hunt argues that the 6/6/2014 first amended counterclaims satisfy SCRCP 15 where Hunt has made no other amendments to the pleading.

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[27] To date BBT has not provided a responsive pleading in this matter to Hunt's counterclaims.

[28] Hunt argues that a responsive pleading of a reply is required; and that the matter has not yet been placed on the trial roster.

Hunt asks that the court –

Find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to paragraph numbered 1 was not permitted; and

deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the paragraph numbered 1 where this is in fact BBT's 6th motion to dismiss.

2. In the 9/5/2013 motion to dismiss BBT stated: **"the counterclaims and each and every cause of action stated therein is barred by the applicable statute of limitations, the operative facts having occurred and been discovered (or discoverable) by Defendant Cindy B. Hunt ("Hunt") prior to July 8, 2009."**

Due Diligence: As shown in the timeline, civil dockets and exhibits this matter has been diligently pursued by Hunt from 1/22/2008 through the present time. At no time did Hunt intend to abandon the case.

Equitable Tolling: Equitable tolling is applicable in this matter to ensure fundamental practicality and fairness where the USDC through out lawsuits #s 1-3[29] helped BBT and its employees out by forcing Hunt to sue only BBT in state court. And when Hunt finally did sue only BBT in state court (as Hunt was instructed to do by the USCA) in lawsuit # 3 BBT thereafter removed the case to the USDC looking for more help.

This court on May 20, 2014 did **not rule** on BBT's 9/5/2013 first motion to dismiss under SCRCP 12(b)(6) re **statute of limitations** to include where Hunt and BBT submitted additional arguments to the court re the original counterclaims on statute of limitations, breach of fiduciary duty, etc. and violations of the SC Probate Code.

Hunt on 6/6/2014 filed the first amended counterclaims. Seventeen days later the only document filed by BBT is its 6/23/2014 second motion to dismiss under SCRCP 12(b)(6).

In the 6/23/2014 second motion to dismiss BBT repeats the objection made in two earlier motions to dismiss of: **the counterclaims are all barred by their applicable statutes of limitations.**

Hunt asks that the court find the arguments as **unpreserved and waived** in BBT's 9/5/2013, 6/23/2014 motion to dismiss under SCRCP 12 (b)(6), emails and at the 5/20/2014 hearing re **statute of limitations, breach of fiduciary duty, etc. and violations of the SC Probate Code.**

Also, see above at all paragraphs of pages 1-13.

Hunt asks that the court –

Find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to paragraph numbered 2 was not permitted where BBT

[29] The USDC only gave Hunt 2 months to serve the BBT and its employee. Thereafter, BBT dodged service of process and the USDC helped BBT out for second time by dismissing the case.

should not be allowed to deprive Hunt of her day in court through the abusive use of motions to dismiss; and

deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the paragraph numbered 2 where this is in fact BBT's 6th motion to dismiss.

3. The original 8/2/2013 counterclaims at the second cause of action stated: **fraud, constructive fraud and fraud in the inducement against BBT.**

In its 9/5/2013 motion to dismiss BBT stated: The second cause of action fails to set forth a claim for relief for fraud. As said cause of action has not been pled with particularity required by SCRCP 9(b) and the counterclaims fail to allege facts sufficient to establish a plausible claim for such relief, including the failure to allege any facts which would establish either the **right to rely or actual reliance** on the allegedly fraudulent statements.

This court at the **hearing on May 20, 2014 granted** BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) re **fraud.**

BBT did not assert in its 9/5/2013 motion to dismiss, at the hearing, in any email, etc. that the causes of action for constructive fraud and fraud in the inducement should be dismissed and BBT did not submit a brief at the time of the hearing.

Hunt argues that the grant of dismissal did not apply to constructive fraud and fraud in the inducement.

In the 5/20/2014 Brief in opposition to the 9/5/2013 motion to dismiss

Hunt argued at page 13 that –

To sustain a claim of fraud, all of the following elements must be proven:(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Armstrong v. Collins, 366 S.C. 204, 218-219, 621 S.E.2d 368 (S.C.App. 2005)

To establish constructive fraud, all elements of actual fraud except the element of intent must be established. Armstrong v. Collins, 366 S.C. 204, 219, 621 S.E.2d 368 (S.C.App. 2005)

Fraud in the inducement is demonstrated by: (1) a representation, (2) its falsity, (3) its materiality, (4) knowledge of its falsity or reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury. *M.B. Kahn Const. Co. v. South Carolina Nat. Bank of Charleston,* 275 S.C. 381, 271 S.E.2d 414 (1980); and

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Hunt argued at page 16 that BBT knew or should have known that their statements were false where Hunt stated: "Hunt argues that BBT had **knowledge of the falsity** of the language in the BSA regarding the treatment of POD accounts or acted in **reckless disregard of its truth or falsity** as follows: BBT sent Hunt annual letters stating that it was in compliance with the GLBA.[30]" **[(Hunt cited to** paragraphs 75, 15, 28-37, 42-43, 135 & exhibit #s 6, 12, 15, 28-33 of the [original 8/2/2013] counterclaims & exhibit # 44 page 6 of 28 (Payable on Death))].

At no time did BBT object to these arguments by Hunt.

Thereafter, Hunt submitted the first amended counterclaims on 6/6/2014.

In this long going dispute between Hunt and BBT – Hunt has argued a cause of action of fraud where all elements of actual fraud except the element of intent must be established **for constructive fraud, since 8/2009 spanning four law suits where BBT submitted six motions to dismiss.**

Also, BBT does not argue and can not argue that the counterclaims in this matter arise from a different set of facts where the 8/2/2013 original counterclaims in this current lawsuit # 4 were taken in their entirety from the 7/9/2012 complaint in lawsuit # 3 at case no: cp-26-5264.

BBT responded to the above referenced complaint and counterclaims with the 4th motion to dismiss at exhibit # 49 at entry # 9 and the 5th motion to dismiss in the current lawsuit that was filed on 9/5/2013 by BBT.

However, for the first time in the sixth 6/23/2014 motion to dismiss the first amended counterclaims BBT state: the first cause of action fails to plead with particularity the elements of constructive fraud as required by SCRCP 9(b), because it falls to state facts which establish that BBT knew or should have known that their statements were false.

Knew or should have known is the same as knowledge of falsity or reckless disregard: Hunt argues that the first amended counterclaims show BBT knew of the falsity or acted with reckless disregard where Hunt directs the court to paragraphs 1- 506 of the first amended counterclaims where these paragraphs state the specific conduct of BBT that shows that BBT knew of the falsity or acted with reckless disregard of the misconduct that Hunt complains of that was on its protected computers; and on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

The first amended counterclaims state: constructive fraud against BBT where -

Paragraph 221 of the first amended counterclaims state: BBT had knowledge of the falsity of their statements or acted with reckless disregard for the truth as shown at exhibit #s 66, 4-7, 10, 12, 14-18, 20 &28-29.

[30] Compare to the FDIC at exhibit #s 17 and 18 made a finding that BBT had violated GLBA.

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Paragraph 233 of the first amended counterclaims state: At all times pertinent hereto, the conduct of BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, willful, reckless, and in grossly negligent disregard for federal and state laws and the rights of Hunt, the IOLTA and other accounts of Hunt. (Cf. exhibit #s 44-45; SC Code 34-3-510 & 62-7-801 thru 817; SC Code 62-6-101 ...; SCACR 412; Exhibit #s 4, 5, 6, 12, 15 & 16-18; 10 & 28-29 & 36)

See above at all paragraphs of pages 1-12.[31]

Hunt asks that the court –

Find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to paragraph numbered 3 was not permitted; and

deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the paragraph numbered 3 where this is in fact BBT's 6th motion to dismiss re the elements of constructive fraud as to these set of facts.

4. The original counterclaims at the third cause of action stated: negligent misrepresentation, negligence, **negligence per se** and gross negligence against BBT.[32]

In its 9/5/2013 motion to dismiss BBT stated: the third cause of action fails to set forth a claim for relief for negligent misrepresentation as the counterclaims fail to allege facts sufficient to establish a plausible claim for such relief. Said cause of action further fails to allege facts supporting recovery in negligence as any duty which might have existed is a duty based in contract which will not support recovery in negligence.

In the 5/20/2014 Brief in opposition to the 9/5/2013 motion to dismiss Hunt argued at pages 17-21:

Legal Standard for negligent misrepresentation: the party must prove (1) the defendant made a false representation to the plaintiff, (2) the defendant had a pecuniary interest in making the statement, (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff, (4) the defendant breached that duty by failing to exercise due care, (5) the plaintiff justifiably relied on the representation, and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation. Armstrong v. Collins, 366 S.C. 204, 219-220, 621 S.E.2d 368 (S.C.App. 2005);

And that in this matter there was No Contracts.

At no time did BBT object to these arguments by Hunt.

This court on **May 20, 2014 granted** BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) re **negligent misrepresentation.**

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[31] Hunt also argues that BBT has waived objections / admitted to fraud in the inducement.

[32] Hunt also argues that BBT has waived objections / admitted to negligence and gross negligence.

BBT did not assert in its 9/5/2013 motion to dismiss, at the hearing, in any email, etc. that the causes of action for negligence, negligence per se and gross negligence should be dismissed and BBT did not submit a brief at the time of the hearing.

Hunt argues that the grant of dismissal by the court did not apply to negligence, negligence per se and gross negligence.

Thereafter, Hunt has submitted the **first amended counterclaims**.

In this long going dispute between Hunt and BBT – Hunt has argued a cause of action of negligence per se since 2/2011 spanning four law suits where BBT has submitted six motions to dismiss.

However, for the first time in this sixth 6/23/2014 motion to dismiss the first amended counterclaims BBT states: the second cause of action fails to set forth a claim for relief for negligence per se because it fails to allege any facts that establish that BBT owes Hunt a duty of care pursuant to statute, or that BBT violated the statute.[33]

The first amended counterclaims state: negligence per se against BBT.

Paragraph 94 of the first amended counterclaims state: At exhibits #s 17-18 in May 2008 the FDIC found that BBT violated GLBA. The FDIC's finding was taken from exhibit # 13 a pre-issuance letter that was written to Hunt by Craven.

Paragraph 170 of the first amended counterclaims state: At exhibit #s 17-18 BBT owed Hunt a **duty of care** as stated under GLBA at 15 USC 6801-6809 and 6821-6827. (exhibit #s 4, 12, 15, 17-18, 10, 26,28-29, 46-49)

Paragraph 178 of the first amended counterclaims state: All of these actions as described above amount to more than mere breaches of contract based on BBT's role of financial partner of the IOLTA and the SC BAR at exhibit # 66. There are **no contracts** in this matter where all of the agreements for all loans, cards and deposit accounts between BBT and Hunt are **void ab initio** as a result of BBT **violating** its own banking service agreements (BSA), SCACR 412, SC Code Ann. 62-6-103(b), SC Code Ann. § 36-4-401(a), GLBA, and SC 34-3-510 where these violations are against public policy.

Statute: Fifth Cause of Action of the first amended counterclaims at paragraphs 359 – 414 state: Violations of SC Probate Code Ann. sections 62-6-101 thru 62-6-106 against BBT.

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[33] **Duty:** Hunt argues that the counterclaims show BBT owes Hunt a duty of care where Hunt directs the court to paragraphs 1- 177 and exhibit #s 17/18 and 44/45; and on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

Statute: Sixth Cause of Action of the first amended counterclaims at paragraphs 415 – 455 state: Violations of UNFAIR TRADE PRACTICES Act: SC Code § 39-5-10 thru 39-5-170 against BBT.

See above at all paragraphs of pages 1-12.

Hunt asks that the court –

Find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to paragraph numbered 4 was not permitted; and

deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the paragraph numbered 4 where this is in fact BBT's 6th motion to dismiss re negligence per se as to these set of facts.

5. The original counterclaims at the fourth cause of action stated: **conversion** against BBT.

In its 9/5/2013 motion to dismiss BBT stated: **the fourth cause of action fails to set forth a claim for relief for conversion as a bank account (a contractual right) cannot be the subject of a conversion action.**

This court on May 20, 2014 granted BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) re conversion as stated in the 9/5/2013 motion to dismiss. BBT did not argue dismissal based on **not tangible personal property as such the ruling of the court should not include "not tangible personal property"**

Thereafter, Hunt has submitted the first amended counterclaims. The first amended counterclaims state: conversion against BBT.

Legal Standard: Conversion is a wrongful act and has been defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789, 792 (S.C. 1990)

Legal Standard: Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property. Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

The facts in Owens, supra at 493 & 497-498 are: *Under the Christmas Club account plan, the Bank transferred $20.00 per week from a joint account, which plaintiff had with her husband, to her Christmas Club account. The husband was not a party to this Christmas Club account. A total of $879.00 was transferred in this manner to plaintiff's Club account over a period of months.*

Under the plan, the Club account was closed and checks prepared for all members, including plaintiff, on November 14, 1973. The check made payable to plaintiff was sent to the Bank's Georgetown branch for delivery to her sometime in November. It is admitted that the check was not delivered with the others; the Bank says it was mailed in February; the plaintiff testified that she has never received it.

Plaintiff's husband was obligated to the Bank under certain financing arrangements. The Georgetown branch manager (Benton) admitted that he held up delivery of the check in order to pressure the husband into making good his personal obligation.

If the facts in this case established nothing more than that the Bank had refused to pay plaintiff funds which she had on general deposit, then we would be disposed to say that the above authority precluded an action based on conversion.

However, the facts before us establish conduct on the part of the Bank, through its agent Benton, much more onerous than a simple breach of contract. Benton's actions, in withholding delivery of plaintiff's check and using this check to pressure her husband, constituted a wrongful and illegal misuse of plaintiff's funds and amounted to a misappropriation of the same to the Bank's own use and benefit.

The counterclaims show that the facts here are: Hunt did all of her banking at BBT from 1993 – 2008. Hunt did not authorize any joint accounts, the beneficiary profile, the at least two unauthorized accounts: transfer management and portfolio, etc. All of Hunts accounts at BBT were held in Hunt's name only. Davis did not contribute to any account of Hunt at BBT. Only Hunt made deposits into her accounts at BBT.

The unauthorized Davis beneficiary profile to include the unauthorized Davis mortgage loan, the at least two unauthorized loans in Hunt's customer profile with her IOLTA and other accounts, the two checks for legal services that were improperly setoff against the POD account, the disclosure to Davis and reporting Hunt as delinquent on the 2007 mortgage without notice of a dispute are much more onerous than a simple breach of contract[34] where Hunt is an attorney,[35] and is required to avoid even the appearance of impropriety.[36]

BBT's claim that Hunt's funds are contractual is another way of saying that the funds are commingled and confused with all other funds on deposit resulting in a relationship of debtor and creditor.

However, here as in Owen, supra at 498 - that argument by BBT is without merit.

Paragraph 178 of the first amended counterclaims state: All of these actions as described above amount to more than mere breaches of contract based on BBT's role of financial partner of the IOLTA and the SC BAR at exhibit # 66. There are **no contracts** in this matter where all of the agreements for all loans, cards and deposit accounts between BBT and Hunt are **void ab initio** as a result of BBT **violating** its own banking service agreements (BSA), SCACR 412, SC Code Ann. 62-6-103(b), SC Code Ann. § 36-4-401(a), GLBA, and SC 34-3-510 where these violations are against public policy.

BBT specifically identified and designated the setoff monies in the debit slips at exhibit #s 5 & 16.

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[34] *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

[35] BBT has known that Hunt was an attorney since 1996 when Hunt opened the IOLTA.

[36] See DR 9-101 and EC 9-2, Supreme Court Rule 32.

Hunt wrote to BBT at exhibit # 20 demanding the return of the setoff monies. BBT refused to deliver the setoff monies of the POD account upon demand to Hunt. (see paragraph 100 of the amended counterclaims and at exhibit #s 5 & 16).

BBT's banking service agreement (BSA) at exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) states: after we receive your letter, we can not try to collect any amount you question or report you as delinquent. BBT's use of the setoff monies for its own wrongful and illegal purpose to Hunt's detriment, constituted the tort complained of.

BBT specifically identified and designated the IOLTA, POD, CD, savings and other account monies in monthly statements.

Hunt argues that it cannot be contended that BBT had a legal right to apply Hunt's funds or use them in the manner it did as stated in the counterclaims, BSA, exhibits, etc where there was no mutuality of demands between Hunt and Davis/the other borrowers. [37]

Such that pursuant to *Owens v. Andrews Bank & Trust Co.,* 265 S.C. 490, 497-498, 220 S.E.2d 116, 119-120 (1975) the conduct on the part of BBT as stated in the counterclaims, BSA, exhibits, etc. constitute wrongful and illegal misuse of Hunt's funds and amounted to a misappropriation of the same to the Bank's own use and benefit.

BBT responded to the first amended counterclaims with the 6/23/2014 motion to dismiss under SCRCP 12(b)(6).

In this long going dispute between Hunt and BBT – Hunt has argued a cause of action of conversion since 5/2010 in four law suits where BBT submitted six motions to dismiss.

However, for the first time in this seventh 6/23/2014 motion to dismiss BBT states: the third cause of action fails to set forth a claim for relief for conversion because a bank account is a contractual right, not tangible personal property, and as such, will not support a claim for relief for conversion. [38]

See above at all paragraphs of pages 1-12.

Hunt asks that the court –

Find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to paragraph numbered 5 was not permitted; and

deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the paragraph numbered 5 where this is in fact BBT's 6th motion to dismiss re conversion as to these set of facts.

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[37] *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 498, 220 S.E.2d 116, 120 (1975).

[38] **Tangible Property:** Hunt argues that the counterclaims show that her bank accounts are tangible property, as per Owens, supra, where Hunt directs the court to paragraphs 1- 178 and exhibit #s 44/45; and on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

6. The original counterclaims at the fifth cause of action state: Breach of Fiduciary Duty / Breaches of Trust for Violations of SC Common Law and SC Code Ann. section 62-7-1001(a) by engaging in conduct that is prohibited at 62-7-801 thru 62-7-817 against BBT.

In its 9/5/2013 motion to dismiss BBT stated: the fifth cause of action fails to set forth a claim for relief for breach of fiduciary duty as the facts alleged in the counterclaims establish a debtor/creditor relationship between Hunt and BBT which does not give rise to a fiduciary duty.

This court on May 20, 2014 **did not rule** on this counterclaim of BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) re breach of fiduciary duty.

Thereafter, Hunt has submitted the first amended counterclaims.
The first amended counterclaims state: Breach of Fiduciary Duty against BBT.

Paragraph 21-26 of the first amended counterclaims state:

Fiduciary Relationship: At exhibit # 3 (page 2 of 9) Hunt's Interest on Lawyers Trust Account (IOLTA) was located at BBT Branch Banking and Trust Company (hereinafter BB&T) from April 1996 – May 2008 in Conway, Horry County, South Carolina.

Hunt is a fiduciary/settler/trustee/beneficiary of her IOLTA.

The SC Bar is a beneficiary to the IOLTA. [39]

Hunt and BBT and its employees/agents have a fiduciary relationship.

BBT and employees/agents were and are a fiduciary/trustee to the IOLTA.

Hunt imposed a special confidence in BBT and its employees where they actively sought and did gain her trust and confidence.

In this long going dispute between Hunt and BBT – Hunt has argued a cause of action of breach of fiduciary duty since 5/2010 in four law suits where BBT submitted six motions to dismiss.

However, in this sixth - 6/23/2014 motion to dismiss BBT repeated the objection made in its 9/5/2013 motion to dismiss of: the fourth cause of action fails to set forth a claim for relief for breach of fiduciary duty because the facts alleged establish nothing more than a typical debtor/creditor relationship between Hunt and BBT, which, as a matter of law, does not give rise to a fiduciary duty. [40]

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[39] See SCACR 412 (a)(3).

[40] **Debtor/creditor relationship:** Hunt argues that the counterclaims show a fiduciary duty where Hunt directs the court to paragraphs 1- 178 and 288-358; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

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See above at all paragraphs of pages 1-12.

Hunt asks that the court –

Find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to paragraph numbered 6 was not permitted; and

deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the paragraph numbered 6 where this is in fact BBT's 6th motion to dismiss re **breach of fiduciary duty** as to these set of facts.

7. The original counterclaims at the sixth cause of action stated: **violations of the SC Probate Code Ann. sections 62-6-101 thru 62-6-106 against BBT.**

In its 9/5/2013 motion to dismiss BBT stated: the sixth cause of action fails to set forth a claim for relief for as the sections referred to therein do not create a right of action and/or the facts alleged in the counterclaims establish that no actionable violation occurred.

In the 5/20/2014 Brief in opposition to the 9/5/2013 motion to dismiss Hunt argued at page 32:

Case law interpreting Title 62 Article 6 of the SC Code Annotated include Vaughn v. Bernhardt, 339 S.C. 125, 528 S.E.2d 82 (S.C.App. 2000);[41] and Kemp v. Rawlings, 358 S.C. 28, 594 S.E.2d 845 (S.C. 2004).[42]

At no time did BBT object to these arguments by Hunt.

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[41] Vaughn v. Bernhardt, 528 S.E.2d 82, 339 S.C. 125 (S.C. App., 2000): The case was submitted to the probate court based upon stipulated facts, and the court found that the funds belonged to the estate of Mary Henrietta Bernhardt. The court ruled that the statutory presumption of entitlement to funds under S.C.Code Ann. § 62-6-104(a) (1987) which John would have had as the sole surviving party to each joint account only applied to sums on deposit in joint survivorship accounts at the death of the contributing party. The court ruled that because John withdrew the funds before his aunt's death, he was not entitled to the presumption. The court ordered him to repay the estate, less funds he used to pay funeral and other related expenses. The circuit court affirmed the probate court. John appeals. We affirm.

[42] Kemp v. Rawlings, 358 S.C. 28, 594 S.E.2d 845 (S.C., 2004): ... [Col. Rawlings' widow] is not entitled to the survivorship presumption as to the funds she withdrew. Appellant did not contribute any money to the joint accounts. Thus, under section 62-6-103(a), all of the funds from the Wachovia joint accounts belonged to Col. Rawlings during his lifetime because he was the sole contributor. Appellant had withdrawn almost all of the funds and deposited them into her own accounts. Therefore, she cannot claim ownership of the funds based on § 62-6-104(a), the right of survivorship provision.
However, under the will, appellant is entitled to the funds she withdrew prior to Col. Rawlings' death.

This court on May 20, 2014 **did not rule on** this counterclaim as to BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) re violations of SC Code Ann. sections 62-6-101 thru 62-6-106.

Thereafter, Hunt has submitted the first amended counterclaims.

The first amended counterclaims state:. violations of SC Code Ann. sections 62-6-101 thru 62-6-106 against BBT.

> **Private right of action** goes to legislative intent. BBT does not cite to any legislation that shows that the legislators intended no private right of action as to the SC Code Ann. sections 62-6-101 thru 62-6-106. Also, based on Vaugh, supra the SC legislature has known for fourteen years that the courts of SC were allowing a private right of action for these sections of the probate code; and these statutes specifically allow for a private right of action in the language of the statutes.
>
> **First amended counterclaims:** Hunt argues that the counterclaims show a private right of action based on Vaugh, supra where Hunt directs the court to paragraphs 1- 178 and 359-414; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

In this long going dispute between Hunt and BBT – Hunt has argued a cause of action of violation of SC Code Ann. sections 62-6-101 thru 62-6-106 since 5/2010 spanning four law suits where BBT submitted six motions to dismiss.

As stated above the court did not rule on this cause of action.

However, instead of filing a motion under SCRCP 59(e) BBT in this sixth 6/23/2014 motion to dismiss repeats the objection made in the 9/5/2013 motion to dismiss or asserts the new objection of: the fifth cause of action fails to set forth a claim for relief for violation of SC Code Ann. sections 62-6-101 thru 62-6-106 because there is no private right of action for violation of those statutes.

See above at all paragraphs of pages 1-12.

Hunt asks that the court –

Find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to paragraph numbered 7 was not permitted; and

deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the paragraph numbered 7 where this is in fact BBT's 6th motion to dismiss re **violations of the SC Probate Code Ann. sections 62-6-101 thru 62-6-106** as to these set of facts.

8. The original counterclaims at the seventh cause of action stated: **violation of the SC Unfair Trade Practices Act: SC Code sections 39-5-10 thru 39-5-170 against BBT.**

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In its 9/5/2013 motion to dismiss BBT stated: the seventh cause of action for unfair trade practices fails to state facts sufficient to state a claim against BBT for "violation of SC Code Ann. sections 39-5-10 et seq." as the actions of BBT, (a federally insured state banking institution), are not covered by or subject to the provisions of SC Code Ann. sections 39-5-10 et seq. as the actions of federally insured financial institutions are not subject thereto and/or exempt from the provisions thereof pursuant to SC Code Ann. sections 39-5-40.
Additionally, the counterclaims fail to set forth a claim for relief under SC Code Ann section 39-5-10 as the facts alleged in the counterclaims establish only a private dispute between the parties that has no impact upon the public interest of the State of SC.

This court in the **hearing on May 20, 2014 granted** BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) re violation of the SC Unfair Trade Practices Act: SC Code sections 39-5-10 thru 39-5-170.

The first amended counterclaims state: violation of the SC Unfair Trade Practices Act: SC Code sections 39-5-10 thru 39-5-170 against BBT.

In this long going dispute between Hunt and BBT – Hunt has argued a cause of action of violation of the SC Unfair Trade Practices Act: SC Code sections 39-5-10 thru 39-5-170 since 2/2011 spanning four law suits where BBT submitted six motions to dismiss.

However, in this sixth 6/23/2014 motion to dismiss BBT repeats its objection that was made in the 9/5/2013 motion to dismiss of: the sixth cause of action fails to state facts[43] sufficient to state a claim against BBT for violation of the SC Unfair Trade Practices Act because the actions of BBT, a federally-insured state banking institution, are not subject thereto and/or are exempt from its provisions pursuant to SC Code Ann. section 39-5-40. Additionally, the counterclaim fails to set forth a claim for relief as the facts alleged establish only a private dispute between the parties that has no impact upon the public interest of the State of SC.

Defendant BBT argues in its motion to dismiss that its activities as a federally insured banking institution do not fall within the coverage of SC Code Ann. § 39-5-40 of the South Carolina Unfair Trade Practices Act (hereafter SC UTPA).

Legal Standard: Exemptions from the SC UTPA are governed by SC Code Ann. § 39-5-40, § 39-5-160 and Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310 (S.C. 1991).

Legal Standard: "An act or practice is ' "unfair" when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is "deceptive" when it has a tendency to deceive.'"[44]

[43] Hunt as included additional facts in the 6/6/2014 first amended counterclaims.

[44] Johnson v. Collins Entertainment Co., Inc., 88 F.Supp.2d 499, 517 (D.S.C. 1999)

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SC Code Ann. § 39-5-40 states in part: For the purpose of this section, the burden of proving exemption from the provisions of this article shall be upon the person claiming the exemption.

BBT is claiming an exemption from **SC Code Ann. § 39-5-40**.

However, BBT in its motion to dismiss concerning the unfair trade practice cause of action cites to no cases in support of its position that its activities as a federally insured banking institution do not fall within the coverage of SC Code Ann. § 39-5-40.

Hunt argues that the exemptions under **SC Code Ann. § 39-5-40**[45] should not apply to Defendant BBT for the following reasons:

> **State ex rel. McLeod v. Rhoades, 275 S.C. 104, 267 S.E.2d 539 (S.C. 1980)**[46] is not applicable to the facts of this case where this matter does not involve a public offering and sale of the stock.[47]
>
> **Anderson v. Citizens Bank, 294 S.C. 387, 365 S.E.2d 26 (S.C.App. 1987)**[48] is not applicable to the facts of this case where at paragraph #s 17-20 the first amended

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[45] SECTION 39-5-40. Article inapplicable to certain practices and transactions. Nothing in this article shall apply to:

(a) Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law.

(b) Acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and did not have a direct financial interest in the sale or distribution of the advertised product or service.

(c) This article does not supersede or apply to unfair trade practices covered and regulated under Title 38, Chapter 57, Sections 38-57-10 through 38-55-320.

(d) Any challenged practices that are subject to, and comply with, statutes administered by the Federal Trade Commission and the rules, regulations and decisions interpreting such statutes.

For the purpose of this section, the burden of proving exemption from the provisions of this article shall be upon the person claiming the exemption.

[46] [M]odified to the extent that the "general activity" test is inconsistent with the interpretation of the exemption provision set forth in [] Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310, 313 (S.C. 1991).

[47] See, McCleod v. Rhoades, 275 S.C. 104, 267 S.E.2d 539 (1980) (transactions in question are regulated by the Securities Exchange Commission and the South Carolina Uniform Securities Act, and are therefore exempt from the coverage of the Unfair Trade Practices Act.) And FN1 of Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310 (S.C. 1991) states: We note that the sale of securities is a unique transaction. Each public offering is subject to strict regulation and must comply with stringent requirements. Very few, if any, other business transactions are subject to the strict scrutiny which is placed upon securities. Therefore, we choose to follow the vast majority of jurisdictions in holding that securities transactions remain exempt from claims under the UTPA.

[48] Anderson v. Citizens Bank, 294 S.C. 387, 365 S.E.2d 26 (Ct.App.1987) [is] overruled to the extent that the result was based upon the "general activity" test. Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310, 313 (S.C. 1991).

counterclaims state that BBT is not regulated by the SC Board of Banks as BBT is a North Carolina Corporation.[49]

Page 399 of anderson: The State Board of Financial Institutions regulates the banking practices of Citizens Bank pursuant to Section 34-1-10 to -130, Code of Laws of South Carolina, 1976. The Board has extensive regulatory authority over banking practices, including the power to initiate criminal prosecutions against banks that violate a statute or regulation. Sections 34-1-60, 34-1-90, 34-1-100, Code of Laws of South Carolina, 1976. Therefore, under the "general activity" test of *State ex rel. McLeod v. Rhoades,* 275 S.C. 104, 267 S.E.2d 539(1980), the actions of Citizens Bank in connection with the Graham loan are exempt from the provisions of the Unfair Trade Practices Act pursuant to Section 39-5-40(a), Code of Laws of South Carolina, 1976. See *NCNB Nat'l Bank of North Carolina v. Tiller,* 814 F.2d 931 (4th Cir.1987). [1] Accordingly, we affirm the ruling of the trial judge.

NCNB Nat. Bank of North Carolina v. Tiller, 814 F.2d 931, 934 (4th Cir. 1987) is not applicable to the facts of this case where this matter does not involve a claim of usury, prime rate dispute or an enforcement of a guaranty agreement.

F. T. C. v. Winters Nat. Bank & Trust Co., 601 F.2d 395, 396 (6th Cir. 1979) is not applicable to the facts of this case where this matter does not involve the Federal Trade Commission issuing a subpoena to BBT.

Lands Inn, Inc. v. Branch Banking and Trust Company of South Carolina is not applicable to the facts of this case where Lands Inn is an unpublished opinion and unpublished opinions are not binding precedent in this circuit.[50] Also, in Lands Inn BBT was BBT of SC and was regulated by the SC Board of Banks. Years later in this matter BBT is a North Carolina Corporation[51] and is regulated by the NC Commission on Banking.

Federal Reserve System Avoided:

In this matter Hunt reported BBT to the FDIC twice for conduct that Hunt alleges was unfair and deceptive practices, etc. where Hunt had her IOLTA with BBT from 4/1996-5/19/2008.[52] And while Hunt had her IOLTA at BBT at least three (Davis mortgage and the loans: transfer management and portfolio) unauthorized loans were placed into Hunt's customer profile. (See exhibit #s 15 and 10)

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[49] Anderson is not applicable here where Defendant BBT is a North Carolina Corporation (See exhibit 2 of the Complaint). As such, is not regulated by a SC regulatory body or officer. Also, see where the BBT in 2012 removed this case from State Court based on diversity under 28 U.S.C. 1332.

[50] See Local Rule 36(c) and Smith v. Westvaco Corp. Voluntary Employees Beneficiary Ass'n. Long Term Disability Plan, 399 F.Supp.2d 692, 694 (D.S.C. 2005). Also, Judge Duffy can not be called as a witness as per FRE 605, Canon Two of the Code of Judicial Conduct and United States v. Cross, 516 F.Supp. 700, 707 (M.D.Ga. 1981).

[51] See exhibit # 2 of the Complaint.

[52] See paragraph 11 of the State Court Complaint where the Plaintiff and the Defendant BBT had and have a fiduciary relationship.

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> At exhibit # 13 attorney Trustee David Craven failed to disclose the at least two unauthorized loans in Hunt's customer profile and falsely stated that no fiduciary relationship was ever established between Hunt and BBT.[53]
>
> Judy Teal in her April 11, 2008 (see exhibit # 15) letter to the FDIC also sent Craven's letter at exhibit # 13 to the FDIC. Mark Booz in his letter (see exhibit # 19) to the FDIC also failed to disclose the at least two unauthorized loans in Hunt's customer profile along with Hunt's IOLTA.
>
> The above described misconduct allowed BBT to avoid the authority of the Federal Reserve System to promulgate and enforce regulations to define and prevent unfair or deceptive acts or practices by banks under 15 U.S.C. Sec. 57a(f) (Supp.1986).

Thereafter, BBT now comes asserting that its activities as a federally insured banking institution do not fall within the coverage of the SC UTPA.

However, in Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310, 311 (S.C. 1991) Justice Toal of the South Carolina Supreme Court said: If we were to accept this contention [that section 39-5-40 excludes from the Act any activity which is regulated by state or federal agencies or other state statutes] however, the UTPA would be rendered without meaning. Almost every business is subject to some [] type of regulation.

Justice Toal in Ward v. Dick Dyer went on to adopt the position of the Tennessee Court in *Skinner v. Steele,* 730 S.W.2d 335 (Tenn.App.1987) of:

> "The purpose of the exemption [under SC Code Ann. 39-5-40] is to insure that a business is not subjected to a lawsuit under the Act when it does something required by law, or does something that would otherwise be a violation of the Act, but which is allowed under other statutes or regulations. It [SC Code Ann. 39-5-40] is intended to avoid conflict between laws, not to exclude from the Act's coverage every activity that is authorized or regulated by another statute or agency. Virtually every activity is regulated to some degree. The defendant's interpretation of the exemption would deprive consumers of a meaningful remedy in many situations. We find this reasoning persuasive and applicable to our statutory exemption. In addition we find that this conclusion is buttressed by the fact that § 39-5-160 of the Act provides that "[t]he powers and remedies provided by this article shall be cumulative and supplementary to all powers and remedies otherwise provided by law."[54]

Applying the reasoning of Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310, 312 (S.C. 1991) to this matter yields the following:

> The certain specified practices and transactions of this case include all the allegations in the pleadings of lawsuits 1-4. Hunt alleges that the failure to disclose and other allegations made by Hunt against BBT are offensive to public policy, immoral, fraudulent, unethical, or oppressive and deceptive practices. Hunt argues that the deception and other actions have been repeated multiple times and have caused injury to the public.[55]

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[53] See exhibit 13 of the Complaint.

[54] Ward v. Dick Dyer and Associates, Inc., 304 S.C. 152, 403 S.E.2d 310, 312 (S.C. 1991).

[55] See attached exhibit #s 10-13 of Davis, Allen and Sherman.

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As such, the certain specified practices and transactions of this case that are alleged against BBT are a violation of the Act.

Also, BBT's conduct which is alleged to violate the UTPA is neither an action nor a transaction which is specifically authorized by any regulatory agency.

And BBT is not required by law to do any of the certain specified practices and transactions of this case that are alleged against BBT by Hunt.

Hunt argues that the certain specified practices and transactions of this case that are alleged against BBT are not allowed under other statutes, regulations or BBT's own Banking Service Agreements.[56]

As such, there is no conflict between the state and federal statutes. As previously stated BBT is a North Carolina Corporation. Thus, BBT is not regulated by a SC regulatory body or officer. BBT was able to avoid full regulation by the FDIC. As such, for all of these reasons no exemption under 39-5-40 should apply to BBT and the SC UTPA should apply to BBT in these unique set of circumstances.

Public Interest: Hunt argues that the counterclaims show a public interest where Hunt directs the court to paragraphs 1- 178 and 415-455; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true where –

Paragraph # 409 of the first amended counterclaims state: BBT through exhibit #s 44-45 (BSAs) and exhibit # 66 is engaged in businesses that affect public interest.

Paragraph # 419 of the first amended counterclaims state: BBT through exhibit #s 44-45 is engaged in businesses that affect public interest.

Paragraph #s 421-422 of the first amended counterclaims state: BBT through exhibit # 66 is engaged in businesses that affect public interest.

BBT through its membership in the FDIC is engaged in businesses that affect public interest.

Paragraph # 434 of the first amended counterclaims state: The deception and other actions by BBT as described herein have been repeated multiple times and have caused injury to the public to include Hunt, Davis and other borrowers.

Not with standing these inclusions in the 6/6/2013 first amended counterclaims BBT responded to the first amended counterclaims with the **6/23/2014 motion to dismiss** under SCRCP 12(b)(6).

See above at all paragraphs of pages 1-12.

[56] See paragraph 43 of the State Court Complaint and the attached documents at exhibit #s 23 and 24.

Hunt asks that the court -

> **Find that** the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to paragraph numbered 8 was not permitted; and
>
> **deny** BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the paragraph numbered 8 where this is in fact BBT's 6th motion to dismiss re - **violation of the SC Unfair Trade Practices Act** as to these set of facts.

9. "A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the [complainant] to any relief on any theory of the case." *Stiles v. Onorato,* 318 S.C. 297, 300, 457 S.E.2d 601, 602-3 (1995). As such, the complaint in lawsuits # 1-3 and the original counterclaims in lawsuit #4 included averments of **breach of contract(s).**[57]

In its 9/5/2013 motion to dismiss BBT was silent as to breach of contract(s).

Also, this court in the hearings on May 20, 2014 stated that the allegations asserted by Hunt were a breach of contract.

> BBT did not argue lack of causation or a non breach of contract or lack of damages or statute of limitations re breach of contract at the hearing. Hunt argues that BBT's failure to object in open court is binding such that BBT can not change its mind at this time by asserting an objection under SCRCP 12(b)(6). As such, Hunt argues that BBT has waived/admitted all elements of breach of contract to include damages and causation.

As such - included in the 6/6/2014 **first amended counterclaims** is a cause of action for **breach of contract(s)** at paragraph #s 456-506.

Damages: Hunt argue that the counterclaims show causation and or damages from the breach of contract(s) where Hunt directs the court to paragraphs 1-177, paragraphs 456 -506 and pages 36-38 of the first amended counterclaims and the affidavits of Hunt at exhibit #s 1, 3-5, 7, 9, 10, 16, 26 and 46[58] where these paragraphs, etc. affidavits state the damages as a result of the breach of contract(s) where on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

"Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981).

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[57] See the first page of the civil docket at exhibit #s 47, 48 and 49; and this court at the 5/20/2014 hearing on the 9/5/2013 motion to dismiss that that this matter included a breach of contract where BBT did not object.

[58] These affidavits where also submitted in the USDC court proceedings where BBT did not object or appeal the rulings of the USDC.

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The first amended counterclaims show causation and or damages from breach of contract(s) at paragraph #s 456-506 where -

Seventh Cause of Action: *Breach of contract(s) against BBT.*

Each previous paragraph and exhibits are repeated herein as if verbatim.

This cause of action includes paragraphs 53-69 and 124-127.

Causation and Damages: *Hunt's 2000 POD account signature card is at exhibit # 4.*

Causation and Damages: *Hunt's 2006 CD is at exhibit # 9.*

Causation and Damages: *Hunt's 2007 mortgage application is at exhibit # 7.*

Causation and Damages: *Hunt's customer profile with the coastal gold benefits is at exhibit # 10.*

Causation and Damages: *On July 19, 2007 BBT provided Hunt a copy of her customer profile.*

Causation and Damages: *The July 19, 2007 customer profile at exhibit # 10 included the loans: transfer management and portfolio. (See exhibit #28-29)*

Causation and Damages: *Hunt did not authorize the loans: transfer management and portfolio.*

Causation and Damages: *Most of Hunt's accounts and loans at BBT are shown at exhibit # 10.*

Causation and Damages: *BBT is required to keep records of all of Hunt's accounts and loans, etc.*

Causation and Damages: *Hunt never signed BBT's banking service agreements (BSA) that are shown at exhibit #s 44 and 45.*

Causation and Damages: *At exhibit # 4 in May 2000 Hunt authorized an individual POD account at BBT with Hunt as the trustee and Davis as the beneficiary at Hunt's death.*

Causation and Damages: *Hunt did not authorize a joint POD account with Davis.*

Causation and Damages: *At exhibit # 11 page 8 of 10 and exhibit #15 - BBT states that it set up Hunt's POD account as a joint account with Davis in 2000.*

Causation and Damages: *The setoffs to Hunt's POD account at exhibit #s 5 and 16 were not authorized by Hunt.*

Causation and Damages: *The name on the account of the POD at exhibit # 4 is: Cindy B. Hunt trustee Costella H Davis beneficiary.*

Causation and Damages: *The checks that resulted in the setoffs to the POD account were not in the name of: Cindy B. Hunt trustee Costella H Davis beneficiary.*

Causation and Damages: *BBT completed the 2007 mortgage application prior to Hunt's arrival on May 18, 2007.*

Causation and Damages: *BBT presented the 2007 application to Hunt for her signature only.*

Causation and Damages: *Hunt's 2007 mortgage application did not list the two unauthorized loans (transfer management and portfolio) that was in Hunt's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts. (exhibit #s 7 and 10)*

Causation and Damages: *Hunt's 2007 mortgage application at exhibit # 7 did not list the POD account. (exhibit # 7 at page 3 of 6)*

Causation and Damages: *The only account listed on Hunt's 2007 mortgage application is Hunt's savings account with a one dollar balance. (exhibit # 7 at page 3 of 6)*

Causation and Damages: *On 1/19/2008 while in the mortgage portion of the system at exhibit # 15 and exhibit # 12 BBT told Davis that she was the owner of Hunt's POD account.*

Causation and Damages: *On 1/19/2008 while in the mortgage portion of the system as stated at exhibit # 15 and exhibit # 12 BBT told Davis that she was the beneficiary of Hunt's POD account.*

Causation and Damages: *On 1/19/2008 while in the mortgage portion of the system at exhibit # 15 and exhibit # 12 BBT told Davis what the dollar account balance was in Hunt's POD account.*

Causation and Damages: *On 1/19/2008 while in the mortgage portion of the system as per exhibit # 15 and exhibit # 12 BBT was unable to find the Davis mortgage under Davis' name.*

Causation and Damages: *Davis' mortgage was placed into Hunt's customer profile by BBT.*

Causation and Damages: *Hunt notified BBT of the disclosure to Ms. Davis on 1/22/2008 and requested that their legal department call Hunt. (exhibit # 14 at para 7)*

Causation and Damages: *At exhibit 36, at the time Hunt closed the IOLTA and POD trust account, on 5/19/2008, BBT indicated on the exit interview form that it had not saved the account histories of the POD and IOLTA.*

Causation and Damages: *BBT deleted the at least two unauthorized loans*

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in Hunt customer profile. (exhibit #s 28-29 and 32)

Causation: *Hunt notified BBT of the disclosure to Ms. Davis on 1/22/2008 and requested that their legal department call Hunt.*

BBT in its April 11, 2008 letter (exhibit # 15) to the FDIC states from Feb 1, 2008 through March 17, 2008: "I have had numerous conversations with Ms. Hunt."

Causation: *BBT in its April 11, 2008 letter to the FDIC stated that beneficiary profile for Davis had been deleted.*

Causation: *BB&T wrote to the HCPD at exhibit # 32 on page 2 that they had no records of the at least two unauthorized loans in Hunt customer profile.*

Causation: *At exhibit #s 28 (page 3) – 29 (page 2) BBT refused to provide Hunt with an updated copy of her customer profile.*

Causation: *Hunt put BBT on notice of legal action by her on 1/21/2008. Hunt requested that BBT preserve evidence at exhibit # 26.*

Causation: *At exhibit # 32 page 2 BBT responds to the HCPD search warrant stating: Subject:* ***Criminal Subpoena*** *– Cindy B Hunt, Transfer Management, Portfolio*
BBT has received Subpoena requesting information regarding the above referenced client(s) and responds as follows:
We are unable to produce documents as requested. We have no record of accounts with BBT in reference to the account numbers listed on subpoena. [...]."

Causation: *Hunt financed her 2003 mortgage with BBT. (exhibit #3 para 3.c.)*

Damages: *In May 2007 the balance of the 2003 mortgage was about $91,000.00.*

Damages: *In May 2007 the property appraised for $195,000.00.*

Causation and Damages: *Hunt refinanced her 2003 mortgage on May 18, 2007 with BBT.*

Causation: *BBT recorded the 2007 mortgage with the register of deeds for Horry County.*

Damages: *At exhibit # 1 the current balance of the 2007 mortgage is about $140, 000.00.*

Causation and Damages: *BBT has not issued a satisfaction of the 2007 mortgage to Hunt.*

Damages: *Hunt's interest rate on the 2007 mortgage is 6.375%. (exhibit # 7)*

Damages: *Hunt must discharge the 2007 mortgage before she can complete refinancing.*

Damages: *Hunt was forced to close and or stop paying the following accounts and loans at BBT: savings, POD trust, IOLTA and 2007 mortgage.*

Causation and Damages: *At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts. (exhibit #s 14, 15, 10 & 28-29, 32, 36)*

See below for relief sought.

To recover for a **breach of contract**, the [party] must prove: (1) a binding contract; (2) a breach of contract; and (3) damages proximately resulting from the breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

In its 6/23/2014 motion to dismiss BBT argues lack of causation and or no damages. Hunt argues that BBT has waived objections to a binding contract and a breach of contract.

In this long going dispute between Hunt and BBT – BBT and the court has argued for a cause of action of breach of contract since 5/2010 spanning four law suits where BBT has submitted six motions to dismiss.

The allegations in the complaint / counterclaims at #s 1-7 gave rise to breach of contract causes of action.[59] BBT opposed the claim for breach of contract in the motion to dismiss at # 7 only.

BBT omitted an objection re **breach of contract** from five earlier motions to dismiss and during the 5/20/2014 hearing BBT made no objections when the court stated that this matter included a breach of contract.

However, for the first time in this sixth - 6/23/2014 motion to dismiss the first amended counterclaims BBT objects to breach of contract where BBT states: the seventh cause of action fails to set forth a claim for relief for **breach of contract** because it fails to allege facts sufficient to plausibly establish the elements of causation and/or damages.

However, BBT is choosing to ignore as stated above and in the first amended counterclaims that these documents show both causation and damages.

See above at all paragraphs of pages 1-12.

Hunt asks that the court –

[59] The first page of the civil dockets of the USDC at exhibit #s 47, 48 and 49 indicate breach of contract.

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Find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to paragraph numbered 9 was not permitted; and

deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the paragraph numbered 9 where this is in fact BBT's 6th motion to dismiss re breach of contract as to these set of facts.

10. In the original counterclaims Hunt argued **punitive damages throughout to include** at paragraphs 245, 283 and 296; and at paragraphs j, m, p and q on page 21.

In its 9/5/2013 motion to dismiss BBT stated: **"the counterclaims fail to allege any factual or legal basis for any claim for punitive damages."**

This court in the hearing on May 20, 2014 **did rule** on BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) re **punitive damages**.

Thereafter, Hunt has submitted the 6/6/2014 first amended counterclaims.

The first amended counterclaims states at paragraph 454: [Hunt] seeks damages under: SC Code § 39-5-140(a) actual damages, punitive damages, cost, attorney fees, such other relief as Court deems necessary or proper.

The first amended counterclaims states at paragraph j on page 21: Statutory damages, consequential damages, general damages, special damages, actual damages and punitive damages.

The first amended counterclaims states at paragraph m on page 21: BBT to pay to Hunt all monies paid on the current mortgage with legal, prejudgment and post judgment interest; punitive damages.

The first amended counterclaims states at paragraph p on page 21: BBT to pay to the SC Bar the life amount of monies deposited in the IOLTA with statutory damages, legal, prejudgment and post judgment interest and punitive damages, etc.

The first amended counterclaims states at paragraph q on page 21: BBT to pay to Davis and the other borrowers pursuant to agreement for each plus loan amount, amount paid on loan with statutory damages, legal, prejudgment and post judgment interest and punitive damages, etc.

The first amended counterclaims at paragraph 243 state: At all pertinent hereto, the conduct of BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

The first amended counterclaims at paragraphs 235 – 245 state: negligence per se against BBT where -

The SC Court of Appeals in Fairchild v. Dept. of Transp., 683 S.E.2d 818, 385 S.C. 344 (S.C. App., 2009) states:

> "A plaintiff is entitled to recover punitive damages if the act complained of is determined to be willful, wanton or reckless." Camp v. Components, Inc., 285 S.C. 443, 444, 330 S.E.2d 315, 316 (Ct.App.1985). A jury may award punitive damages even "when the wrongdoer does not actually realize that he is invading the rights of another, provided the act is committed in such a manner that a person of ordinary prudence would say that it was a reckless disregard of another's rights." Id. (quoting Hicks v. McCandlish, 221 S.C. 410, 415-16, 70 S.E.2d 629, 631 (1952)).
>
> Under current South Carolina precedent, **negligence per se** is evidence of recklessness **requiring** the trial court to submit the issue of punitive damages to the jury. Wise v. Broadway, 315 S.C. 273, 276, 433 S.E.2d 857, 859 (1993) ("The causative violation of a statute constitutes negligence per se and is evidence of recklessness and willfulness, requiring the submission of the issue of punitive damages to the jury."); Rhodes v. Lawrence, 279 S.C. 96, 97-98, 302 S.E.2d 343, 344 (1983) ("In these circumstances, a jury question as to punitive damages was clearly presented given the well settled rule that a showing of statutory violation can be evidence of recklessness and willfulness."); Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 314, 594 S.E.2d 867, 875 (Ct.App. 2004) ("A factual question as to punitive damages is presented when there is evidence of a statutory violation.").

BBT responded to the first amended counterclaims with the 6/23/2014 motion to dismiss under SCRCP 12(b)(6).

In this long going dispute between Hunt and BBT – Hunt has argued for punitive damages since 5/2010 in four law suits where BBT submitted six motions to dismiss.

However, in this sixth 6/23/2014 motion to dismiss BBT repeated the objection that it made in its 9/5/2014 motion to dismiss of: "the counterclaims fail to allege any factual or legal basis for any claim for punitive damages."[60]

See above at all paragraphs of pages 1-12.

Punitive Damages:

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[60] **Punitive Damages:** Hunt argues that the counterclaims show a factual and legal basis for punitive damages where Hunt directs the court to paragraphs 1- 506; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

Hunt argues that through the counterclaims, prior cases, affidavits, exhibits and documents incorporated by reference that she has shown by clear and convincing evidence that BBT's conduct was and is willful, wanton, or in reckless disregard of Hunt's rights where BBT's conduct includes:

> Hunt argues that BBT has engaged in unclean hands during the FDIC proceeding involving Teal and the unauthorized practice of law as stated at exhibit # 47 entry # 105-1 on pages 22 - 25.
>
> Also, the first amended counterclaims state at -
>
> > BBT placed at least two unauthorized mortgage loans (transfer management and portfolio) into Hunt's customer profile along with Hunt's mortgages, IOLTA, CD and other accounts; (see paragraph 58 of the amended counterclaims)
> >
> > BBT also provided an unauthorized beneficiary profile for Davis to include the Davis mortgage loan; (see paragraphs 88, 90, 199 and 273 of the amended counterclaims)
> >
> > BBT did engage in two improper setoffs to Hunt's POD account; (see paragraphs 278-279, 285 and 335 of the amended counterclaims) and
> >
> > BBT did engage in an unauthorized disclosure to Davis. (see paragraphs 70-78 the amended counterclaims)
>
> Hunt argues that these acts were committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of Hunt's rights.[61]
>
> As previously stated - exhibit # 4 clearly shows Davis was the beneficiary-payee of the POD account at the death of Hunt. A review of the Davis mortgage application at exhibit # 6 shows that Hunt's name is not on the application anywhere. And at the time of the Davis mortgage loan in 2004 Davis stated twice in writing that she had no other accounts at BBT.[62]
>
> Hunt argues that this repeated misconduct by BBT showed and shows an intentional malice, trickery, or deceit and a "[...] present consciousness of wrongdoing that justifies the assessment of punitive damages against [BBT] .... In other words, at the time of [BBT's] act or omission to act [BBT was] conscious, or chargeable with consciousness, of [its] wrongdoing."[63]

Hunt also argues that the counterclaims at paragraphs 1- 506 to include all of the exhibits show a factual and legal basis for punitive damages where on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

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[61] Rogers v. Florence Printing Co., 233 S.C. 567, 577-78, 106 S.E.2d 258, 263 (1958); see also Berberich v. Jack, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011) (quoting Rogers).

[62] See exhibit # 6 pages 6-7 where when asked if Davis wanted the mailing address of the mortgaged property to be the address on all accounts at BBT Davis wrote N/A (not applicable).

[63] Cody P. v. Bank of America, N.A., 720 S.E.2d 473, 480 395 S.C. 611 (S.C. App. 2011)

Hunt asks that the court –

Find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to paragraph numbered 10 was not permitted; and

deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the paragraph numbered 10 where this is in fact BBT's 6th motion to dismiss re punitive damages as to these set of facts.

11. In the original counterclaims Hunt argued for **attorney fees and costs to Hunt** throughout to include at paragraphs 88, 245 and 296; and at paragraphs u, v and w on page 22.

In the 9/5/2013 motion to dismiss BBT stated: **"the counterclaims fail to allege any basis for any claim for an award of attorneys' fees or costs."**[64]

Res Judicata: This court in the hearings on May 20, 2014 **did rule** on the attorney fees and costs in the amount of $ 2, 668, 905.00 million dollars as of March 2013. The 4/20/2014 hearing is closed and has not been appealed.

In the **first amended counterclaims** Hunt continued to argue for attorney fees throughout to include at paragraphs 168, 232, 308, 412, 452 and 454; and at paragraphs u, v and w on pages 37-38.

In this long going dispute between Hunt and BBT – Hunt has argued a for attorney fees and costs since 5/2010 in four law suits where BBT submitted six motions to dismiss.

However, in this sixth 6/23/2014 motion to dismiss BBT repeated the objection that it made in its 9/5/2014 motion to dismiss of: "the counterclaims fail to allege any basis for any claim for an award of attorneys' fees or costs." [65]

See above at all paragraphs of pages 1-12.

Attorney fees to Hunt:

Hunt argues that the attorney fees to her are the law of the case and can not be re-litigated where BBT did not preserve any objections to attorney fees and costs to Hunt at the May 20, 2014 hearing.

Hunt argues that the basis for an award of attorney fees and costs includes - in this complex and protracted matter involving Hunt's IOLTA Hunt has put in

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[64] On May 20, 2014 the court awarded Hunt the attorney fees that she requested under her motion for default/default judgment.

[65] **Attorney fees and costs:** Hunt argues that the counterclaims show a basis **for attorney fees and costs** where Hunt directs the court to paragraphs 1- 506; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

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thousands of hours of work to uncover BBT's misconduct and to provide this Court with legal support for all admissions made by BBT.

Hunt argues that the counterclaims show a basis **for attorney fees and costs**[66] where Hunt directs the court to paragraphs 1- 506; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

All seven of the causes of action in this matter involve Hunt's IOLTA. Pursuant to oath, statute[67] and responsibility Hunt is required to protect and defend the IOLTA. The breach of fiduciary duty, UTPA and violations of SC Probate Code causes of action provide for attorney fees.

Hunt asks that the court –

> **Find that** the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to paragraph numbered 11 was not permitted; and
>
> **deny** BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the paragraph numbered 11 where this is in fact BBT's 6th motion to dismiss re **attorney fees and costs to Hunt** as to these set of facts.

12. In the 9/5/2013 motion to dismiss - **BBT requested attorney fees to itself under its BSA.**

The date in the foreclosure complaint that BBT alleges that Hunt became delinquent on her mortgage is 7/1/2012. Thereafter, BBT has requested attorney fees to itself under its BSA in three motions to dismiss: #4 (6/19/2012), #5 (8/9/2012), #6 (9/5/2013).

This court in the hearings on May 20, 2014 **did rule/denied** attorney fees and costs that BBT requested to itself under the BSA.

In this long going dispute between Hunt and BBT – BBT has requested attorney fees to itself under its BSA since 10/2009 in four law suits where BBT submitted six motions to dismiss.

However, for the first time in this sixth 6/23/2014 motion to dismiss BBT has requested attorney fees to itself under the Note/Mortgage. This request was omitted from all prior motions to dismiss.

See above at all paragraphs of pages 1-12.

Hunt argues that the BSA and Note/Mortgage should be read together where -

Hunt argues that BBT has breached its mortgage and BSA contracts.

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[66] Of these fees $8,000.00 was paid to attorneys Valtorta and Ballard; and the remaining fees are for services provided by Hunt an attorney where these matters involved the IOLTA. Hunt can find no case law re these unique set of facts. As such, Hunt would request that if this Court is inclined to deny the requested attorney fees in part or total that they Court submit this issue to the SC Supreme Court. Hunt would request a damages hearings.

[67] See SC Code Ann. § 62-7-811.

Hunt argues that BBT has engaged in unclean hands during the FDIC proceeding involving Teal and the unauthorized practice of law as stated at exhibit # 47 entry # 105-1 on pages 22 - 25.

Hunt also argues that the unclean hands include where BBT has violated its own BSA/Note/Mortgage at least a dozen times where BBT is currently engaging in a violation of its BSA as follows:

Hunt wrote to BBT as stated at paragraph 176 of the first amended counterclaims at exhibit # 37 where Hunt disputed the 2007 mortgage and Hunt requested satisfaction of the mortgage.

Also, through seven complaints / counterclaims spanning four lawsuits and six years Hunt has disputed her 2007 mortgage.

BBT's banking service agreement (BSA) at exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) states: "after we receive your letter, we can not try to collect any amount you question or report you as delinquent.

... However, if our explanation does not satisfy you ..., we must tell anyone that we report you to that you have a question about your statement. And we must tell you the name of anyone we report you to."

BBT at the last page of exhibit # 46 (Hunt's credit report) has completed its threat from exhibit # 49 entry #14-2 (2012 mortgage late notice) where BBT has reported Hunt to the credit reporting agency (CRA) as being delinquent on her 2007 mortgage. As such, not only has BBT reported Hunt as delinquent - BBT also did not include notice that the debt was disputed.

Hunt spent the summer of 2013 at the United States Patent and Trademark Office (USPTO) doing an internship at exhibit # 65. In the fall of 2013 Hunt was denied employment at the USPTO because BBT did not indicate that the mortgage was disputed.

Hunt asks that the court –

Find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to the unnumbered paragraph after the paragraph numbered 11 was not permitted; and

deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) in lawsuit # 4 as to the unnumbered paragraph after the paragraph numbered 11 where this is in fact BBT's 6th motion to dismiss re attorney fees to itself as to these set of facts.

Seven affidavits of default – one for each of the causes of action and seven affidavits of default for the relief prayed for and the affidavit of Hunt (exhibit # 46) are being submitted with this RESPONSE to Plaintiff's 6/23/2014 second motion to dismiss under SCRCP 12(b)(6).

Affidavit at exhibit # 46: BBT made no objection in law suit # 3 to Hunt being pro se and no objection to the affidavit at exhibit # 46 in law suit # 3.[68]

Hunt argues that default should be entered against Plaintiff BBT, Defendant Willow Green Homeowners Association and Defendant CJ Developers pursuant to SCRCP 55 (a) as follows:

A reply to the counterclaims was due on June 21, 2014.

Hunt has received a motion to dismiss that was dated June 23, 2014. The motion to dismiss was not designated as a reply as required at **SCRCP 7.**

Thus, in lawsuit # 4 Hunt argues that BBT has failed to appear, plead or otherwise defend the first amended counterclaims where the first amended counterclaims have been admitted. Therefore, BBT is now in default.

Hunt filed a motion for default and default judgment on the verified counterclaims on September 30, 2014 requesting attorney fees and liquidated damages with the affidavit at exhibit # 46. Thereafter, BBT did not file an objection within ten days of service of the motion and affidavit.

BBT failed to reply to the counterclaims despite the fact that Hunt contacted the attorney for BBT three times where he did not return her two calls and one email.

BBT has not shown any good cause as to why BBT has not replied to the counterclaims.

On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers did not file any pleadings in this matter.

Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

Hunt requests an entry of default against the BBT for failure to appear, plead and defend the counterclaims.

Hunt requests an entry of default against WGHOA and CJ Developers for failure to appear, plead and defend the foreclosure complaint.

BBT is not entitled to notice of the motion for entry of default or the affidavit in support of the motion on attorney fees and liquidated damages.

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[68] This affidavit was submitted in law suit # 3 where BBT did not object to the affidavit. This affidavit from law suit # 3 - can not be re-litigated and requires affirmance as per the order of the USDC in law suit # 3 at exhibit # 43.

Hunt requests Default Judgment against BBT as follows:

1. **No objection to the affidavit at exhibit # 46:** On page 5 of the 9/30/2014 motion for default judgment Hunt requested attorney fees and Hunt attached to the motion for default judgment the affidavit at exhibit # 46 of attorney fees.[69]

   a. The record contains notice of such motion for default judgment and affidavit that was provided to BBT by first class mail to the last known address of the attorney(s) for BBT on 9/30/2014.

   b. At pages 4-5 of the 9/30/2013 motion for default judgment Hunt included a request that the court award attorney fees and liquidated damages.

2. **Attorney Fees:** Within ten days after service of the motion for default judgment filed on 9/30/2013 the Plaintiff BBT did not file any objection to the attorney fees in the affidavit at exhibit # 46 in the amount of $ 2, 665, 500.00[70] million dollars.

   a. Costs in this matter are: $ 3405.00.[71]

   b. Also, as per law of the case, res judicata, estoppel, etc. BBT can not argue against attorney fees to Hunt.

   c. **No hearing required on the attorney fees.**

      i. A hearing on the attorney fees is not required.

      ii. BBT is not entitled to notice of the request for attorney fees.

      iii. **Total amount due for attorney fees and costs:** $ 2, 668, 905.00 million dollars.

3. **Liquidated Damages:** A hearing on the liquidated damages is not required. And even though BBT is not entitled to notice of the request for liquidated damages notice was provided to BBT on 9/9/2013.

Hunt opines that BBT placed all of its marbles in the basket marked "voiding the orders of the USDC." Thereafter, through the motions that Hunt has made and the withdrawal of the answer of WGHOA on Nov 5, 2013 BBT and its attorneys now find themselves in a difficult position.

Hunt's verified counterclaims, exhibits and affidavits at exhibit #s 3,6, 12, 26 and 46 satisfy all of the requirements set out in Beckmann Concrete Contractors, Inc. v. United Fire and Cas. Co., 360 S.C. 127, 600 S.E.2d 76 (S.C.App. 2004) for liquidated damages as follows:[72]

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[69] See SCRCP 55.

[70] As of March 2013 as per the affidavit at exhibit # 46.

[71] As of March 2013 as per the affidavit at exhibit # 46.

[72] This list comes directly from the affidavit at exhibit # 46. The dollar amounts come from the exhibits and the affidavit at exhibit # 46. The affidavit at exhibit # 46 was submitted to the USDC where BBT did

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a. Hunt requests liquidated damages to SC Bar Foundation:

i. Life deposits of IOLTA[73] $3, 000,000.00

b. Hunt requests liquidated damages to Davis:[74]

i. See exhibit # 49 entry 15-3: Davis 2004 Mortgage

ii. 2004 Mortgage[75] $ 126,825.00

c. Hunt requests liquidated damages to Sherman:

i. See exhibit # 49 entry 15-4: Sherman 2002 Mortgage

ii. Sherman 2002 Mortgage[76] $ 78,400.00

d. Hunt requests liquidated damages to Allen:

i. See exhibit # 49 entry 15-6: 2002 Allen car note

ii. 2002 Allen Car: [77] $ 36,925.54

e. Hunt requests the following liquidated damages to Hunt:

i. Coastal Banker Gold benefits[78] $ 160,000.00

ii. Loss of future income[79] $7,866,670.00

iii. All monies paid on the current mortgage[80] $ 90,000.00

iv. 2006 CD (See exhibit # 9)[81] $ 434,744.90

v. Mark mortgage title paid in full.

vi. Setoff monies (See exhibit #s 5 and 16)[82] $ 1,080.25

vii. Life amount of monies deposited in the regular checking account,

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not object. The affidavit at exhibit # 46 was submitted to this court with the motion for default and default judgment where BBT did not object. These amounts **do not** include statutory damages, consequential damages, general damages, special damages, actual damages, punitive (to include fines avoided) damages with legal, prejudgment and post judgment interest.

[73] See exhibit # 46 paragraphs 6 and 17.
[74] Davis paid off her mortgage in 2007.
[75] See exhibit # 46 paragraphs 6.
[76] See exhibit # 46 paragraphs 6.
[77] See exhibit # 46 paragraphs 6.
[78] At exhibit # 10 see page 4 of 7.
[79] See exhibit # 46 at paragraph 7.
[80] See exhibit # 46 at paragraph 12.
[81] See exhibit # 46 at paragraph 14.
[82] See exhibit # 46 at paragraph 15.

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savings account and POD trust[83] .....$1,000,000.00.

viii. Authorized Loans[84] at exhibit # 10[85] ..... $ 347,200.00.

ix. Davis mortgage[86] exhibit # 49 entry 15-3: .....$ 126,825.00.

x. Sherman mortgage[87] exhibit # 49 entry 15-4: ..... $ 78,400.00

xi. Allen car note[88] exhibit # 49 entry 15-6: ..... $ 36,925.54

xii. Life amount of monies deposited in IOLTA account[89] $3,000,000.00.

f. Hunt also requests the following liquidated damages as per the affidavit at exhibit # 46 and the prayer for relief in the counterclaims:

i. Actual and compensatory damages, disgorgement of profits and restitution damages; Legal interest, Prejudgment interest, Post Judgment interest.[90]

ii. Statutory damages, consequential damages, general damages, special damages, actual damages and punitive (to include fines avoided) damages with legal interest, prejudgment interest and post judgment interest.[91]

iii. Constructive and Resulting trusts with tracing with legal interest, prejudgment interest and post judgment interest.[92]

iv. Damages for mental anguish and emotional distress with legal interest, prejudgment interest and post judgment interest.[93]

v. BBT to remove all negative status from the credit reporting agencies on Hunt, Davis and others.[94]

vi. BB&T to immediately provide in a readable and understandable format the documents that were requested in the Oct 18, 2010 search warrant by the HCPD and any other documents that the HCPD may request.[95]

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[83] See exhibit # 46 at paragraph 16.
[84] See exhibit # 46 at paragraph 18.
[85] $26K auto (for title see exhibit # 49 entry 15-1) + 98K (exhibit # 49 entry 14-6 2003 mort) + $147,200 (exhibit # 7 see 2007 mort) + 50K (commercial) + $80,275 (exhibit # 49 entry 15-2).
[86] See exhibit # 46 at paragraph 19.
[87] See exhibit # 46 at paragraph 20.
[88] See exhibit # 46 at paragraph 21.
[89] See exhibit # 46 at paragraph 17.
[90] See exhibit # 46 at paragraph 8.
[91] See exhibit # 46 at paragraph 9.
[92] See exhibit # 46 at paragraph 10.
[93] See exhibit # 46 at paragraph 11.
[94] See exhibit # 46 at paragraph 11.
[95] This and the below listed are in the prayer for relief in the counterclaims.

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vii. Report BBT to the FBI, FDIC-OIG, and the US Attorney.

viii. Report Craven, Licata and Booz to their respective Bar Associations.

ix. An accounting of all authorized and unauthorized accounts of Hunt customer profile including the Davis mortgage and the CD.

x. The appointment of a special fiduciary; Impose a lien on BBT.

xi. BBT pays a surcharge for mismanagement of Hunt accounts.

xii. BBT to remove all mortgages and liens from the property of Hunt, Davis and others.

xiii. Any other relief that this Court deems just and proper.

BBT to remove all negative status from the credit reporting agencies on Hunt, Davis and others.[96]

Plus interest on the judgment at the legal rate until the judgment is satisfied.

Hunt requests that this court refuse to hear, deny the motion to dismiss with prejudice and grant default judgment to Hunt.

Trial on the Damages: Hunt request that this case be set for trial on the issue of damages.

Conclusion:

Service of second motion to dismiss not permitted: Based on all arguments herein Hunt asks that the court find that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to all paragraphs was not permitted.

As such, Hunt respectfully moves the Court for an **Order**

> Finding that the service of BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to all paragraphs was not permitted and denying with prejudice each objection / defense of BBT's second motion under SCRCP 12 (b)(6) to dismiss the first amended counterclaims; and granting entry of default and default judgment on all of the 6/6/2014 first amended counterclaims.

Respectfully submitted,

CB Hunt

Cindy B. Hunt,
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: October 14, 2014

[96] See exhibit # 46 at paragraph 11.

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State of South Carolina) IN THE COURT OF COMMON PLEAS

County of Horry) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO: 2013-CP-26-2528

Branch Banking and)

Trust Company)

Plaintiff,)

vs.) Brief in support of motions under SCRCP 59, 60 and lack of jurisdiction to void the order of dismissal filed on 1/13/2015;[1] and reversal of the orders filed on 10/28/2014 & 6/3/2015.

Cindy B. Hunt; Willow Greens)

Homeowners Association, Inc.;)

CJ Developers, LLC.)

Defendant(s))

_____)

FILED
HORRY COUNTY
2015 MAY 10 PM 12:16
JULIANE HUDGINS-WARD
CLERK OF COURT

This brief is supported by all the exhibits[2] in this matter and the prior pleadings at c/a 4:09-cv-2151-JMC-TER; c/a 4:11-cv-00870-MGL-TER;[3] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[4] and all the pleadings in the present matter at Case No: 2013-CP-26-2528[5] aka c/a 4:14-cv-04352-BHH-TER[6] where this matter has been in dispute/litigation for seven plus years (1/2008 – 9/2015).

[1] The order filed on 1/13/2015 dismissed all of Hunt's first amended counterclaims/defenses. And the order filed on 10/28/2014 denied Hunt entry of default judgment – stating that the motion was moot because all of the first amended counterclaims had been dismissed.

[2] See Hunt's affidavits at exhibit #s 3, 26 and 46; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act; and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Exhibits 1-52 were submitted in the USDC without objection by BBT and includes five affidavits. Here in after referred to as Lawsuit # 1 - was filed in the USDC by Hunt in 8/2009 – see exhibit # 47.

[3] Here in after referred to as Lawsuit # 2 - was filed in the USDC by Hunt in 4/2011 – see exhibit # 48.

[4] Here in after referred to as Lawsuit # 3 where the verified complaint in this civil action was filed by Hunt in this court in 7/2012 and removed by BBT to the United States District Court (USDC) in Florence, SC in 8/2013 – see exhibit # 49.

[5] Here in after referred to as Lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

[6] Removed to USDC on 11/10/2014. Remanded to State Court on 5/8/2015 and filed by the Horry County Clerk of Court on 5/11/2015.

copy

Statement of facts and procedural history. **See Pages** 4-9.

Hunt has been prejudiced. **See pages** 10-15.

The order filed on 1/13/2015 (which resulted from the 6/25/2014 2nd MTD the FAC that was heard on 10/14/2014) should be vacated as void. **See pages 15-19**

The ORDER filed on 10/28/2014[7] (which denied the motion for entry of default judgment as moot – based on all of the FAC having been dismissed at the 10/14/2014 hearing where the ruling from the hearing was filed in the void ORDER on 1/13/2015) should be reversed and Hunt's MFDJ should be granted under SCRCP 55 (a) and (b). **See pages 20-40**

The order filed on 6/03/2015 (which denied the motion for attorney fees, costs and to stay the action until the fees were paid) should be reversed and Hunt should be granted attorney fees and costs or voided. **See pages** 40-45.

[7] Hunt made a motion under SCRCP 59(e) on 10/30/2014.

Exhibits that are being submitted with this brief include:

80: Notice of Removal to the USDC

81: BBT's Motion to Remand (11, 11-1 and 11-2)

82: Hunt's response to Motion to Remand

83: BBT's Reply to Hunt's Response (13, 13-1, 13-2)

84: ORDER filed 1/13/2015 received from HC clerk on 8/10/2015 with envelope

85: 4/15/2015 Report and Recommendation

86: ORDER of Remand from the USDC with envelope

87: ORDER of Remand from the HC clerk of court filed 5/11/2015

88: BBT's motion to dismiss from lawsuit # 3

89: BBT's 9/05/2013 motion to dismiss

90: BBT's 6/25/2014 motion to dismiss

91: Documents served on 10/30/2014

92: Hunt's Santee Cooper Power Service

93: SC SOS: RA for WGHOA

94: ORDER Filed 10/28/2014 from BBT

95: 8/27/2015 Email to BBT

96: Documents served on 8/11/2015

97: 7/27/2015 Letter to the HC clerk of court

98: ORDER filed 6/3/2015

99: 9/11/2013 Notice with envelope

100: Affidavit of Hunt re credit card statements.

101: 11/25/2014 ORDER from the USDC re change of address

102 & 103: Blank

104: 6/20/2013 Affidavit of non service (See Order of publication, Exhibit #s 53 & 92)

105: 7/15/2014 Cert of Service, 9/30/2014 Cert of Service, 9/30/2014 Receipt for MFDJ and 9/30/2014 Notice of Hearing

106: 11/2/2015 Amended Notice of Hearing, 11/2/2015 Cert of Service and 11/2/2015 Cert Return Receipt - USPS

107: Transcript of 10/14/2015 Hearing

1. **Statement of relevant facts: There have been four lawsuits involving Hunt's banking relationship with BBT. Hunt asks that this court take judicial notice of these lawsuits. SCRE 201.**

   a. **Lawsuit # 1:** c/a 4:09-cv-2151-JMC-TER (filed 8/9/2009 in the USDC by Hunt against several Defendants involving federal question jurisdiction. The USDC granted BBT's motion to dismiss the federal causes of action and the court declined supplemental jurisdiction over the state law claims.[8] The USDC partially granted BBT's motion to dismiss. Hunt made a motion to alter and amend and Hunt appealed lawsuit # 1 to the USCA.[9] Hunt argues that res judicata and law of the case applies to law suit # 1);

   b. **Lawsuit # 2:** c/a 4:11-cv-0870-MGL-TER (filed 4/12/2011 in the USDC by Hunt against several Defendants involving federal question jurisdiction. The USDC granted BBT's motion to dismiss. The 3/13/2013 final judgment of the USDC states: case dismissed without prejudice under FRCP 4(m). Law suit # 2 was not appealed. Hunt argues that res judicata and law of the case applies to law suit # 2);

   c. **Lawsuit # 3:** Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL-TER (filed 7/9/2012[10] in Horry County Court of Common Pleas by Hunt against BBT only. Hunt submitted a notice of withdrawal on 8/6/2012 at 10:46 am. Thereafter BBT submitted a notice of **removal**[11] on 8/6/2012 at 13:49 pm based on diversity jurisdiction. In the USDC BBT submitted a motion to dismiss based on withdrawal among other grounds for dismissal. The USDC on 3/13/2013 partially granted BBT's motion to dismiss. BBT did not file a motion to alter are amend the judgment. Law suit # 3 was not appealed. Hunt argues that res judicata and law of the case applies to law suit # 3.); and

   d. **Lawsuit # 4 is ongoing:** Case No: 2013-CP-26-2528[12] aka c/a 4:14-cv-04352-BHH-TER (filed 4/16/2013 in Horry County Court of Common Pleas by BBT against Hunt, Willow Green HOA and CJ Developers).

   e. **Lawsuit #4 - Procedural history in CASE NO: 2013-CP-26-2528:**

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[8] The claims of lawsuit # 1 were included in lawsuit #s 2-4; and Hunt timely refiled the claims from lawsuit # 1 in lawsuit #s 2-4.

[9] See case # c/a 4:09-cv-2151-JMC-TER where the USDC dismissed the federal causes of action and declined supplemental jurisdiction. Hunt made a timely motion to alter or amend. Hunt made a timely appeal and request for reconsideration to the USCA. Thereafter, Hunt timely filed law suit # 3.

[10] BBT in its foreclosure complaint in lawsuit # 4 states that the mortgage became delinquent on 7/1/2012.

[11] In its Notice of Removal for lawsuit # 3 in 8/2012 BBT cited to the already delinquent mortgage as the amount in controversy. BBT did not assert a claim for foreclosure in lawsuit #s 2-3.

[12] Here in after referred to as lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

i. BBT filed its **mortgage foreclosure action,** the 4th lawsuit in this matter, on April 16, 2013.

ii. Thereafter, Hunt filed the **original counterclaims** and defenses in this matter with her answer on 8/2/2013 where Hunt had never been served the summons, complaint, lis pendens and intervention by BBT.

iii. Instead of filing a responsive pleading to the counterclaims BBT filed the **9/5/2013 motion to dismiss under SCRCP 12(b)(6).**

iv. In February 2014 a hearing was held where BBT's motion for a **priority scheduling order was heard.** Thereafter, the scheduling order was drafted by the attorney for BBT; signed by Judge Howe on 4/30/2014; clocked by the clerk of court on 5/6/2014 and mailed to Hunt on 6/12/2014.

v. On 4/21/2014 the court heard Hunt's summary judgment motion and several other motions by Hunt.

vi. On May 20, 2014 this court held a hearing on BBT's **9/5/2013 motion to dismiss** under SCRCP 12(b)(6) where the motion to dismiss was **orally** granted in part and several issues were not orally ruled on and several issues were not argued by BBT. Hunt submitted a brief in opposition to the motion to dismiss that was clocked into evidence by the court on 10/16/2014.

vii. The court never made a written order based on the 5/20/2014 hearing.

viii. At the May 20, 2014 hearing on BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) Judge Howe directed Hunt to replead the counterclaims without a motion.

ix. On **6/6/2014** Hunt filed and served the first amended counterclaims/defenses **(FAC)**[13] and the Motion for Sanctions on all parties.

x. On **6/25/2014**[14] BBT filed the second motion to dismiss the first amended counterclaims (2nd MTD the FAC) under SCRCP 12(b)(6) in lawsuit # 4 and the seventh motion to dismiss in lawsuits 1-4.

1. The 2nd MTD the FAC was scheduled to be heard on 10/14/2014.

[13] Hunt reasserts her 8/2/2013 ANSWER with affirmative defenses.
[14] This is a correction. Hunt previously stated that the second motion to dismiss was filed on 6/23/2014.

xi. On **7/15/2014** Hunt filed and served on all parties

1. fourteen affidavits of default;
2. the affidavit of Hunt at exhibit #46;[15] and
3. the Response to Plaintiff's 6/25/2014 2nd MTD the FAC.

xii. On **9/17/2014** the State Court heard Hunt's motion for sanctions against BBT.[16]

xiii. On **9/30/2014** Hunt filed and served on all parties –

1. forty (40) entries of default;
2. the Motion for Default Judgment (MFDJ) under SCRCP 55 (a) and (b) with the affidavit at exhibit # 46 requesting attorney fees; and
3. notice of hearing for the MFDJ where the MFDJ was scheduled to be heard on 10/14/2014.

xiv. On **10/14/2014** the State Court heard BBT's **6/25/2014 2nd MTD the FAC.**[17]

1. Hunt submitted a brief labeled: Brief in opposition to Plaintiff's 6/23/2014[18] Second Motion To Dismiss the First Amended Counterclaims; Brief in support of entry of default and default judgment.[19]
2. BBT did not submit a brief.
3. BBT's attorney made oral arguments in support of the 2nd MTD the FAC.
4. At this 10/14/2014 hearing the court orally dismissed all of Hunt's FAC.
5. The State Court made its 10/14/2014 oral ruling into a written order on 1/12/2015 and **the order was filed on 1/13/2015** which was after Removal to the USDC and prior to Remand to the State Court.

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[15] The affidavit of Hunt is at exhibit # 46. Hunt also submitted the affidavit of Hunt at exhibit # 46 to the USDC during the removal/remand where BBT did not object to this affidavit. Also, BBT did not object to the affidavit of Hunt at exhibit # 46 when it was submitted in lawsuit #s 3 and 4 to the USDC or when it was submitted to the State Court in lawsuit # 4 with the MFDJ.

[16] Hunt submitted a brief in support of the motion for sanctions. BBT did not submit a brief. The court denied Hunt's motion for sanctions against BBT.

[17] BBT in its 6/25/2014 2nd MTD the FAC **moved** the court for an order dismissing the counterclaims set forth in the first amended counterclaims and defenses of defendant Cindy B. Hunt with prejudice. BBT's 2nd MTD the FAC was heard on 10/14/2014. The 10/14/2014 hearing is closed.

[18] **Correction:** this 2nd MTD the FAC was filed by the clerk of court on 6/25/2014.

[19] The court filed this brief on 10/16/2014.

xv. On **10/14/2014** the State Court heard Hunt's **9/30/2014 MFDJ under SCRCP 55(a) and 55(b).**

1. Hunt was not able to make oral arguments on her MFDJ where after the oral rulings on BBT's 2nd MTD the FAC the attorney for BBT exited the courtroom.

2. The Judge told Hunt to call her clerk the next day to see about rescheduling. Hunt called the court back to reschedule oral arguments in support of the written documents (MFDJ and Brief in support of entry of default and default judgment) on the MFDJ under SCRCP 55(a) and 55(b). Thereafter,

3. On **10/28/2014** where **no additional hearing** was held,[20] the Court filed a form 4 judgment stating that Hunt's motion for entry of default judgment was denied as moot where all first amended counterclaims were dismissed following a hearing on **10/14/2014** for BBT's second motion to dismiss. See **enforcement of null/void order is reversible error.**

xvi. On **10/30/2014** Hunt filed a motion to alter or amend the judgment/orders of the court under SCRCP 59(e) – re the order denying sanctions against BBT; and re the order denying the numerous motions heard on 4/21/2014; and re the 10/28/2014 order denying entry of default judgment as moot.

xvii. Thereafter, on **11/10/2014** Hunt submitted a notice of **removal** to the State Court and USDC. Thereafter,

1. The State Court on **1/12/2015** signed a written order based on the 10/14/2014 hearing – where all of the first amended counterclaims/defenses of Defendant Hunt were dismissed; and

2. On **1/13/2015** the Clerk of the Horry County State Court **filed** the order dismissing all of the first amended counterclaims/defenses.[21]

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[20] Hunt argued in the motion for default judgment and brief in support of entry of default and default judgment that no hearing was required for the attorney fees/costs and liquidated damages.

[21] Over four and a half months elapsed were Hunt had no knowledge of the existence of 1/13/2015 Order. Thereafter, on 5/27/2015 Hunt learned of the existence of the 1/13/2015 order from the computers at the Clerk of Court Office. Hunt was unable to print the order from the computer and there was no paper copy of the order in the file. On 7/27/2015 Hunt requested from the clerk of court a copy of all orders filed in 2015. Thereafter, Hunt received from the clerk of court on August 10, 2015 three orders filed on 1/13/2015, 5/11/2015 and 6/3/2015. The court has never filed an order requiring BBT to serve Hunt.

3. Thereafter, on **4/15/2015** the Magistrate of the USDC made a Report and Recommendation. No objections were made to the report and recommendations of the magistrate. The USDC adopted the recommendations of the US magistrate and the case was **remanded** to state court on 5/8/2015 and filed by the HC clerk of court on 5/11/2013.

   Neither Hunt nor BBT filed a motion to alter or amend the judgment. The removal/remand of Law suit # 4 was not appealed by any party. Hunt argues that **res judicata, law of the case, etc.** applies to the removal/remand procedure.

4. **Upon remand the case is** - [] to recommence in the state court from the **procedural point** at which the [] County Clerk of Court received [404 S.C. 110] a certified copy of the federal court's remand order. See **Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566 (S.C., 2013).**

xviii. On **May 12, 2015** Hunt received from the USDC a copy of the 5/8/2015 order of remand from the USDC via the US mail where Hunt discovered after comparison with the copy from the clerk of court that was received on 8/10/2015 that Hunt's copy from the USDC was not manually embossed nor did it contain a seal and the copy was not certified.

xix. On **5/27/2015** Hunt filed a motion for attorney fees under SCRCP 41.

1. This 5/27/2015 motion was denied in an order filed on 6/3/2015.

2. Hunt had no knowledge of the 6/3/2015 order. Hunt received a copy of the 6/3/2015 order on 8/10/2015 from the clerk of court after a written request to the clerk of court.

xx. After a written request at exhibit # 97 to BBT and the clerk of court **on 7/27/2015** Hunt received on **8/10/2015** from the Horry County clerk of court the following three orders:[22] [23]

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[22] Hunt was injured by the very late mailing of these orders (1) Hunt was deprived of submitting the 1/13/2015 ORDER to the USDC to be voided and vacated; and (2) caused Hunt to file the motion for attorney fees/costs under SCRCP 41.

[23] All three of the orders received by Hunt on 8/10/2015 do not show any date as to when the orders were mailed to Hunt other than on the face of the envelope. In fact the 1/13/2015 ORDER shows a marking that indicates that a date was rubbed out.

1. A copy of the ORDER that dismissed all of the first amended counterclaims/defenses where the ORDER indicated that it had been filed by the clerk of court on 1/13/2015;[24] and

2. A certified copy of the USDC ORDER of **remand** with the seal where the order indicated that it had been filed by the clerk of court on 5/11/2015;[25] and

3. A copy of the order that denied Hunt's request for attorney fees and costs under SCRCP 41 where the order indicated that it had been filed by the clerk of court on 6/3/2015. **Hunt had no knowledge of this order until she received it from the clerk of court on 8/10/2015.**[26]

xxi. Hunt visited the courthouse on 11/09/2015 to view this case on the computers of the clerk of court. Hunt saw that BBT on 8/4/2015 filed a certificate of service stating that BBT had mailed to Hunt a copy of the 1/13/2015 ORDER on 7/30/2015.

Hunt has NEVER received a copy of the 1/13/2015 ORDER from any one other than the HC clerk of court on 8/10/2015.

There is no ORDER in the file requiring BBT to serve Hunt. BBT has in the past mailed Hunt a copies of ORDERS when the court denied Hunt's motions. Hunt argues that BBT had no incentive to mail to Hunt a copy of the 1/13/2015 involving lack of subject matter jurisdiction. Note that BBT did not state that it had mailed the ORDERS filed on 5/11/2015 and 6/03/2015 to Hunt. BBT is up to its old tricks.

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[24] Hunt filed and served a motion to alter or amend the order/judgment under SCRCP 59, SCRCP 60 and lack of jurisdiction on 8/11/2015 as to the 1/13/2015 ORDER.

[25] **Cf.:** On **May 12, 2015** Hunt received from the USDC a copy of the 5/8/2015 order of remand from the USDC via the US mail. Hunt assumed that her 5/12/2015 copy of the remand order was the same as provided to the state clerk of court. However, after receiving a copy of the remand order from the state clerk of court 8/10/2015 - Hunt compared the two documents and came to see that the copy provided to Hunt by the USDC was not manually embossed nor did it contain a seal and that copy was not certified.

[26] Hunt filed and served a motion to alter or amend the order/judgment under SCRCP 59(e) on 8/11/2015 as to the 6/3/2015 ORDER.

2. Hunt was prejudiced by the late receipt of the 1/13/2015,[27] 5/11/2015 and 6/3/2015[28] ORDERS on 8/10/2015 from the Horry County clerk of court as follows:

Rule 77 (d), SCRCP, provides in relevant part: Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by first class mail upon every party affected thereby who is not in default for failure to appear, and shall make a note in the case file or docket sheet of the mailing. Such mailing shall not be necessary to parties who have already received notice. Such mailing is sufficient notice for all purposes for which notice of the entry of an order or judgment is required by these rules; but any party may in addition serve a notice of entry on any other party in the manner provided in Rule 5 for the service of such papers.

a. Hunt is not in default for failure to appear.

b. In this matter on June 17, 2013 Judge Culbertson directed the clerk of court to instruct BBT to attempt service at the Defendant Hunt's residence before signing an order for service by publication. On June 20, 2013 at exhibit # 104 BBT submitted an affidavit of non service stating that Hunt's power was shut off at **195 D Willow Green Drive.**

c. However, at exhibit # 92 on 12/22/2014 Santee Cooper submitted a letter to the USDC, without objection by BBT, stating that Hunt's power has remained active since 9/30/2003 at 195 D Willow Green Dr.

d. Hunt argues that the ORDER of publication that was filed on 8/12/2013 was issued pursuant to a false affidavit that was submitted by BBT.

e. Hunt argues that this type of misconduct by BBT has existed throughout these four lawsuits.

f. As per SCRCP 77 the **last** and only address provided to the State Court by Hunt prior to the **1/13/2015 ORDER** (and afterwards) was as stated on the 11/10/2014 Notice of Removal at the last page of exhibit # 80 where the address on that document and all other prior documents from Hunt is: 195 D Willow Green Drive.[29]

The Form 4 part of the 1/13/2015 and 6/3/2015 ORDERS received by Hunt on 8/10/2015 from the Horry County clerk of court does not show any date as to when the orders were mailed to Hunt. In fact the Form 4 part of the 1/13/2015 ORDER shows a marking that indicates that a date was rubbed and marked out.

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[27] Hunt filed a motion under SCRCP 59, 60 and lack of jurisdiction upon receipt of this ORDER.
[28] Hunt filed a motion under SCRCP 59, 60 and lack of jurisdiction upon receipt of this ORDER.
[29] In addition to living at 195 D Willow Green Drive the affidavit and credit card statements at exhibit # 100 shows that Hunt has not traveled outside of Horry County from 11/25/2014 through 8/21/2015.

Prior to the 1/13/2015 ORDER the court and or BBT has sent and Hunt has received all ORDERS at: 195 D Willow Green Drive where Hunt has filed numerous prior motions under SCRCP 59(e).

As argued below, the written, signed and filed 1/13/2015 ORDER is void for lack of subject matter jurisdiction having not re-vested with the State Court until the State Court received the 5/11/2015 ORDER with the result that BBT is subjected to millions of dollars in damages.

With the above knowledge, the Form 4 part of the **1/13/2015 ORDER** received by Hunt on 8/10/2015 after request from the Horry County clerk of court show an address for Hunt of **195-D Willow Creek Drive.** However, Hunt's address has never been 195-D Willow Creek Drive. And there is zero documents in the Horry County clerk's office from Hunt that show this as Hunt's address.

g. As per SCRCP 77 the **last** and only address provided to the State Court by Hunt prior to the **5/11/2015 ORDER** (and afterwards) was as stated on the 11/10/2014 Notice of Removal where the address on that document and all other prior documents from Hunt is: 195 D Willow Green Drive.

The copy of the 5/11/2015 Order from the Horry County Clerk of Court did not have any type of Form 4 type paper work attached showing when the clerk of court might have sent the order to Hunt or what address the clerk's office was using for Hunt.

The last page of the **5/11/2015 USDC ORDER of Remand** received by Hunt on 8/10/2015 from the Horry County clerk of court had the Notice of Electronic Filing attached from the USDC that showed an address for Hunt of **195-D Willow Green Drive.**

Prior to the 1/13/2015 ORDER and the 5/11/2015 ORDER the court and or BBT has sent and Hunt has received all ORDERS at: 195 D Willow Green Drive where Hunt has filed numerous prior motions under SCRCP 59(e).

As argued below, the written, signed and filed 1/13/2015 ORDER is void for lack of subject matter jurisdiction having not re-vested with the State Court until the State Court received the certified 5/11/2015 ORDER with the result that BBT is subjected to millions of dollars in default judgment damages.

With the above knowledge, Hunt did not receive a Form 4 document on the **5/11/2015 ORDER where** Hunt did not receive the 5/11/2015 ORDER from the Horry County Clerk of Court until 8/10/2015 which was after it was requested by Hunt.

Also, the last page of the **5/08/2015 USDC ORDER of Remand** received by Hunt on 5/12/2015 from the USDC show an address for Hunt of **195-D Willow Green Drive**. Note that this ORDER that Hunt received from the USDC differs from that received on 8/10/2015 by Hunt from the Horry County clerk of court where the copy from the Horry County Clerk of Court was certified.

h. As per SCRCP 77 the **last** and only address provided to the State Court by Hunt prior to the **6/3/2015 ORDER** (and afterwards) was as stated on the 5/27/2015 motion for attorney fees/costs and as stated on the 11/10/2014 Notice of Removal where the address on these two documents and all other prior documents from Hunt is: 195 D Willow Green Drive.

The Form 4 part of the 6/3/2015 ORDER received by Hunt on 8/10/2015 from the Horry County clerk of court does not show any date as to when the ORDER was mailed to Hunt.

Prior to the 1/13/2015, 5/11/2015 and 6/3/2015 ORDERs the court and or BBT have sent and Hunt has received all ORDERS at: 195 D Willow Green Drive where thereafter Hunt has filed numerous prior motions under SCRCP 59(e).

As argued below, the written, signed and filed 1/13/2015 ORDER is void for lack of subject matter jurisdiction having not re-vested with the State Court with the result that BBT is subjected to millions of dollars in damages to include damages for attorney fees/costs to Hunt and two other attorneys that represented Hunt in this where Hunt paid those attorneys $8,000.00.

With the above knowledge, the **6/3/2015 ORDER** denying attorney fees under SCRCP 41(d) was received by Hunt on 8/10/2015 after request from the Horry County clerk of court.

The Form 4 part of the **6/3/2015 ORDER** received by Hunt on 8/10/2015 from the Horry County clerk of court show an address for Hunt of 195-D Willow Green Drive. Hunt did not receive this ORDER until 8/10/2015.

Hunt has lived at 195 D Willow Green Drive from 2003 – present day. All documents submitted by Hunt in this matter to the USDC[30] and the State Court show Hunt's address as 195 D Willow Green Drive. Hunt has never submitted a change of address in this matter to the USDC or the State Court.

[30] In 2009 Hunt wrote to the USDC when she was a student at USC. In 2009 Hunt was not acting pro se. In 2009 Hunt's attorney was Laura Valtorta of Columbia.

All documents including the very first on 9/11/2013 at exhibit # 99 and the most recent 8/10/2015 (exhibit # 84) documents from the State Court and 5/8/2015 ORDER of Remand (exhibit # 86) from the USDC in this matter was mailed to and received by Hunt at 195 D Willow Green Drive.

There is no ORDER in the file requiring BBT to serve Hunt. And the Judge has never orally instructed BBT to serve a filed ORDER on Hunt. However, in 2014 Hunt received at least one or more filed ORDERS that denied Hunt's motions in this matter from BBT.

However, all of the above discussion comes down to the ruling of the SCSC in I **Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566, 575 (S.C., 2013) and the 1/13/2015 ORDER with the result that BBT is subjected to millions of dollars in default judgment damages.**

Thus, in Hunt's opinion in an effort to avoid the impact of Limehouse, supra on these facts the above described conduct has occurred.

Hunt has been prejudiced: As such, Hunt argues that the above described events do not appear to be coincidental and have caused Hunt to be prejudiced where (1) Hunt has been deprived of submitting the 1/13/2015 ORDER to the USDC to be voided and vacated; (2) with the result that this matter involves increased costs and (3) the court without objection to the motion by BBT[31] has denied the 5/27/2015 motion under SCRCP 41(d) which impacts default judgment as argued below, etc.

Hunt filed the motion for attorney fees/costs under SCRCP 41 on 5/27/2015 where Hunt had no prior knowledge of the 1/13/2015 ORDER and if Hunt had had prior knowledge of the 1/13/2015 ORDER Hunt would not have filed the 5/27/2015 ORDER where as stated above BBT goes from the 1/13/2015 ORDER dismissing all of the FAC **to** the 1/13/2015 ORDER being void where BBT made zero objections at the hearing on the MFDJ and is now subject to millions of dollars in a default judgment to include attorney fees.

3. **BBT has print and read access:** The ORDER at exhibit # 94 was filed on 10/28/2014. The 10/28/2014 ORDER was mailed to Hunt by BBT's Columbia attorney on 10/28/2014.

Hunt argues that is possible only if BBT's Columbia attorney has been given read and print access to the Horry County clerk of court's database where Hunt and the other defendants do not have print and read access and in fact have an inactive status in the database which means that – BBT is getting access to the file and ORDERS in this matter long before Hunt receives ORDERS via the US mail when those ORDERS are in fact deposited in the US mail. **This is not fair.**

[31] The court also denied Hunt's MFDJ without objection to the motion from BBT.

4. **November 10, 2015 Hearing:** Hunt has made motions under SCRCP 59, 60 and lack of jurisdiction objecting to the below listed ORDERS in this matter where these motions under SCRCP 59, 60 and lack of jurisdiction were timely filed and served; and will be heard on 11/10/2015. Notice of the 11/10/2015 hearing date was agreed to by BBT through emails and thereafter Hunt has provided BBT with timely notice of the hearing on 9/30/2015 through the US Mail[32] and email. Hunt sent an amended notice on 10/30/2015 to all parties.

   a. BBT's 6/25/2014[33] second motion to dismiss the first amended counterclaims and defenses (2nd MTD the FAC) has been applied to Hunt's first amended counterclaims (FAC) where at the 10/14/2014 hearing the Judge made oral rulings that resulted in a written ORDER that was filed on 1/13/2015 where the 1/13/2015 ORDER dismissed all of Hunt's first amended counterclaims based on statute of limitations and no private right of action, etc.[34]

      Hunt argues that as per Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537, 539-540, (S.C., 2011), that all arguments of BBT 2nd MTD the FAC in opposition to the FAC that were not included in the 1/13/2015 ORDER are **not preserved** where BBT did not file a motion under SCRCP 59(e).

      Hunt received a copy of the 1/13/2015 ORDER from the HC clerk of court on 8/10/2015. Hunt's motion under SCRCP 59, 60 and lack of jurisdiction was timely filed on 8/11/2015.

   b. Hunt's 9/30/2014 motion for default judgment (MFDJ) under SCRCP 55 (a) and (b) has been denied as moot where the court issued a form 4 written ORDER on 10/28/2014 stating that Hunt's motion for entry of default judgment against BBT is hereby **denied as moot** where all of the first amended counterclaims had been dismissed following an October 14, 2014 hearing[35] where there are no remaining counterclaims to which BBT could be considered in default.

      Hunt argues that as per Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537, 539-540, (S.C., 2011), that all arguments of BBT in opposition to the MFDJ that were not included in the 10/28/2014 ORDER are **not preserved** where BBT did not file a motion under SCRCP 59(e).

      Hunt received a copy of the 10/28/2014 ORDER from BBT on 10/30/2014. Hunt's motion under SCRCP 59(e) was timely filed on 10/30/2014.

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[32] Certified mail with return receipt.
[33] **Correction:** in earlier dated documents Hunt uses the date 6/23/2014 however, this 2nd MTD the FAC was filed by the clerk of court on 6/25/2014.
[34] See below where Hunt argues that the 1/13/2015 ORDER is void.
[35] The 10/14/2014 hearing resulted in an ORDER that was written, signed and filed on 1/13/2015.

c. Hunt's 5/27/2015 motion for attorney fees/costs (MFAFC) has been denied where the court issued a form 4 written ORDER on 6/03/2015 stating that Hunt's motion for attorney fees/costs and to stay **are denied** where a pro se litigant, whether an attorney or lay person does not become liable for or subject to fees charged by an attorney.

Hunt argues that as per Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537, 539-540, (S.C., 2011), that all arguments of BBT in opposition to the MFAFC that were not included in the 6/03/2015 ORDER are **not preserved** where BBT did not file a motion under SCRCP 59(e).

Hunt received a copy of the 6/3/2015 ORDER from the HC clerk of court on 8/10/2015. Hunt's motion under SCRCP 59, 60 and lack of jurisdiction was timely filed on 8/11/2015.

The order filed on 1/13/2015 (which resulted from the 10/14/2014 hearing on the 6/25/2014 2nd MTD the FAC) should be vacated as void as follows –

5. This matter was Removed to the USDC on 11/10/2014. Hunt provided written notice of the Removal to all adverse parties and Hunt filed a copy of the notice of removal with the Horry County clerk of court.

6. The written, signed and filed 1/13/2015 ORDER came about as the result of the oral rulings at a hearing on 10/14/2014. As argued below the 1/13/2015 ORDER dismissing all of the FAC is **void** where subject matter jurisdiction had not been re-vested in the State Court where the State Court received a certified copy of the ORDER of Remand on 5/11/2015.

7. The ORDER filed on 1/13/2015 granted BBT's 2nd MTD the FAC based on statute of limitations and no private right of action, etc.

8. After a written request to the clerk of court Hunt received the 1/13/2015 ORDER on 8/10/2015.

9. Thereafter, Hunt timely filed a motion under SCRCP 59, 60 and lack of jurisdiction on 8/11/2015 objecting to the court's granting of the 2nd MTD the FAC based statute of limitations and no private cause of action where Hunt argued that the 1/13/2015 ORDER was void for lack of subject matter jurisdiction.

10. The following are applicable to the 1/13/2015 ORDER -

a. **Subject matter jurisdiction can not be waived and issues relating to subject matter jurisdiction maybe raised at any time.** [36]

[36] See Bardoon Properties, NV v. Eidolon Corp., 485 S.E.2d 371, 372-373, 326 S.C. 166 (S.C., 1997).

b. **28 USC 1446(d) states:** Notice to Adverse Parties and State Court.— Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and **the State court shall proceed no further unless and until the case is remanded; and**

c. **28 USC 1447 - Procedure after removal generally**
Part (c) states: ... A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case; and

d. **Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566, 575 (S.C., 2013); etc.**

11. **Lack of Subject Matter Jurisdiction after Removal to the USDC and prior to Remand back to the State Court:** Hunt argues the circuit court was without [subject matter] jurisdiction over the proceedings [after removal and prior to remand with certified ORDER] as the federal removal statutes require the state court to receive a certified order [of remand] for jurisdiction to be re-vested. **Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566, 575 (S.C., 2013).**

a. **Motions scheduled for the 10/14/2014 hearing:** The Court states on page 3 at lines 11-16 of the transcript from the 10/14/20014 hearing: "And today we have scheduled two sets of motions.

i. The first one is the plaintiff's motion to dismiss the first amended counterclaims of defendant, Cindy B. Hunt;[37]

ii. And, thereafter, we have the defendant, Cindy B. Hunt's motion for default judgment.[38]"

b. **Briefs submitted at the 10/14/2014 Hearing:**

i. BBT did not submit a brief at the 10/14/2014 hearing in support of it's 2nd MTD the FAC.

ii. BBT did not submit a brief at the 10/14/2014 hearing in opposition to Hunt's MFDJ under SCRCP 55(a) and 55(b) with the affidavit of Hunt (see exhibit # 46) requesting attorney fees.

iii. At the hearing on 10/14/2014 Hunt submitted

[37] See BBT's 6/25/2014 (2nd MTD the FAC) second motion to dismiss the first amended counterclaims/defenses.
[38] See Hunt's 9/30/2014 (MFDJ) Motion for Default Judgment under SCRCP 55(a) and 55(b) with the affidavit of Hunt (see exhibit # 46) requesting attorney fees.

1. A brief in opposition to Plaintiff's 6/23/2014[39] Second Motion To Dismiss the First Amended Counterclaims (2nd MTD the FAC)
2. A brief in support of Hunt's MFDJ under SCRCP 55(a) and 55(b) with the affidavit of Hunt (see exhibit # 46) requesting attorney fees.
3. **Hunt's brief was labeled**: Brief in opposition to Plaintiff's 6/23/2014[40] Second Motion To Dismiss the First Amended Counterclaims; Brief in support of entry of default and default judgment.[41]

c. **Removal to the USDC:** On **11/10/2014** Hunt filed the Removal notice with the USDC and the State Court Clerk of Court which resulted in a "suspension" of the state court's jurisdiction. **Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566 (S.C., 2013)**

d. **The oral ruling from the 10/14/2014 hearing on the 2nd MTD the FAC was made into a written, signed ORDER and was filed on 1/13/2015:**

   i. At the 10/14/2014 hearings the court **orally** dismissed all of Hunt's causes of action in the FAC.

   ii. Hunt submitted a brief at the 10/14/2014 hearing in opposition to BBT's 2nd MTD the FAC. BBT did not submit a brief at the 10/14/2015 hearing re its 2nd MTD the FAC.

   iii. **After Removal to the USDC and prior to Remand:** The written ORDER from the 10/14/2014 hearing was filed on **1/13/2015** which was after Removal (11/10/2014) to the USDC and prior to Remand (5/11/2015) to the state court.

e. The **effective date** of the 10/14/2014 oral ruling is **1/13/2015**, the date the written and signed ORDER was filed. **SCRCP 58 and Bowman v. RICHLAND MEMORIAL HOSP., 515 S.E.2d 259, 335 S.C. 88, 93 (S.C. App., 1999)**

f. On 1/13/2015 the date the written and signed ORDER was filed - the state court had not received a certified copy of the 5/11/2015 ORDER of Remand from the USDC.

g. The 1/13/2015 ORDER was filed after Removal and prior to receipt of a certified copy of the ORDER of Remand being

[39] **Correction:** this 2nd MTD the FAC was filed by the clerk of court on 6/25/2014.
[40] **Correction:** this 2nd MTD the FAC was filed by the clerk of court on 6/25/2014.
[41] In this brief Hunt uses the words: not ruled on. This should be: not orally ruled on. And in this brief Hunt uses the words: ruled on. This should be: orally ruled on.

received by the State Court: The written order filed on 1/13/2015 (re 6/25/2014 2nd MTD the FAC and the oral ruling from the 10/14/2014 hearing) that granted BBT's 2nd MTD the FAC **was filed** after the Removal of this matter to the USDC by Hunt on 11/10/2014 and prior to the State Court receiving a certified copy of the ORDER of remand from the USDC on 5/11/2015.

h. In **Limehouse v. Hulsey, 404 S.C. 93,97, 744 S.E.2d 566, 569 (S.C., 2013):**

On April 19, 2006, Father and Son, separately but with identical pleadings, initiated the current defamation action against Hulsey in state court, alleging the statements in the article were false and damaged their reputation, health, and business.

Hulsey's law practice was served with a copy of the Complaint on April 20, 2006, and Hulsey was served individually on April 21, 2006. **On May 5, 2006, before Hulsey's Answer was due in state court, Hulsey filed a notice of removal to federal district court.**
On June 2, 2006, Father and Son filed a motion to remand the cases to state court.

By order dated July 19, 2006, the federal district court remanded the cases to state court on the ground that federal question jurisdiction was not present.

The federal court electronically transmitted the order to counsel on July 20, 2006; however, the electronic copy was **neither manually embossed nor did it contain an electronic seal.**

The Charleston County Clerk of Court received an **uncertified** copy of the remand order on July 21, 2006, which it filed the same day. **On July 27, 2006, the clerk mailed notice of the filing to the parties.**

On August 21, 2006, Father and Son moved for entry of default in state court on the ground Hulsey failed to timely file an Answer to the Complaint. The Charleston County Clerk of Court entered default on **August 21, 2006**, and filed it on August 22, 2006. The clerk mailed the Form 4 order to all parties on August 24, 2006, noticing the entry of default. On August 29, 2006, upon receipt of the Form 4 order, Hulsey filed an Answer and a motion to set aside the entry of default pursuant to Rule 55(c), SCRCP. Following a hearing, then Circuit Court Judge Daniel F. Pieper issued a written order denying the motion.

On February 4–6, 2008, Circuit Court Judge Roger M. Young presided over the damages hearing involving Father's case. Because Hulsey was deemed in default, Judge Young limited Hulsey's participation in the hearing to cross-examination and objection to Father's evidence. The jury returned a verdict against Hulsey for $2.39 million in actual damages and $5 million in punitive damages.

On **February 15, 2008**, Hulsey filed several post-trial motions, including a motion to dismiss for lack of subject matter jurisdiction after discovering the Charleston County Clerk of Court had not received a certified copy of the remand order from the federal court.

In **Limehouse v. Hulsey, 404 S.C. 93,111, 744 S.E.2d 566 (S.C., 2013)** the Court states: Because the absence of a certified order precluded jurisdiction from resuming in the state court, we hold the state court proceedings conducted after the federal court's entry of the remand order are void. As a result, we reverse the decision of the Court of Appeals, vacate both judgments, and remand the cases to recommence in the state court from the procedural point at which the Charleston County Clerk of Court received [404 S.C. 110]a certified copy of the federal court's remand order.**8 See Davis v. Davis, 267 S.C. 508, 229 S.E.2d 847 (1976)** (concluding that all orders issued by state court after proceeding was removed to federal court were void); **Peoples Trust & Sav. Bank v. Humphrey, 451 N.E.2d 1104 (Ind.Ct.App.1983)** (noting that, during the pendency of the removal petition, any proceedings by the state trial court are void until remand by the federal court); **77 C.J.S. Removal of Cases § 154 (Supp.2013)** ("Proceedings in the state court after the requirements for removal are met are not merely erroneous, but null and void. No subsequent pleadings can be filed in the state court." (footnotes omitted)). **FN 8.** On March 5, 2009, the Charleston County Clerk of Court received the certified remand order from the federal district court. Hulsey filed and served his Answer on March 13, 2009.

i. In the ***State of South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir., 1971)*** – the Court stated "Since the adoption of § 1446, it has been uniformly held that the state court loses all jurisdiction to proceed immediately upon the filing of the petition in the federal court and a copy in the state court. Under these holdings any proceedings in the state court after the filing of the petition and prior to a federal remand order are absolutely void, despite subsequent determination that the removal petition was ineffective."

j. "[A]ll orders issued by the County Court" after proceedings were removed to federal court are void. **Davis v. Davis, 267 S.C. 508, 229 S.E.2d 847 (1976).**

k. **Certified copy of the ORDER of Remand was received by the State Court on 5/11/2015:** On 5/8/2015 the USDC Remanded the case back to the State Court based on notice of removal being untimely. This order was received by the Horry County clerk of court and filed on 5/11/2015.

Hunt argues that based on **28 USC 1446(d), 28 USC 1447(c) and the above case law** that the 1/13/2015 written, signed and filed ORDER (that resulted from the application of the 6/25/2014 2nd MTD to the FAC) is required to be **voided** where jurisdiction had not been re-vested in the State Court where the State Court received a certified copy of the ORDER of remand on 5/11/2015. **Limehouse v. Hulsey, 404 S.C. 93, 108-110, 744 S.E.2d 566, 575 (S.C., 2013).**

As such, Hunt respectfully moves the Court for an Order vacating as void the Court's 1/13/2015 ORDER because the absence of a certified remand order precluded jurisdiction from re-vesting in the state court until the state court received the certified ORDER of Remand on 5/11/2015.

The ORDER filed on 10/28/2014[42] (which denied the motion for entry of default judgment as moot – based on all of the FAC having been dismissed at the 10/14/2014 hearing where the ruling from the hearing was filed in the void ORDER on 1/13/2015) should be reversed and Hunt should be granted entry of default and default judgment under SCRCP 55 (a) and (b) as follows –

12. A hearings were held on 10/14/2014 for BBT's 2nd MTD the FAC and for Hunt's MFDJ under SCRCP 55 (a) and (b). Hunt submitted a brief at the 10/14/2014 hearing. BBT was present at the 10/14/2014 hearing. BBT made no oral objections at the hearing as to the MFDJ where the attorney for BBT exited the courtroom before the court reached the MFDJ; and BBT did not file a written response to Hunt's MFDJ under SCRCP 55 (a) and (b) and Hunt's brief in support of entry of default and default judgment.

13. Thereafter, instead of rescheduling the hearing as requested by Hunt the court filed the 10/28/2014 ORDER that denied Hunt's request for entry of default and default judgment under SCRCP 55 (a) and (b) based on mootness.

14. As per the mailing envelope BBT mailed the 10/28/2014 ORDER to Hunt on 10/28/2014.

15. Thereafter, Hunt timely filed a motion under SCRCP 59(e) on 10/30/2014 objecting to the court's denial of the MFDJ based on moot. In the motion under SCRCP 59(e) Hunt argued that the MFDJ was not moot where all the causes of action of the FAC survived BBT's 2nd MTD the FAC.

16. This matter was Removed to the USDC on 11/10/2014. BBT submitted the 10/28/2014 ORDER to the USDC in support of its motion to Remand.

17. The written, signed and filed 1/13/2015 ORDER came about as the result of the oral rulings at the hearing on 10/14/2014 for BBT's 2nd MTD the FAC. As argued above the 1/13/2015 ORDER dismissing all of the FAC is **void** where subject matter jurisdiction had not been re-vested in the State Court where the State Court received a certified copy of the ORDER of Remand on 5/11/2015.

18. *The below argument of enforcement of the null and void 1/13/2015 ORDER through the 10/28/2014 ORDER is reversible error was not argued at the 10/14/2014 hearing or in the brief in support of the entry of default and default judgment but is allowed on this motion*

[42] Hunt made a motion under SCRCP 59(e) on 10/30/2014.

under SCRCP 59(e) because the events that gave rise to the argument did not occur until 1/13/2015 (which is more than ten days after Hunt received the 10/28/2014 ORDER) and involves subject matter jurisdiction where the 1/13/2015 ORDER is void where subject matter jurisdiction did not re-vest in the State Court until the state court received the certified remand ORDER on 5/11/2015. **Issues relating to subject matter jurisdiction maybe raised at any time.** [43]

19. **The arguments of BBT's 2nd MTD the FAC that were and were not ruled on in the void 1/13/2015 Order are not preserved with the result that the 2nd MTD the FAC contains zero arguments in opposition to the FAC as follows –**

20. **No motion under SCRCP 59(e):**

    a. BBT's 2nd MTD the FAC contained numerous arguments (including but not limited to against attorney fees to Hunt and against punitive damages) that were not ruled on in the 1/13/2015 void ORDER. **BBT did not make a Rule 59(e) motion to preserve those arguments that were not ruled on in the void 1/13/2015 ORDER.**

    b. **In Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537, 539-540, (S.C., 2011) the court states:**
    "Cole Vision asserts, as it did before the court of appeals, that Hobbs' attempt to characterize his counterclaim as one for general negligence is unpreserved because **it was not addressed in the circuit court's order granting the motion to dismiss, and Hobbs did not file a Rule 59(e), SCRCP, motion.** Hobbs responds that he specifically raised [714 S.E.2d 540] this issue to the circuit court during the hearing and the circuit court ruled on it. It is true that Hobbs' counsel raised the issue of general negligence in arguments before the circuit court and that, in the oral ruling from the bench, the circuit court recognized the cause of action may have some reference to negligence. However, the written order is based solely on spoliation of evidence.

    It is well settled that when there is a discrepancy between an oral ruling of the court and its written order, the written order controls. See Ford v. State Ethics Comm'n, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001); Corbin v. Kohler Co., 351 S.C. 613, 620, 571 S.E.2d 92, 96 (Ct.App.2002); Parag v. Baby Boy Lovin, 333 S.C. 221, 226, 508 S.E.2d 590, 592 (Ct.App.1998). Thus, Cole Vision is correct in its assertion that Hobbs' characterization of his counterclaim before the court of appeals as one for general negligence is **unpreserved**."

    c. **Not Preserved:** As per Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537, 539-540, (S.C., 2011), all the arguments of BBT in the 2nd MTD the FAC that were and were not ruled on in the written void ORDER that was filed on 01/13/2015 are **not preserved.**

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[43] **See Bardoon Properties, NV v. Eidolon Corp., 485 S.E.2d 371, 372-373, 326 S.C. 166 (S.C., 1997).**

d. **Void - Statute of limitations and no private right of action, etc:** The statute of limitations and no private right of action arguments of BBT's 2nd MTD the FAC were ruled on and granted are now voided as argued above where the 1/13/2015 Order is void; and the 10/14/2014 hearing on the 2nd MTD the FAC is closed.

e. **Zero arguments in opposition to the FAC:** As such, based on the arguments of the 1/13/2015 ORDER being void and where BBT has failed to preserve the void arguments of the 1/13/2015 ORDER **and** where BBT has failed to preserve the other arguments of the 2nd MTD the FAC that were not included in the void 1/13/2015 ORDER **then** the 2nd MTD the FAC contains **zero arguments in opposition** to the FAC.

21. **No extension of time for BBT to respond:** As per the requirements of SCRCP 15(a) there is no ORDER in the file that provides for an extension of time to BBT for a response to the FAC or a second hearing on the 2nd MTD the FAC.

22. **ENTRY of DEFAULT:** BBT has failed to respond or otherwise plead to the FAC within the time allowed at SCRCP 15(a) - : As such, Hunt argues that BBT has failed to plead or otherwise defend as provided by SCRCP 55 (a) and that fact was made to appear by the fourteen affidavits of default that were filed by Hunt on 7/15/2014 or otherwise. Hunt requests that the clerk shall enter BBT's default upon the calendar (file book).[44]

23. **"[I]t is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998).**

24. **BBT has conceded liability:** By defaulting, a defendant forfeits his "right to answer or otherwise plead to the [FAC]." In essence, the defaulting defendant has conceded liability. **Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 723 S.E.2d 597 (S.C. App., 2012).**

25. **Hunt argues that none of the FAC were dismissed at the 10/14/2014 hearing[45] as stated by the court in the ORDER that was filed on 10/28/2014 and the MFDJ was not moot based on dismissal of all FAC as stated by the court in the ORDER that was filed on 10/28/2014 as follows -**

a. **SCRCP 58 states in part:** Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record.

[44] Also, the 2nd MTD the FAC has already been heard and granted as requested by BBT in the void 1/13/2015 order; BBT failed to preserve the other issues of the 2nd MTD the FAC; the 2nd MTD the FAC did not include a request for a second order of dismissal if the first order is voided; the hearing for the 2nd MTD FAC is closed. As per SCRCP 15(a) there is no order in the file that proves for an extension of time to BBT for a response to the FAC.

[45] Or by the resulting written signed and filed 1/13/2015 void ORDER as argued above.

b. **In Bowman v. RICHLAND MEMORIAL HOSP., 515 S.E.2d 259, 335 S.C. 88, 92 (S.C. App., 1999) the court states:** Even if as contended by defendant the trial Judge granted an oral divorce to plaintiff such pronouncement *is not a final ruling on the merits nor is it binding on the parties until it has been reduced to writing, signed by the Judge and delivered for recordation.* The Decree must be in writing and until such time the Judge may modify, amend or rescind such an oral Order.

c. **The order filed on 10/28/2014 states:** 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. Defendant Cindy B. Hunt's Motion for Entry of Default Judgment against Plaintiff BBT is hereby **denied as moot.**[46] All counterclaims asserted by the Defendant in this action were previously dismissed by this Court following an **October 14, 2014 hearing** regarding Plaintiff's Motion to Dismiss the First Amended Counterclaims [2nd MTD the FAC] of Defendant Cindy B. Hunt. As such, there are no remaining counterclaims [FAC] to which Plaintiff could be considered in default.

d. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief." **Mathis v. South Carolina State Highway Dept., 195 S.E.2d 713, 714, 260 S.C. 344,345 (S.C., 1973).**[47]

e. **None of the FACs are dismissed:** Mootness in this matter, as per the 10/28/2014 ORDER, was based on all the FACs being dismissed at the 10/14/2014 hearing. However, on 10/14/2014 there was no filed written ORDER dismissing the FAC. And the oral rulings of the 10/14/2014 hearing dismissing the FAC resulted in the void 1/13/2015 ORDER as argued above.

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[46] **MOOT was the only objection in the 10/28/2014 ORDER:** The only objection in the order filed on 10/28/2014 to the MFDJ under SCRCP 55 (a) and (b) was that the **motion for entry of default judgment** was moot based on the 10/14/2014 oral hearing where the 10/14/2014 oral hearing resulted in the void 1/13/2015 written, filed and signed ORDER as argued above.

[47] Upon the call of the case, we were advised that the respondent would be entitled to the return of his driver's license on March 23, 1973. This date now having passed, and the respondent being entitled to the return of his driver's license, has rendered the issues made by this appeal, moot and academic. There remains no actual controversy between the parties. We have held that this Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. Fabian's Uptown v. South Carolina Page 715 Tax Commission, 247 S.C. 164, 146 S.E.2d 608. A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief. Such is the situation here. **Mathis v. South Carolina State Highway Dept., 195 S.E.2d 713, 260 S.C. 344 (S.C., 1973).**

i. As such, based on the requirements of **SCRCP 58[48] and Bowman**, supra, that there must be a filed written ORDER then none of the FAC were dismissed at the 10/14/2014 hearing.

f. **MFDJ is not moot:** If none of the FAC are dismissed based on the requirements of SCRCP 58[49] and Bowman, supra, that there must be a filed written ORDER then the **MFDJ was not moot** based on dismissal of all the FAC at the 10/14/2014 hearing where there was NO filed written ORDER on 10/14/2014; and

Thereafter, the 10/14/2014 oral rulings resulted in the ORDER filed on 1/13/2015 where the 1/13/2015 ORDER as argued above is void for lack of re-vesting of jurisdiction in the State Court.

g. Where the **MFDJ is not moot** then judgment when rendered involving the MFDJ under SCRCP 55(a) and (b) will have practical legal effect upon the existing controversy involving the FAC and the foreclosure complaint.

h. Where the **MFDJ is not moot,** by issuing the 10/28/2014 ORDER which, in effect enforced the 1/13/2015 Null/Void Order the court has erred and the 10/28/2014 ORDER[50] should be REVERSED. **DeWitt v. South Carolina Dept. of Highways and Public Transp., 262 S.E.2d 28, 30, 274 S.C. 184, 187 (S.C., 1980).**

26. This 11/10/2015 hearing arises in part from the motion under SCRCP 59(e) that was filed by Hunt on 10/30/2014 objecting to the denial based on mootness of Hunt's MFDJ under SCRCP 55(a) and (b) where Hunt submitted a brief[51] in support of entry of default and default judgment.

27. As argued below, BBT made zero objections to Hunt's MFDJ under SCRCP 55(a) and (b) and the Brief in support of entry of default and default judgment.

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[48] Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record.

[49] Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record.

[50] The ORDER filed on 10/28/2014 by the State Court denied Hunt's MFDJ under SCRCP 55(a) and 55(b) against BBT as moot was based on the oral ruling at the 10/14/2014 hearing where the oral ruling was filed on 1/13/2015 where the 1/13/2015 ORDER is void.

[51] **Hunt's brief is labeled:** Brief in opposition to Plaintiff's 6/23/2014 [(**Correction:** this 2nd MTD the FAC was filed by the clerk of court on 6/25/2014.)] Second Motion To Dismiss the First Amended Counterclaims; Brief in support of entry of default and default judgment. The court filed this brief on 10/16/2014.

As such, Hunt requests that the 10/28/2014 ORDER based on mootness be reversed and that Hunt be granted an ORDER of entry of default and default judgment under SCRCP 55(a) and (b) as requested in the MFDJ and the brief in support of entry of default and default judgment.

28. **Any and all arguments that may be asserted by BBT that Hunt is not entitled to** entry of default and default judgment under SCRCP 55(a) and (b) as requested in the MFDJ and the brief in support of entry of default and default judgment and 10/30/2014 Motion under SCRCP 59(e) **should be rejected where BBT has had its day in court, where**

    a. **Hunt should not be required to overcome objections that were not stated in the 10/28/2014 ORDER denying Hunt's MFDJ.**

    b. BBT was present at the 10/14/2014 damages hearing for the MFDJ under SCRCP 55 (a) and (b) where BBT did not make oral objections to the MFDJ and BBT did not submit a brief in opposition to the MFDJ. Instead the attorney for BBT exited the room where he had already been given notice that Hunt's MFDJ would be heard after his 2nd MTD the FAC.

    c. In the 9/30/2014 notice of hearing on the MFDJ at exhibit # 105 - Hunt clearly states that the MFDJ was a damages hearing where the MFDJ was under SCRCP 55(a) and (b).

    d. In the MFDJ at pages 1-5 Hunt states:

        i. That Hunt has satisfied each requirement under SCRCP 55(a) and (b); and

        ii. **Page 5 of the MFDJ states:** "Hunt respectfully moves the Court/clerk of court for an **ENTRY OF DEFAULT and Default Judgment** as to each cause of action, attorney fees, punitive damages and prayer for relief of the first amended counterclaims where BBT has failed to appear, plead and otherwise defend all thirty eight pages of the first amended counterclaims within the time allowed and, therefore, is now in default."

    e. At the 10/14/2014 MFDJ damages hearing BBT **had the opportunity to participate by examining witnesses and objecting to evidence as stated by the court in** Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 204, 723 S.E.2d 597, 603 (S.C. App., 2012).

    f. BBT did not examine any witness and BBT did not object to any evidence.

    g. BBT made zero objections to Hunt's Brief in support of entry of default and default judgment where the brief was submitted at the 10/14/2014 hearing to

BBT and the Court; after submission of the brief to the Court and BBT the Court asked if Hunt wanted the Court to file the brief with the clerk of court where the court filed the brief on 10/16/2014 (see exhibit # 107 page 77 line 17 – page 78 line 3 of the transcript from the 10/14/2014 hearing) where BBT made zero objections to the brief.

h. Thereafter, Hunt argues that on this Hunt's motion under SCRCP 59(e) that BBT cannot use Rule 59(e) to present to the court an issue that BBT could have raised prior to judgment but did not. **Hickman v. Hickman, 392 S.E.2d 481, 301 S.C. 455 (S.C. App., 1990) where**

i. MOOT was the only objection to the MFDJ: The only objection in the ORDER filed on 10/28/2014 to the MFDJ under SCRCP 55 (a) and (b) was that the MFDJ was moot based on the 10/14/2014 oral hearing (where the 10/14/2014 oral hearing resulted in the void 1/13/2015 written order); and

ii. BBT submitted the 10/28/2014 ORDER to the USDC on 1/3/2015 in support of its position that the matter should be remanded to State Court. Exhibit # 83 entry # 13-1.[52]

iii. BBT made zero objections to the 10/28/2014 Order denying the MFDJ where BBT did not file a motion under SCRCP 59(e) to preserve any arguments of BBT that were not ruled on in the 10/28/2014 ORDER.

iv. As per Cole Vision Corp. v. Hobbs, 394 S.C. 144, 147-149, 714 S.E.2d 537, 539-540, (S.C., 2011), all arguments[53] of BBT in opposition to the MFDJ and the supporting Brief and the ORDER filed on 10/28/2014 that were not included in the written order that was filed on 10/28/2014 are **not preserved; and** are void as argued above

i. **ELEMENTS:** Any and all arguments by BBT that Hunt has failed to plead all the elements of any of the named and unnamed claims in the FAC should be rejected where -

i. BBT is in default and has admitted to liability; and

ii. See Hunt's brief labeled: Brief in opposition to Plaintiff's 6/23/2014[54] Second Motion To Dismiss the First Amended Counterclaims; Brief in support of entry of default and default

[52] BBT should not be able to benefit from the 10/28/2014 ORDER and thereafter assert that BBT has not has its day in court.
[53] Some of the arguments that BBT did not assert include but is not limited to: attorney fees, punitive damages, unliquidated damages, objections to Hunt's assertions re liquidated damages, etc.
[54] **Correction:** this 2nd MTD the FAC was filed by the clerk of court on 6/25/2014.

judgment[55] where Hunt argues that Hunt has satisfied all the elements of each named and unnamed cause of action to include slander of title in the FAC; and

iii. BBT was present at the 10/14/2014 hearing for the MFDJ where BBT was silent and walked out of the MFDJ hearing before Hunt presented oral arguments on the MFDJ; and BBT did not submit a brief in opposition to the MFDJ; and

iv. Hunt argues that as per Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537, 539-540, (S.C., 2011), that all arguments of BBT in opposition to the FAC and the MFDJ that were not included in the 10/28/2014 and 1/13/2015 ORDERs are **not preserved** where BBT did not file a motion under SCRCP 59(e).

29. **10/14/2014 MFDJ Damages Hearing:**

a. **As per the certificate of service the MFDJ under SCRCP 55(a) and (b) was mailed to BBT on 9/30/2014.**

b. **As per the certificate of service the notice of the hearing on the MFDJ under SCRCP 55(a) and (b) was mailed to BBT on 9/30/2014.**

c. **BBT was present at the 10/14/2014 hearing on the MFDJ under SCRCP 55(a) and (b). See exhibit # 107 page 3 lines 14-16.**

d. **At the 10/14/2014 hearing on the MFDJ Hunt gave BBT a copy of her brief labeled:** Brief in opposition to Plaintiff's 6/23/2014[56] Second Motion To Dismiss the First Amended Counterclaims; Brief in support of entry of default and default judgment.

e. **In the brief in support of the MFDJ under SCRCP 55(a) and (b) at pages 40-45 Hunt requested entry of default and default judgment against BBT.**

f. BBT exited the hearing where Hunt had not yet made oral arguments on the MFDJ under SCRCP 55(a) and 55(b) with the affidavit of Hunt (see exhibit # 46) requesting attorney fees.

g. **Request to Reschedule Oral arguments:** Even though Hunt submitted a brief at the 10/14/2014 re her MFDJ no oral arguments on the MFDJ were made at the 10/14/2014 hearing.

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[55] The court filed this brief on 10/16/2014.

[56] **Correction:** this 2nd MTD the FAC was filed by the clerk of court on 6/25/2014.

i. After the 10/14/2014 hearing Hunt called the clerk for the master in equity to reschedule a hearing time for oral arguments in support of Hunt's MFDJ under SCRCP 55(a) and 55(b) since she did not get to make oral arguments on her motion on 10/14/2014.

h. Hunt submitted a brief at the hearing 10/14/2014 hearing in support of her MFDJ under SCRCP 55(a) and 55(b) with the affidavit of Hunt (see exhibit # 46) requesting attorney fees. See above at: **Motions scheduled for the 10/14/2014 hearing and Briefs submitted at the 10/14/2014 Hearing.**

i. BBT did not submit a brief at the 10/14/2015 hearing in opposition of Hunt's MFDJ under SCRCP 55(a) and 55(b) with the affidavit of Hunt (see exhibit # 46) requesting attorney fees.

j. **10/28/2014 ORDER:**[57]

i. Instead of allowing Hunt to reschedule oral arguments to supplement the written documents that were submitted in support of the MFDJ the court on 10/16/2014 filed Hunt's brief labeled: Brief in opposition to Plaintiff's 6/23/2014[58] Second Motion To Dismiss the First Amended Counterclaims; Brief in support of entry of default and default judgment; and

ii. Thereafter on 10/28/2014 the court issued a form 4 written order on 10/28/2014 stating that Hunt's motion for entry of default judgment against BBT is hereby **denied as moot** where all of the first amended counterclaims had been dismissed following an October 14, 2014 hearing where there are no remaining counterclaims to which BBT could be considered in default.

k. BBT made no objections to the MFDJ under SCRCP 55(a) and 55(b) with the affidavit of Hunt (see exhibit # 46) requesting attorney fees.

l. Hunt stated in the brief that was submitted at the 10/14/2014 damages hearing and filed by the court on 10/16/2014 at pages 42-45 that a hearing on attorney fees and liquidated damages was not required;[59]

m. Hunt stated in the MFDJ under SCRCP 55(a) and (b) at page 4 that as to unliquidated damages under SCRCP 55 (b)(1) that BBT (all parties) had been provided with notice of any trial or hearing on unliquidated damages at least three days prior to the hearing on such motion.

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[57] At exhibit # xx BBT submitted the 10/28/2014 ORDER to the USDC in support of its motion to remand.
[58] **Correction:** this 2nd MTD the FAC was filed by the clerk of court on 6/25/2014.
[59]

n. Hunt stated in the MFDJ under SCRCP 55(a) and (b) at page 5 that as to attorney fees under SCRCP 55 (b)(3) that notice of the MFDJ and affidavit for attorney fees had been provided to BBT (all parties).

o. **Legal Merits:** As such, Hunt argues that the 10/28/2014 written ORDER was based on the legal merits of Hunt's MFDJ under SCRCP 55(a) and (b) which was reached at the 10/14/2014 damages hearing through the paper MFDJ under SCRCP 55(a) and (b) and Brief in support of entry of default and default judgment that was filed by the court on 10/16/2014.

p. The FAC indicate that the amount claimed is liquidated or capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits. As such, a judgment by default in this matter maybe entered without a hearing on damages. Wells Fargo Bank 408 S.C. 87.

30. **BBT made no objections to Hunt's MFDJ under SCRCP 55 (a) and (b) and supporting brief:**

a. All objections by BBT to Hunt's MFDJ and Brief in support of entry of default and default judgment are void and not preserved where:

b. BBT filed no written objections to Hunt's motion for default judgment and BBT filed no written objections to the brief in support of entry of default and default judgment.

c. And at the 10/14/2014 hearing BBT made no oral or written objections to Hunt's motion for default judgment and BBT made no oral or written objections to Hunt's brief in support of entry of default and default judgment.

d. Also, BBT did not object to the 10/28/2014 written order that denied Hunt's MFDJ that was based on legal merits where BBT did not file a motion to alter or amend the 10/28/2014 order under SCRCP 59(e).

e. Also, after removal and prior to remand, while this matter was in the USDC BBT submitted the order that was filed on 10/28/2014 to the USDC.

f. As such, Hunt argues that as per Cole Vision Corp. v. Hobbs, 394 S.C. 144, 147-149, 714 S.E.2d 537, 539-540, (S.C., 2011), that all arguments[60] of BBT in opposition to the MFDJ and Brief and the order filed on 10/28/2014 that were not included in the written order that was filed on 10/28/2014 are **not preserved; and are** void as argued above.

[60] Some of the arguments that BBT did not assert include but is not limited to: attorney fees, punitive damages, unliquidated damages, objections to Hunt's assertions re liquidated damages, etc.

31. **SCRCP 55(b)(1-3):**[61] Hunt argues that BBT has also conceded to the amount of liability under SCRCP 55 (b)(1-3) as set forth in the prayer for relief, affidavits of default, exhibits, verified FAC, 9/30/2014 MFDJ and 10/14/2014 brief in support of entry of default and default judgment and the 10/30/2014 motion under Rule 59(e), etc.[62] as follows -

    a. The court in Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 203, 723 S.E.2d 597, 603 (S.C. App., 2012) states: **[A] defaulting defendant does not concede the amount of liability.**

    b. In **Solley** at page 198: The Bank was held in default after it failed to answer the complaint. Thereafter, the court entered an order and entry of judgment against the Bank. The Bank did not pursue having the default set aside. The court referred the matter to a special referee to conduct the damages hearing. The bank appeared at the damages hearing.

32. Hunt argues that unlike the Bank in Solley that BBT has conceded the amount of liability in these set of unusual facts as follows:

33. Hunt filed the FAC on 6/6/2014. Thereafter, the only document filed by BBT was the 6/25/2014 2nd MTD the FAC.

34. On 7/15/2014 Hunt filed 14 affidavits of default for the causes of action and for the relief prayed for. On 10/14/2014 a hearing was held on the 2nd MTD the FAC and Hunt's MFDJ where BBT was present; and where the court granted the 2nd MTD the FAC. And denied Hunt's MFDJ.

35. Thereafter, the 1/13/2015 ORDER granting the 2nd MTD the FAC is void as argued above. Thereafter, as argued above the 2nd MTD the FAC contains zero arguments in opposition to the FAC and BBT is in default as argued above where BBT has been present through out the proceedings.

36. Hunt argues that the Solley court should have said that when a defendant receives an entry of default judgment where the defendant is not present when

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[61] For the doctrine of election of remedies to apply, therefore, two or more remedies must be available to the complaining party at the time of the election and these remedies must be inconsistent. An inconsistency exists where, if an election is not made, a party will receive a double recovery. **Tomlinson v. Mixon, 626 S.E.2d 43, 367 S.C. 467 (S.C. App., 2006).** Election of remedies is not applicable here involving these multiple different facts that support distinct injuries. The time to make an election is after a damages hearing.
Hunt argues that the doctrine of continuous tort is not applicable to this matter based on multiple wrongs that arise from multiple contracts involving numerous different facts.

[62] See page 5, last paragraph of the 9/30/2014 MFDJ.

the court applies SCRCP 55 (a) that the defaulting defendant does not concede the amount of liability under SCRCP 55 (b).

37. In this matter BBT was present at the hearing on the MFDJ under SCRCP 55 (a) and (b). Thus, Hunt argues that when a party is present at a hearing under SCRCP 55 (a) and (b) that the party can concede the amount of liability.

38. Hunt's MFDJ and the brief in support of entry of default and default judgment clearly requested entry of default and default judgment under SCRCP 55 (a) and (b) as follows –

    a. The 9/30/2014 notice of hearing for the 10/14/2014 hearing states among other things: **Motion for Default Judgment [MFDJ] with exhibit # 46 –** SCRCP 55 (a) and (b) (filed 9/30/2014).

    b. At the 10/14/2014 Hearing, as previously stated, Hunt submitted a brief labeled: *Brief in opposition to Plaintiff's 6/23/2014*[63] *Second Motion To Dismiss the First Amended Counterclaims;* ***Brief in support of [MFDJ] entry of default and default judgment*** to BBT and the court.

39. After the brief was submitted to BBT and the court - BBT exited the courtroom before oral arguments on Hunt's MFDJ such that BBT did not make any oral or written objections at the 10/14/2014 damages hearing where Hunt had submitted the written MFDJ under SCRCP 55 (a) and (b) on 9/30/2014 and the brief in support of entry of default and default judgment at the 10/14/2014 hearing; and at the hearing Hunt provided the court and BBT with a copy of Hunt's brief.

40. **NO OBJECTION to the BRIEF in support of [MFDJ] entry of default and default judgment:** The court filed the BRIEF on 10/16/2014 with the clerk of court where Hunt argues that the entire brief was admitted into evidence without objection by BBT and BBT cannot make its admission a ground of appeal. **Mendelsohn v. Whitfield, 430 S.E.2d 524, 530, 312 S.C. 17, 25 (S.C. App., 1993).**

41. **Conceded the amount of liability:** Hunt argues that BBT conceded the amount of liability when BBT made no objections when the BRIEF was submitted on 10/14/2014 and filed on 10/16/2014. However, Hunt argues that the concession of the amount of liability was SUSPENDED when the court filed the 10/28/2014 ORDER.

42. **The order filed on 10/28/2014 states:** 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. Defendant Cindy B. Hunt's Motion for Entry of Default Judgment against Plaintiff BBT is hereby **denied as moot.**[64] All counterclaims asserted

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[63] **Correction:** this 2nd MTD the FAC was filed by the clerk of court on 6/25/2014.

[64] **MOOT was the only objection in the 10/28/2014 ORDER:** The only objection in the order filed on 10/28/2014 to the MFDJ under SCRCP 55 (a) and (b) was that the **motion for entry of default**

by the Defendant in this action were previously dismissed by this Court following an **October 14, 2014 hearing** [where the resulting void ORDER was filed on 1/13/2015] regarding Plaintiff's Motion to Dismiss the First Amended Counterclaims [2nd MTD the FAC] of Defendant Cindy B. Hunt. As such, there are no remaining counterclaims [FAC] to which Plaintiff could be considered in default.

43. Thereafter, BBT did not preserve any objections to the 10/28/2014 ORDER that denied the MFDJ based on mootness; where mootness was based on all the FAC being dismissed at **the 10/14/2014 damages hearing** on the MFDJ under SCRCP 55 (a) and (b) where BBT thereafter did not file a motion under SCRCP 59(e).

    As per Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537, 539-540, (S.C., 2011), that all arguments of BBT in the 2nd MTD the FAC in opposition to the FAC and the MFDJ that were not included in the 10/28/2014 and 1/13/2015 ORDERS are **not preserved** where BBT did not file a motion under SCRCP 59(e).

44. BBT submitted the 10/28/2014 ORDER to the USDC during the Removal/Remand proceeding in support of remand back to the State Court. The case was remanded on 5/11/2015.

45. Hunt filed a motion under SCRCP 59(e) on 10/30/2014 objecting to the 10/28/2014 ORDER denying the MFDJ under SCRCP 55 (a) and (b) where Hunt argues above that the mootness has been overcome.

46. As such, Hunt argues that BBT has **conceded the amount of liability** as set forth in the – prayer for relief, affidavits of default, exhibits, verified FAC, 9/30/2014 MFDJ and 10/14/2014 brief in support of entry of default and default judgment and the 10/30/2014 motion under Rule 59(e), etc.[65]

47. Here unlike in **Solley** BBT has conceded the amount of liability where

    a. BBT was present at the 10/14/2014 damages hearing for the MFDJ under SCRCP 55 (a) and (b); and

    b. BBT was present at the 10/14/2014 hearing for its 2nd MTD the FAC where the 1/13/2015 written, signed and filed ORDER is void.

    c. BBT made zero objections at damages hearing in this matter that was held on 10/14/2014 for the MFDJ under SCRCP 55 (a) and (b) as required by **Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566 (S.C., 2013) where**

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judgment was moot based on the 10/14/2014 oral hearing where the 10/14/2014 oral hearing resulted in the void 1/13/2015 written, filed and signed ORDER as argued above.

[65] See page 5, last paragraph of the 9/30/2014 MFDJ.

Howard v. Holiday, Inns, Inc., 271 S.C. 238, 246 S.E.2d 880 (1978) was reaffirmed where BBT was properly served with the affidavits of default, affidavit for attorney fees, 40 entries of default and the MFDJ under SCRCP 55 (a) and (b); and the notice of the hearing on the MFDJ.

d. Thus, Hunt argues that BBT has had its day in court and is now in default and that BBT has conceded liability and conceded the amount of liability as set forth in the prayer for relief, affidavits, exhibits, verified FAC, 9/30/2014 MFDJ and 10/14/2014 brief in support of entry of default and default judgment and the 10/30/2014 motion under Rule 59(e), etc.

48. **WAIVER and EQUITABLE ESTOPPEL:** Hunt argues that BBT is equitably estopped and has waived all objections to Hunt being pro se and to the MFDJ under SCRCP 55 (a) and (b) and the brief labeled: Brief in opposition to Plaintiff's 6/23/2014[66] Second Motion To Dismiss the First Amended Counterclaims; Brief in support of entry of default and default judgment where

a. On 10/14/2014 as per the transcript BBT at the hearing for its 2nd MTD the FAC did not make an argument against attorney fees to Hunt and the resulting void 1/13/2015 ORDER that was written by BBT was silent on attorney fees to Hunt; and

b. BBT was present at the 10/14/2014 damages hearing where BBT made zero objections at the time the two documents were presented where the MFDJ and brief clearly state that Hunt requested attorney fees in the amount of $2, 668, 905.00; and

c. MOOT was the only objection to the MFDJ and the brief in support ...: The only objection in the ORDER filed on 10/28/2014 to the MFDJ under SCRCP 55 (a) and (b) was that the MFDJ was moot based on the 10/14/2014 oral hearing where all the FAC were dismissed where the 10/14/2014 oral hearing resulted in the void 1/13/2015 written ORDER with the result that the MFDJ was never moot as argued above; and the damages hearing that was held on 10/14/2014 for the MFDJ under SCRCP 55 (a) and (b) is closed; and

d. In **Austin v. Stokes-Craven Holding Corp., Opinion No. 26784 (S.C. 3/8/2010) (S.C., 2010)** Stokes-Craven failed to preserve any challenge to [...] testimony where the court stated: "The failure to make an objection at the time evidence is offered constitutes a waiver of the right to object"; and

e. In **Parker v. Parker, 313 S.C. 482, 443 S.E.2d 388 (S.C., 1994)** the court states: "Waiver is a question of fact for the finder of fact. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992).

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[66] **Correction:** this 2nd MTD the FAC was filed by the clerk of court on 6/25/2014.

Waiver is a voluntary and intentional abandonment or relinquishment of a known right. Id. at 342-44, 415 S.E.2d at 387. It may be expressed or implied by a party's conduct, and it may be applied to bar a party from relying on a statute of limitations defense. Mende v. Conway Hospital, Inc., 304 S.C. 313, 404 S.E.2d 33 (1991).

Equitable estoppel occurs where a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do. Lee v. Southern Railway Co., 228 S.C. 240, 89 S.E.2d 431 (1955); see Janasik, supra. It may arise even though there was no intention by the party to relinquish or change any existing rights. Janasik, supra. The essential element of estoppel is prejudice to the party raising the defense. Id. As we noted in Janasik, "the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations." Id. 307 S.C. at 344, 415 S.E.2d at 388.

Regardless, either doctrine seems applicable on the present facts. Virginia Ann Martin was listed as an heir on the original petition for informal probate, she participated in the agreement to retain Ethel Parker as the personal representative, as well as, a separate paternity challenge[313 S.C. 488] made by another alleged illegitimate heir. Now, almost four years later, the Appellants attempt to assert that Virginia Ann Martin is not an heir of the estate. This clearly is an implicit waiver of a statutory right. Further, the inaction of the Appellants gave Virginia Ann Martin absolutely no notice and lulled her into a position where she could no longer defend her parentage under § 62-2-109. The prejudice to Virginia Ann Martin is apparent and is more than sufficient to establish her defense of equitable estoppel."

f. Here the inaction of BBT at the 10/14/2014 hearing gave Hunt no notice that it would assert that Hunt was pro se as an argument against attorney fees to Hunt and where Hunt had no knowledge of the 1/13/2015 ORDER Hunt submitted the 5/27/2015 motion for attorney fees under SCRCP 41(d) where in the resulting 6/3/2015 ORDER the court (BBT did not respond in writing to the 5/27/2015 motion[67] and no hearing was requested by Hunt) denied attorney fees to Hunt – stating that Hunt was pro se.[68]

49. **Liquidated Damages do not require a hearing:**[69]

a. **Hunt stated in the 9/30/2014 MFDJ at the top of page 4 of 5 that:** Hunt was seeking a liquidated amount, a sum certain or a sum which can by computation be made certain. BBT DID NOT OBJECT AT ANY TIME TO THIS STATEMENT.

[67] BBT received notice of the 5/27/2015 motion under SCRCP 41(d) where the green card for certified return receipt mail was received by Hunt.
[68] This was the second ruling the court made without input from BBT on the motion.
[69] See SCRCP 55 (b)(1).

b. **Thereafter, Hunt stated in the 9/30/2014 MFDJ at the bottom of page 5 of 5:** Hunt respectfully moves the Court/clerk of court for an **ENTRY OF DEFAULT and Default Judgment** as to each cause of action, attorney fees, punitive damages and prayer for relief of the first amended counterclaims where BBT has failed to appear, plead and otherwise defend all thirty eight pages of the first amended counterclaims within the time allowed and, therefore, is now in default. BBT DID NOT OBJECT AT ANY TIME TO THIS STATEMENT.

c. Liquidated damages do not require a hearing. SCRCP 55 (b)(1).

d. **At pages 42 of 45 Hunt stated in the Brief in support of entry of default and default judgment that was filed with the clerk of court on 10/16/2014 and given to the court and BBT at the 10/14/2014 hearing that:** Hunt requests Default Judgment against BBT as follows where Hunt went on to list four pages of attorney fees and liquidated damages. BBT DID NOT OBJECT AT ANY TIME TO THESE FOUR PAGES OF ATTORNEY FEES AND LIQIDATED DAMAGES.

50. **The required damages hearing for unliquidated damages has already been held:** To the extent that any of the attorney fees/costs and damages that Hunt requested in the verified FAC and prayer for relief, MFDJ and brief in support of entry of default and default judgment[70] that MAY HAVE BEEN unliquidated where the court in Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566 (S.C., 2013) states: A damages hearing is required on unliquidated damages under SCRCP 55(b)(2). Hunt argues that BBT has conceded the amount of liability and that the required damages hearing for unliquidated damages has already been held on 10/14/2014 where

a. BBT did not object to service related to the MFDJ under SCRCP 55 (a) and (b). A hearing on the MFDJ was held on 10/14/2014 where BBT was present and did not object to Hunt's statement at the bottom of page 4 of 5 of the MFDJ as to SCRCP 55 (b)(2):

> (2) All Other Cases.
>
> Written notice of the motion or application for judgment is being served on all parties at least 3 days prior to the hearing on such motion/application.
>
> Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages has been be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action.

[70] See page 45:Trial on the Damages: Hunt request that this case be set for trial on the issue of damages.

BBT DID NOT OBJECT AT ANY TIME TO THIS STATEMENT.

b. As such, Hunt argues that the requirement of a damages hearing as per **Limehouse** has been previously met where **BBT had notice of the 10/14/2014 hearing under SCRCP 55 (a) and (b), BBT had an opportunity to be heard, BBT was present at the 10/14/2014 damages hearing** on the MFDJ under SCRCP 55 (a) and (b) and made no objections and the only objection in the resulting 10/28/2014 ORDER was that the court had denied the MFDJ as moot based on the court orally dismissing all the FAC on 10/14/2014.

c. In **Rounds v. Aiken Mfg. Co, 58 S.C. 299, 36 S.E. 714 (S.C., 1900)** the court states: "It is unquestioned that if a hearing is had entirely ex parte by the arbitrators, [36 S.E. 720] without notice or opportunity to the other side to be present, such an award should be set aside, as was done in the case relied on by plaintiffs' counsel, decided by our court of appeals, and set forth in Shinnie v. Coil, 1 McCord, Eq. 475;

but where the parties have notice of a hearing and opportunity to be heard, and are present and make no objection to the mode of procedure, they are deemed to waive all irregularities as to the procedure, and the award is valid and binding, unless assailable on the grounds of fraud, or, in some cases, of mistake such as is relievable in equity."

51. **ATTORNEY FEES under SCRCP 55 (b)(3):** Hunt argues that pursuant to statute on the MFDJ that Hunt should be allowed payment by BBT of attorney fees and costs in the amount of **$2, 668, 905.00 for services render by Hunt and incurred and already paid by Hunt of $8.000.00 paid to Valtorta and Ballard.**

a. **Three attorneys - Valtorta, Ballard and Hunt:** This matter spanning seven years has involved three attorneys on behalf of Hunt as shown in the affidavit at exhibit # 26 at paragraph k and the affidavit at exhibit # 46 at paragraphs 21-24.[71] Those three attorneys are Valtorta, Ballard[72] and Hunt.

b. BBT has repeatedly threaten Hunt and Hunt's attorneys with a Rule 11 violation: Hunt became pro se in this matter after BBT threaten Hunt and Hunt's attorneys Valtorta and Ballard with Rule 11 violations in the motions to dismiss in lawsuit # 1 at exhibit # 49 entry # 16-2 where these threats resulted in Hunt having to proceed pro se where Hunt contacted over three dozen lawyers.

i. Thereafter, BBT has continued to threaten Hunt with Rule 11 violations in lawsuit #2 see exhibit # 48 entry # 34; in lawsuit # 3 see exhibit #

[71] These affidavits have never been objected to by BBT in the USDC or State Court in this matter.
[72] As shown in exhibit # 26 at paragraph k Hunt has paid $8,000.00 in attorney fees to Valtorta and Ballard.

49 entry # 9; and in the current fourth lawsuit see the last page of the motion to dismiss that is dated 9/05/2013.

ii. Also, BBT's attorney at paragraph three of exhibit # 46 threatened Hunt with a Rule 11 violation. Since 1/2008 Hunt has received wages of only $5290. Hunt argues that BBT should not be allowed to bully and threaten; and thereafter assert that attorney fees should not be allowed to Hunt based on Hunt's pro se status (as asserted by the court) where this argument was not made by BBT and not preserved in a motion under SCRCP 59(e).

iii. **The attorney fees and costs in this matter through March 6, 2013 are $2, 668, 905.00. Of this amount, $8, 000.00 has already been paid to attorneys Valtorta and Ballard by Hunt as stated in the affidavits at exhibit #s 26 and 46.**

c. **Hunt is not related to Valtorta or Ballard by blood or marriage.**

52. **SCRCP 55(b)(3) states:** Attorneys Fees. If a party seeks to recover attorneys fees in connection with a default judgment, a hearing pursuant to subdivision (b)(2) of this rule shall be required unless: (i) the party seeking attorneys fees specifies in the motion for default judgment that such motion includes a request that the court award attorneys fees and also files an affidavit of attorneys fees; (ii) notice of such motion and affidavit is provided to the defaulted party by first class mail to the last known address of such party; and (iii) no objection is filed by the opposing party within 10 days of service of such motion and affidavit.

a. Hunt argues that she has satisfied all the requirements of SCRCP 55 (b)(3) and that if Hunt has not that those deficiencies are waived where the deficiencies were not stated in the ORDER denying the MFDJ as moot and BBT failed to file a motion under SCRCP 59(e); and the brief in support of entry of default and default judgment was entered into evidence without objection by BBT.

53. In SC attorney fees are recoverable for services rendered if provided for by contract or statute. **Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750, 759 (S.C., 1997).**

54. **Statutes and Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 204, 723 S.E.2d 597, 603 (S.C. App., 2012):** Based on the allegations of the FAC where BBT on the MFDJ has conceded liability and BBT has conceded the amount of liability (as argued above) Hunt requests attorney fees based on one of the following statutes and or Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 204, 723 S.E.2d 597, 603 (S.C. App., 2012) as follows:[73]

[73] The FAC shows at paragraphs 168, 232, 308, 412, 452 and 454; and at paragraphs u, v and w on pages 37-38 that Hunt seeks attorney fees.

a. **At the fourth amended counterclaim at paragraphs 288 – 358:** Breach of Fiduciary Duty against BBT involving 62-7-1002 thru 62-7-1004 and 62-7-1001(b) –

i. **SECTION 62-7-1002.** Damages for breach of trust.
(a) A **trustee**[74] who commits a breach of trust is liable to the **beneficiaries**[75] affected for the greater of:
(1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or (2) the profit the trustee made by reason of the breach.

ii. **SECTION 62-7-1004.** Attorney's fees and costs:[76] In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

b. **At the sixth amended counterclaim at paragraphs 415 - 455:** Violation of UNFAIR TRADE PRACTICES Act: SC Code 39-5-10 thru 39-5-170 against BBT where

i. SECTION 39-5-140. Actions for damages: (a) ...Upon the finding by the court of a violation of this article, the court **shall** award to the person bringing such action under this section reasonable attorney's fees and costs.

ii. **Hunt argues that** use of the word "shall" in a statutory provision indicates the provision is mandatory. **Calhoun v. Calhoun, 339 S.C. 96, 529 S.E.2d 14 (S.C., 2000).**

iii. **The court in Jackson v Speed, 326 S.C. 289, 486 S.E.2d 750(S.C. 1997), applied the mandatory statutory provision at section 56-15-110 to attorney fees where the court allowed more attorney fees than was agreed to by contract at page 759-760.**

iv. **SECTION 56-15-110 states:** Suits for damages. (1) In addition to temporary or permanent injunctive relief as provided in Section 56-15-

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[74] Paragraph # 25 of the FAC state: BBT and employees/agents were and are a fiduciary/trustee to the IOLTA.
[75] Paragraph #23 of the FAC state: The SC Bar is a beneficiary to the IOLTA.
[76] See **First Union Nat. Bank of SC v. Soden, 333 S.C. 554, 569-570 511 S.E.2d 372 (S.C. App., 1998) and at paragraphs 22 and 25 of the FAC were Hunt states that she is a trustee to the IOLTA. In** Soden, supra, at page 569-570 the issue of attorney fees to the trustee was remanded for an inclusion of the individual factors that were stated in Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991).

40(3)(c), any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and **shall** recover double the actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Breach of Contract/Slander of Title[77] – Hunt argues that the elements that satisfy a slander of title claim has been conceded by BBT in the allegations of the FAC (paragraphs 456-506) as stated in Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 204, 723 S.E.2d 597, 603 (S.C. App., 2012) as follows:

v. BBT **published** a **false statement** when it wrongfully recorded the unfounded mortgage against Hunt's home where

1. At paragraph 499 of the FAC – BBT admits: BBT recorded the 2007 mortgage with the register of deeds for Horry County; and
2. At paragraph 501 of the FAC – BBT admits: BBT has not issued a satisfaction of the 2007 mortgage to Hunt; and
3. At paragraph 504 of the FAC – BBT admits: Hunt was forced to close and or stop paying the following accounts and loans at BBT: savings, POD trust, IOLTA and 2007 mortgage;

vi. At paragraph 503 of the FAC – BBT has admitted that: Hunt must discharge the 2007 mortgage before she can complete refinancing. Hunt argues that discharging the 2007 mortgage has **diminished the value of the property and publication** of the unfounded and false mortgage was **derogatory to Hunt's title.**

vii. BBT lacked legal justification for recording the mortgage against Hunt's home(s) where the mortgage is false, has caused damage to Hunt and or was not privileged.

viii. Hunt has requested special damages in the prayer for relief; and

ix. Through four lawsuits Hunt has taken legal action to **remedy the effects of the slanderous mortgage where the first three**

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[77] "[T]o maintain a claim for slander of title, the plaintiff must establish (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes special damages (6) as a result of diminished value of the property in the eyes of third parties." Huff v. Jennings, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct.App.1995). "Actual malice can mean the defendant acted recklessly or wantonly, or with conscious disregard of the plaintiff's rights." Constant v. Spartanburg Steel Prods., Inc., 316 S.C. 86, 89, 447 S.E.2d 194, 196 (1994). **Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 204, 723 S.E.2d 597, 603 (S.C. App., 2012).**

lawsuits were dismissed at the request of BBT and in the 4th and current lawsuit BBT is asserting foreclosure against the very property that BBT has admitted to have engaged in slander of title.

x. Hunt like Solley had no other choice than to bring this lawsuit. And thereafter, in lawsuit # 4 Hunt had no choice but to defend herself. Accordingly, Hunt is entitled to the cost of this litigation, which is the costs of motions, copies, $400 filing fee to the USDC, court reporter fees, etc and her attorney's fees and costs in bringing the action. **Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 210-211, 723 S.E.2d 597 (S.C. App., 2012).**

c. **SCRCP 41 (d) - Costs of Previously-Dismissed Action:** Hunt filed a motion under SCRCP 41 (d) on 5/27/2015 where the court denied this motion in an ORDER on 6/3/2015 where the only reason stated in the ORDER was that Hunt was pro se. SEE the arguments below.

Based on the above Hunt requests that the court reverse the 10/28/2014 Order and grant Hunt's MFDJ under SCRCP 55(a) and (b) against BBT.

The order filed on 6/03/2015 (which denied the motion for attorney fees, costs and to stay the action until the fees were paid) <u>should be</u> reversed and Hunt should be granted attorney fees and costs as follows –

55. This matter was Removed to the USDC on 11/10/2014. BBT submitted the 10/28/2014 ORDER to the USDC in support of its motion to Remand.

56. The written, signed and filed 1/13/2015 ORDER came about as the result of the oral rulings at the hearing on 10/14/2014 for BBT's 2nd MTD the FAC. As argued above the 1/13/2015 ORDER dismissing all of the FAC is **void** where subject matter jurisdiction had not been re-vested in the State Court where the State Court received a certified copy of the ORDER of Remand on 5/11/2015.

57. The 6/3/2015 ORDER involves subject matter jurisdiction where the 1/13/2015 ORDER is void where subject matter jurisdiction did not re-vest in the State Court until the state court received the certified remand ORDER on 5/11/2015 as argued below.

58. On 5/27/2015 Hunt filed a motion under SCRCP 41(d) for attorney fees and costs. Hunt did not request a hearing. BBT did not file a written response to the motion under SCRCP 41(d).

59. The statement of facts in the 5/27/2015 motion **do not** include mention of the 1/13/2015 ORDER (Hunt had no knowledge of this ORDER) and do not include mention of the 5/11/2015 ORDER of Remand - on 5/12/2015 Hunt received an uncertified copy of the

ORDER of Remand from the USDC. Hunt had no knowledge that the 5/11/2015 ORDER was different from what Hunt received from the USDC until Hunt received a copy of the 5/11/205 ORDER on 8/10/2014 from the HC clerk of court after requesting it.

60. Thereafter the court filed the ORDER on 6/03/2015 where BBT did not respond. (See above where BBT where the court not BBT asserted that the MFDJ was moot.) The basis stated by the court in the 6/3/2015 ORDER for denying Hunt's request for attorney fees and costs under SCRCP 41(d) is that Hunt is pro se where pro se litigants in SC are not awarded attorney fees because a fee is never incurred.

61. After written request to the Horry County clerk of court Hunt received the 6/3/2015 ORDER on 8/10/2015. Hunt had no kind of knowledge of the 6/3/2015 ORDER until this ORDER was received from the clerk of court on 8/10/2015.

62. Thereafter, Hunt timely filed a motion under SCRCP 59,[78] 60 and lack of jurisdiction on 8/11/2015 objecting to the court's denial of the motion based on Hunt being pro se.

63. In Limehouse, supra the SCSC states that jurisdiction is re-vested in the State Court after the State Court receives a certified ORDER of Remand. Here the clerk had a certified copy and Hunt did not; and the clerk had a copy of the 1/13/2015 ORDER and Hunt did not have a copy of the 1/13/2015 ORDER where Hunt had to request a copies of these ORDERS.

64. Hunt visited the HC clerk's computers today at the courthouse on 11/09/2015, where Hunt did not see a letter from BBT requesting the ORDERS dated 1/3/2015, 5/11/2015 and 6/3/2015. Through the first two ORDERS BBT's liability changed in this matter as can be seen through the void 1/13/2015 ORDER and the MFDJ as argued above. Hunt's address continues to be 195 D Willow Green Drive where prior to the 1/13/2015 ORDER Hunt received all of the **negative rulings** of the court.

65. **6/3/2015 ORDER should be voided:** Hunt argues that the 6/3/2015 ORDER was greatly impacted by the ORDERS filed on 1/13/2015 and 5/11/2015 and should be voided. **Issues relating to subject matter jurisdiction maybe raised at any time.** [79]

66. The court in **Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750, 759 (S.C., 1997)** states: In SC attorney fees are recoverable for services rendered if provided for by statute.

a. **SCRCP 41 (d) states - Costs of Previously-Dismissed Action.** If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court

[78] SCRCP 59 **(e) Motion to Alter or Amend a Judgment.** A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.

[79] **See Bardoon Properties, NV v. Eidolon Corp., 485 S.E.2d 371, 372-373, 326 S.C. 166 (S.C., 1997).**

may make such order[80] for the payment of **costs** of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.[81]

b. Hunt argues that the above listed statute is applicable in this matter where above in the procedural history Hunt states that there are three prior lawsuits that BBT caused to be dismissed where

c. **Hunt is not related to attorneys Valtorta or Ballard:** Here unlike in Hopkins v. Hopkins, 540 S.E.2d 454, 343 S.C. 301, 307 (S.C., 2000), Hunt is not related by blood or marriage to attorneys Valtorta and Ballard where Hunt has already incurred and paid $ 8,000.00 to Valtorta and Ballard as stated in the affidavit at exhibit #s 26 and 46; and

67. BBT IS ESTOPPED FROM ASSERTING THAT HUNT IS PRO SE: Hunt continues (see all pages of the 5/27/2015 motion) to argue that BBT is estopped by silence, waiver and or abandonment to assert that Hunt is a pro se litigant as follows –

a. PREJUDICE TO HUNT: Hunt argues that like in Parker that Hunt has been prejudiced as follows –

b. **See above at WAIVER and Equitable Estoppel.**

c. **Recommence: Upon remand the case is** - [] to recommence in the state court from the **procedural point** at which the [] County Clerk of Court received [404 S.C. 110] a certified copy of the federal court's remand order. See **Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566 (S.C., 2013).**

d. In this matter a certified copy of the ORDER of Remand was received by the Horry County clerk of court on 5/11/2015 as shown at exhibit # 87. The Order that the USDC sent to Hunt at exhibit # 86 (not certified) is different from the ORDER that was sent to the HC clerk of court (certified) at exhibit # 87.

e. After request Hunt received three ORDERS from the Horry County clerk of court on 8/10/2015: the 1/13/2015 ORDER dismissing the FAC, the 5/11/2015 certified Order of Remand and the 6/3/2015 ORDER denying attorney fees/costs based on Hunt being pro se.

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[80] It is a fact that the court signed the 1/13/2015 ORDER after removal and prior to the 5/11/2015 receipt of the certified ORDER of Remand. And thereafter, the court without input from BBT on the motion denied the motion stating that Hunt is pro se. This causes Hunt great concern that the court would make such an ORDER where BBT did not object to the motion and there was no objection in the record by BBT.

[81] If all attorney fees and costs have not been granted under one of the above statutes at **SCRCP 55 (b)(3)** then Hunt requests statutory attorney fees for services rendered by Hunt and incurred by Hunt through attorneys Valtorta and Ballard[81] under SCRCP 41 (d).

f. Thus, at the time that Hunt filed the 5/27/2015 motion Hunt had no knowledge of the 1/13/2015 ORDER; and Hunt had no knowledge that the ORDER of Remand that Hunt received from the USDC differed from ORDER of Remand that was sent to the Horry County clerk of court. If Hunt had had knowledge of the 1/13/2015 ORDER Hunt would not have filed the request for attorney fees under SCRCP 41(d).

g. BBT's argument at paragraph 11 of the **6/25/2014** 2nd MTD the FAC states: The [Amended] Counterclaims fail to allege any basis for an award of attorneys' fees and costs.

h. BBT's argument at paragraph 11 of the **6/25/2014** 2nd MTD the FAC of "the [Amended] Counterclaims fail to allege any basis for an award of attorneys' fees and costs" is not preserved as argued above.

i. As shown on the first page of the **9/30/2014** MFDJ Hunt submitted the affidavit at exhibit # 46 requesting attorney fees where BBT did not respond in writing within 10 days to the MFDJ; and

j. At exhibit # 107 the transcript of the **10/14/2014** hearing on BBT's 2nd MTD the FAC shows that at the hearing that BBT did not assert that the [Amended] Counterclaims fail to allege any basis for an award of attorneys' fees and costs; and

k. On **10/16/2014** the Court filed Hunt's brief labeled: Brief in opposition to Plaintiff's 6/23/2014[82] Second Motion To Dismiss the First Amended Counterclaims; Brief in support of entry of default and default judgment where in the brief Hunt requests attorney fees under SCRCP 55 (b)(3). BBT did not object to this request by Hunt as stated herein.

l. The **10/28/2014** ORDER (of the 10/14/2015 hearing which resulted in the void 1/13/2015 ORDER) **did not** include a ruling on attorney fees to Hunt; and

m. The void **1/13/2015** ORDER (of the 10/14/2015 hearing) **did not** include a ruling on attorney fees to Hunt (BBT wrote the 1/13/2015 ORDER); and

n. On **5/11/2015** the clerk of the Horry County Court received a certified copy of the ORDER of Remand.

o. On **5/27/2015** Hunt filed the motion under SCRCP 41(d) requesting attorney fees and costs.

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[82] **Correction:** this 2nd MTD the FAC was filed by the clerk of court on 6/25/2014.

p. Hunt filed the motion under SCRCP 41 for attorney fees and costs on 5/27/2015 where the statement of relevant facts at page 2 **do not** include mention of the 1/13/2015 ORDER where Hunt had no knowledge of the 1/13/2015 ORDER.

q. And thereafter Hunt wrote to the clerk of court on 7/27/2015 stating that Hunt had not received any ORDERS from the clerk in 2015.

r. **NO OBJECTION IN THE RECORD for ATTORNEY FEES to Hunt without the void 1/13/2015 ORDER:** If the ORDER from the 10/14/2014 hearing **had not been** filed during removal **then** BBT still **did not** preserve any of the objections asserted in the 2nd MTD the FAC that were not ruled on in the [void] 1/13/2015 ORDER and BBT **did not** preserve any of the objections that BBT might have had that were not ruled on in the 10/28/2014 ORDER were BBT did not timely make a motion under SCRCP 59(e)[83] such that there is no objection in the record by BBT against attorney fees to Hunt or attorneys Valtorta and Ballard where Hunt has already paid these two attorneys $8,000.00 as shown at exhibit #s 26 and 46; and

s. **NO OBJECTION IN THE RECORD for ATTORNEY FEES to Hunt with the void 1/13/2015 ORDER:** BBT **did not** preserve any of the objections asserted in the 2nd MTD the FAC that were not ruled on in the void 1/13/2015 ORDER and BBT **did not** preserve any of the objections that BBT might have had that were not ruled on in the 10/28/2014 ORDER were BBT did not timely make a motion under SCRCP 59(e)[84] such that there is no objection in the record by BBT against attorney fees to Hunt or attorneys Valtorta and Ballard where Hunt has already paid these two attorneys $8,000.00 as shown at exhibit #s 26 and 46; and

t. Almost 13 and 10 months respectively after the 10/14/2014 hearing, after the 10/28/2014 ORDER (that should be reversed where the MFDJ is not moot) and after the void 1/13/2015 ORDER - the court denied Hunt's 5/27/2013 motion on **6/3/2015. BBT received notice of the motion** under SCRCP 41(d) where BBT did not file any kind of a written response to the motion under SCRCP 41 (d) for attorney fees and costs. Instead the court supplied a response for BBT.

u. Hunt argues that the court should not be allowed to make arguments for BBT where there was NO OBJECTION IN THE RECORD for ATTORNEY FEES to Hunt with or without the void 1/13/2015 ORDER.

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[83] See above at **No motion under SCRCP 59(e).**
[84] See above at **No motion under SCRCP 59(e).**

v. From 5/27/2015 onward Hunt was knee deep researching the 1/13/2015 ORDER being filed during removal and prior to remand where Hunt consulted other attorneys.

w. Thereafter, Hunt wrote to the clerk of court on 7/27 /2015 stating that Hunt had not received any ORDERS from the clerk in 2015. Hunt received notice and knowledge for the first time of the 6/3/2015 ORDER on 8/10/2015.

Here like in Parker, supra the prejudice to Hunt is apparent and is more than sufficient to establish Hunt's defense of equitable estoppel and waiver.

As such, Hunt respectfully moves the Court for an Order reversing the 6/03/2015 ORDER and granting attorney fees and costs to Hunt in the amount of $2,668,905.00; or voiding the 6/3/2015 ORDER.

Conclusion:

As such, Hunt respectfully moves the Court for an Order

1. Reversing and vacating as void the Court's 1/13/2015 Order because the absence of a certified remand order precluded jurisdiction from re-vesting in the state court until the state court received the certified ORDER of Remand on 5/11/2015; and

2. Reversing the 10/28/2014 ORDER and for an ORDER that grants Hunt MFDJ under SCRCP 55(a) and (b) as requested in the MFDJ and in the Brief in support of entry of default and default judgment; and

3. Reversing the 6/03/2015 ORDER and for an ORDER granting attorney fees and costs to Hunt in the amount of $2,668,905.00 or voiding the 6/3/2015 ORDER.

Respectfully submitted,

C B Hunt

Cindy B. Hunt,
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: November 10, 2015

Blank

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 1

IRS Form 1098

#1

January 2011 IRS Form 1098 from BBT

Exhibit # 1

Number of Pages 3

1272

Substitute IRS Form 1098

BB&T

5119750 900-01-05-10
CINDY B HUNT
195 WILLOW GREEN DR UNIT D
CONWAY SC 29526-9382

This is your substitute 1098 for your mortgage loan. If your loan is escrowed, refer to your last escrow analysis for detailed escrow information. Please review the Borrower Tax ID number below. If the Tax ID is incorrect, please contact a Mortgage Loan Client Service Representative at 1-800-295-5744. You can access your mortgage loan information online by using BB&T OnLine at www.bbt.com.

Property Address: 195 -D WILLOW GREENS DR
CONWAY SC

Account Status

BB&T's EIN			Loan Number: [redacted]
Borrower Tax ID	[redacted]	Suspense Balance	$0.00
Principal Balance	[redacted]	Late Charges Due	$0.00
Forbearance Balance	$140,069.48	Other Fees Due	$0.00
Escrow Balance	$0.00	Interest Rate	6.375%
	$186.49	Due Date	03/01/11

YTD Information

Property Taxes Disbursed	$482.45	Other Disbursed	$0.00
Homeowner/Flood Insurance Disbursed	$0.00	Interest on Escrow	$0.00

Total Interest Applied in 2010 - Next Due Date 03/01/11	$9,000.03
Less Deferred Interest Assessed (Added to Principal Balance)	$0.00
Less Buydown/Subsidy Payments	$0.00
Less HUD Payments (Not deductible from FIT)	$0.00
Less Capitalized Interest	$0.00
Less Interest Prepaid in 2010 for 2011	$745.04
Plus Payments Applied to Previously Deferred Interest	$0.00
Plus Interest Prepaid in 2009 for 2010	$755.74
Plus Late Charges Paid	$0.00
Plus Prior Years 1098 Statement Interest Correction	$0.00
2010 Net Interest Payments Reported to IRS	**$9,010.73**

Substitute Form 1098 OMB No. 1545-0901 ***Copy B for Payer - 2010***

The information in Boxes 1, 2, 3, and 4 is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if the IRS determines that an underpayment of tax results because you have overstated a deduction for this mortgage interest or for these points or because you did not report this refund of interest on your return. The amount shown may not be fully deductible by you on your federal income tax return. Limitations based on the cost and value of the secured property may apply. In addition, you may only deduct an amount of mortgage interest to the extent it was incurred by you, actually paid by you, and not reimbursed by another person.

Box 1	Mortgage Interest Received from Payers(s)/Borrower(s)	$9,010.73
Box 2	Points Paid	$0.00
Box 3	Refund of Overpaid Interest	$0.00
Box 4	Mortgage Insurance Premiums	$0.00

(Keep For Your Records)
Department of the Treasury - Internal Revenue Service

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Customer Service Information

Contact Methods:

- BB&T OnLine at www.bbt.com - BB&T OnLine provides quick information on your mortgage loan with several types of self help features:
  - Viewing loan balances and activity
  - Making one time payments
  - Setting up automatic payment drafts
  - Viewing your year end statement/IRS form 1098
  - Changing your mailing address
- **Call 1-800-295-5744** to receive automated account information or to speak to a Mortgage Loan Client Service Representative between the hours of 8:30 AM and 5:00 PM (ET) Monday through Friday
- **Additional Contact Information:**

Payment Address:
BB&T Mortgage
P. O. Box 580022
Charlotte, NC 28258-0022

BB&T Mortgage Customer Service
P. O. Box 2467
Greenville, SC 29602-2467
Telephone: (800) 295-5744
Fax: (864) 242-9531

BB&T Mortgage Collections, Bankruptcy, and Foreclosure
P. O. Box 2027
Greenville, SC 29602-2027
Telephone: (800) 827-3722
Fax: (864) 242-9533

Other Important Customer Service Information:

- **Make your payment online** with BB&T OnLine at www.bbt.com
- **Make checks payable to BB&T Mortgage.** Please write your loan account number on your check or money order. DO NOT MAIL CASH. Please do not include correspondence with your payment. Correspondence must be mailed to the Customer Service Address listed above.
- **Late Charges** are assessed according to the terms of your loan. To avoid late charges, make sure that BB&T Mortgage receives your payment on or before the due date.

Automatic Draft Setup

- Use BB&T OnLine at www.bbt.com to setup your automatic draft, or
- Contact a Mortgage Loan Client Service Representative at 1-800-295-5744

Insurance Reminders

Policy Amount - For your protection and to meet the requirements of your loan, please consult with your agent, broker, or insurance carrier to determine the replacement value of your property and available coverage. Your coverage should be sufficient to allow for claims to be settled on a replacement cost basis.

Renewal Policies and Invoices - are due in this office 30 days prior to the expiration of your existing policy. Give your agent your Mortgage Loan Account Number to expedite handling. Failure to renew coverage will result in our ordering coverage to protect your mortgage interest. Please notify our agent to include your Mortgage Loan Account Number and forward the bill directly to: BB&T Mortgage, P. O. Box 7933, Springfield, OH 45501-7933.

Property damage - Settlement checks will include our name as payee. To protect our interest under the terms of the mortgage, we will require evidence that the property has been properly restored prior to our release of insurance loss proceeds. Report the loss to your insurance agent immediately and contact us at 888-882-1827.

Property Tax Reminders

Additional Assessments/Supplemental Bills - Promptly send all additional assessments/supplemental bills for escrowed accounts to: BB&T Mortgage Tax Department, P. O. Box 2387, Greenville, SC 29602-2387. Any delay in sending these documents may result in penalties and interest, which may be charged to your escrow account.

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 2

Articles of merger for BBT and CFB

Articles of Merger

Exhibit # 9

Number of Pages 3

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OFFICE OF THE COMMISSIONER OF BANKS

CERTIFICATE OF AUTHORITY
FOR ARTICLES OF MERGER

Branch Banking and Trust Company, Winston-Salem, Forsyth County, North Carolina, a North Carolina state chartered commercial bank, and Coastal Federal Bank, Myrtle Beach, South Carolina, a federal savings bank, have submitted to me as Commissioner of Banks for the State of North Carolina, Articles of Merger between the said institutions for the purpose of merging Coastal Federal Bank into Branch Banking and Trust Company with the surviving institution being Branch Banking and Trust Company.

I hereby certify that these Articles of Merger were duly approved by the North Carolina State Banking Commission on the 23rd day of May, 2007, as appears in the official records of the Commission filed with me and kept under my direction and supervision. Authority to file the Articles of Merger is, therefore, granted.

This the 23rd day of May, 2007.

Joseph A. Smith, Jr.
Commissioner of Banks

1277

SOSID: 0023695
Date Filed: 7/31/2007 10:25:00 AM
Effective: 8/17/2007
Elaine F. Marshall
North Carolina Secretary of State
C200721200023

State of North Carolina
Department of the Secretary of State

ARTICLES OF MERGER

Pursuant to North Carolina General Statute Sections 55-11-05(a), 55A-11-09(d), 55A-11-04, 57C-9A-22(a), 59-73.32(a) and 59-1072(a), as applicable, the undersigned entity does hereby submit the following Articles of Merger as the surviving business entity in a merger between two or more business entities.

1. The name of the surviving entity is Branch Banking and Trust Company, a *(check one)* [X] corporation, [ ] nonprofit corporation, [ ] professional corporation, [ ] limited liability company, [ ] limited partnership, [ ] partnership, [ ] limited liability partnership organized under the laws of North Carolina *(state or country)*.

2. The address of the surviving entity is:
Street Address 200 West Second Street City Winston-Salem
State North Carolina Zip Code 27101 County Forsyth
(Complete only if the surviving business entity is a foreign business entity that is not authorized to transact business or conduct affairs in North Carolina.) The mailing address of the surviving foreign business entity is: _____.
The Surviving foreign business entity will file a statement of any subsequent change in its mailing address with the North Carolina Secretary of State.

3. For each merging entity: *(if more than one, complete on separate sheet and attach.)*
The name of the merged entity is Coastal Federal Bank, a *(check one)* [X] corporation, [ ] nonprofit corporation, [ ] professional corporation, [ ] limited liability company, [ ] limited partnership, [ ] partnership, [ ] limited liability partnership organized under the laws of the United States *(state or country)*.

4. If the surviving business entity is a domestic business entity, the text of each amendment, if any, to the Articles of Incorporation, Articles of Organization, or Certificate of Limited Partnership within the Plan of Merger is attached. No Amendments.

5. A Plan of Merger has been duly approved in the manner required by law by each of the business entities participating in the merger.

6. These articles will be effective upon filing unless a delayed date and/or time is specified 11:59 p.m. on August 17 , 2007

This the 1 day of August, 2007.

Branch Banking and Trust Company
Name of Entity

Christopher L. Henson
Signature

Christopher L. Henson Senior Executive Vice President and Chief Financial Officer

NOTES:
1. Filing fee is $50 for For-profit entities.
2. Filing fee is $25 for Non-profit entities.
3. This document must be filed with the Secretary of State. Certificate(s) of Merger must be registered pursuant to the requirements of N.C.G.S. Section 47-18.1

(Revised September 2005)
CORPORATIONS DIVISION P. O. BOX 29622 RALEIGH, NC 27626-0622 *(Form BE-15)*

1278

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 3

Affidavit of CB Hunt

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Exhibit # 3

Number of Pages 8

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CINDY B. HUNT,	)	
Plaintiff,	)	
vs.	)	
Branch Banking & Trust Company,	)	
Danny Fogle, Cathy Lambert,	)	c/a 4:09-cv-02151-JMC-TER
Kaci Sansbury, Judy Teal,	)	
Mark Booz and David Craven,	)	
Defendants.	)	
_____	)	

AFFIDAVIT OF CINDY B. HUNT

PERSONALLY APPEARED BEFORE ME, Cindy B. Hunt, who after being duly sworn and deposed states as follows:

1. The matters contained herein are based upon my personal knowledge.
2. I am an attorney licensed to practice law in South Carolina.
3. The general facts and background are:
    a. In August 1993 the Plaintiff applied for a mortgage from BB&T for the property on Cultra Road.
    b. Defendant Fogle told the Plaintiff that she would need to open a checking account at BB&T as a condition of the mortgage. A few weeks later the Plaintiff opened a regular checking account at Defendant BB&T.
    c. From August 1993 through March 2008 the Plaintiff did all of her banking at Defendant BB&T. (exhibit 10)
    d. The Plaintiff had her Interest on Lawyers Trust Account (IOLTA) at Defendant BB&T Bank from April 1996 through May 2008. (exhibit 10)

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e. In May 2000 the Plaintiff converted her regular checking account to a POD trust account at Defendant BB&T at the recommendation of Defendant Fogle. (exhibit 4 & 10)

   i. The POD trust account was opened by Defendant Lambert. The Plaintiff was the trustee and she named Ms. Davis as the beneficiary of the POD Trust. (exhibit 4)

   ii. The POD trust was a Coastal Banker Gold (CBG) account that cost the Plaintiff five or seven dollars a month. The CBG had benefits with a value of over $150,000.00. (exhibit 10)

f. In April 2004 the Plaintiff deposited a check that was for legal services at Defendant BB&T for $225.25. The check was returned for insufficient funds. Defendant BB&T did not make the setoff against the IOLTA. Instead Defendant BB&T made a setoff against the Plaintiff's POD trust account. (exhibit 5)

g. In September 2004 Ms. Davis got a mortgage for a second home at Defendant BB&T where she stated in writing in her mortgage documents **twice** (9/18/2004 & 9/24/2008) that she had no existing accounts at Defendant BB&T. (exhibit 6 & 12)

h. In April 2006 BB&T reported Ms. Davis to a credit reporting agency for being late on a mortgage payment. (exhibit 6)

i. The Plaintiff in May 2007 did a mortgage refinance and debt consolidation at Defendant BB&T. (exhibit 7)

   i. The Plaintiff's mortgage loan application was already filled in when she arrived at the office of Karen Butcher, a BB&T mortgage loan officer in May 2007. (exhibit 8)

   ii. The Plaintiff's May 2007 mortgage loan application accurately listed the loans of the Plaintiff at BB&T: car, commercial and mortgage.

   iii. In May 2007 after the car payoff and debt consolidation of the mortgage and commercial loans the Plaintiff had only one loan at BB&T: a mortgage. The Plaintiff still has this mortgage at Defendant BB&T.

   iv. The Plaintiff read and relied on the mortgage application.

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j. Plaintiff (and two other people) had a CD at Defendant BB&T from 10/09/2006 through 5/07/2007 with a deposit amount of $434,744.90. (exhibit 9)

k. The Plaintiff's customer profile from Defendant BB&T Bank was given to her by Tamara Cannon, a branch manager of Defendant BB&T, on 7/19/2007. The Plaintiff read and relied on the customer profile and attached documents, herein referred to as customer profile. (exhibit 10)

l. Pre-merger Accounts: Defendant BB&T in May and June of 2007 mailed the Plaintiff letters that listed her accounts and stated that after the merger new account numbers would be assigned to these accounts. (exhibit 11)

    i. Defendant BB&T failed to disclose to the Plaintiff that there were two unauthorized loans in the Plaintiff's customer profile, etc.

m. The 7/19/2007 customer profile shows that the Plaintiff had the following accounts at Defendant BB&T: Checking-Direct Free Interest (savings account); Checking-Interest Checking (POD Trust); Debit Card; **transfer management (an unauthorized loan)**; a closed auto loan; a closed conventional mortgage; an active conventional mortgage; **Portfolio (an unauthorized loan)**; a closed commercial loan; Credit Card and the Plaintiff's IOLTA. (exhibit 10)

    i. The Plaintiff did not apply for loans called: transfer management and portfolio.

    ii. The Plaintiff did not receive any money from loans called: transfer management and portfolio.

    iii. The Plaintiff did not repay loans called: transfer management and portfolio.

    iv. The Plaintiff read and relied on the customer profile.

    v. The Plaintiff's July 19, 2007 customer profile was last updated on May 30, 2007.

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n. On January 19, 2008 Ms. Davis, who lives in Maryland, went to the Defendant BBT in Conway, SC to check on why the Bank had reported her as late on the April 2006 mortgage payment. (exhibit 6)

   i. At that time Ms. Davis' social security number and property address were entered into the mortgage portion of the system at Defendant BB&T by Defendant Sansbury and the Plaintiff's POD trust account came up. (exhibit 12 & 15)

   ii. Defendant Sansbury went on to disclose that the account was owned by the Plaintiff; that Ms. Davis was the beneficiary and the amount of the current dollar balance of the POD trust to Ms. Davis. (exhibit 12)

o. On Jan 22, 2008, after the holiday weekend, the Plaintiff begin complaining to Defendant BB&T about the disclosure to Ms. Davis.

p. On March 10, 2008 Defendant Attorney Craven (Senior Vice President of Defendant BB&T) wrote to the Plaintiff (exhibit 13):

   i. The March 10, 2008 letter from Defendant Craven **failed to disclose** to the Plaintiff the two unauthorized loans in the Plaintiff's customer profile along with the Plaintiff's IOLTA, POD trust, savings account, mortgage and other accounts, etc.

   ii. The March 10, 2008 letter from Defendant Craven stated that the **POD trust account balance had not been disclosed** to Ms. Davis and **there was no breach of fiduciary duty**, etc.

q. **Start of FDIC Proceedings:** The Plaintiff reported the January 19, 2008 disclosure of the POD trust account information to Ms. Davis to the FDIC in March 2008. This letter was received by the FDIC on March 24, 2008. (exhibit 14)

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r. On March 24, 2008 the Plaintiff **closed her savings account** at Defendant BB&T.

s. On April 11, 2008 Defendant Judy Teal, Senior Vice President Regional Branch Operations Manager, for Defendant BB&T wrote to the FDIC. (exhibit 15) The Defendant Teal is not an attorney.

t. Defendant Teal in her April 11, 2008 letter to the FDIC stated that: (exhibit 15)

   i. The Plaintiff's POD trust account came up because at its inception in May 2000 it was set up with an **unauthorized beneficiary profile**.

   ii. Defendant Sansbury on 1/19/2008 was **unable to locate** the Davis mortgage.

   iii. The unauthorized beneficiary profile, that resulted in the Plaintiff's POD trust account coming up on January 19, 2008 when Ms. Davis' social security number and name was entered in the mortgage portion of the system, **had been deleted**. (exhibit 15)

u. Defendant Craven had copied his March 10, 2008 letter to the Plaintiff to the Defendants Teal and BB&T. (exhibit 13)

v. The April 11, 2008 letter from Defendant Teal to the FDIC contained two letters: one from Defendant Teal and one from Defendant Craven. (exhibit 13 & 15)

   i. The April 11, 2008 letters from Defendants Craven and Teal **failed to disclose** to the Plaintiff and the FDIC the two unauthorized loans in the Plaintiff's customer profile along with the Plaintiff's IOLTA, POD trust, savings account, mortgage and other accounts, etc.

   ii. The April 11, 2008 letters from Defendants Craven and Teal stated that the POD trust account balance had not been disclosed to Ms. Davis, etc.

w. In April 2008 the Plaintiff cashed a check that was for legal services at Defendant BB&T for $855.00. The check was returned for stop payment. Defendant BB&T did not make

the setoff against the IOLTA. Instead Defendant BB&T made a setoff against the Plaintiff's POD trust account. (exhibit 16)

x. On May 8, 2008 the FDIC made a finding of Gramm Leach Bliely Act (GLBA) violation against Defendant BB&T for disclosing the existence of the POD trust account at Defendant BB&T. (exhibit 17)

y. On May 8, 2008 the FDIC also wrote to the Defendant BB&T requesting their position on an opt out requirement or exception to GLBA. (exhibit 18)

z. On May 15, 2008 Defendant Attorney Booz wrote to the FDIC asserting that an exception to the finding of a GLBA violation was applicable to Defendant BB&T. (exhibit 19)

   i. The May 15, 2008 letter from Defendant Booz **failed to disclose** to the Plaintiff and the FDIC the two unauthorized loans in the Plaintiff's customer profile along with the Plaintiff's IOLTA, POD trust, savings account, mortgage and other accounts, etc.

   ii. The May 15, 2008 letter from Defendant Booz, referred the FDIC to the April 11, 2008 letter from Defendant Teal to the FDIC, specifically to the factual exchange between Defendant Sansbury and Ms. Davis to include that the POD trust account balance had not been disclosed to Ms. Davis, etc.

aa. On May 19, 2008 the Plaintiff closed her IOLTA and POD trust accounts at Defendant BB&T.

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bb. On June 6, 2008 the Plaintiff wrote to the FDIC and among other things requested an on site investigation. (exhibit 20)

i. The Plaintiff believes that the FDIC did not do an onsite investigation where it relied on the letters of Defendant Attorney Craven, Defendant Attorney Booz and Defendant Teal and their assertion of a procedure that resulted in an unauthorized beneficiary profile and no breach of fiduciary duty, etc. (exhibits 13, 15 & 19)

cc. Also, the Plaintiff's 6/6/2008 letter to the FDIC contained an affidavit from Ms. Davis. (exhibit 20 & 12)

i. The affidavit of Ms. Davis contradicted the statement of Defendants Teal, Booz and Craven where she stated that the POD account balance was disclosed to her and she correctly stated the amount of the balance as listed in the Plaintiff's monthly bank statement from Defendant BB&T.

dd. On 6/27/2008 Defendant Teal wrote to the FDIC. This letter was in response to the Plaintiff's June 6, 2008

respond. (exhibit 22, 12, & 20)

ii. The June 27, 2008 letter from Defendant Teal **failed to disclose** to the Plaintiff and the FDIC the two unauthorized loans in the Plaintiff's customer profile along with the Plaintiff's IOLTA, POD trust, savings account, mortgage and other accounts. (exhibit 21)

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iii. Defendant Teal included in her June 27, 2008 letter to the FDIC a copy of **one of two** of the Defendant BB&T's Banking Service Agreements (BSA). (exhibit 21)

1. Defendant BBT has a BSA for non-commercial accounts. (exhibit 23)
2. Defendant BB&T has a BSA for commercial accounts. (exhibit 24) The Plaintiff's IOLTA is a commercial account. (exhibit 10)
3. Defendant Attorney Booz has asserted that this Court lacks personal jurisdiction over him. Both of the BSA contains a law governing your account clause.

iv. On August 7, 2008 the FDIC responded to the Plaintiff's June 6, 2008 letter. (exhibit 25)

ee. **End of FDIC Proceedings.**

Cindy B. Hunt

Cindy B. Hunt

Sworn to and subscribed before me this
15th Day of November, 2010.

Kristy H. Gordon (L.S.)
Notary Public State of South Carolina
My commission expires: 6-29-19

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 4

POD signature card

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Exhibit # 4

Number of Pages 2

1290

Confidential - For Internal Use Only

Account # / Tax Id: 1410000280744

02/26/2008

1 - 2 3 - 4

Coastal Federal Savings Bank ("the Financial Institution")

Account Holder Name(s): **CINDY B HUNT TRUSTEE COSTELLA HUNT DAVIS BENEF** **0552006407**

Reporting SSN/TIN: [redacted]

Mailing Address: **3108 CULTRA RD, CONWAY, SC 29526-3711**

Telephone Number: **(843) 365-0172** Work # ( )

Number of Signatures Required: 1 CIF Number: [redacted]

PERSONAL

Signatures of Authorized Individuals. This Agreement is subject to all terms below.	
x Cindy B. Hunt	
CINDY B HUNT	

(Signatures and printed names of each account signer)

The Authorized Individual(s) signing above agree(s), jointly and severally if multiple signers, to the terms set forth in the Deposit Account Agreement and Disclosure, the Time Certificate of Deposit and Agreement (if applicable), the Rate and Fee Schedule, the Funds Availability Policy Disclosure and the Electronic Funds Transfer Agreement and Disclosure if requested below, as amended by the Financial Institution from time to time. Each of the Authorized Individual(s) signing also acknowledge that the Financial Institution provided at least one copy of these deposit account documents.

Account Purpose: **Consumer**

EFT Services: No

ACCOUNT OWNERSHIP **Payable on Death**

ACCOUNT TYPE **Coastal Banker Gold T94**

ACCOUNT NUMBER **0552006407**

Date Opened	Date Revised	Opening Deposit	ATM Card	Verified By	OPENED BY Lambert
05-31-00		$0.00	N		Account Formerly With
Date Closed	**Closing Balance**	**Closed By**	**Reason For Closing**	**Statement Disposition**	**Service Chg Disposition**
				Hold	Regular

DEPOSIT PRO, Reg. U.S. Pat. & T.M. Off., Ver. 5.040.11(64,09,01,08 (c) 2000 CPI ProServices, Inc. All Rights Reserved. SC - SC - L7649.29

Coastal Federal Savings Bank ("the Financial Institution")

Account Holder Name(s): **CINDY B HUNT TRUSTEE COSTELLA HUNT DAVIS BENEF** **0552006407**

Reporting SSN/TIN: [redacted]

Mailing Address: **3108 CULTRA RD, CONWAY, SC 29526-3711**

Telephone Number: **(843) 365-0172** Work # ( )

Number of Signatures Required: 1 CIF Number: [redacted]

PERSONAL

Signatures of Authorized Individuals	
X	
CINDY B HUNT	

Opened by: [redacted] Date/Ref:

Confidential - For Internal Use Only

Account # / Tax Id: 1410000280744

02/26/2008

1-23-4

The following information may be used to further identify individual(s) for telephone instructions, large transactions, or if a signature varies. MMN=Mother's Maiden Name

Name: CINDY B HUNT SSN: [redacted]
Street: 3108 CULTRA RD, CONWAY, SC 29526-3711
Mailing:
Phone: (H): (843) 365-0172 (W): ( ) -
Job:
DOB: [redacted]
ID: [redacted]
MMN: HUNT

Name:
Street:
Mailing:
Phone: (H): SSN:
Job: (W):
DOB:
ID:
MMN:

Beneficiary / Payee: COSTELLA HUNT DAVIS SSN/TIN: [redacted]

TIN/BACKUP WITHHOLDING

Important: Under penalties of perjury, I certify that the number shown above is my correct taxpayer identification number and that (check appropriate box): Reporting SSN: 247-06-5778

☒ I am not subject to backup withholding, because I am exempt from backup withholding, or because I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or because the IRS has notified me that I am no longer subject to backup withholding.

☐ I am subject to backup withholding.

☐ I am not a United States citizen or resident.

Signature of Authorized Individual: X Cindy B. Hunt Date

COASTAL BANKER CHECKING / COASTAL BANKER GOLD CHECKING
Membership Enrollment

(Please Print) Account Name: Cindy B Hunt
Address: 3108 Cultra Rd City: Conway State: SC Zip: 29526
Account Number: [redacted]

Member acknowledges receipt of program membership materials and agrees to the terms of the insurance coverage, other services, any applicable monthly membership dues, and any announced changes in fees or services. COASTAL BANKER CHECKING insurance coverage will be in effect if member fails to select plan below. Insurance coverage is divided equally on joint accounts. See reverse side for important information before signing.

☐ COASTAL BANKER CHECKING — Includes Accidental Death Insurance as described in the insurance certificate.
☐ COASTAL BANKER GOLD CHECKING — Includes Accidental Death Insurance as described in the insurance certificate.
☐ UPGRADE from COASTAL BANKER CHECKING to COASTAL BANKER GOLD CHECKING.

MEMBER SIGNATURE: Cindy B Hunt DATE OF BIRTH: [redacted]
Only one of Joint Account members need sign.

FOR COASTAL FEDERAL SAVINGS BANK USE ONLY
Enrollment Date: 9-12-95 (Date received by FI)
Routing/Transit No: [redacted] Branch No.: 0101213
☐ Individual Account ☐ Joint Account ☐ Employee Account
Mail Original to: Financial Services Association, P.O. Box 41511, Nashville, TN 37204-1511
Date Mailed To FSA: 9/12/95 (Retain bottom copy for FI files.)
0895

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 5

Setoff $225.25 against POD Account

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Exhibit # 5

Number of Pages 1

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REGARDING YOUR ACCOUNT NUMBER	THE ITEM IS	IN THE AMOUNT OF	THIS ITEM IS	DATE
[redacted]	☐ ATM/DEBIT ITEM OF: _____ ☑ A CHECK ☐ A DRAFT REASON NUMBER 1,9 (SEE KEY)	$ 225.25 RETURN FEE OF $ 4.00	☐ BEING HELD ☐ DEBITED FROM YOUR ACCOUNT ☐ CREDITED TO YOUR ACCOUNT ☑ ENCLOSED WITH THIS ADVICE ☐ WAS RETURNED TO US UNPAID ISSUED BY: _____ ☐ NOTICE OF ADJUSTMENT	4/1/04 CUSTOMER REPRESENTATIVE # 24

REQUIRED ACTION:

☐ 1. PLEASE REMIT FUNDS PROMPTLY
☐ 2. CONTACT THE COASTAL FEDERAL OFFICE WHERE YOU CONDUCT BUSINESS
☐ NONE

COASTAL FEDERAL BANK

CUSTOMER COPY

REASON KEY

1. INSUFFICIENT FUNDS
2. UNCOLLECTED FUNDS
3. ENDORSEMENT MISSING
4. ACCOUNT CLOSED
5. PAYMENT STOPPED
6. REFER TO MAKER
7. DEPOSIT/PAYMENT NOT CORRECT
8. INCOMING WIRE
9. RETURN DEPOSIT ITEM

10. OTHER: _____

Blank

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 6

Affidavit of Davis

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Exhibit # 6

Number of Pages 74

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CINDY B. HUNT,
Plaintiff,

vs.

Branch Banking and Trust Company, Danny Fogle, Cathy Lambert, Judy Teal, Mark Booz, David Craven and Kaci Sansbury,
Defendants.

C/A 4:09-cv-02151-TLW

AFFIDAVIT OF Costella H. Davis

PERSONALLY APPEARED BEFORE ME, Costella H. Davis, who after being duly sworn and deposed, states as follows:

I am over the age of eighteen (18) years and I am competent to state the matters set forth herein. The matters contained herein are based upon my personal knowledge.

1. I am currently and have been employed with the Federal Government for almost 34 years. My office is located in Washington, DC.

2. For the past thirty six (36) I have lived and resided in the Washington, DC metropolitan area. For the past ten years I have lived and resided at the permanent address on my attached mortgage application: 3807 Clairton Drive, Mitchellville, MD.

3. The property located at Willow Green Drive in Conway, SC is used by my family when we visit Conway, SC. My husband and I purchased this property with a mortgage from Coastal Federal Bank in September 2004 (see attached mortgage application and documents).

4. With the mortgage on the Conway home our monthly expenses had increased greatly. To help with the large amount of money going out each month we took the equity from our home in Maryland and paid off the Coastal Federal Bank mortgage in April 2006.

5. On January 19, 2008 I went to BB&T formerly Coastal Federal Bank. The mortgage matter that caused me to visit the bank on January 19, 2008 was that the bank had reported me to the credit bureau as being late on the final/last/payoff mortgage payment (please see the attached two pages of my credit report).

1299

6. My visit to the bank on January 19, 2008 had nothing to do with the paid interest amount for the last year of the loan. Paid interest amount was never discussed by either me or Ms. Sansbury.

7. During my visit to the bank on January 19, 2008 Ms. Sansbury never was able to locate my loan/loan history.

8. At no time prior to, during or after the mortgage on the property in Conway have I ever received any paper work or month statements from CFB/BB&T or anyone having to do with the payable on death account of Cindy B. Hunt.

Costella H. Davis
Senior Contract Specialist
Department of Homeland Security
202 447-5571 (wk)

Sworn to and subscribed before me this
13th Day of September, 2010.

(L.S.)

My commission expires: Jared V. Ferris
Notary Public, District of Columbia
My Commission Expires 1/1/2015

JARED VINCE FERRIS NOTARY PUBLIC DISTRICT OF COLUMBIA

1300

TransUnion

Personal Credit Report

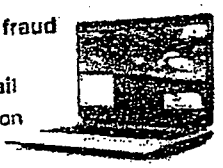
COSTELLA H. DAVIS
Source: TransUnion

October 23, 2009
Available until Nov 22, 2009

Get Instant Message Updates About Your Credit Report

- Alerts you to possible fraud
- Sent to your desktop
- No need to check email

Free downloadable application
Learn more >>



Display a printer friendly version
Found an inaccuracy? Click to learn about correcting

File Number: 212847369
Date Issued: 10/23/2009

Personal Information

Name: COSTELLA H. DAVIS
Other Names: DAVIS,COSTELLA,HUNT
You have been on our files since 10/1984

SSN: XXX-XX-[redacted]
Date of Birth:
Telephone 262-7117
Your SSN is partially masked for your protection

CURRENT ADDRESS

Address: 3807 CLAIRTON DR.
MITCHELLVILLE, MD 20721
Date Reported: 12/1999

PREVIOUS ADDRESSES

Address: 4621 DAVIS AV.
SUITLAND, MD 20746
Date Reported: 08/1993

Address: 3223 31ST AV.
TEMPLE HILLS, MD 20748

EMPLOYMENT DATA REPORTED

Employer Name: DEPT OF HOMELAND SEC
Date Verified: 12/2008
Position:
Date Hired: 12/2006

Special Notes: Your Social Security number has been masked for your protection. You may request disclosure of the full number by writing to us at the address found at the end of this report. Also if any item on your credit report begins with 'MED1', it includes medical information and the data following 'MED1' is not displayed to anyone but you except where permitted by law.

Account Information

The key to the right helps explain the payment history information contained in some of the accounts below. Not all accounts will contain payment history information; but some creditors report how you make payments each month in relation to your agreement with them.

NA	X	OK	30	60	90	120
Not Applicable	Unknown	Current	30 days late	60 days late	90 days late	120 days late

Adverse Accounts

The following accounts contain information that some creditors may consider to be adverse. Adverse account information may generally be reported for 7 years from the date of the first delinquency, depending on your state of residence. The adverse information in these accounts has been printed in >brackets< or is shaded for your convenience, to help you understand your report. They are not bracketed or shaded this way for creditors. (Note: The account # may be scrambled by the creditor for your protection).

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BB&T #[redacted]

2713 FOREST HILLS
WILSON , NC 27893
Phone number not available

Balance:	$0	**Pay Status:**	>30 Days Past Due<
Date Updated:	04/2006	**Account Type:**	Mortgage Account
High Balance:	$126,825	**Responsibility:**	Joint Account
Collateral:	Freddie Mac 411747010	**Date Opened:**	09/2004
Past Due:	$0	**Date Closed:**	04/2006
Terms:	$880 for 360 months		

Loan Type: Conventional Real Estate Mtg
Remark: Closed
Estimated date that this item will be removed: 03/2013

Late Payments
23 months
30 60 90
0 0 0

Last 23 Months

OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK
mar feb '06 dec nov oct sep aug jul jun may apr mar feb '05 dec nov oct sep aug jul jun may

Satisfactory Accounts

Late Payments
2 months
30 60 90
0 0 0

Last 2 Months

OK OK
aug jul

CAPITAL ONE BANK USA NA #[redacted]

POB 30281
SALT LAKE CITY , UT 84130-0281
(800) 955-7070

Balance:	$0	**Pay Status:**	Paid or Paying as Agreed
Date Updated:	04/2005	**Account Type:**	Revolving Account
High Balance:	$4,510	**Responsibility:**	Individual Account
Past Due:	$0	**Date Opened:**	05/1998
		Date Closed:	04/2005
		Date Paid:	03/2005

Loan Type: Credit Card
Remark: Account closed by consumer

Late Payments
48 months
30 60 90
0 0 0

Last 48 Months

OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK
mar feb '05 dec nov oct sep aug jul jun may apr mar feb '04 dec nov oct sep aug jul jun may apr
OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK
mar feb '03 dec nov oct sep aug jul jun may apr mar feb '02 dec nov oct sep aug jul jun may apr

CATHERINES/SOANB #[redacted]

1103 ALLEN DRIVE
MILFORD , OH 45150
(800) 995-9450

Balance:	$0	**Pay Status:**	Paid or Paying as Agreed
Date Updated:	12/2008	**Account Type:**	Revolving Account
High Balance:	$230	**Responsibility:**	Individual Account
Credit Limit:	$1,000	**Date Opened:**	10/2002
Past Due:	$0	**Date Closed:**	04/2005
		Date Paid:	11/2002

Loan Type: Credit Card
Remark: Account closed by credit grantor

Late Payments
48 months
30 60 90
0 0 0

Last 48 Months

OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK
nov oct sep aug jul jun may apr mar feb '08 dec nov oct sep aug jul jun may apr mar feb '07 dec
OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK OK
nov oct sep aug jul jun may apr mar feb '06 dec nov oct sep aug jul jun may apr mar feb '05 dec

CATO #[redacted]

PO BOX 34216
CHARLOTTE , NC 28234-4216
(704) 554-8510

Balance:	$0	**Pay Status:**	Paid or Paying as Agreed
Date Updated:	02/2009	**Account Type:**	Revolving Account
High Balance:	$300	**Responsibility:**	Individual Account
Credit Limit:	$300	**Date Opened:**	05/2007
Past Due:	$0	**Date Closed:**	02/2009
		Date Paid:	07/2007

Loan Type: Charge Account
Remark: Closed

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I (We) hereby accept the foregoing commitment and agree to reimburse Coastal Federal Bank for any expenses actually incurred should the loan fail to close.

Executed this 18 day of September 2004

Costella Davis Date: 9/18/04
COSTELLA DAVIS

Cleveland N Davis Date: 9-14-04
CLEVELAND DAVIS

Please indicate below the mailing address to be placed on the account upon closing:

Mr. & Mrs. Cleveland N. Davis
595-D Willow Greens Drive
Conway, SC. 29526

Do you want this change for all accounts at Coastal Federal Bank N/A [ ] YES[ ] NO

1303

I (We) hereby accept the foregoing commitment and agree to reimburse Coastal Federal Bank for any expenses actually incurred should the loan fail to close.

Executed this 24th day of September 20 04.

COSTELLA DAVIS Date: 9-24-04

CLEVELAND DAVIS Date: 9-24-04

Please indicate below the mailing address to be placed on the account upon closing:

Do you want this change for all accounts at Coastal Federal Bank N/A [ ] YES [ ] NO

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower," as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when [X] the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or [ ] the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her income or assets must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for: [ ] VA [X] Conventional [ ] Other (Explain): [ ] FHA [ ] USDA/Rural Housing Service

Agency Case Number:

Lender Case Number: 101634129

Amount	Interest Rate	No. of Months	Amortization Type:	
$ 126,825.00	5.875 %	360	[X] Fixed Rate [ ] GPM	[ ] Other (explain): [ ] ARM (type):

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state, & ZIP): UNIT 595 D WILLOW GREEN DRIVE, CONWAY, SC 29526

No. of Units: 1

Legal Description of Subject Property (attach description if necessary): WILLOW GREENS PHASE 7

Year Built: 1998

Purpose of Loan: [X] Purchase [ ] Refinance [ ] Construction [ ] Construction-Permanent [ ] Other (explain):

Property will be: [ ] Primary Residence [X] Secondary Residence [ ] Investment

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot	(b) Cost of Improvements	Total (a + b)
	$	$	$	$	$

Complete this line if this is a refinance loan.

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements	
	$	$		Cost: $	[ ] made [ ] to be made

Title will be held in what Name(s): COSTELLA AND CLEVELAND DAVIS

Manner in which Title will be held: JOINT TENANTS

Estate will be held in: [X] Fee Simple [ ] Leasehold (show expiration date)

Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain): CHECKING/SAVINGS

III. BORROWER INFORMATION

Borrower	Co-Borrower
Borrower's Name (include Jr. or Sr. if applicable): COSTELLA DAVIS	Co-Borrower's Name (include Jr. or Sr. if applicable): CLEVELAND DAVIS
Social Security Number: [redacted]	Social Security Number: [redacted]
Home Phone (incl. area code): 301-262-7117	Home Phone (incl. area code): 301-262-7117
DOB (MM/DD/YYYY): 09/15/1956	DOB (MM/DD/YYYY): 07/04/1949
Yrs. School:	Yrs. School:
[X] Married [ ] Unmarried (include single, divorced, widowed) [ ] Separated	[X] Married [ ] Unmarried (include single, divorced, widowed) [ ] Separated
Dependents (not listed by Co-Borrower): no. ages	Dependents (not listed by Borrower): no. ages
Present Address (street, city, state, ZIP): 3807 CLAIRTON DRIVE MITCHELLVILLE, MD 20721 [X] Own [ ] Rent 4 No. Yrs.	Present Address (street, city, state, ZIP): 3807 CLAIRTON DRIVE MITHCELLVILLE, MD 20721 [X] Own [ ] Rent 4 No. Yrs.
Mailing Address, if different from Present Address:	Mailing Address, if different from Present Address:

If residing at present address for less than two years, complete the following:

Former Address (street, city, state, ZIP)		Former Address (street, city, state, ZIP)	
[ ] Own [ ] Rent	No. Yrs.	[ ] Own [ ] Rent	No. Yrs.

IV. EMPLOYMENT INFORMATION

Borrower		Co-Borrower	
Name & Address of Employer: DOD/DISA PO BOX 4502 ARLINGTON VA 22204	[ ] Self Employed	Name & Address of Employer: WASHINGTON MARRIOTT 1221 22ND ST NW WASHINGTON DC 20037	[ ] Self Employed
Yrs. on this job:	Yrs. employed in this line of work/profession:	Yrs. on this job:	Yrs. employed in this line of work/profession:
Position/Title/Type of Business:	Business Phone (incl. area code): 703-681-0314	Position/Title/Type of Business:	Business Phone (incl. area code): 202-872-1500

If employed in current position for less than two years or if currently employed in more than one position, complete the following:

Name & Address of Employer	[ ] Self Employed	Dates (from - to)	Monthly Income	Name & Address of Employer	[ ] Self Employed	Dates (from - to)	Monthly Income
			$				$
Position/Title/Type of Business		Business Phone (incl. area code)		Position/Title/Type of Business		Business Phone (incl. area code)	
Name & Address of Employer	[ ] Self Employed	Dates (from - to)	Monthly Income	Name & Address of Employer	[ ] Self Employed	Dates (from - to)	Monthly Income
			$				$
Position/Title/Type of Business		Business Phone (incl. area code)		Position/Title/Type of Business		Business Phone (incl. area code)	

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION

Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	$ 7,612.00	$ 2,231.00	$ 9,843.00	Rent	$	
Overtime				First Mortgage (P&I)	1,983.00	$ 1,983.00
Bonuses				Other Financing (P&I)		
Commissions				Hazard Insurance		
Dividends/Interest				Real Estate Taxes		
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in "describe other income," below)				Homeowner Assn. Dues		
				Other:		
Total	$ 7,612.00	$ 2,231.00	$ 9,843.00	Total	$ 1,983.00	$ 1,983.00

*Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

B/C	Describe Other Income — Notice: Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.	Monthly Amount
		$
		$
		$
		$

VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required. If the Co-Borrower section was completed about a spouse, this Statement and supporting schedules must be completed about that spouse also.

Completed [X] Jointly [ ] Not Jointly

ASSETS Description	Cash or Market Value
Cash deposit toward purchase held by:	$
List checking and savings accounts below	
Name and address of Bank, S&L, or Credit Union: NAVY FED CU	
Acct. no. [redacted]	$ 16560.00
Name and address of Bank, S&L, or Credit Union: NAVY FED CU	
Acct. no. [redacted]	$ 11222.00
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Stocks & Bonds (Company name/number & description)	$
Life insurance net cash value	$
Face amount: $	
Subtotal Liquid Assets	$ 27782.00
Real estate owned (enter market value from schedule of real estate owned)	$
Vested interest in retirement fund	$
Net worth of business(es) owned (attach financial statement)	$
Automobiles owned (make and year)	$
Other Assets (Itemize) [illegible] op	$
Total Assets a.	$ 27782.00

Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.

LIABILITIES	Monthly Payment & Months Left to Pay	Unpaid Balance
Name and address of Company: UP MTG PRIMARY	$ Payment/Months: 1983.00 / 110	$ 218389.00
Acct. no. [redacted]		
Name and address of Company: NAVY FCU	$ Payment/Months: 775.00 / 44	$ 34247.00
Acct. no. [redacted]		
Name and address of Company: NAVY FCU	$ Payment/Months: 371.00 / 15	$ 5637.00
Acct. no. [redacted]		
Name and address of Company: DELL FNCL	$ Payment/Months: 18.00 / 32	$ 592.00
Acct. no. [redacted]		
Name and address of Company: CAP 1 BANK	$ Payment/Months: 13.00 / 38	$ 499.00
Acct. no. [redacted]		
Name and address of Company: NAVY FCU	$ Payment/Months: 10.00 / 14	$ 141.00
Acct. no. [redacted]		
Name and address of Company: SAMS CLUB	$ Payment/Months: 15.00 / 6	$ 99.00
Acct. no. [redacted]		
Alimony/Child Support/Separate Maintenance Payments Owed to:	$	
Job-Related Expense (child care, union dues, etc.)	$	
Total Monthly Payments	$ 1202.00	
Net Worth a. minus b.	$ -231822.00	Total Liabilities b. $ 259604.00

1306

Property address (enter S if sold, PS if pending sale or R if rental being held for income)		Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
3807 CLAIRTON DRIVE MITCHELLVILLE MD	H	SFD	$	$ 218389.00	$	$ 1,983.00	$	$
		Totals	$	$ 218389.00	$	$ 1,983.00	$	$

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

Alternate Name | Creditor Name | Account Number

VII. DETAILS OF TRANSACTION

a. Purchase price	$ 133,500.00
b. Alterations, improvements, repairs	
c. Land (if acquired separately)	
d. Refinance (incl. debts to be paid off)	
e. Estimated prepaid items	815.33
f. Estimated closing costs	1,609.29
g. PMI, MIP, Funding Fee	
h. Discount (if Borrower will pay)	
i. Total costs (add items a through h)	135,924.62
j. Subordinate financing	
k. Borrower's closing costs paid by Seller	
l. Other Credits (explain)	
m. Loan amount (add j, k, l & o from l)	126,825.00
n. PMI, MIP, Funding Fee financed	
o. Loan amount (add m & n)	126,825.00
p. Cash from/to Borrower (subtract j, k, l & o from i) From Borrower	9,099.62

VIII. DECLARATIONS

If you answer "Yes" to any questions a through i, please use continuation sheet for explanation.

	Borrower Yes	Borrower No	Co-Borrower Yes	Co-Borrower No
a. Are there any outstanding judgments against you?		X		X
b. Have you been declared bankrupt within the past 7 years?		X		X
c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?		X		X
d. Are you a party to a lawsuit?		X		X
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of Lender, FHA or VA case number, if any, and reasons for the action.)		X		X
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.		X		X
g. Are you obligated to pay alimony, child support, or separate maintenance?		X		X
h. Is any part of the down payment borrowed?		X		X
i. Are you a co-maker or endorser on a note?		X		X
j. Are you a U.S. citizen?	X		X	
k. Are you a permanent resident alien?		X		X
l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below.		X		X
m. Have you had an ownership interest in a property in the last three years?	X		X	
(1) What type of property did you own - principal residence (PR), second home (SH), or investment property (IP)?	PR		PR	
(2) How did you hold title to the home - solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?	SP		SP	

IX. ACKNOWLEDGMENT AND AGREEMENT

Each of the undersigned specifically represents to Lender and to Lender's actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors and assigns and agrees and acknowledges that: (1) the information provided in this application is true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I have made on this application, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1001, et seq.; (2) the loan requested pursuant to this application (the "Loan") will be secured by a mortgage or deed of trust on the property described herein; (3) the property will not be used for any illegal or prohibited purpose or use; (4) all statements made in this application are made for the purpose of obtaining a residential mortgage loan; (5) the property will be occupied as indicated herein; (6) any owner or servicer of the Loan may verify or reverify any information contained in the application from any source named in this application, and Lender, its successors or assigns may retain the original and/or an electronic record of this application, even if the Loan is not approved; (7) the Lender and its agents, brokers, insurers, servicers, successors and assigns may continuously rely on the information contained in the application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the Loan; (8) in the event that my payments on the Loan become delinquent, the owner or servicer of the Loan may, in addition to any other rights and remedies that it may have relating to such delinquency, report my name and account information to one or more consumer credit reporting agencies; (9) ownership of the Loan and/or administration of the Loan account may be transferred with such notice as may be required by law; (10) neither Lender nor its agents, brokers, insurers, servicers, successors or assigns has made any representation or warranty, express or implied, to me regarding the property or the condition or value of the property; and (11) my transmission of this application as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or my facsimile transmission of this application containing a facsimile of my signature, shall be as effective, enforceable and valid as if a paper version of this application were delivered containing my original written signature.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X [signature]	[illegible]	X [signature]	9.24.09

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may discriminate neither on the basis of this information, nor on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this lender is required to note the information on the basis of visual observation or surname. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)

BORROWER		CO-BORROWER	
	I do not wish to furnish this information.		I do not wish to furnish this information.
Ethnicity:	Hispanic or Latino	Ethnicity:	Hispanic or Latino
	X Not Hispanic or Latino		X Not Hispanic or Latino
Race:	American Indian or Alaska Native	Race:	American Indian or Alaska Native
	Asian		Asian
	X Black or African American		X Black or African American
	Native Hawaiian or Other Pacific Islander		Native Hawaiian or Other Pacific Islander
	White		White
Sex:	X Female	Sex:	Female
	Male		X Male

To be completed by Interviewer

This application was taken by:

- Face-to-face interview
- Mail
- Telephone
- X Internet

Interviewer's Name (print or type): Danny Fogle

Interviewer's Signature | Date

Interviewer's Phone Number (incl. area code): 843-205-2000

Name and Address of Interviewer's Employer:
COASTAL FEDERAL BANK
2619 OAK STREET
MYRTLE BEACH, SC 29577-3129

Freddie Mac Form 65 01/04 | Fannie Mae Form 1003 01/04

101634129

GREATLAND

1307

Continuation Sheet/Residential Loan Application

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.	Borrower: COSTELLA DAVIS	Agency Case Number:
	Co-Borrower: CLEVELAND DAVIS	Lender Case Number: 101634129

MONTHLY INVESTMENT EXPENSES

1st Mtg P&I: 750.22	Other P&I:	Haz Ins:	RE Taxes: 50.00
Other Ins: 98.29	Dues: 150.00	Other:	Total: 1048.51

I/We may understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X Costella Davis	9-24-04	X Cleveland D Davis	9-24-04

Freddie Mac Form 65 01/01 — Fannie Mae Form 1003 01/01

101634129

ITEM 7200NL4 (0401) (Page 4 of 4 pages) To Order Call: 1-800-530-9393 FAX: 616.791.1131 — TREATLAND

1308

COASTAL FEDERAL BANK
The right bank for you.

2619 Oak Street, Myrtle Beach, SC 29577
Phone: 843-205-2000 Fax: 843-205-2490

September 2, 2004

ATTORNEY'S CLOSING INSTRUCTIONS

Attorney Name and Address
GREG MARTIN
900 C MAIN ST
CONWAY, SC 29526

Commitment Expiration:
October 4, 2004

Attorney's Phone # 843-248-2089

Borrower(s) Name and Address
COSTELLA DAVIS
CLEVELAND DAVIS
3807 Clairton Drive
Mitchellville, MD 20721

Title approved to be held as:
COSTELLA AND CLEVELAND DAVIS

Phone: 301-262-7117

Social Security # [redacted]

Property Address
Unit 595 D Willow Green Drive
Conway, SC 29526
Horry County

Legal Description
WILLOW GREENS PHASE 7

Type of Loan PURCHASE - SECONDARY HOME
FIXED RATE - CONVENTIONAL

Loan No. 7510034129

Terms of Loan:

Loan Amount:	$	126,825.00
Interest Rate:		5.875 % Per Annum
Amortization Term		360 months
P & I Payment:	$	750.22

Fees

* Appraisal Fee:	$	300.00	Vincent J. Olivetti
* Credit Report Fee:	$	17.00	
Tax Service Fee:	$	81.00	
Underwriters Fee:	$	295.00	
Interim Interest:	$	20.697	p/diem
P.M.I. Monthly Renewal:	$	98.29	RMIC

* Funds Paid Outside of Closing - On the HUD Statement show the payee as above. (If nothing is filled in, show the payee as Coastal Federal Bank.)

Make check payable to COASTAL FEDERAL BANK when sending funds not prepaid or deducted as set forth in "Funding Arrangements/Loan Proceeds".

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Dear Attorney:

The above named applicant has requested that you handle the closing of a loan on the above referenced property. You will also be representing Coastal Federal Bank (herinafter referenced as "the Bank") in this transaction (therefore, Attorney-In-Fact closings are unacceptable). All items described in this instruction package must be fully completed prior to closing.

**SPECIAL CONDITIONS

FINAL APPLICATION TO BE SIGNED AT CLOSING.
Loan must NOT close with a POA unless approved by bank
We will furnish the following Riders/Addendums: CONDO RIDER, SECOND HOME RIDER
See Special Conditions In Borrower's Committment Letter to be satisfied prior to closing.
ESCROWS ARE REQUIRED FOR TAXES AND PMI, AND MONTHLY TAXES ARE NOT TO EXCEED $50.00
MAXIMUM FUNDS AT CLOSING FROM BORROWER ARE NOT TO EXCEED $ 27,782.00
FINAL TITLE POLICY MUST INCLUDE ALTA'S 4 AND 8.1.

Number of Pages of Documents

If you use the mortgage or deed of trust provided by us, it contains 12 pages. If this is an adjustable rate loan, it will need an Adjustable Rate Rider (2 pages) and Assumption Rider (1 page). If applicable, the Second Home Rider and Construction Loan Addendum are each 1 page; and the The One - Four Family, Condominium and PUD Riders are all 2 pages.

Commitment/Closing Expiration Date

The loan must be closed and funded by October 4, 2004. Please contact the borrower immediately to arrange for a closing date. If not funded by the above date this offer will become null and void and the borrower(s) will be subject to current market rate conditions at Lender's option. If the loan cannot close by that date, then contact the Bank immediately. **Time is of the essence.**

Closing Responsibility

It is the responsibility of the closing attorney to close the loan in accordance with this instruction letter, Borrower's Commitment Letter and Coastal Federal Bank's General Closing Instructions (enclosed or previously submitted). If your office cannot adhere to these requirements, do not process the loan package for closing and notify us immediately.

Please use the enclosed Fax Cover Sheet to forward all preview documents to Closing at 843-205-2490.

Preview Requirement

The Bank will not provide a representative at loan closing, therefore the following prepared documents **must be reviewed** by the Bank's Loan Closing Department AT LEAST 24 HOURS prior to final execution by the borrowers:

A. All applicable property insurance policies/binders/certificates
B. Mortgage Title Insurance binder
C. HUD Settlement Statement
D. Wood Infestation Report/Soil Treatment Certificate, as applicable
E. Survey
F. Tax Information Sheet.

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Note: Items A, D and E are not required on bare land loans.

THE COMPLETED NOTE, APPLICABLE ADDENDUMS AND RIDERS WILL BE FORWARDED TO YOU ALONG WITH THE TRUTH-IN-LENDING DISCLOSURE ONCE ALL PREVIEW REQUIREMENTS HAVE BEEN MET.

Funding Arrangements/Loan Proceeds
After previewing the documents specified above, the Bank will make arrangements for funding on the date of disbursement. The Bank will disburse proceeds LESS loan discount points, origination fees, appraisal fees, credit report fees, private mortgage insurance premium, underwriting fee, administration fee, tax service fee, construction inspection fees, recertification fee, and/or construction costs, as applicable.

Wiring of funds upon request is available before 12:00 noon (if all required items are received by us prior to 10:00 AM) or 4:00 PM (if requested prior to 10:00AM and all required items are received by us prior to 2:00 PM); otherwise a disbursement check will be issued.

IF THE CLOSING IS POSTPONED, you must contact us and RETURN THE FUNDS BY 3:00 P.M. or the interest will begin as of that date, regardless of cancellation.

Purchase and Sales Agreement
A copy of the purchase and sales agreement is enclosed. The closing should be completed in accordance with this contract. Should you become aware of conditions and/or terms different from this, DO NOT CLOSE the loan without prior approval of the Bank. Please be sure that the seller information is completed on the HUD Statement.

Mortgagee Name
The Mortgage must read: Coastal Federal Bank organized and existing under the Laws of the United States of America, with a mailing address of 2619 North Oak St., Myrtle Beach, SC 29577-3129.

It is the attorney's responsibility to prepare and record the mortgage (Fannie Mae/Freddie Mac Uniform South Carolina Form 3041 9/90). The Bank will provide the applicable riders and addendums after it receives your Closing Request.

Late Charges
If the payment is more than fifteen (15) days late after the due date, a late charge of five (5%) percent of the overdue payment of principal and interest will be charged, as applicable.

First Payment Date of Note
The first payment Date of the Note should begin on the first (1st) day of the month two months following the date the loan proceeds are disbursed by the Bank, ie.

Disbursement Date: April 13 - First Payment Date: June 1; or
Construction End Date: April 13 - First Payment Date: June 1.

Title Insurance/Lien Priority

Title Insurance is required on this loan (exception - Lot Loans as noted). Please refer to the Bank's "General Closing Instructions" manual for details.

The title binder must be dated no later than sixty (60) days prior to closing. It is the closing attorney's responsibility to payoff, cancel and/or meet the conditions of the Title Binder.

The "Insured" section of the policy must read "**Coastal Federal Bank, its successors**

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and/or assigns as their interest may appear."

The security must be a **First Mortgage Lien.**

The Title Insurance Policy **must include:** Affirmative Coverage over matters of survey, easements, restirctions, set back requirements, filed and unfiled mechanic's and materialmen's liens, violations of any restrictions, covenants and conditions and insure that any future violations will not cause forfeiture or reversion of title. ALL standard exceptions shall be deleted from the title policy.

Coatal Federal Bank requires an "ALTA" title endorsement 8.1 on all closings, and ALTA 4 - Condo, ALTA 5 - PUD, ALTA 6 - ARM, ALTA 7 - Manufactured home if applicable. We **do not** accept the ALTA 9 - Mineral Rights; we require affirmative language coverage stating that it will not affect the intended residential use of the property.

Hazard Insurance / Builder's Risk
Fire & Extended coverage(Windstorm & Hail) is required on this loan. Permanent Hazard Insurance on existing structures. A condominium requires a certificate of insurance showing the unit number. **The Mortgagee clause must read Coastal Federal Bank, its successors and assigns, ATIMA, 2619 Oak Street, Myrtle Beach, SC 29577.** Please refer to the Bank's General Closing Instructions for details

Private Mortgage Insurance
Private Mortgage Insurance is required on this loan. The name of the company is RMIC which must be stated on the HUD Statement and the inital escrow statement as the collector of these insurance fees.

Tax Information Sheet
A Tax Information Sheet is enclosed for you as attorney to complete, sign and return to us with the preview package. The Tax Map Number is very important for our records. **If it is not available at closing, please keep this form until it may be completed and then return it to us.**

Escrow Account Requirement
An escrow account will be required to be established with the Bank. Please return the Escrow fees within the closing package on your Trust Account check payable to Coastal Federal Bank as follows:

Real Estate Taxes Computed on the most recent tax billing:
From December through first payment + 1 month.

Private Mortgage Insurance:. Three months renewal premium (see fee section).
For monthly PMI premiums collect initial premium + two (2) months escrow.

Pest Inspection Certificate:
Form CL100 is required for all **purchase** transactions. This form must be executed by the exterminating company which prepared the report and the certification cannot be more than forty-five (45) days old. It must show all improvements to be free of infestation and/or damage from prior infestation. If damage, excessive moisture, other repairs or infestation appears, it must be corrected prior to closing.

PLEASE NOTE THAT ALL BORROWERS MUST SIGN THE CL100 TO ACKNOWLEDGE RECEIPT OF THE FORM.

Request for Taxpayer Identification Number and Certification Form W-9
This form must be completed for the Borrower and Social Security Number listed on the first page of these instructions. Only that Borrower needs to complete and sign this

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form.

Commitment Letter
A copy of the Borrower(s) Commitment Letter is enclosed. Please have Borrowers execute and return to our office with your closing package. Do not close this loan without knowledge of execution of Commitment Letter.

Documentation Copies To Borrower
You are requested to provide copies of the Note, Mortgage, HUD Settlement Statement, Truth-In-Lending Statement, Initial Escrow Statement and other applicable forms to the borrower(s).

Repairs
All repairs which are not deemed to be punch list items must be completed prior to closing. THE BORROWER/PURCHASER WILL NOT BE ALLOWED TO RECEIVE CASH IN LIEU OF REPAIRS BEING MADE. You must obtain specific approval from Lender prior to closing for any process which does not require repairs to be made prior to closing.

Escrow for Postponed Improvements:
If there are any improvements to be constructed or not yet completed by the closing date an Escrow Hold Back is allowable on a case-by-case basis with the approval of the Lender. An amount equal to 150% of the market replacement cost must be reserved in the attorney's escrow account until approval of release by the lender. The cost of improvements must be estimated by an approved licensed builder/contractor and submitted to the Bank prior to closing, at which time we will forward you an "Escrow for Postponed Improvements Form" for completion and signature at closing.

Documentation Checklist / Preparation
This Attorney Closing Package contains a document checklist which denotes the documents submitted by the Bank for completion and/or signature. Please insure all the documents denoted have been received and are completed properly. Any corrections to the note, Mortgage/ Deed of Trust, Riders, or Addendums or HUD Statement must be initialed and no more than two corrections are acceptable. Coastal Federal Bank WILL NOT ACCEPT ORIGINAL SIGNATURES ON FACSIMILE PAPER AS FINAL DOCUMENTS/FORMS.

Final Documents
Within twenty-four (24) hours after the closing, all closing documents and Attorneys Trust Account check must be returned and received by the Bank as noted in this instruction package. These documents should include clocked-in copies of all recorded documents.

The original recorded documents and the final title policy must be submitted to the Bank within forty-five (45) days after closing.

Send all payoff checks to the Loan Servicing Department, Attention Payoff Clerk. (Exception: Construction permanent final title policy due prior to disbursing construction funds which exceed 90% of the construction costs.)

Please direct loan closing questions to the Residential Closing Department, at 843-205-2000 AFTER reviewing the Bank's "General Closing Instructions" manual submitted herein or previously provided.

COASTAL FEDERAL BANK

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Beth Smith, Closing Specialist

Enclosures: Closing Checklist with Documents Itemized

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Initial Escrow Account Disclosure Statement

Date 09/23/04
Borrowers: COSTELLA DAVIS
UNIT 595 D WILLOW GREEN DRIVE
CLEVELAND DAVIS

Application: 101634129
Property:
CONWAY SC 29526

This is an estimate of activity in your escrow account during the coming year based on payments anticipated to be made from your account.

Date	Description	Payments To Escrow	Payments From Escrow	Escrow Account Balance
	Initial Deposit:			*$613.36*
Oct 01, 2004	Item(s) disbursed prior to first payment		N/A	$613.36
Nov 01, 2004	Monthly escrow payment	130.35		$743.71
Nov 2004	Taxes		384.72	
Nov 2004	Mtg Insurance		98.29	$260.70
Dec 01, 2004	Monthly escrow payment	130.35		$391.05
Dec 2004	Mtg Insurance		98.29	$292.76
Jan 01, 2005	Monthly escrow payment	130.35		$423.11
Jan 2005	Mtg Insurance		98.29	$324.82
Feb 01, 2005	Monthly escrow payment	130.35		$455.17
Feb 2005	Mtg Insurance		98.29	$356.88
Mar 01, 2005	Monthly escrow payment	130.35		$487.23
Mar 2005	Mtg Insurance		98.29	$388.94
Apr 01, 2005	Monthly escrow payment	130.35		$519.29
Apr 2005	Mtg Insurance		98.29	$421.00
May 01, 2005	Monthly escrow payment	130.35		$551.35
May 2005	Mtg Insurance		98.29	$453.06
Jun 01, 2005	Monthly escrow payment	130.35		$583.41
Jun 2005	Mtg Insurance		98.29	$485.12
Jul 01, 2005	Monthly escrow payment	130.35		$615.47
Jul 2005	Mtg Insurance		98.29	$517.18
Aug 01, 2005	Monthly escrow payment	130.35		$647.53
Aug 2005	Mtg Insurance		98.29	$549.24
Sep 01, 2005	Monthly escrow payment	130.35		$679.59
Sep 2005	Mtg Insurance		98.29	$581.30
Oct 01, 2005	Monthly escrow payment	130.35		$711.65
Oct 2005	Mtg Insurance		98.29	$613.36

(Please keep this statement for comparison with the actual activity in your account at the end of the escrow accounting computation year.)

Cushion selected by servicer: $260.70

Your monthly mortgage payment for the coming year will be $880.57, of which $750.22 will be for principal and interest and $130.35 will go into your escrow account.

COSTELLA DAVIS

CLEVELAND DAVIS

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PRIVATE MORTGAGE INSURANCE DISCLOSURE
(Fixed Rate Mortgages)

Date: 09/20/04

BORROWER(S) NAME AND PROPERTY ADDRESS	LENDER(S) NAME AND ADDRESS
COSTELLA DAVIS CLEVELAND DAVIS UNIT 595 D WILLOW GREEN DRIVE CONWAY, SC 29526	COASTAL FEDERAL BANK 2619 OAK STREET MYRTLE BEACH, SC 29577-3129
LOAN NO. [redacted]	PMI CERTIFICATE NO 0424598010

You are obtaining a mortgage loan that requires private mortgage insurance ("PMI"). PMI protects lenders and others against financial loss when borrowers default. Charges for the insurance are added to your loan payments.

Under certain circumstances, federal law gives you the right to cancel PMI or requires that PMI automatically terminate. This disclosure describes when cancellation and termination may occur. Please note that PMI is *not* the same as property/casualty insurance—such as homeowner's or flood insurance—which protects you against damage to the property. Cancellation or termination of PMI does *not* affect any obligation you may have to maintain other types of insurance.

In this disclosure, "loan" means the mortgage loan you are obtaining; "you" means the original borrower (or his or her successors or assigns); and "property" means the property securing the mortgage loan.

Initial Amortization Schedule

An amortization schedule showing the principal and interest due on your loan, along with the balance remaining after each scheduled payment, is attached for your reference.

Borrower Requested Cancellation of PMI

You have the right to request that PMI be canceled on or after the following dates:

(1) The date the principal balance of your loan is first *scheduled* to reach 80% of the original value of the property. This date is 06/01/2014 . (If your loan has a balloon feature with a fixed interest rate and no conditional right to refinance, this date will not be reached before your loan matures.)
(2) The date the principal balance *actually* reaches 80% of the original value of the property.

"Original value" means the lesser of the contract sales price of the property or the appraised value of the property at the time the loan was closed. If this loan refinances an existing loan secured by the property, "original value" means the appraised value relied on by the lender to approve this loan.

PMI will only be canceled if all the following conditions are satisfied:

(1) you submit a written request for cancellation;
(2) you have a good payment history;
(3) you are current on the payments required by your loan; and
(4) we receive, if requested and at your expense, evidence satisfactory to the holder of your loan that the value of the property has not declined below its original value, and certification that there are no subordinate liens on the property.

A "good payment history" means no payments 60 or more days past due within two years and no payments 30 or more days past due within one year of the later of (a) the cancellation date, or (b) the date you submit a request for cancellation.

Automatic Termination of PMI

If you are current on your loan payments, PMI will automatically terminate on the date the principal balance of your loan is first *scheduled* to reach 78% of the original value of the property. This date is 05/01/2015 . (If your loan has a balloon feature with a fixed interest rate and no conditional right to refinance, this date will not be reached before your loan matures.) If you are *not* current on your loan payments as of that date, PMI will automatically terminate on the first day of the month immediately following the date you thereafter become current on your payments.

Exceptions to Cancellation and Automatic Termination

The cancellation and automatic termination requirements described above do not apply to certain loans that may present a higher risk of default. Your loan, however, does not fall into this category. Accordingly, the cancellation and automatic termination provisions described above apply to your loan.

By signing below, I/we hereby acknowledge receipt of this Private Mortgage Insurance Disclosure.

Borrower COSTELLA DAVIS 9-24-04 Date

Borrower CLEVELAND DAVIS 9-24-04 Date

Borrower Date

Borrower Date

Borrower Date

Borrower Date

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ITEM 9500L0 (0107)

GREATLAND ®
To Order Call: 1-800-530-9393 ☐ Fax: 616-791-1131

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BORROWER CERTIFICATION

BORROWER(S)
COSTELLA DAVIS AND CLEVELAND DAVIS

APPLICATION NUMBER
101634129

1. [X] **ADDRESS CERTIFICATION:** I hereby certify that the property securing my loan is located at the address indicated below and that my correct mailing address is also indicated below:

The complete **Property Street Address** is as follows:

UNIT 595 D WILLOW GREEN DRIVE
CONWAY, SOUTH CAROLINA 29526

The complete **Mailing Address** is as follows:

3807 CLAIRTON DRIVE, MITCHELLVILLE , MD 20721

2. [ ] **OCCUPANCY STATEMENT:** I, COSTELLA DAVIS AND CLEVELAND DAVIS intend to occupy said property as my primary residence within sixty (60) days of loan closing. Failure to occupy shall constitute default under the terms of the loan. Upon default I must, at Lender's demand, immediately pay in full the balance of the loan and any other amounts to which Lender is entitled. I also acknowledge that the interest rate may be accelerated to the non-owner occupied rate in effect at the date of original application.

3. [X] **SALES CONTRACT:** All of the conditions, including but not limited to inspections, of the Contract/Offer to Purchase signed and executed by me have been satisfactorily met.

4. [X] **TERMITE CERTIFICATION:** I have received a copy of the Termite Report or Termite Soil Treatment Guaranty and have read, understand, and accepted it. (If applicable, I have been made specifically aware of items numbered on the Termite Report and I am not holding Coastal Federal Savings Bank responsible for any damages (future or present) that might occur.

5. [X] **NAME CERTIFICATION:** With reference to my loan application, the following names appearing in the loan file are one and the same person.
DAVIS CLEVELAND, CLEVELAND N. DAVIS
COSTELLA H. DAVIS, COSTELLA HUNT DAVIS

6. [X] **COMPLIANCE AGREEMENT:** I have been advised by the closing agent that the loan documents being executed this date do not have final approval of or acceptance by the investor or guarantor which has issued its commitment to purchase or guarantee the loan. As a condition of Lender proceeding with the closing and disbursement of loan proceeds, I will fully cooperate and adjust for clerical errors on any loan documents and will execute whatever additional documents may be required in order to make this loan eligible for purchase or guarantee by the investor or insuring agency.

7. [ ] **FLOOD HAZARD INSURANCE:** If at any time during the term of my loan the Department of Housing and Urban Development should determine that the property is located in a special flood hazard area, I authorize Lender to obtain Special Flood Insurance covering my home and to pay the premium due by adjusting my escrow account. Any amounts advanced by Lender to pay premiums shall be paid through my escrow account or added to the outstanding principal balance of my loan. If an escrow account has not been established, I agree to allow Lender to establish an account at that time.

8. [ ] **ESCROW ACCOUNT:** If during the term of my loan I am ever late in payment of loan, taxes, insurance, etc., and no escrow account has been established, I hereby agree to authorize Lender, at their option, to require an escrow account be established.

9. [X] **CLOSING AGENT:** I hereby certify that I have chosen GREG MARTIN as my closing agent for property located at UNIT 595 D WILLOW GREEN DRIVE CONWAY SC

I certify that the above applicable representations are true and correct as of this 24th day of September, 2004

Costella Davis (Seal) (Borrower)
COSTELLA DAVIS

C Cleveland Davis (Seal) (Borrower)
CLEVELAND DAVIS

(Seal) (Borrower)

(Seal) (Borrower)

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A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-02

Type of Loan	6. File Number	7. Loan Number	8. Mortgage Insurance Case
1.☐ FHA 2.☐ FmHA 3.☒ Conv. Unins. 4.☐ VA 5.☐ Conv. Ins	13253	7510034129	

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.

D. Name and Address of Borrower	E. Name and Address of Seller	F. Name and Address of Lender
Costella Davis Cleveland Davis 3807 Clairton Drive Mitchellville, MD 20721	Joan C. Russell Doanld E. Russell [redacted]	Coastal Federal Bank 2619 Oak Street Myrtle Beach, SC 29577

G. Property Location	H. Settlement Agent	I. Settlement Date
Unit 595 D Willow Greens Drive Conway, SC 29526	Gregory K. Martin, PC Place of Settlement 900-C Main Street, Suite C Conway, SC 29526	09/24/04

J. SUMMARY OF BORROWER'S TRANSACTION:		K. SUMMARY OF SELLER'S TRANSACTION:	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price	133,500.00	401. Contract sales price	133,500.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	2,204.94	403.	
104. Start up fee	150.00	404.	
105. October HOA	150.00	405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109. Prorated September HOA (9-24 to 9-30)	30.00	409. Prorated September HOA (9-24 to 9-30)	30.00
110.		410.	
		411.	
		412.	
120. GROSS AMOUNT DUE FROM BORROWER	136,034.94	420. GROSS AMOUNT DUE TO SELLER	133,530.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT TO SELLER	
201. Deposit or earnest money	1,000.00	501. Excess Deposit (see instructions)	
202. Principal amount of new loan(s)	126,825.00	502. Settlement charges to seller (line 1400)	9,178.85
203. Existing loan(s) taken subject to		503. Existing loans taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506. Payoff to BB&T	25,742.85
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes 01/01 to 09/24	281.71	511. County taxes 01/01 to 09/24	281.71
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY / FOR BORROWER	128,106.71	520. TOTAL REDUCTION AMOUNT DUE SELLER	35,203.51
300. CASH AT SETTLEMENT FROM OR TO BORROWER		600. CASH AT SETTLEMENT TO OR FROM SELLER	
301. Gross amount due from borrower (line 120)	136,034.94	601. Gross amount due to seller (line 420)	133,530.00
302. Less amounts paid by/for borrower (line 220)	128,106.71	602. Less reduction amount due to seller (line 520)	35,203.51
303. CASH FROM BORROWER	7,928.23	603. CASH TO SELLER	98,326.49

IN THE EVENT A RE-PRORATION OF THE TAXES IS NECESSARY WHEN THE TAX BILLS FOR 2004 ARE PREPARED, THE PARTIES AGREE TO HANDLE SAID RE-PRORATION BETWEEN THEMSELVES

Costella Davis

Cleveland Davis

Joan C. Russell

Doanld E. Russell

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SETTLEMENT STATEMENT
PAGE 2

File Number: 13253

L. SETTLEMENT CHARGES:			PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL SALES/BROKER'S COMMISSION based on price $ 133,500.00 @ 6.00 =	8,010.00			
Division of commission (line 700) as follows:				
$ 4,005.00 to Coldwell Banker				
$ 4,005.00 to Coastal Living Realty				
703. Commission paid at Settlement				8,010.00
704.				
800. ITEMS PAYABLE IN CONNECTION WITH LOAN		P.O.C.		
801. Loan Origination Fee %				
802. Loan Discount %				
803. Appraisal Fee to Vincent J. Olivetti	300.00B			
804. Credit Report to Coastal Federal Bank	17.00B			
805. Lender's Inspection Fee to				
806. Mtg. Ins. Application Fee to				
807. Assumption Fee to				
808. Tax Service Fee Coastal Federal Bank			61.00	
809. Underwriters Fee Coastal Federal Bank			295.00	
810. P.M.I. Monthly Renewal Coastal Federal Bank			98.29	
811. Flood Certification Coastal Federal Bank			18.00	
812.				
813.				
814.				
815.				
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE				
901. Interest from 09/27/04 to 10/01/04 @$ 20.697 /day	4 day(s)		82.79	
902. Mortgage Insurance Premium to				
903. Hazard Insurance Premium yrs. to				
904.				
905.				
1000. RESERVES DEPOSITED WITH LENDER FOR				
1001. Hazard Insurance mo. @$ / mo.				
1002. Mortgage Insurance 2 mo. @$ 98.29 / mo.			196.58	
1003. City property taxes mo. @$ / mo.				
1004. County property taxes 13 mo. @$ 32.06 / mo.			416.78	
1005. Annual Assessments mo. @$ / mo.				
1006. mo. @$ / mo.				
mo. @$ / mo.				
Aggregate Reserve for Hazard/Flood Ins, City/County Prop Taxes, Mortgage Ins & Annual Assessments				
1100. TITLE CHARGES				
1101. Settlement or closing fee to				
1102. Abstract or title search to				
1103. Title examination to Annette Thomas			121.00	
1104. Title insurance binder to GKM Title Insurance			50.00	
1105. Document preparation to Parson, Ouverson, Start, Guest, & Neil				275.00
1106. Notary fees to				
1107. Attorney's fees to Gregory K. Martin			425.00	
(includes above item No:)				
1108. Title insurance to GKM Title Insurance			359.50	
(includes above item No:)				
1109. Lender's coverage 126,825.00 — 25.00				
1110. Owner's coverage 133,500.00 — 334.50				
1111.				
1112.				
1113.				
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording fees Deed $ 10.00 ; Mortgage $ 31.00 ; Releases $	5.00		41.00	5.00
1202. City/county/stamps Deed $ 493.95 ; Mortgage $				493.95
1203. State tax/stamps Deed $; Mortgage $				
1204.				
1205.				
1300. ADDITIONAL SETTLEMENT CHARGES				
1301. Survey to				
1302. Pest inspection to				
1303.				
1304. Overnight Fees Gregory K. Martin			20.00	
1305. Home Warranty Old Republic				360.00
1306. Admin. Fee Parson, Ouverson, Start, Guest & Neil				35.00
1307.				
1308.				
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and K)			2,204.94	9,178.95

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Costelle Davis — Cleveland Davis — Joan C. Russell — Donnie E. Russell

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Gregory K. Martin, PC — Date 9-24-04

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010

1319

A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-0265

B. Type of Loan	6. File Number	7. Loan Number	8. Mortgage Insurance Case Number
1.☐ FHA 2.☐ FmHA 3.☑ Conv. Unins. 4.☐ VA 5.☐ Conv. Ins.	13253	[redacted]	

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.

D. Name and Address of Borrower	E. Name and Address of Seller	F. Name and Address of Lender
Costella Davis Cleveland Davis 3897 Clairton Drive Mitchellville, MD 20721	Joan C. Russell Donald E. Russell [redacted]	Coastal Federal Bank 2619 Oak Street Myrtle Beach, SC 29577

G. Property Location	H. Settlement Agent	I. Settlement Date
Unit 595 D Willow Greens Drive Conway, SC 29526	Gregory K. Martin, PC Place of Settlement 900-C Main Street, Suite C Conway, SC 29528	09/24/04

J. SUMMARY OF BORROWER'S TRANSACTION:		K. SUMMARY OF SELLER'S TRANSACTION:	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price	133,500.00	401. Contract sales price	133,500.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	2,249.03	403.	
104. Start up fee	150.00	404.	
105. October HOA	150.00	405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109. Prorated September HOA (9-24 to 9-30)	30.00	409. Prorated September HOA (9-24 to 9-30)	30.00
110.		410.	
111.		411.	
		412.	
120. GROSS AMOUNT DUE FROM BORROWER	136,079.03	420. GROSS AMOUNT DUE TO SELLER	133,530.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT TO SELLER	
201. Deposit or earnest money	1,000.00	501. Excess Deposit (see instructions)	
202. Principal amount of new loan(s)	126,826.00	502. Settlement charges to seller (line 1400)	9,176.95
203. Existing loan(s) taken subject to		503. Existing loans taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506. Payoff to BB&T	25,742.65
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes 01/01 to 09/24	281.71	511. County taxes 01/01 to 09/24	281.71
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY / FOR BORROWER	128,106.71	520. TOTAL REDUCTION AMOUNT DUE SELLER	35,203.51
300. CASH AT SETTLEMENT FROM OR TO BORROWER		600. CASH AT SETTLEMENT TO OR FROM SELLER	
301. Gross amount due from borrower (line 120)	136,079.03	601. Gross amount due to seller (line 420)	133,530.00
302. Less amounts paid by/for borrower (line 220)	128,106.71	602. Less reduction amount due to seller (line 520)	35,203.51
303. CASH FROM BORROWER	7,972.32	603. CASH TO SELLER	98,326.49

IN THE EVENT A RE-PRORATION OF THE TAXES IS NECESSARY WHEN THE TAX BILLS FOR 2004 ARE PREPARED, THE PARTIES AGREE TO HANDLE SAID RE-PRORATION BETWEEN THEMSELVES.

Costella Davis

Cleveland Davis

Joan C. Russell
Joan C. Russell

Donald E. Russell
Donald E. Russell

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SEP-17-2004 12:04 GREGORY K MARTIN 1 843 248 9653 P.03/03

SETTLEMENT STATEMENT
PAGE 2

File Number: 13253

L. SETTLEMENT CHARGES:			PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL SALES/BROKER'S COMMISSION based on price $ 133,500.00 @ 6.00 = 8,010.00				
Division of commission (line 700) as follows:				
$ 4,005.00 to Coldwell Banker				
$ 4,005.00 to Coastal Living Realty				8,010.00
Commission paid at Settlement				
704.		P.O.C.		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN				
801. Loan Origination Fee	%			
802. Loan Discount	%			
803. Appraisal Fee	to Vincent J. Olivetti	300.00		
804. Credit Report	to Coastal Federal Bank	17.00		
805. Lender's Inspection Fee	to			
806. Mtg. Ins. Application Fee	to			
807. Assumption Fee	to		81.00	
808. Tax Service Fee	Coastal Federal Bank		295.00	
809. Underwriters Fee	Coastal Federal Bank		98.29	
810. P.M.I. Monthly Renewal	Coastal Federal Bank			
811.				
812.				
813.				
814.				
815.				
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE				
901. Interest from 09/24/04 to 10/01/04 @$ 20.597 /day 7 day(s)			144.88	
902. Mortgage Insurance Premium	to			
903. Hazard Insurance Premium	yrs. to			
904.				
905.				
1000. RESERVES DEPOSITED WITH LENDER FOR				
1001. Hazard Insurance	mo. @$	/ mo.		
1002. Mortgage Insurance	2 mo. @$ 98.29	/ mo.	196.58	
1003. City property taxes	mo. @$	/ mo.		
1004. County property taxes	13 mo. @$ 32.00	/ mo	416.78	
1005. Annual Assessments	mo. @$	/ mo.		
1006.	mo. @$	/ mo.		
1007.	mo. @$	/ mo.		
Aggregate Reserve for Hazard/Flood Ins, City/County Prop Taxes, Mortgage Ins & Annual Assessments				
1100. TITLE CHARGES				
1101. Settlement or closing fee	to			
1102. Abstract or title search	to			
1103. Title examination	to Annette Thomas		121.00	
1104. Title insurance binder	to GKM Title Insurance		60.00	
1105. Document preparation	to Parson, Ouverson, Stark, Guest, & Nell			275.00
1106. Notary fees	to			
1107. Attorney's fees	to Gregory K. Martin		425.00	
(Includes above item No:)				
1108. Title insurance	to GKM Title Insurance		359.50	
(Includes above item No:)				
1109. Lender's coverage 126,825.00 --- 25.00				
1110. Owner's coverage 133,500.00 --- 334.50				
1111.				
1112.				
1113.				
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording fees Deed $ 10.00 ; Mortgage $ 31.00 ; Releases $ 5.00			41.00	5.00
1202. City/county/stamps Deed $ 493.95 ; Mortgage $				493.95
1203. State tax/stamps Deed $; Mortgage $				
1204.				
1205.				
1300. ADDITIONAL SETTLEMENT CHARGES				
1301. Survey	to			
1302. Pest Inspection	to			
1303.				
1304. Overnight Fees	Gregory K. Martin		20.00	
1305. Home Warranty	Old Republic			360.00
1306. Admin. Fee	Parrison, Ouverson, Stark, Guest & Nell			35.00
1307.				
1308.				
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103 and 502, Sections J and K)			2,249.03	9,178.95

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Costello Davis Cleveland Davis Joan C. Russell Donald E. Russell

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

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RESPA, HB 4305.2 - REV. HUD1(3/86)

TOTAL P.03

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PROPERTY DESCRIPTION RIDER

ALL AND SINGULAR, that certain unit, including the appropriate interest in the common condominium elements, situate in Conway Township, Horry County, South Carolina, being **Unit 595-D of Phase 7 of Willow Greens Horizontal Property Regime**, established pursuant to the South Carolina Horizontal Property Act, Sections 27-31-10 at.seq., South Carolina Code of Laws, 1976, as amended, and submitted by Master Deed dated December 13, 1996, and recorded in the Office of the ROD for Horry County in January 3, 1997, in Deed Book 1912 at Page 544, said Master Deed being further amended by First Amendment to the Master Deed for Willow Greens Horizontal Property Regime, dated January 28, 1997 and recorded on January 30, 1997 in the aforesaid ROD's office in Deed Book 1917 at Page 1251, and being further amended by Second Amendment to the Master Deed for Willow Greens Horizontal Property Regime, April 21, 1997 and recorded April 21, 1997 and recorded April 24, 1997 in the Office of the ROD in Deed Book 1936 at Page 819 and further by Third Amendment to the Master Deed for Willow Greens Horizontal Property Regime, dated June 16, 1997 and recorded June 17, 1997 in the Office of the ROD for Horry County in Deed Book 1950 at Page 633; further amended by Fourth Amendment to Master Deed for Willow Greens Horizontal Property Regime, dated August 22, 1997 and recorded August 26, 1997 in the Office of the ROD for Horry County in Deed Book 1968 at Page 604; further amended by Fifth Amendment to the Master Deed for Willow Greens Horizontal Property Regime, dated December 16, 1997 and recorded December 16, 1997 in the aforesaid Office of the ROD in Deed Book 1999 at Page 491 and being further shown upon plans certified by Joel R. Carter, Architect, and recorded on December 16, 1997 in the Office of the ROD for Horry County in Condominium Cabinet "C" at Page 587. The real estate upon which said dwelling is situate is more fully described on a survey prepared by Terry L. Watson, dated December 11, 1997, and recorded in the Office of the ROD for Horry County in December 16, 1997 in Plat Book 152 at Page 131.

SUBJECT TO, all of the provisions of said Master Deed, including the provisions of all of its exhibits; applicable zoning ordinances; restrictions, covenants, easements, and reservations of records; and taxes for the current year.

TOGETHER with all of the appurtenances thereto according to said Master Deed and the Grantee assumes all obligations under said Master Deed including, but not limited to, the payment of assessments for the maintenance and operation of the Unit and common elements;

AND SUBJECT to the provisions of the By-Laws of Willow Greens Homeowners Association, Inc., and to all other reservations and restrictions of record, easements and rights of way of record including those as set out on the aforesaid map.

This being the identical property conveyed to the Mortgagors herein by Deed recorded in the Office of the ROD for Horry County in Deed Book ____ at Page _____.

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require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may

require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

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

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

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

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with

Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

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

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

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

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

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

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

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

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

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

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

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 11 of this Security Instrument and in any Rider executed by Borrower and recorded with it.

_____ (Seal) -Borrower

COSTELLA DAVIS (Seal) -Borrower

_____ (Seal) -Borrower

CLEVELAND DAVIS (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

Signed, sealed and delivered in the presence of:

Teresa Templeton

_____

Maryland
State of ~~SOUTH CAROLINA~~
County of HC

I Mary M Capers (name and title), do hereby certify that

Costella Davis and Cleveland Davis, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal (where required by law) this the 24th day of September, 2004

_____
Notary Public for ~~SOUTH CAROLINA~~ Maryland

My commission expires: 3/1/08

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 24th day of September, 2004 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to

Coastal Federal Bank

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

Unit 595 D Willow Green Drive, Conway, SC 29526

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

Willow Greens Horizontal Property Regime

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

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

A. **Condominium Obligations.** Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. **Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

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

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

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

NOTE

7510034129

September 24, 2004 [Date] | CONWAY [City] | SOUTH CAROLINA [State]

Unit 595 D Willow Green Drive, Conway, South Carolina, 29526
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 126,825.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is

COASTAL FEDERAL BANK

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.875 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on November 1, 2004 I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on October 1, 2034 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 2619 NORTH OAK STREET

MYRTLE BEACH, SC, 29577-3129

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 750.22

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 %. of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in

this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

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

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

Borrower has executed and acknowledges receipt of pages 1 through 3 of this Note.

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

COSTELLA DAVIS _____(Seal) -Borrower

CLEVELAND DAVIS _____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

[Sign Original Only]

COASTAL FEDERAL BANK
The right bank for you.

September 1, 2004

Borrower(s) Name & Address

COSTELLA DAVIS
CLEVELAND DAVIS
3807 CLAIRTON DRIVE
MITCHELLVILLE, MD 20721

Application Number: 101634129

Property Address / Legal Description
UNIT 595 D WILLOW GREEN DRIVE
CONWAY, SC 29526
HORRY COUNTY
WILLOW GREENS PHASE 7

Attorney's Name and Address
GREG MARTIN
900 C MAIN ST
CONWAY, SC 29526

Attorney's Phone # 843-248-2089

Dear Applicant(s):

Coastal Federal Bank is pleased to advise you that we have approved your loan application on the above referenced property. This approval is subject to all of the terms and conditions hereinafter set forth:

Commitment/Closing Expiration Date

The loan must be closed and funded by 10/04/04. Please contact your attorney immediately to arrange for a closing date. If not **FUNDED** by the above date this offer will become null and void and you will be subject to current market rate conditions at lender's option. If the loan cannot close by the expiration date, contact the lender immediately. Time is of the essence.

Terms

Loan Amount	: $ 126825.00
Interest Rate	: 5.875%
Amortization Term	: 360 months
P&I Payment	: $ 750.22
Discount Points	: $
Origination Fee	: $

Special Condition

CONDOMINIUM PROJECT TO MEET ALL THE BANK'S INSURANCE REQUIREMENTS.

Closing

The loan must be closed in accordance with Coastal Federal Bank's General and Specific Closing Instructions and this commitment letter. A copy of these instructions are available to you upon request. The borrower(s) will be required to execute any and all documents and to pay any and all expenses incident to consummate the closing of this loan. PLEASE BE ADVISED THAT YOUR ATTORNEY WILL REQUIRE A CERTIFIED CHECK AT CLOSING FOR THE DIFFERENCE BETWEEN THE LOAN AMOUNT AND TOTAL COST PLUS CLOSING FEES.

Commitment

This is a non-assignable commitment only for the applicant(s) named above. The accuracy of all information, representations, exhibits & other data submitted in connection with the application is assumed. If further investigation discloses conditions considered by Coastal Federal Bank to be adverse of if there should be any subsequent development affecting the security, this commitment may be cancelled at the option of Coastal Federal Bank. This commitment is also subject to any requirements of the Bank previously disclosed.

Compliance

Full responsibility for compliance with all zoning and building ordinances, municipal or county, shall be upon the applicant(s) and the closing attorney.

Note/Security Instrument

The loan shall be evidenced by a promissory note to be executed and signed by each of the persons to whom this letter is addressed and such other persons as are designated hereafter. It shall be secured by an appropriate Security Instrument to be executed by all parties who have an interest in the property. Said Security Instrument shall insure Coastal Federal Bank a first lien with regard to the real property, and all improvements constructed or to be constructed thereon, free and clear of all other liens and encumbrances.

Taxes

All taxes billed or due must be paid at closing.

Title Examination

The Title Examination, Certificate of Title, and Title Opinion in connection with this loan shall be by an attorney approved by Coastal Federal Bank, and the title, closing documents, and all facts and circumstances connected with the property are subject to approval by Coastal Federal Bank and the attorney. Title Insurance and/or an attorney's title opinion is a requirement of this loan.

Private Mortgage Insurance

Private Mortgage Insurance is required on this loan. The cost to purchase and maintain this insurance will be at the borrower's expense.

Existing Property: Policy to be purchased and maintained
To be Built: Twelve (12) month commitment to be purchased at closing of permanent loan.

Hazard Insurance/Builder's Risk

A certificate of insurance is required for condominiums. This certificate must show unit number and the Mortgagee clause must read the samed named as the insured on the Mortgagee Title Insurance.

Please specify this amount to the Insurance Agent of your choice. Have the Agent furnish to your Attorney the binder along with a paid receipt for the first years premium. (Exception: A refinance loan requires at least (3) month remaining on the policy term). A condominium requires a certificate of insurance showing the unit number. The Mortgagee clause must read the same named as the Insured on the Mortgagee Title Insurance. Please refer to the Bank's General Instructions for details.

Insurance coverage acceptable to Coastal Federal Bank must be kept in force at all times. Should you fail to provide a renewal, or allow coverage to expire for any reason, the mortgage will be in default. Coastal Federal Bank has the right under these circumstances to obtain insurance it deems necessary from an agent and company of its choice. Such insurance will be at your expense and may cover only the Bank's interest in the property. Closing attorney will provide the certificate of insurance after our closing date. CHD/CHD

Pest Inspection Certificate

Termite certification can not be more than thirty (30) days old. Certification must be signed by Mortgagor/Borrower(s).

Existing Property: Form CL100 is required for all **purchase** transactions. It must show all improvements to be free of infestation and/or damage from prior infestation. If damage, excessive moisture, other repairs or infestation appears, it must be corrected prior to closing.

New Construction: Obtain a copy of the Builder's Soil Treatment Certification which is not older than twelve (12) months as evidenced by exterminators signature and date. This includes loans for permanent mortgages which are taken out after new construction of the improvements.

Reserves

Reserves for real property tax and for insurance of the premises may be established with Coastal Federal Bank initially or at such time as you may elect so that the amount in the reserves coupled with the monthly payments (which payments shall be in addition to the payments of principal and interest) will be sufficient to pay in full prior to the due date thereof all real property taxes and all required insurance coverages affecting the premises.

Banking Services

Coastal Federal Bank offers a variety of banking services. Some of these services include the ability to draft your loan payment from your checking or savings account, mortgage life insurance, and ATM access. To arrange for these services you may contact your loan processor.

Appraisal Receipt/Acknowledgement

By execution below, I hereby acknowledge receipt of a copy of the Appraisal Report from Lender.

Disclosure/Disclaimer of Appraisal/Pest Report

The Lender in no way warrants the contents of the report(s) or the adequacy or accuracy of the inspection(s) nor does it warrant the qualifications of any Company and/or Persons who performed the inspection(s). The Lender hereby expressly disclaims any and all warranties of any nature whatsoever pertaining to the inspection(s) and/or report.

Borrower(s) should base acceptance of the condition and value of the property upon his/her/their thorough investigation and after seeking any professional advice deemed prudent. Borrower(s) hereby release Lender of any liability regarding the inspection(s) or report(s).

Commitment Acceptance Expiration Date

This commitment is valid only if written acceptance is received by the Bank within ten (10) days from the date of this letter, otherwise, closing and terms will be at Lender's option. The attorney's closing package has been forwarded to your designated attorney. **This Commitment must be executed and returned to Lender prior to loan closing.**

Coastal Federal Bank appreciates this opportunity to provide you with financing. Should you have any questions pertaining to this commitment letter, please notify our office. Please direct all closing questions to your attorney.

by: _____
COASTAL FEDERAL BANK

cc. GREG MARTIN

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
SELLER'S AFFIDAVIT
SOUTH CAROLINA WITHHOLDING TAX
S.C. Code Section 12-8-580 et. seq.
FORM I-295 (Rev. 2/96)

This is an affidavit of facts. Whether or not this affidavit is sufficient to relieve the buyer of the responsibility to withhold is governed by SC Revenue Ruling #90-3. Please read this affidavit carefully in conjunction with this ruling.

The undersigned on oath, being first duly sworn, hereby certifies as follow:

1. This affidavit is being given in connection with a sale of real estate pursuant to SC Revenue Ruling #90-3.

2. I have attached to this affidavit a description of the real property and any tangible personal property being sold as part of this sale. The real property is located in the **County of Horry**, and its Tax Map Parcel Number is **151-36-01-044.**

3. The undersigned are the sellers of the property described in the attached description.

4. The closing date of this sale is **September 24, 2004.**

5. The Sellers' names are **Donald E. Russell** and **Joan C. Russell.**

6. The Sellers' address is **595-D Willow Greens Dr., Conway, SC 29526.**

7. The Sellers' Social Security Numbers or Taxpayer Identification Numbers are [redacted], [redacted].

8. _____ **Corporations.** The Seller is a corporation or an association or trust that is taxed as a corporation and is subject to withholding at 5%.

9. _____ **Gain.** We affirm, pursuant to Section 12-8-580(B), that the amount of gain we are required to recognize on this transaction and on which buyer is to make the requisite withholding will not exceed $_____.

10. _____ **Installment Sale.** The Sellers will report this sale on the installment method for South Carolina income tax purposes and have attached an amortization schedule correctly designating the principal and interest portions of the payments.

11. ___X___ **Resident.** The Sellers are residents of South Carolina, as that term is defined in the South Carolina income tax laws (S.C. Code Section 12-2-20 et. seq. as amended) and in SC Revenue Ruling #90-3.

12. _____ **Deemed Resident.** Pursuant to SC Revenue Ruling #90-3, the Sellers are deemed to be residents of South Carolina because:

1. The Sellers (a) have filed at least one South Carolina income tax return, (b) are not delinquent with respect to filing any South Carolina income tax return, and (c) have been in business in the State during the sellers' last two taxable years (including the year of sale); and
2. The Sellers are in business in South Carolina and will continue substantially the same business in South Carolina after the sale; and

3. The Sellers will report the sale on a South Carolina income tax return for the current year and file it by its due date; and
4. If the Seller is a corporation or limited partnership, it is registered to do business in South Carolina.

13. _____ **Employee Relocation.** The transaction involves the sale of an employee's property which is being sold by an employer or relocation company in connection with the employee's transfer. For income tax purposes, the sale is treated as a sale by the employer or relocation company.

14. _____ **Nonrecognition of Gain.** The sale of the property will not be subject to taxes because of Section 1033, 1034 or 121 of the Internal Revenue Code. The Sellers acknowledge their obligation to file a South Carolina income tax return for the year or the sale. If the Sellers fail to comply with Section 1033 or 1034, the Sellers acknowledge an obligation to file an amended South Carolina income tax return for the year of the sale.

15. _____ **Tax-Exempt Organizations.** The Seller is an organization exempt from income taxes under Internal Revenue Code Section 501 (a) or is an insurance company exempt from South Carolina taxes on income.

16. _____ **Withholding Amount Equals Entire Net Proceeds.** If the withholding amount is limited to the entire net proceeds, any lien, mortgage or credit line advance which was made within one year prior to the closing was not made in contemplation of the sale as that phrase is defined in SC Revenue Ruling #90-3.

The undersigned understand that this affidavit may be disclosed to the S.C. Department of Revenue and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, we declare that we have examined this affidavit and, to the best of our knowledge and belief, it is true, correct and complete.

Donald E. Russell

Donald E. Russell

Joan C. Russell

Joan C. Russell

Sworn to before me this
24th day of September, 2004.

(Notary Public)

My commission expires 3-22-10

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PRIVACY NOTICE
PARSONS, OUVERSON, STARK, GUEST & NEILL, P.A.

NOTICE TO: Cleveland Davis and Costella H. Davis and Donald E. Russell and Joan C. Russell

FROM: Parsons, Ouverson, Stark, Guest & Neill, P.A.

RE: Privacy Policy

We collect nonpublic personal information about you from the following sources:

- Information we receive from you, such as your name, address, telephone number, or social security number;
- Information about your transaction with us, our affiliates, or others. We receive this information from your lender, attorney, real estate broker, etc.; and
- Information from public records.

We do not disclose any nonpublic personal information about our clients or former clients to anyone, except as permitted by law.

We restrict access to nonpublic personal information about you to those employees who need to know the information to provide the products or services requested by you or your lender.

We maintain physical, electronic, and procedural safeguards that comply with appropriate federal and state regulations.

Witness:

Seller(s):

Donald E. Russell

Joan C. Russell

Buyer(s):

Cleveland Davis

Costella H. Davis

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OFFICIAL SOUTH CAROLINA WOOD INFESTATION REPORT

THIS REPORT VALID FOR 45 DAYS ONLY. THIS REPORT MAY NOT BE USED IN A REAL ESTATE CLOSING AFTER 45 DAYS. THIS REPORT IS NOT TO BE CONSTRUED AS A GUARANTEE OR WARRANTY AGAINST FUTURE INFESTATION OR DAMAGE. IT IS RECOMMENDED BY THE DEPARTMENT OF PESTICIDE REGULATION, REGULATORY AND PUBLIC SERVICE PROGRAMS, AND THE SOUTH CAROLINA PEST CONTROL ASSOCIATION THAT THE PURCHASER OF THE STRUCTURE, RATHER THAN THE SELLER, OBTAIN THIS WOOD INFESTATION REPORT.

Date 04/16/2004 File No. _____

This is to report that a qualified inspector employed by the below named firm has carefully inspected readily accessible areas, including attics and crawl spaces which permit entry, of the property located at the below address for termites, other wood-destroying insects, and fungi. The inspection for fungi and fungi damage commonly called water damaged wood, rot or decay is limited to the area below the first main floor of the structure as defined by DPRPN-198. This report specifically excludes hidden areas and areas not readily accessible, and the undersigned pest control operator disclaims that he has made any inspection of such hidden areas or of such areas not readily accessible.

The inspection described has been made on the basis of visible evidence, and special attention was given to those accessible areas which experience has shown to be particularly susceptible to attack by wood-destroying insects. Probing and/or sounding of those areas and other visible and accessible wood members showing evidence of infestation was performed. This report is submitted without warranty, guarantee, or representation as to concealed evidence of infestation or damage or as to future infestation.

If there is evidence of active infestation or past infestation of termites and/or other wood-destroying insects or fungi, it must be assumed that there is some damage to the building caused by this infestation; however any visible damage to a wood member in accessible areas has been reported. The below-named firm's inspectors are not engineers or builders, and you may wish to call a qualified engineer or expert in the building trade to provide their opinion as to whether there is structural damage to this property.

LOCATION AND DESCRIPTION OF PROPERTY INSPECTED: 595-D Willow Greens Drive Conway SC 29526

TYPE OF TRANSACTION: FHA _____ VA _____ CONVENTIONAL ✓ LOAN ASSUMPTION _____ CASH SALE _____

IF ANY OF THE FOLLOWING ITEMS ARE MARKED YES, DESCRIBE ON REVERSE:	Check Only Appropriate Items YES	NO
WERE ANY AREAS OF THE PROPERTY OBSTRUCTED OR INACCESSIBLE?	[✓]	[ ]
INFESTATION:		
1. There is visible evidence of active: (A) subterranean termites.	[ ]	[✓]
(B) other wood-destroying insects.	[ ]	[✓]
2. There is visible evidence of a previous infestation of:		
(A) subterranean termites	[ ]	[✓]
(B) other wood-destroying insects.	[ ]	[✓]
3. There is visible evidence of prior subterranean termite treatment	[✓]	[ ]
4. There is evidence below the first main floor of the presence of:		
(A) active wood-destroying fungi (wood moisture content 28% or above)	[ ]	[✓]
(B) wood-destroying fungi is present but not active (less than 28% wood moisture content).	[ ]	[✓]
5. There is evidence of the presence of excessive moisture conditions below the first main floor (20% or above wood moisture content, standing water, etc.)	[ ]	[✓]
DAMAGE: Termite, other wood-destroying insects and fungi (Note: reporting of fungi damage to wood, commonly called water damage, decay or rot, is limited to the area below the first main floor of the structure as defined by DPRPN-198.)		
At the time of our inspection, there were visibly damaged wooden members (e.g insect damage to columns, sills, joists, plates, door jambs, headers, exterior stairs, porches, or fungi damage below the first main floor) If the answer is "YES," specify causes and location(s) on back.	[ ]	[✓]
DAMAGE OBSERVED (IF ANY)	Check Appropriate Block Below	
A. Will be or has been corrected by this company	[ ]	
B. Will be or has been corrected by another company (see attached contract.)	[ ]	
C. Will not be corrected by this company; recommend that structure be thoroughly and completely evaluated by a qualified building expert licensed or registered with the S.C. Department of Labor, Licensing, and Regulations, Residential Builder's Commission and that needed repairs be made.	[ ]	
D. In our opinion there is insufficient visible damage to recommend repair. (Explanation on the reverse side why repair was not recommended.)	[✓]	
TREATMENT	Check Appropriate Block Below	
1. The property described was treated by us for the prevention or control of _____ _____ (date of treatment)	[ ]	
A waiver has been issued and is attached to this form	[ ]	
The present treatment warranty will expire on _____ and may be renewed initially at $ _____ by the owner.		
2. The property described has not been treated by us and is not now under contract with our firm	[✓]	

SEE OTHER SIDE OF THIS REPORT FOR ADDITIONAL CONDITIONS GOVERNING THIS REPORT.

CL-100 Approved by the South Carolina Pest Control Association, Inc., and the Division of Regulatory and Public Service Programs of Clemson University. Revised 3/99 Supercedes earlier versions.

(OVER)

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DISBURSEMENT AUTHORIZATION

PROPERTY: 595-D Willow Greens Drive, Conway, SC 29526

CLOSING DATE: September 24, 2004

SELLER(S): Donald E. Russell and Joan C. Russell

PURCHASER(S): Cleveland Davis and Costella H. Davis

Please disburse my/our proceeds check as follows:

_____ Send to me/us via Federal Express
A charge of $30.00 will be deducted to cover mailing and administrative costs

Address: _____

_____

_____ **Initial here is you specifically request that your funds to be sent to you by regular mail**

✓ Hold to be picked up by Seller

✓ Hold to be picked up by Rose Ann

_____ Deliver to my/our Realtor: _____

_____ Wire transfer funds to my account: (need a copy of deposit slip or check)
(Our Bank charges a wire fee which will be deducted from you wire)

Bank Name: _____

Bank City/State: _____

ABA Routing Number: _____

Account Number: _____

Donald E. Russell

Donald E. Russell

Joan C. Russell

Joan C. Russell

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WELCOME TO COASTAL FEDERAL ON-LINE

Mortgage Loans



Thank You for your time. We will contact you within two business days so that we may complete your application. If you have any questions, please contact us at (800) 613-8179.

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WELCOME TO COASTAL FEDERAL ON-LINE

Mortgage Loans



Please review the data that you have entered. If you need to make any changes, please click the "Return to Application" button to return to the application. When everything is correct, click the "Submit Application" button.

Quick Application

UNIFORM RESIDENTIAL LOAN APPLICATION

This application is designed to be completed by the applicant(s) with the lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower" as applicable. Co-borrower information must also be provided (and the appropriate box checked) when

☒ the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or

☐ the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for:	Loan Amount	No. of Months
Conventional	$133,500.00	360
Interest Rate	Amortization Type:	Purchase Price
%	Fixed Rate	$133,500.00

Loan Officer:

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address:

Street: 595-D Willow Green Drive No. of Units:

City: conway State: South Carolina Zip Code: 29526

Purpose of Loan:	Property will be:	Estate will be held in:
Purchase	Secondary Residence	Fee Simple

If refinancing, purpose of Refinance

III. BORROWER INFORMATION

Borrower:

First Name: Costella

Last Name: Davis
(include Jr. or Sr. if applicable)

Social Sec. No.: [redacted]

Home Phone: 301-262-7117 (incl. area code)

E-mail Address: davis1s@ncr.disa.mil

DOB: (MM/DD/YYYY) [redacted] Marital Status: Married

Present Address: Own/Rent Own No. Yrs. 4 yrs

Street: 3807 Clairton Drive

City: Mitchellville State: MD Zip Code: 20721

Mailing Address: (if different from Present Address)

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Street:

City: State: Zip Code:

If at present address less than two years, complete the following:

Former Address: Own/Rent No. Yrs.

Street:

City: State: Zip Code:

Co-Borrower:

First Name: Cleveland

Last Name: Davis
(include Jr. or Sr. if applicable)

Social Sec. No.: [redacted]

Home Phone: 301-262-7117 (incl. area code)

E-mail Address:

DOB: (MM/DD/YYYY) [redacted] Marital Status: Married

Present Address: Own/Rent Own No. Yrs. 4 yrs

Street: 3807 Clairton Drive

City: Mitchellville State: MD Zip Code: 20721

Mailing Address: (if different from Present Address)

Street:

City: State: Zip Code:

If at present address less than two years, complete the following:

Former Address: Own/Rent No. Yrs.

Street:

City: State: Zip Code:

IV. EMPLOYMENT INFORMATION

Borrower:

Self Employed
Employer Name DoD/DISA, Code PL63
Employer Address P.O. Box 4502
Employer City/State/Zip ArlingtonVA22204

Yrs. on this job: 28 yrs

Business Phone: 703-681-0314(incl. area code)

If employed in current position for less than two years or if currently employed in more than one position, complete the following:

Self Employed
Employer Name
Employer Address
Employer City/State/Zip

Dates (from - to)
Please use the following format YYYYMMDD

-

Co-Borrower:

Self Employed
Employer Name Washington Marriott
Employer Address 1221 22nd St. NW
Employer City/State/Zip WashingtonDC20037

Yrs. on this job: 17

Business Phone: 202-872-1500(incl. area code)

If employed in current position for less than two years or if currently employed in more than one position, complete the following:

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Self Employed
Employer Name
Employer Address
Employer City/State/Zip

Dates (from - to)
Please use the following format YYYYMMDD

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION

	Borrower	Co-Borrower
Gross Monthly Income Total	9405.00	
* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns & financial statements.		
Monthly Housing Expense Total	3000.00	
Other Monthly Income (rental, alimony, stocks, bonds, etc.)	500.00	

* Notice: Alimony, child support, or separate maintenance income need not be revealed if the borrower (b) or coborrower (c) does not choose to have it considered for repaying this loan.

VI. ASSETS AND LIABILITIES

This statement and any applicable supporting schedules may be completed jointly by both married and unmarried co-borrowers if their assets and liabilities are sufficiently joined so that the statement can be meaningfully and fairly presented on a combined basis; otherwise separate statements and schedules are required. If the co-borrower section was completed about a spouse, this statement and supporting schedules must be completed about the spouse also.

Completed: Jointly

ASSETS	
Total Assets	$250,000.00
LIABILITIES	
Total Liabilities	$240,000.00
Total Liabilities Monthly Payment	$2400.00

VIII. DECLARATIONS

Items	Borrower	Co-Borrower
a. Are there any outstanding judgements against you?	N	N
b. Have you been declared bankrupt within the last 7 years?	N	N
c. Have you had property foreclosed upon in the last 7 years?	N	N
d. Are you a party to a lawsuit?	N	N
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment?	N	N
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond or loan guarantee?	N	N
g. Are you obligated to pay alimony child support or separate maintenance?	N	N
h. Is any part of the down payment borrowed?	N	N
i. Are you the co-maker or endorser on a note?	Y	N
j. Are you a U.S. citizen?	Y	Y
k. Are you a permanent resident alien?	N	N
l. Do you intend to occupy the property as your primary residence? (if "Yes," complete question m below.)	N	N
m. Have you had an ownership interest in a property in the last 3 years?	Y	Y
1. What type of property did you own — principal residence (PR), second home (SH), or investment property (IP)?	SH	SH
2. How did you hold title to the home — solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?	SP	SP

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IX. ACKNOWLEDGMENT AND AGREEMENT

Each of the undersigned specifically represents to Lender and to Lender's actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors and assigns and agrees and acknowledges that: (1) the information provided in this application is true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I have made on this application, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1001, et seq.; (2) the loan requested pursuant to this application (the "Loan") will be secured by a mortgage or deed of trust on the property described herein; (3) the property will not be used for any illegal or prohibited purpose or use; (4) all statements made in this application are made for the purpose of obtaining a residential mortgage loan; (5) the property will be occupied as indicated herein; (6) any owner or servicer of the Loan may verify or reverify any information contained in the application from any source named in this application, and Lender, its successors or assigns may retain the original and/or an electronic record of this application, even if the Loan is not approved; (7) the Lender and its agents, brokers, insurers, servicers, successors and assigns may continuously rely on the information contained in the application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the Loan; (8) in the event that my payments on the Loan become delinquent, the owner or servicer of the Loan may, in addition to any other rights and remedies that it may have relating to such delinquency, report my name and account information to one or more consumer credit reporting agencies; (9) ownership of the Loan and/or administration of the Loan account may be transferred with such notice as may be required by law; (10) neither Lender nor its agents, brokers, insurers, servicers, successors or assigns has made any representation or warranty, express or implied, to me regarding the property or the condition or value of the property; and (11) my transmission of this application as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or my facsimile transmission of this application containing a facsimile of my signature, shall be as effective, enforceable and valid as if a paper version of this application were delivered containing my original written signature.

Borrower Costella H. Davis	Date 08/18/04
Co-Borrower Cleveland N. Davis	Date 08/18/04

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may discriminate neither on the basis of this information, nor on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this lender is required to note the information on the basis of visual observation or surname. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)

Borrower

☐ I do not wish to furnish this information

Ethnicity: Not Hispanic or Latino

Race/National Origin: Black or African American;

Sex:Female

Co-Borrower

☐ I do not wish to furnish this information

Ethnicity: Not Hispanic or Latino

Race/National Origin: Black or African American;

Sex:Male

[redacted]

[redacted]

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COASTAL FINANCIAL CORPORATION PRIVACY POLICY

We limit the collection, use and sharing of information about our Customers to that, which is necessary to provide quality products and superior service, as well as identify opportunities that we feel are of interest to our Customers.

Information We Collect
We collect the following types of information:

- Information you provide on applications or other forms, such as name, address, social security number, income, assets and liabilities;
- Information we receive from third party consumer reporting agencies, such as credit history;
- Information about your transactions with our affiliates; others, or us such as your account balance, payment history and credit card usage.

Information We Disclose
We do not share information about our Customers or former Customers to anyone except as permitted or required by law. For example, we may disclose information about you to third parties to assist us in servicing your account with us, to government entities in response to subpoenas and to credit bureaus.

We are permitted by law to share Customer account history and experiences within our family of affiliates. You may find a list of these companies at the end of this notice. Unless you tell us not to, we may also share the information described above. **If you have previously notified us, it is not necessary to do so again, unless you decide to change your preferences.**

In order to make such instruction or ask any questions, you may call (843) 205-2000 or 1-800-613-8179, or e-mail to www.coastalfederal.com or visit your local Coastal Federal Bank office. Please provide your full name and street address, social security number and email address. If two or more Customers jointly obtain or have a product from us (joint ownership), we will treat a "do not share" instruction by one of the joint owners as applying to all at that household address.

We may contract with outside firms to provide product benefits and services you have requested that we do not provide internally and with other financial institutions with which we have joint marketing agreements. When this occurs, we may provide the information we collect as described above so they may offer or administer their services. Contractually, these companies are not permitted to use this information or to contact our Customers directly for any other reason than to provide the specific products or services intended.

Maintaining Accurate Information
Keeping your account information accurate is very important to us. We provide you with a variety of ways to access your account information through such means as account statement, Bank-by-Phone telephone banking and our online banking services. If you find that your account information is inaccurate, incomplete or not current, please call (843) 205-2000 or 1-800-613-8179 or write to: Deposit Servicing at 2619 Oak Street, Myrtle Beach, SC 29577. We will promptly address any concerns that you may have.

Safeguarding our Customers' Information
Coastal Financial Corporation has a strong commitment to protect our Customers' information. We permit only authorized Associates who are trained in the proper handling of Customer information to have access to that information. We encourage you to be diligent in protecting the security of your information. Tips and reminders regarding safety and security when using credit cards, debit cards, ATMs and On-Line Banking are available in the Privacy section of our website at www.coastalfederal.com.

COASTAL FINANCIAL CORPORATION AFFILIATES: Coastal Federal Bank and Coastal Retirement, Estate & Tax Planners

June 1, 2004

OFFICIAL SOUTH CAROLINA WOOD INFESTATION REPORT

THIS REPORT VALID FOR 45 DAYS ONLY. THIS REPORT MAY NOT BE USED IN A REAL ESTATE CLOSING AFTER 45 DAYS. THIS REPORT IS NOT TO BE CONSTRUED AS A GUARANTEE OR WARRANTY AGAINST FUTURE INFESTATION OR DAMAGE. IT IS RECOMMENDED BY THE DEPARTMENT OF PESTICIDE REGULATION, REGULATORY AND PUBLIC SERVICE PROGRAMS, AND THE SOUTH CAROLINA PEST CONTROL ASSOCIATION THAT THE PURCHASER OF THE STRUCTURE, RATHER THAN THE SELLER, OBTAIN THIS WOOD INFESTATION REPORT. ORIGINAL

Date 09/16/2004 File No. _____

This is to report that a qualified inspector employed by the below named firm has carefully inspected readily accessible areas, including attics and crawl spaces which permit entry, of the property located at the below address for termites, other wood-destroying insects, and fungi. The inspection for fungi and fungi damage commonly called water damaged wood, rot or decay is limited to the area below the first main floor of the structure as defined by DPRPN-198. This report specifically excludes hidden areas and areas not readily accessible, and the undersigned pest control operator disclaims that he has made any inspection of such hidden areas or of such areas not readily accessible.

The inspection described has been made on the basis of visible evidence, and special attention was given to those accessible areas which experience has shown to be particularly susceptible to attack by wood-destroying insects. Probing and/or sounding of those areas and other visible and accessible wood members showing evidence of infestation was performed. This report is submitted without warranty, guarantee, or representation as to concealed evidence of infestation or damage or as to future infestation.

If there is evidence of active infestation or past infestation of termites and/or other wood-destroying insects or fungi, it must be assumed that there is some damage to the building caused by this infestation; however any visible damage to a wood member in accessible areas has been reported. The below-named firm's inspectors are not engineers or builders, and you may wish to call a qualified engineer or expert in the building trade to provide their opinion as to whether there is structural damage to this property.

LOCATION AND DESCRIPTION OF PROPERTY INSPECTED: 595-D Willow Greens Drive Conway SC 29526

TYPE OF TRANSACTION: FHA _____ VA _____ CONVENTIONAL [✓] LOAN ASSUMPTION _____ CASH SALE _____

IF ANY OF THE FOLLOWING ITEMS ARE MARKED YES, DESCRIBE ON REVERSE:

	Check Only Appropriate Items YES	NO
WERE ANY AREAS OF THE PROPERTY OBSTRUCTED OR INACCESSIBLE?	[✓]	[ ]
INFESTATION:		
1. There is visible evidence of active: (A) subterranean termites.	[ ]	[✓]
(B) other wood-destroying insects.	[ ]	[✓]
2. There is visible evidence of a previous infestation of:		
(A) subterranean termites	[ ]	[✓]
(B) other wood-destroying insects.	[ ]	[ ]
3. There is visible evidence of prior subterranean termite treatment	[✓]	[ ]
4. There is evidence below the first main floor of the presence of:		
(A) active wood-destroying fungi (wood moisture content 28% or above)	[ ]	[✓]
(B) wood-destroying fungi is present but not active (less than 28% wood moisture content).	[ ]	[✓]
5. There is evidence of the presence of excessive moisture conditions below the first main floor (20% or above wood moisture content, standing water, etc.)	[ ]	[✓]
DAMAGE: Termite, other wood-destroying insects and fungi (Note: reporting of fungi damage to wood, commonly called water damage, decay or rot, is limited to the area below the first main floor of the structure as defined by DPRPN-198.)		
At the time of our inspection, there were visibly damaged wooden members (e.g insect damage to columns, sills, joists, plates, door jambs, headers, exterior stairs, porches, or fungi damage below the first main floor)	[ ]	[✓]
If the answer is "YES," specify causes and location(s) on back.		

	Check Appropriate Block Below
DAMAGE OBSERVED (IF ANY)	
A. Will be or has been corrected by this company	[ ]
B. Will be or has been corrected by another company (see attached contract.)	[ ]
C. Will not be corrected by this company; recommend that structure be thoroughly and completely evaluated by a qualified building expert licensed or registered with the S.C. Department of Labor, Licensing, and Regulations, Residential Builder's Commission and that needed repairs be made.	[ ]
D. In our opinion there is insufficient visible damage to recommend repair. (Explanation on the reverse side why repair was not recommended.)	[✓]
TREATMENT	Check Appropriate Block Below
1. The property described was treated by us for the prevention or control of _____ (date of treatment)	[ ]
A waiver has been issued and is attached to this form	[ ]
The present treatment warranty will expire on _____ and may be renewed initially at $ _____ by the owner.	
2. This property described has not been treated by us and is not now under contract with our firm	[✓]

SEE OTHER SIDE OF THIS REPORT FOR ADDITIONAL CONDITIONS GOVERNING THIS REPORT.

CL-100 Approved by the South Carolina Pest Control Association, Inc., and the Division of Regulatory and Public Service Programs of Clemson University. Revised 3/98 Supercedes earlier versions.

(OVER)

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CONDITIONS GOVERNING THIS REPORT

Please read carefully.

This report is based on the observations and opinions of our inspector. It must be noted that all buildings have some wood members which are not visible or accessible for inspection. It is not always possible to determine the presence of infestation without extensive probing and in some cases actual dismantling of parts of the structure being inspected.

All inspections and reports will be made on the basis of what is visible, and we will not render opinions covering areas that are enclosed or not readily accessible, areas of finished rooms, areas concealed by wall coverings, floor coverings, insulation, furniture, equipment, stored articles, or any portion of the structure in which inspection would necessitate tearing out or marring finished work. We do not move furniture, appliances, equipment, etc. Plumbing leaks may not be apparent at the time of inspection. If evidence of such leaks is disclosed, liability for the correction of such leaks is specifically denied. No opinion can be rendered as to infestation or damage on that portion of sheathing, siding or other susceptible material which continues below soil grade.

The areas of the substructure and attic that are accessible and open for inspection have been inspected. The substructure is defined as that portion of the building below the first main floor living space.

Detached garages, sheds, lean-tos, fences, or other buildings on the property are not included in this inspection report unless specifically noted.

The company, upon specific request and agreement as to additional charge, will open any inaccessible, concealed, or enclosed area and inspect same and make a report thereon.

REMARKS

THIS SPACE IS TO BE USED TO DETAIL ANY "YES" ANSWERS FROM THE FRONT OF THIS FORM. INCLUDE ITEM NUMBER WITH EACH EXPLANATION. CLARIFICATION AND EXPLANATION OF OTHER ITEMS MAY ALSO BE INCLUDED.

Absolute Pest and Termite Control holds no responsibility, warranty, guarantee, or representation as to hidden, concealed, or inaccessible area(s) with evidence of infestation, damage or future infestation. Inaccessible areas include, but are not limited to ceiling coverings, walls, floor coverings, plumbing and drains (without access), hollow block voids, space between walls and brick or veneer, and areas that cannot be visibly inspected. This CL-100 is NOT a warranty. Absolute waives all wood in direct contact with soil. Absolute is a pest and termite control company only and not structural engineers. No employee has the right or knowledge to make evaluations as to the structural soundness of any building. If the buyer has doubts as to the soundness of the structure he/she should engage a licensed structural engineer from the building trade to make a complete evaluation and make any recommendations needed to give an accurate opinion as to the stability of any structure. This property was not inspected for the presence or absence of health related molds, fungi, spores and or fungus.

No visible evidence of active termites found at time of inspection. This inspection is for the interior of unit 555-b only and does not include adjoining units or common areas. Structure has hidden voids and expansions that are uninspectable. Termite baiting stations are present from a previous treatment.

Neither I nor the company for which I am acting have had, presently have, or contemplate having any interest in this property. I do further state that neither I nor the company for which I am acting is associated in any way with any party to this transaction.

LICENSE NUMBER OF PERSON SIGNING THIS REPORT

CA 011935

(MUST BE CERTIFIED IN CATEGORY 7A)

Business License Number [redacted]

FIRM: Absolute Pest & Termite Control

BY: James Graham

ADDRESS: 3718 Pee Dee Hwy., Conway, SC 29527

OF FIRM: (843) 333-4036 (843) 369-9504

ACKNOWLEDGEMENT:

PURCHASER ACKNOWLEDGES THAT A COPY OF THIS REPORT HAS BEEN REVIEWED AND RECEIVED.

Sept 24 2004

DATE ACKNOWLEDGED

PURCHASER'S SIGNATURE

1350

(SC Copyright FORM ORT Forms 3539, 3540 & 3541
FASTTIME\WP7WIN95\1.CMT 05-05-97)

Commitment - Schedule A

File Number:
Lender Loan #: 13253
Closing Attorney:
Agent Name: GREGORY K. MARTIN
Agent Number: GREGORY K. MARTIN
39189

Borrower:

COSTELLA DAVIS AND CLEVELAND DAVIS

1. Commitment Date: SEPTEMBER 10, 2004

2. Policy (or Policies) to be issued:

(a) ALTA OWNER'S POLICY 10-17-92
Policy Amount: $ N/A
Proposed Insured: N/A

(b). ALTA LOAN POLICY 10-17-92
Policy Amount: $126,825.00
Proposed Insured:

COASTAL FEDERAL BANK, ITS SUCCESSORS AND ASSIGNS, AS THEIR INTERESTS MAY APPEAR

(c) ALTA RESIDENTIAL OWNER'S (1987)
Policy Amount $ N/A
Proposed Insured: N/A

(d)

Policy Amount $ N/A
Proposed Insured: N/A

3. Fee Simple interest in the land described in this Commitment is owned, at the Commitment Date by:

DONALD E. RUSSELL AND JOAN C. RUSSELL

4. The land referred to in this Commitment is described as follows:

SEE ATTACHED LEGAL DESCRIPTION

Issued through the office of:
GREGORY K. MARTIN (39189)
900-C MAIN STREET
CONWAY, SC 29526
843-248-2089

1351

2217-4 ☐ CORRECTED (if checked)

FILER'S name, street address, city, state and ZIP code	1. Date of closing 09/24/04	OMB No. 1545-0997
Gregory K. Martin, PC 900-C Main Street, Suite C Conway, SC 29526	2. Gross proceeds $133,500.00	2004

Proceeds From Real Estate Transactions

FILER'S Federal identification number	TRANSFEROR'S identification number	3. Address or legal description	Copy B For Transferor
[redacted]	[redacted]	Unit 595 D Willow Greens Drive Conway, SC 29526	This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

TRANSFEROR'S name
Joan C. Russell
Doanld E. Russell

Street address (including apt. no.)
[redacted]

City, state and ZIP code
[redacted]

4. Transferor received or will receive property or services as part of the consideration (if checked) ☐

Account number (optional)
[redacted]

5. Buyer's part of real estate tax (see Box 5 on back)
$0

Form 1099-S (Keep for your records.) Department of the Treasury - Internal Revenue Service

Instructions for Transferor

Generally, persons responsible for closing a real estate transaction must report the real estate proceeds to the Internal Revenue Service and must furnish this statement to you. If the real estate transferred was your main home, file **Form 2119**, Sale of Your Home, with your income tax return even if you sold at a loss or you did not replace your home. If the real estate transferred was not your main home, report the transaction in the applicable parts of **Form 4797**, Sales of Business Property, **Form 6252**, Installment Sale Income, and/or **Schedule D (Form 1040)**, Capital Gains and Losses.

If you sold your home that you did not own for more than 9 years and that home was financed after 1990 under a Federally-subsidized program (qualified mortgage bonds or mortgage credit certificates), you may have to recapture part of the subsidy. This will increase your tax. See Form 8828, Recapture of Federal Mortgage Subsidy, and Pub. 523, Selling Your Home.

Box 1.–Shows the date of closing.

Box 2.–– Shows the gross proceeds from a real estate transaction. Gross proceeds include cash and notes payable to you and notes assumed by the transferee (buyer). It does not include the value of the property or services you received or are to receive. See Box 4.

Box 3.–Shows the address of the property transferred or a legal description of the property.

Box 4.–If marked, shows that you received or will receive services or property (other than cash or notes) as part of the consideration for the property transferred. The value of any services or property (other than cash or notes) is not included in box 2.

Box 5. –Shows any real estate tax on a residence charged to the buyer at settlement. If you have already paid the real estate for the period that includes the sale date, subtract this amount from the amount already paid to determine your deductible real estate tax. But if you have already deducted the real estate tax in a prior year, generally report this amount as income on the line for "Other income" on Form 1040. For more information, see Pub. 523.

1352

Terms

Loan Amount	: $ 126825.00
Interest Rate	: 5.875%
Amortization Term	: 360 months
P&I Payment	: $ 750.22
Discount Points	: $
Origination Fee	: $

Special Condition

CONDOMINIUM PROJECT TO MEET ALL THE BANK'S INSURANCE REQUIREMENTS.

Closing

The loan must be closed in accordance with Coastal Federal Bank's General and Specific Closing Instructions and this commitment letter. A copy of these instructions are available to you upon request. The borrower(s) will be required to execute any and all documents and to pay any and all expenses incident to consummate the closing of this loan. PLEASE BE ADVISED THAT YOUR ATTORNEY WILL REQUIRE A CERTIFIED CHECK AT CLOSING FOR THE DIFFERENCE BETWEEN THE LOAN AMOUNT AND TOTAL COST PLUS CLOSING FEES.

Commitment

This is a non-assignable commitment only for the applicant(s) named above. The accuracy of all information, representations, exhibits & other data submitted in connection with the application is assumed. If further investigation discloses conditions considered by Coastal Federal Bank to be adverse of if there should be any subsequent development affecting the security, this commitment may be cancelled at the option of Coastal Federal Bank. This commitment is also subject to any requirements of the Bank previously disclosed.

Compliance

Full responsibility for compliance with all zoning and building ordinances, municipal or county, shall be upon the applicant(s) and the closing attorney.

Note/Security Instrument

The loan shall be evidenced by a promissory note to be executed and signed by each of the persons to whom this letter is addressed and such other persons as are designated hereafter. It shall be secured by an appropriate Security Instrument to be executed by all parties who have an interest in the property. Said Security Instrument shall insure Coastal Federal Bank a first lien with regard to the real property, and all improvements constructed or to be constructed thereon, free and clear of all other liens and encumbrances.

Taxes

All taxes billed or due must be paid at closing.

Title Examination

The Title Examination, Certificate of Title, and Title Opinion in connection with this loan shall be by an attorney approved by Coastal Federal Bank, and the title, closing documents, and all facts and circumstances connected with the property are subject to approval by Coastal Federal Bank and the attorney. Title Insurance and/or an attorney's title opinion is a requirement of this loan.

Private Mortgage Insurance

Private Mortgage Insurance is required on this loan. The cost to purchase and maintain this insurance will be at the borrower's expense.

Existing Property: Policy to be purchased and maintained
To be Built: Twelve (12) month commitment to be purchased at closing of permanent loan.

Hazard Insurance/Builder's Risk

A certificate of insurance is required for condominiums. This certificate must show unit number and the Mortgagee clause must read the samed named as the insured on the Mortgagee Title Insurance.

Please specify this amount to the Insurance Agent of your choice. Have the Agent furnish to your Attorney the binder along with a paid receipt for the first years premium. (Exception: A refinance loan requires at least (3) month remaining on the policy term). A condominium requires a certificate of insurance showing the unit number. The Mortgagee clause must read the same named as the insured on the Mortgagee Title Insurance. Please refer to the Bank's General Instructions for details.

Insurance coverage acceptable to Coastal Federal Bank must be kept in force at all times. Should you fail to provide a renewal, or allow coverage to expire for any reason, the mortgage will be in default. Coastal Federal Bank has the right under these circumstances to obtain insurance it deems necessary from an agent and company of its choice. Such insurance will be at your expense and may cover only the Bank's interest in the property.

Pest Inspection Certificate

Termite certification can not be more than thirty (30) days old. Certification must be signed by Mortgagor/Borrower(s).

Existing Property: Form CL100 is required for all **purchase** transactions. It must show all improvements to be free of infestation and/or damage from prior infestation. If damage, excessive moisture, other repairs or infestation appears, it must be corrected prior to closing.

New Construction: Obtain a copy of the Builder's Soil Treatment Certification which is not older than twelve (12) months as evidenced by exterminators signature and date. This includes loans for permanent mortgages which are taken out after new construction of the improvements.

Reserves

Reserves for real property tax and for insurance of the premises may be established with Coastal Federal Bank initially or at such time as you may elect so that the amount in the reserves coupled with the monthly payments (which payments shall be in addition to the payments of principal and interest) will be sufficient to pay in full prior to the due date thereof all real property taxes and all required insurance coverages affecting the premises.

Banking Services

Coastal Federal Bank offers a variety of banking services. Some of these services include the ability to draft your loan payment from your checking or savings account, mortgage life insurance, and ATM access. To arrange for these services you may contact your loan processor.

Appraisal Receipt/Acknowledgement

By execution below, I hereby acknowledge receipt of a copy of the Appraisal Report from Lender.

Disclosure/Disclaimer of Appraisal/Pest Report

The Lender in no way warrants the contents of the report(s) or the adequacy or accuracy of the inspection(s) nor does it warrant the qualifications of any Company and/or Persons who performed the inspection(s). The Lender hereby expressly disclaims any and all warranties of any nature whatsoever pertaining to the inspection(s) and/or report.

Borrower(s) should base acceptance of the condition and value of the property upon his/her/their thorough investigation and after seeking any professional advice deemed prudent. Borrower(s) hereby release Lender of any liability regarding the inspection(s) or report(s).

Commitment Acceptance Expiration Date

This commitment is valid only if written acceptance is received by the Bank within ten (10) days from the date of this letter, otherwise, closing and terms will be at Lender's option. The attorney's closing package has been forwarded to your designated attorney. **This Commitment must be executed and returned to Lender prior to loan closing.**

Coastal Federal Bank appreciates this opportunity to provide you with financing. Should you have any questions pertaining to this commitment letter, please notify our office. Please direct all closing questions to your attorney.

by: _____
COASTAL FEDERAL BANK

cc. GREG MARTIN

TAX INFORMATION SHEET

LOAN TO: COSTELLA DAVIS
CLEVELAND DAVIS

LOAN NUMBER: [redacted]

Property located at : UNIT 595 D WILLOW GREEN DRIVE, CONWAY, SC

HORRY COUNTY

TAX MAP NUMBER 151-36-01-044

PROPERTY RETURNED FOR CURRENT YEAR 2004 IN NAME OF

Donald E. Russell and Joan C. Russell

MOST RECENT COUNTY TAX BILLING $ 384.72

MOST RECENT CITY TAX BILLING $_____

____YES PAYMENT OF CURRENT YEAR TAX BILL AT CLOSING
__X__NO

Attorney K Martin

ATTORNEY AT LAW Gregory K. Martin

(IT IS IMPORTANT THAT THIS FORM BE PROPERLY COMPLETED)

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Amortization Schedule...[redacted]...DAVIS C8-31-04... continued...

Pmt #	Payment Date	Unpaid Balance	Payment Amount	Interest Portion	Principal Portion	Remaining Balance	Resulting LTV
245	03/01/25	66,275.26	750.22	324.47	425.75	65,849.51	49.33
246	04/01/25	65,849.51	750.22	322.39	427.83	65,421.68	49.01
247	05/01/25	65,421.68	750.22	320.29	429.93	64,991.75	48.68
248	06/01/25	64,991.75	750.22	318.19	432.03	64,559.72	48.36
249	07/01/25	64,559.72	750.22	316.07	434.15	64,125.57	48.03
250	08/01/25	64,125.57	750.22	313.95	436.27	63,689.30	47.71
251	09/01/25	63,689.30	750.22	311.81	438.41	63,250.89	47.38
252	10/01/25	63,250.89	750.22	309.67	440.55	62,810.34	47.05
253	11/01/25	62,810.34	750.22	307.51	442.71	62,367.63	46.72
254	12/01/25	62,367.63	750.22	305.34	444.88	61,922.75	46.38
255	01/01/26	61,922.75	750.22	303.16	447.06	61,475.69	46.05
256	02/01/26	61,475.69	750.22	300.98	449.24	61,026.45	45.71
257	03/01/26	61,026.45	750.22	298.78	451.44	60,575.01	45.38
258	04/01/26	60,575.01	750.22	296.57	453.65	60,121.36	45.04
259	05/01/26	60,121.36	750.22	294.34	455.88	59,665.48	44.69
260	06/01/26	59,665.48	750.22	292.11	458.11	59,207.37	44.35
261	07/01/26	59,207.37	750.22	289.87	460.35	58,747.02	44.01
262	08/01/26	58,747.02	750.22	287.62	462.60	58,284.42	43.66
263	09/01/26	58,284.42	750.22	285.35	464.87	57,819.55	43.31
264	10/01/26	57,819.55	750.22	283.08	467.14	57,352.41	42.96
265	11/01/26	57,352.41	750.22	280.79	469.43	56,882.98	42.61
266	12/01/26	56,882.98	750.22	278.49	471.73	56,411.25	42.26
267	01/01/27	56,411.25	750.22	276.18	474.04	55,937.21	41.90
268	02/01/27	55,937.21	750.22	273.86	476.36	55,460.85	41.54
269	03/01/27	55,460.85	750.22	271.53	478.69	54,982.16	41.19
270	04/01/27	54,982.16	750.22	269.18	481.04	54,501.12	40.83
271	05/01/27	54,501.12	750.22	266.83	483.39	54,017.73	40.46
272	06/01/27	54,017.73	750.22	264.46	485.76	53,531.97	40.10
273	07/01/27	53,531.97	750.22	262.08	488.14	53,043.83	39.73
274	08/01/27	53,043.83	750.22	259.69	490.53	52,553.30	39.37
275	09/01/27	52,553.30	750.22	257.29	492.93	52,060.37	39.00
276	10/01/27	52,060.37	750.22	254.88	495.34	51,565.03	38.63
277	11/01/27	51,565.03	750.22	252.45	497.77	51,067.26	38.25
278	12/01/27	51,067.26	750.22	250.02	500.20	50,567.06	37.88
279	01/01/28	50,567.06	750.22	247.57	502.65	50,064.41	37.50
280	02/01/28	50,064.41	750.22	245.11	505.11	49,559.30	37.12
281	03/01/28	49,559.30	750.22	242.63	507.59	49,051.71	36.74
282	04/01/28	49,051.71	750.22	240.15	510.07	48,541.64	36.36
283	05/01/28	48,541.64	750.22	237.65	512.57	48,029.07	35.98
284	06/01/28	48,029.07	750.22	235.14	515.08	47,513.99	35.59
285	07/01/28	47,513.99	750.22	232.62	517.60	46,996.39	35.20
286	08/01/28	46,996.39	750.22	230.09	520.13	46,476.26	34.81
287	09/01/28	46,476.26	750.22	227.54	522.68	45,953.58	34.42
288	10/01/28	45,953.58	750.22	224.98	525.24	45,428.34	34.03
289	11/01/28	45,428.34	750.22	222.41	527.81	44,900.53	33.63
290	12/01/28	44,900.53	750.22	219.83	530.39	44,370.14	33.24
291	01/01/29	44,370.14	750.22	217.23	532.99	43,837.15	32.84
292	02/01/29	43,837.15	750.22	214.62	535.60	43,301.55	32.44
293	03/01/29	43,301.55	750.22	212.00	538.22	42,763.33	32.03
294	04/01/29	42,763.33	750.22	209.36	540.86	42,222.47	31.63
295	05/01/29	42,222.47	750.22	206.71	543.51	41,678.96	31.22
296	06/01/29	41,678.96	750.22	204.05	546.17	41,132.79	30.81
297	07/01/29	41,132.79	750.22	201.38	548.84	40,583.95	30.40

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Amortization Schedule...[redacted]...DAVIS C8-31-04... continued...

Pmt #	Payment Date	Unpaid Balance	Payment Amount	Interest Portion	Principal Portion	Remaining Balance	Resulting LTV
298	08/01/29	40,583.95	750.22	198.69	551.53	40,032.42	29.99
299	09/01/29	40,032.42	750.22	195.99	554.23	39,478.19	29.57
300	10/01/29	39,478.19	750.22	193.28	556.94	38,921.25	29.16
301	11/01/29	38,921.25	750.22	190.55	559.67	38,361.58	28.74
302	12/01/29	38,361.58	750.22	187.81	562.41	37,799.17	28.31
303	01/01/30	37,799.17	750.22	185.06	565.16	37,234.01	27.89
304	02/01/30	37,234.01	750.22	182.29	567.93	36,666.08	27.47
305	03/01/30	36,666.08	750.22	179.51	570.71	36,095.37	27.04
306	04/01/30	36,095.37	750.22	176.72	573.50	35,521.87	26.61
307	05/01/30	35,521.87	750.22	173.91	576.31	34,945.56	26.18
308	06/01/30	34,945.56	750.22	171.09	579.13	34,366.43	25.74
309	07/01/30	34,366.43	750.22	168.25	581.97	33,784.46	25.31
310	08/01/30	33,784.46	750.22	165.40	584.82	33,199.64	24.87
311	09/01/30	33,199.64	750.22	162.54	587.68	32,611.96	24.43
312	10/01/30	32,611.96	750.22	159.66	590.56	32,021.40	23.99
313	11/01/30	32,021.40	750.22	156.77	593.45	31,427.95	23.54
314	12/01/30	31,427.95	750.22	153.87	596.35	30,831.60	23.10
315	01/01/31	30,831.60	750.22	150.95	599.27	30,232.33	22.65
316	02/01/31	30,232.33	750.22	148.01	602.21	29,630.12	22.20
317	03/01/31	29,630.12	750.22	145.06	605.16	29,024.96	21.74
318	04/01/31	29,024.96	750.22	142.10	608.12	28,416.84	21.29
319	05/01/31	28,416.84	750.22	139.12	611.10	27,805.74	20.83
320	06/01/31	27,805.74	750.22	136.13	614.09	27,191.65	20.37
321	07/01/31	27,191.65	750.22	133.13	617.09	26,574.56	19.91
322	08/01/31	26,574.56	750.22	130.11	620.11	25,954.45	19.44
323	09/01/31	25,954.45	750.22	127.07	623.15	25,331.30	18.98
324	10/01/31	25,331.30	750.22	124.02	626.20	24,705.10	18.51
325	11/01/31	24,705.10	750.22	120.95	629.27	24,075.83	18.03
326	12/01/31	24,075.83	750.22	117.87	632.35	23,443.48	17.56
327	01/01/32	23,443.48	750.22	114.78	635.44	22,808.04	17.09
328	02/01/32	22,808.04	750.22	111.66	638.56	22,169.48	16.61
329	03/01/32	22,169.48	750.22	108.54	641.68	21,527.80	16.13
330	04/01/32	21,527.80	750.22	105.40	644.82	20,882.98	15.64
331	05/01/32	20,882.98	750.22	102.24	647.98	20,235.00	15.16
332	06/01/32	20,235.00	750.22	99.07	651.15	19,583.85	14.67
333	07/01/32	19,583.85	750.22	95.88	654.34	18,929.51	14.18
334	08/01/32	18,929.51	750.22	92.68	657.54	18,271.97	13.69
335	09/01/32	18,271.97	750.22	89.46	660.76	17,611.21	13.19
336	10/01/32	17,611.21	750.22	86.22	664.00	16,947.21	12.70
337	11/01/32	16,947.21	750.22	82.97	667.25	16,279.96	12.20
338	12/01/32	16,279.96	750.22	79.70	670.52	15,609.44	11.69
339	01/01/33	15,609.44	750.22	76.42	673.80	14,935.64	11.19
340	02/01/33	14,935.64	750.22	73.12	677.10	14,258.54	10.68
341	03/01/33	14,258.54	750.22	69.81	680.41	13,578.13	10.17
342	04/01/33	13,578.13	750.22	66.48	683.74	12,894.39	9.66
343	05/01/33	12,894.39	750.22	63.13	687.09	12,207.30	9.14
344	06/01/33	12,207.30	750.22	59.77	690.45	11,516.85	8.63
345	07/01/33	11,516.85	750.22	56.39	693.83	10,823.02	8.11
346	08/01/33	10,823.02	750.22	52.99	697.23	10,125.79	7.59
347	09/01/33	10,125.79	750.22	49.57	700.65	9,425.14	7.06
348	10/01/33	9,425.14	750.22	46.14	704.08	8,721.06	6.53
349	11/01/33	8,721.06	750.22	42.70	707.52	8,013.54	6.00
350	12/01/33	8,013.54	750.22	39.23	710.99	7,302.55	5.47

1358

Amortization Schedule...[redacted]...DAVIS C8-31-04... continued...

Pmt #	Payment Date	Unpaid Balance	Payment Amount	Interest Portion	Principal Portion	Remaining Balance	Resulting LTV
351	01/01/34	7,302.55	750.22	35.75	714.47	6,588.08	4.94
352	02/01/34	6,588.08	750.22	32.25	717.97	5,870.11	4.40
353	03/01/34	5,870.11	750.22	28.74	721.48	5,148.63	3.86
354	04/01/34	5,148.63	750.22	25.21	725.01	4,423.62	3.31
355	05/01/34	4,423.62	750.22	21.66	728.56	3,695.06	2.77
356	06/01/34	3,695.06	750.22	18.09	732.13	2,962.93	2.22
357	07/01/34	2,962.93	750.22	14.51	735.71	2,227.22	1.67
358	08/01/34	2,227.22	750.22	10.90	739.32	1,487.90	1.12
359	09/01/34	1,487.90	750.22	7.29	742.93	744.97	0.56
360	10/01/34	744.97	748.62	3.65	744.97	0.00	0.00

Dates to Reach:

* 80% = 06/01/2014
** 78% = 05/01/2015
*** 77% = 11/01/2015
**** Mid = 10/01/2019

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CERTIFICATE OF INSURANCE

This certifies that

- [x] STATE FARM FIRE AND CASUALTY COMPANY, Bloomington, Illinois
- [ ] STATE FARM GENERAL INSURANCE COMPANY, Bloomington, Illinois
- [ ] STATE FARM FIRE AND CASUALTY COMPANY, Scarborough, Ontario
- [ ] STATE FARM FLORIDA INSURANCE COMPANY, Winter Haven, Florida
- [ ] STATE FARM LLOYDS, Dallas, Texas

sures the following policyholder for the coverages indicated below:

Policyholder: WILLOW GREENS CONDOMINIUM ASSOCIATION

Address of policyholder: 395 WILLOW GREENS DRIVE CONWAY, SC 29526

Location of operations: SAME

Description of operations: CONDOMINIUM ASSOCIATION

The policies listed below have been issued to the policyholder for the policy periods shown. The insurance described in these policies is subject to all the terms exclusions, and conditions of those policies. The limits of liability shown may have been reduced by any paid claims.

POLICY NUMBER	TYPE OF INSURANCE	POLICY PERIOD Effective Date	POLICY PERIOD Expiration Date	LIMITS OF LIABILITY (at beginning of policy period)
99-CG-1733-3F	Comprehensive Business Liability	03/31/2004	03/31/2005	BODILY INJURY AND PROPERTY DAMAGE
This insurance includes:	[x] Products - Completed Operations [x] Contractual Liability [x] Underground Hazard Coverage [x] Personal Injury [x] Advertising Injury [x] Explosion Hazard Coverage [x] Collapse Hazard Coverage [x] DIRECTORS/OFFICERS [ ]			Each Occurrence $2,000,000 General Aggregate $4,000,000 Products – Completed Operations Aggregate $4,000,000
	EXCESS LIABILITY [ ] Umbrella [ ] Other			BODILY INJURY AND PROPERTY DAMAGE (Combined Single Limit) Each Occurrence $ Aggregate $
	Workers' Compensation and Employers Liability			Part 1 STATUTORY Part 2 BODILY INJURY Each Accident $ Disease - Each Employee $ Disease - Policy Limit $

POLICY NUMBER	TYPE OF INSURANCE	POLICY PERIOD Effective Date	POLICY PERIOD Expiration Date	LIMITS OF LIABILITY (at beginning of policy period)
99-CG-1733-3F	PROPERTY	03/31/2004	03/31/2005	$5,445,100

THE CERTIFICATE OF INSURANCE IS NOT A CONTRACT OF INSURANCE AND NEITHER AFFIRMATIVELY NOR NEGATIVELY AMENDS, EXTENDS OR ALTERS THE COVERAGE APPROVED BY ANY POLICY DESCRIBED HEREIN.

If any of the described policies are canceled before its expiration date, State Farm will try to mail a written notice to the certificate holder 45 days before cancellation. If however, we fail to mail such notice, no obligation or liability will be imposed on State Farm or its agents or representatives.

Cleveland & Costella Davis
395D Willow Greens Drive
Conway, SC 29526

Name and Address of Certificate Holder

Coastal Federal Bank
Its successors and/or assigns/Atima
2619 Oak Street
Myrtle Beach, SC 29577

Charleen Johnson by Robert L Barlow, CSA
Signature of Authorized Representative 9-16-04
AGENT ~~03/31/2004~~
Title Date

Agent's Code Stamp

Select Agent - Legion of Honor
AFO Cbdhnson 40-1876
Coastal AFO F342

558-984 8.4 11-12-2002 Printed in U.S.A.

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09/16/2004 10:13 8433479326 CHARLEEN JOHNSON PAGE 02

COASTAL FEDERAL BANK
The right bank for you.

September 1, 2004

Borrower(s) Name & Address

COSTELLA DAVIS
CLEVELAND DAVIS
3807 CLAIRTON DRIVE
MITCHELLVILLE, MD 20721

Application Number: 101634129

Property Address / Legal Description
UNIT 595 D WILLOW GREEN DRIVE
CONWAY, SC 29526
HORRY COUNTY
WILLOW GREENS PHASE 7

Attorney's Name and Address
GREG MARTIN
900 C MAIN ST
CONWAY, SC 29526

Attorney's Phone # 843-248-2089

Dear Applicant(s):

Coastal Federal Bank is pleased to advise you that we have approved your loan application on the above referenced property. This approval is subject to all of the terms and conditions hereinafter set forth:

Commitment/Closing Expiration Date

The loan must be closed and funded by 10/04/04. Please contact your attorney immediately to arrange for a closing date. If not **FUNDED** by the above date this offer will become null and void and you will be subject to current market rate conditions at lender's option. If the loan cannot close by the expiration date, contact the lender immediately. Time is of the essence.

Form **W-9**
(Rev. January 2003)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type See Specific Instructions on page 2.

Name
COSTELLA DAVIS

Business name, if different from above

Check appropriate box: ☑ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☐ Other ► ..... ☐ Exempt from backup withholding

Address (number, street, and apt. or suite no.)
3807 CLAIRTON DRIVE

Requester's name and address (optional)

City, state, and ZIP code
MITCHELLVILLE, MD 20721

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Note: *If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.*

Social security number
[redacted]

or

Employer identification number
- -

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here — Signature of U.S. person ► [signature] Date ► 9-24-04

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

Note: *If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.*

Foreign person. If you are a foreign person, use the appropriate Form W-8 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 30% of such payments (29% after December 31, 2003; 28% after December 31, 2005). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or

2. You do not certify your TIN when required (see the Part II instructions on page 4 for details), or

3. The IRS tells the requester that you furnished an incorrect TIN, or

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your social security card on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

Other entities. Enter your business name as shown on required Federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note: *You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).*

Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note: *If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.*

Exempt payees. Backup withholding is **not required** on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2);

2. The United States or any of its agencies or instrumentalities;

3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities;

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities; or

5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation;

7. A foreign central bank of issue;

8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States;

9. A futures commission merchant registered with the Commodity Futures Trading Commission;

10. A real estate investment trust;

11. An entity registered at all times during the tax year under the Investment Company Act of 1940;

12. A common trust fund operated by a bank under section 584(a);

13. A financial institution;

14. A middleman known in the investment community as a nominee or custodian; or

15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

If the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over $600 required to be reported and direct sales over $5,000 [1]	Generally, exempt recipients 1 through 7 [2]

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a Federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see **How to get a TIN** below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see **Limited liability company (LLC)** on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

Note: *See the chart on page 4 for further clarification of name and TIN combinations.*

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form on-line at www.ssa.gov/online/ss5.html. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can get Forms W-7 and SS-4 from the IRS by calling 1-800-TAX-FORM (1-800-829-3676) or from the IRS Web Site at www.irs.gov.

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: *Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.*

Caution: *A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.*

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 3, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see **Exempt from backup withholding** on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA or Archer MSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account [1]
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor [2]
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee [1]
b. So-called trust account that is not a legal or valid trust under state law	The actual owner [1]
5. Sole proprietorship or single-owner LLC	The owner [3]
For this type of account:	**Give name and EIN of:**
6. Sole proprietorship or single-owner LLC	The owner [3]
7. A valid trust, estate, or pension trust	Legal entity [4]
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name, but you may also enter your business or "DBA" name. You may use either your SSN or EIN (if you have one).

[4] List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

Note: *If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.*

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA or Archer MSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 30% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

TRUTH-IN-LENDING DISCLOSURE FOR REAL ESTATE MORTGAGE LOANS

LENDER	BORROWER
COASTAL FEDERAL BANK 2619 OAK STREET MYRTLE BEACH, SC 29577-3129	COSTELLA DAVIS CLEVELAND DAVIS 3807 CLAIRTON DRIVE MITCHELLVILLE, MD 20721

APPLICATION # [redacted] DATE OF DISCLOSURE 09/20/04

(In this disclosure statement, the words "I," "me," "my," and "mine" refer to each consumer listed above. The words "you," "your," and "creditor" refer to COASTAL FEDERAL BANK

Words, numbers or phrases preceded by a ☐ are applicable only if the ☐ is marked.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of my credit as a yearly rate.	The dollar amount the credit will cost me.	The amount of credit provided to me or on my behalf.	The amount I will have paid after I have made all payments as scheduled, based on the current annual percentage rate.
6.599 %	$ 155,735.59	$ 126,053.34	$ 281,788.93

My payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
117	848.51	MONTHLY BEGINNING 11/01/2004
10	771.36	MONTHLY BEGINNING 08/01/2014
232	750.22	MONTHLY BEGINNING 06/01/2015
1	748.62	PAYMENT IS DUE ON 10/01/2034

117 PAYMENTS CONTAIN $98.29 AND 10 PAYMENTS CONTAIN $21.14 PMI.

☐ **Construction Loan:** Interest on the amount of credit outstanding during the construction period will be payable Monthly based on the outstanding balance. After the construction period I will pay payments as shown above.

☐ **Variable Rate:** "ASSUMPTION NOTICE" THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT THE REAL ESTATE SECURING THE DEBT IS SOLD, CONVEYED OR OTHERWISE TRANSFERRED.

Security: I am giving you a mortgage on real estate located at
UNIT 595 D WILLOW GREEN DRIVE, CONWAY, SC 29526

Late Charge: If payment is more than 15 days late, I will be charged 5.00 % of the interest and principal payment.

Assumption:

☐ Someone buying my principal dwelling may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

☒ Someone buying my principal dwelling cannot assume the remainder of the mortgage on the original terms.

Prepayment: If I pay off early, I WILL NOT have to pay a penalty, and I may be entitled to a refund of any part of the finance charge.

☐ All above numerical disclosures except for the late charge are estimates.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and penalties and creditor's policy regarding assumption of the obligation.

"e" means an estimate.

Initials Initials "By initialing, the Borrower(s) acknowledge(s) that this page is 1 of 2 of the Truth-In-Lending Disclosure For Real Estate Mortgage Loans."

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GREATLAND ■ To Order Call: 1-800-530-9393 ☐Fax 616-791-1131

TRUTH-IN-LENDING DISCLOSURE FOR REAL ESTATE MORTGAGE LOANS

LENDER	BORROWER
COASTAL FEDERAL BANK 2619 OAK STREET MYRTLE BEACH, SC 29577-3129	COSTELLA DAVIS CLEVELAND DAVIS 3807 CLAIRTON DRIVE MITCHELLVILLE, MD 20721

APPLICATION # 101634129 DATE OF DISCLOSURE 09/20/04

(In this disclosure statement, the words "I," "me," "my," and "mine" refer to each consumer listed above. The words "you," "your," and "creditor" refer to COASTAL FEDERAL BANK

Words, numbers or phrases preceded by a ☐ are applicable only if the ☐ is marked.

Recording Fees: $ 25.00

Insurance: I may obtain all required property insurance (including flood hazard insurance) from anyone I want that is acceptable to creditor.

Itemization of Amount Financed of $ 126053.34 (C minus D)

A. $	126825.00	Amount given to me directly
B. $		Amount paid on my account(s) with creditor
C. $	126825.00	Principal amount of loan
D. $	771.66	Prepaid finance charge (itemized below)
$		for "points" paid by me
$	82.79	for 4 days prepaid interest
$	294.87	for INITIAL PMI ESCROW
$	81.00	for TAX SERVICE FEE
$	18.00	for FLOOD CERTS
$	295.00	for UNDERWRITER/DOC P

Insurance: Credit life and credit disability insurance are not required to obtain credit and will not be provided unless I agree to pay the additional cost by signing below. No requested insurance will be in force until I have completed an application, an insurance company has issued a policy, the effective date of that policy has arrived and the premium called for has been paid.

TYPE	PREMIUM	SIGNATURE
Credit Life		I apply for Credit Life Insurance
Credit Disability		I apply for Disability Insurance
Credit Life & Credit Disability		I apply for Credit Life and Disability Insurance

I understand that this is not a contract and does not reflect all of the terms and conditions of the mortgage transaction to which the disclosures reflected on this form relate.

All parties signing below acknowledge receiving a filled-in copy of this disclosure statement.

9-24-04 DATE — SIGNATURE — COSTELLA DAVIS

9-24-04 DATE — SIGNATURE — CLEVELAND DAVIS

Initials Initials

"By initialing, the Borrower(s) acknowledge(s) that this page is 2 of 2 of the Truth-In-Lending Disclosure For Real Estate Mortgage Loans."

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GREATLAND ■ To Order Call: 1-800-530-9393 ☐Fax 616-791-1131

AMORTIZATION SCHEDULE

101634129
COSTELLA DAVIS
CLEVELAND DAVIS

Purchase Price/Value	$133,500.00	
Loan To Value	95.00	%
Loan Amount	$126,825.00	
Term (in months)	360	
Interest Rate	5.875	%

Pmt #	Payment Date	Unpaid Balance	Payment Amount	Interest Portion	Principal Portion	Remaining Balance	Resulting LTV
1	11/01/04	126,825.00	750.22	620.91	129.31	126,695.69	94.90
2	12/01/04	126,695.69	750.22	620.28	129.94	126,565.75	94.81
3	01/01/05	126,565.75	750.22	619.65	130.57	126,435.18	94.71
4	02/01/05	126,435.18	750.22	619.01	131.21	126,303.97	94.61
5	03/01/05	126,303.97	750.22	618.36	131.86	126,172.11	94.51
6	04/01/05	126,172.11	750.22	617.72	132.50	126,039.61	94.41
7	05/01/05	126,039.61	750.22	617.07	133.15	125,906.46	94.31
8	06/01/05	125,906.46	750.22	616.42	133.80	125,772.66	94.21
9	07/01/05	125,772.66	750.22	615.76	134.46	125,638.20	94.11
10	08/01/05	125,638.20	750.22	615.10	135.12	125,503.08	94.01
11	09/01/05	125,503.08	750.22	614.44	135.78	125,367.30	93.91
12	10/01/05	125,367.30	750.22	613.78	136.44	125,230.86	93.81
13	11/01/05	125,230.86	750.22	613.11	137.11	125,093.75	93.70
14	12/01/05	125,093.75	750.22	612.44	137.78	124,955.97	93.60
15	01/01/06	124,955.97	750.22	611.76	138.46	124,817.51	93.50
16	02/01/06	124,817.51	750.22	611.09	139.13	124,678.38	93.39
17	03/01/06	124,678.38	750.22	610.41	139.81	124,538.57	93.29
18	04/01/06	124,538.57	750.22	609.72	140.50	124,398.07	93.18
19	05/01/06	124,398.07	750.22	609.03	141.19	124,256.88	93.08
20	06/01/06	124,256.88	750.22	608.34	141.88	124,115.00	92.97
21	07/01/06	124,115.00	750.22	607.65	142.57	123,972.43	92.86
22	08/01/06	123,972.43	750.22	606.95	143.27	123,829.16	92.76
23	09/01/06	123,829.16	750.22	606.25	143.97	123,685.19	92.65
24	10/01/06	123,685.19	750.22	605.54	144.68	123,540.51	92.54
25	11/01/06	123,540.51	750.22	604.83	145.39	123,395.12	92.43
26	12/01/06	123,395.12	750.22	604.12	146.10	123,249.02	92.32
27	01/01/07	123,249.02	750.22	603.41	146.81	123,102.21	92.21
28	02/01/07	123,102.21	750.22	602.69	147.53	122,954.68	92.10
29	03/01/07	122,954.68	750.22	601.97	148.25	122,806.43	91.99
30	04/01/07	122,806.43	750.22	601.24	148.98	122,657.45	91.88
31	05/01/07	122,657.45	750.22	600.51	149.71	122,507.74	91.77
32	06/01/07	122,507.74	750.22	599.78	150.44	122,357.30	91.65

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Amortization Schedule...101634129...DAVIS C8-31-04... continued...

Pmt #	Payment Date	Unpaid Balance	Payment Amount	Interest Portion	Principal Portion	Remaining Balance	Resulting LTV
33	07/01/07	122,357.30	750.22	599.04	151.18	122,206.12	91.54
34	08/01/07	122,206.12	750.22	598.30	151.92	122,054.20	91.43
35	09/01/07	122,054.20	750.22	597.56	152.66	121,901.54	91.31
36	10/01/07	121,901.54	750.22	596.81	153.41	121,748.13	91.20
37	11/01/07	121,748.13	750.22	596.06	154.16	121,593.97	91.08
38	12/01/07	121,593.97	750.22	595.30	154.92	121,439.05	90.97
39	01/01/08	121,439.05	750.22	594.55	155.67	121,283.38	90.85
40	02/01/08	121,283.38	750.22	593.78	156.44	121,126.94	90.73
41	03/01/08	121,126.94	750.22	593.02	157.20	120,969.74	90.61
42	04/01/08	120,969.74	750.22	592.25	157.97	120,811.77	90.50
43	05/01/08	120,811.77	750.22	591.47	158.75	120,653.02	90.38
44	06/01/08	120,653.02	750.22	590.70	159.52	120,493.50	90.26
45	07/01/08	120,493.50	750.22	589.92	160.30	120,333.20	90.14
46	08/01/08	120,333.20	750.22	589.13	161.09	120,172.11	90.02
47	09/01/08	120,172.11	750.22	588.34	161.88	120,010.23	89.90
48	10/01/08	120,010.23	750.22	587.55	162.67	119,847.56	89.77
49	11/01/08	119,847.56	750.22	586.75	163.47	119,684.09	89.65
50	12/01/08	119,684.09	750.22	585.95	164.27	119,519.82	89.53
51	01/01/09	119,519.82	750.22	585.15	165.07	119,354.75	89.40
52	02/01/09	119,354.75	750.22	584.34	165.88	119,188.87	89.28
53	03/01/09	119,188.87	750.22	583.53	166.69	119,022.18	89.16
54	04/01/09	119,022.18	750.22	582.71	167.51	118,854.67	89.03
55	05/01/09	118,854.67	750.22	581.89	168.33	118,686.34	88.90
56	06/01/09	118,686.34	750.22	581.07	169.15	118,517.19	88.78
57	07/01/09	118,517.19	750.22	580.24	169.98	118,347.21	88.65
58	08/01/09	118,347.21	750.22	579.41	170.81	118,176.40	88.52
59	09/01/09	118,176.40	750.22	578.57	171.65	118,004.75	88.39
60	10/01/09	118,004.75	750.22	577.73	172.49	117,832.26	88.26
61	11/01/09	117,832.26	750.22	576.89	173.33	117,658.93	88.13
62	12/01/09	117,658.93	750.22	576.04	174.18	117,484.75	88.00
63	01/01/10	117,484.75	750.22	575.19	175.03	117,309.72	87.87
64	02/01/10	117,309.72	750.22	574.33	175.89	117,133.83	87.74
65	03/01/10	117,133.83	750.22	573.47	176.75	116,957.08	87.61
66	04/01/10	116,957.08	750.22	572.60	177.62	116,779.46	87.48
67	05/01/10	116,779.46	750.22	571.73	178.49	116,600.97	87.34
68	06/01/10	116,600.97	750.22	570.86	179.36	116,421.61	87.21
69	07/01/10	116,421.61	750.22	569.98	180.24	116,241.37	87.07
70	08/01/10	116,241.37	750.22	569.10	181.12	116,060.25	86.94
71	09/01/10	116,060.25	750.22	568.21	182.01	115,878.24	86.80
72	10/01/10	115,878.24	750.22	567.32	182.90	115,695.34	86.66
73	11/01/10	115,695.34	750.22	566.43	183.79	115,511.55	86.53
74	12/01/10	115,511.55	750.22	565.53	184.69	115,326.86	86.39
75	01/01/11	115,326.86	750.22	564.62	185.60	115,141.26	86.25
76	02/01/11	115,141.26	750.22	563.71	186.51	114,954.75	86.11
77	03/01/11	114,954.75	750.22	562.80	187.42	114,767.33	85.97
78	04/01/11	114,767.33	750.22	561.88	188.34	114,578.99	85.83
79	05/01/11	114,578.99	750.22	560.96	189.26	114,389.73	85.69
80	06/01/11	114,389.73	750.22	560.03	190.19	114,199.54	85.54
81	07/01/11	114,199.54	750.22	559.10	191.12	114,008.42	85.40
82	08/01/11	114,008.42	750.22	558.17	192.05	113,816.37	85.26
83	09/01/11	113,816.37	750.22	557.23	192.99	113,623.38	85.11
84	10/01/11	113,623.38	750.22	556.28	193.94	113,429.44	84.97
85	11/01/11	113,429.44	750.22	555.33	194.89	113,234.55	84.82

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Amortization Schedule...101634129...DAVIS C8-31-04... continued...

Pmt #	Payment Date	Unpaid Balance	Payment Amount	Interest Portion	Principal Portion	Remaining Balance	Resulting LTV
86	12/01/11	113,234.55	750.22	554.38	195.84	113,038.71	84.67
87	01/01/12	113,038.71	750.22	553.42	196.80	112,841.91	84.53
88	02/01/12	112,841.91	750.22	552.46	197.76	112,644.15	84.38
89	03/01/12	112,644.15	750.22	551.49	198.73	112,445.42	84.23
90	04/01/12	112,445.42	750.22	550.51	199.71	112,245.71	84.08
91	05/01/12	112,245.71	750.22	549.54	200.68	112,045.03	83.93
92	06/01/12	112,045.03	750.22	548.55	201.67	111,843.36	83.78
93	07/01/12	111,843.36	750.22	547.57	202.65	111,640.71	83.63
94	08/01/12	111,640.71	750.22	546.57	203.65	111,437.06	83.47
95	09/01/12	111,437.06	750.22	545.58	204.64	111,232.42	83.32
96	10/01/12	111,232.42	750.22	544.58	205.64	111,026.78	83.17
97	11/01/12	111,026.78	750.22	543.57	206.65	110,820.13	83.01
98	12/01/12	110,820.13	750.22	542.56	207.66	110,612.47	82.86
99	01/01/13	110,612.47	750.22	541.54	208.68	110,403.79	82.70
100	02/01/13	110,403.79	750.22	540.52	209.70	110,194.09	82.54
101	03/01/13	110,194.09	750.22	539.49	210.73	109,983.36	82.39
102	04/01/13	109,983.36	750.22	538.46	211.76	109,771.60	82.23
103	05/01/13	109,771.60	750.22	537.42	212.80	109,558.80	82.07
104	06/01/13	109,558.80	750.22	536.38	213.84	109,344.96	81.91
105	07/01/13	109,344.96	750.22	535.34	214.88	109,130.08	81.75
106	08/01/13	109,130.08	750.22	534.28	215.94	108,914.14	81.58
107	09/01/13	108,914.14	750.22	533.23	216.99	108,697.15	81.42
108	10/01/13	108,697.15	750.22	532.16	218.06	108,479.09	81.26
109	11/01/13	108,479.09	750.22	531.10	219.12	108,259.97	81.09
110	12/01/13	108,259.97	750.22	530.02	220.20	108,039.77	80.93
111	01/01/14	108,039.77	750.22	528.95	221.27	107,818.50	80.76
112	02/01/14	107,818.50	750.22	527.86	222.36	107,596.14	80.60
113	03/01/14	107,596.14	750.22	526.77	223.45	107,372.69	80.43
114	04/01/14	107,372.69	750.22	525.68	224.54	107,148.15	80.26
115	05/01/14	107,148.15	750.22	524.58	225.64	106,922.51	80.09
116	06/01/14	106,922.51	750.22	523.48	226.74	106,695.77	79.92 *
117	07/01/14	106,695.77	750.22	522.37	227.85	106,467.92	79.75
118	08/01/14	106,467.92	750.22	521.25	228.97	106,238.95	79.58
119	09/01/14	106,238.95	750.22	520.13	230.09	106,008.86	79.41
120	10/01/14	106,008.86	750.22	519.00	231.22	105,777.64	79.23
121	11/01/14	105,777.64	750.22	517.87	232.35	105,545.29	79.06
122	12/01/14	105,545.29	750.22	516.73	233.49	105,311.80	78.89
123	01/01/15	105,311.80	750.22	515.59	234.63	105,077.17	78.71
124	02/01/15	105,077.17	750.22	514.44	235.78	104,841.39	78.53
125	03/01/15	104,841.39	750.22	513.29	236.93	104,604.46	78.36
126	04/01/15	104,604.46	750.22	512.13	238.09	104,366.37	78.18
127	05/01/15	104,366.37	750.22	510.96	239.26	104,127.11	78.00 **
128	06/01/15	104,127.11	750.22	509.79	240.43	103,886.68	77.82
129	07/01/15	103,886.68	750.22	508.61	241.61	103,645.07	77.64
130	08/01/15	103,645.07	750.22	507.43	242.79	103,402.28	77.46
131	09/01/15	103,402.28	750.22	506.24	243.98	103,158.30	77.27
132	10/01/15	103,158.30	750.22	505.05	245.17	102,913.13	77.09
133	11/01/15	102,913.13	750.22	503.85	246.37	102,666.76	76.90 ***
134	12/01/15	102,666.76	750.22	502.64	247.58	102,419.18	76.72
135	01/01/16	102,419.18	750.22	501.43	248.79	102,170.39	76.53
136	02/01/16	102,170.39	750.22	500.21	250.01	101,920.38	76.35
137	03/01/16	101,920.38	750.22	498.99	251.23	101,669.15	76.16
138	04/01/16	101,669.15	750.22	497.76	252.46	101,416.69	75.97

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Amortization Schedule...101634129...DAVIS C8-31-04... continued...

Pmt #	Payment Date	Unpaid Balance	Payment Amount	Interest Portion	Principal Portion	Remaining Balance	Resulting LTV
139	05/01/16	101,416.69	750.22	496.52	253.70	101,162.99	75.78
140	06/01/16	101,162.99	750.22	495.28	254.94	100,908.05	75.59
141	07/01/16	100,908.05	750.22	494.03	256.19	100,651.86	75.40
142	08/01/16	100,651.86	750.22	492.78	257.44	100,394.42	75.20
143	09/01/16	100,394.42	750.22	491.51	258.71	100,135.71	75.01
144	10/01/16	100,135.71	750.22	490.25	259.97	99,875.74	74.81
145	11/01/16	99,875.74	750.22	488.98	261.24	99,614.50	74.62
146	12/01/16	99,614.50	750.22	487.70	262.52	99,351.98	74.42
147	01/01/17	99,351.98	750.22	486.41	263.81	99,088.17	74.22
148	02/01/17	99,088.17	750.22	485.12	265.10	98,823.07	74.03
149	03/01/17	98,823.07	750.22	483.82	266.40	98,556.67	73.83
150	04/01/17	98,556.67	750.22	482.52	267.70	98,288.97	73.63
151	05/01/17	98,288.97	750.22	481.21	269.01	98,019.96	73.42
152	06/01/17	98,019.96	750.22	479.89	270.33	97,749.63	73.22
153	07/01/17	97,749.63	750.22	478.57	271.65	97,477.98	73.02
154	08/01/17	97,477.98	750.22	477.24	272.98	97,205.00	72.81
155	09/01/17	97,205.00	750.22	475.90	274.32	96,930.68	72.61
156	10/01/17	96,930.68	750.22	474.56	275.66	96,655.02	72.40
157	11/01/17	96,655.02	750.22	473.21	277.01	96,378.01	72.19
158	12/01/17	96,378.01	750.22	471.85	278.37	96,099.64	71.99
159	01/01/18	96,099.64	750.22	470.49	279.73	95,819.91	71.78
160	02/01/18	95,819.91	750.22	469.12	281.10	95,538.81	71.57
161	03/01/18	95,538.81	750.22	467.74	282.48	95,256.33	71.35
162	04/01/18	95,256.33	750.22	466.36	283.86	94,972.47	71.14
163	05/01/18	94,972.47	750.22	464.97	285.25	94,687.22	70.93
164	06/01/18	94,687.22	750.22	463.57	286.65	94,400.57	70.71
165	07/01/18	94,400.57	750.22	462.17	288.05	94,112.52	70.50
166	08/01/18	94,112.52	750.22	460.76	289.46	93,823.06	70.28
167	09/01/18	93,823.06	750.22	459.34	290.88	93,532.18	70.06
168	10/01/18	93,532.18	750.22	457.92	292.30	93,239.88	69.84
169	11/01/18	93,239.88	750.22	456.49	293.73	92,946.15	69.62
170	12/01/18	92,946.15	750.22	455.05	295.17	92,650.98	69.40
171	01/01/19	92,650.98	750.22	453.60	296.62	92,354.36	69.18
172	02/01/19	92,354.36	750.22	452.15	298.07	92,056.29	68.96
173	03/01/19	92,056.29	750.22	450.69	299.53	91,756.76	68.73
174	04/01/19	91,756.76	750.22	449.23	300.99	91,455.77	68.51
175	05/01/19	91,455.77	750.22	447.75	302.47	91,153.30	68.28
176	06/01/19	91,153.30	750.22	446.27	303.95	90,849.35	68.05
177	07/01/19	90,849.35	750.22	444.78	305.44	90,543.91	67.82
178	08/01/19	90,543.91	750.22	443.29	306.93	90,236.98	67.59
179	09/01/19	90,236.98	750.22	441.79	308.43	89,928.55	67.36
180	10/01/19	89,928.55	750.22	440.28	309.94	89,618.61	67.13 ****
181	11/01/19	89,618.61	750.22	438.76	311.46	89,307.15	66.90
182	12/01/19	89,307.15	750.22	437.23	312.99	88,994.16	66.66
183	01/01/20	88,994.16	750.22	435.70	314.52	88,679.64	66.43
184	02/01/20	88,679.64	750.22	434.16	316.06	88,363.58	66.19
185	03/01/20	88,363.58	750.22	432.61	317.61	88,045.97	65.95
186	04/01/20	88,045.97	750.22	431.06	319.16	87,726.81	65.71
187	05/01/20	87,726.81	750.22	429.50	320.72	87,406.09	65.47
188	06/01/20	87,406.09	750.22	427.93	322.29	87,083.80	65.23
189	07/01/20	87,083.80	750.22	426.35	323.87	86,759.93	64.99
190	08/01/20	86,759.93	750.22	424.76	325.46	86,434.47	64.75
191	09/01/20	86,434.47	750.22	423.17	327.05	86,107.42	64.50

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Amortization Schedule...101634129...DAVIS C8-31-04... continued...

Pmt #	Payment Date	Unpaid Balance	Payment Amount	Interest Portion	Principal Portion	Remaining Balance	Resulting LTV
192	10/01/20	86,107.42	750.22	421.57	328.65	85,778.77	64.25
193	11/01/20	85,778.77	750.22	419.96	330.26	85,448.51	64.01
194	12/01/20	85,448.51	750.22	418.34	331.88	85,116.63	63.76
195	01/01/21	85,116.63	750.22	416.72	333.50	84,783.13	63.51
196	02/01/21	84,783.13	750.22	415.08	335.14	84,447.99	63.26
197	03/01/21	84,447.99	750.22	413.44	336.78	84,111.21	63.01
198	04/01/21	84,111.21	750.22	411.80	338.42	83,772.79	62.75
199	05/01/21	83,772.79	750.22	410.14	340.08	83,432.71	62.50
200	06/01/21	83,432.71	750.22	408.47	341.75	83,090.96	62.24
201	07/01/21	83,090.96	750.22	406.80	343.42	82,747.54	61.98
202	08/01/21	82,747.54	750.22	405.12	345.10	82,402.44	61.73
203	09/01/21	82,402.44	750.22	403.43	346.79	82,055.65	61.47
204	10/01/21	82,055.65	750.22	401.73	348.49	81,707.16	61.20
205	11/01/21	81,707.16	750.22	400.03	350.19	81,356.97	60.94
206	12/01/21	81,356.97	750.22	398.31	351.91	81,005.06	60.68
207	01/01/22	81,005.06	750.22	396.59	353.63	80,651.43	60.41
208	02/01/22	80,651.43	750.22	394.86	355.36	80,296.07	60.15
209	03/01/22	80,296.07	750.22	393.12	357.10	79,938.97	59.88
210	04/01/22	79,938.97	750.22	391.37	358.85	79,580.12	59.61
211	05/01/22	79,580.12	750.22	389.61	360.61	79,219.51	59.34
212	06/01/22	79,219.51	750.22	387.85	362.37	78,857.14	59.07
213	07/01/22	78,857.14	750.22	386.07	364.15	78,492.99	58.80
214	08/01/22	78,492.99	750.22	384.29	365.93	78,127.06	58.52
215	09/01/22	78,127.06	750.22	382.50	367.72	77,759.34	58.25
216	10/01/22	77,759.34	750.22	380.70	369.52	77,389.82	57.97
217	11/01/22	77,389.82	750.22	378.89	371.33	77,018.49	57.69
218	12/01/22	77,018.49	750.22	377.07	373.15	76,645.34	57.41
219	01/01/23	76,645.34	750.22	375.24	374.98	76,270.36	57.13
220	02/01/23	76,270.36	750.22	373.41	376.81	75,893.55	56.85
221	03/01/23	75,893.55	750.22	371.56	378.66	75,514.89	56.57
222	04/01/23	75,514.89	750.22	369.71	380.51	75,134.38	56.28
223	05/01/23	75,134.38	750.22	367.85	382.37	74,752.01	55.99
224	06/01/23	74,752.01	750.22	365.97	384.25	74,367.76	55.71
225	07/01/23	74,367.76	750.22	364.09	386.13	73,981.63	55.42
226	08/01/23	73,981.63	750.22	362.20	388.02	73,593.61	55.13
227	09/01/23	73,593.61	750.22	360.30	389.92	73,203.69	54.83
228	10/01/23	73,203.69	750.22	358.39	391.83	72,811.86	54.54
229	11/01/23	72,811.86	750.22	356.48	393.74	72,418.12	54.25
230	12/01/23	72,418.12	750.22	354.55	395.67	72,022.45	53.95
231	01/01/24	72,022.45	750.22	352.61	397.61	71,624.84	53.65
232	02/01/24	71,624.84	750.22	350.66	399.56	71,225.28	53.35
233	03/01/24	71,225.28	750.22	348.71	401.51	70,823.77	53.05
234	04/01/24	70,823.77	750.22	346.74	403.48	70,420.29	52.75
235	05/01/24	70,420.29	750.22	344.77	405.45	70,014.84	52.45
236	06/01/24	70,014.84	750.22	342.78	407.44	69,607.40	52.14
237	07/01/24	69,607.40	750.22	340.79	409.43	69,197.97	51.83
238	08/01/24	69,197.97	750.22	338.78	411.44	68,786.53	51.53
239	09/01/24	68,786.53	750.22	336.77	413.45	68,373.08	51.22
240	10/01/24	68,373.08	750.22	334.74	415.48	67,957.60	50.91
241	11/01/24	67,957.60	750.22	332.71	417.51	67,540.09	50.59
242	12/01/24	67,540.09	750.22	330.67	419.55	67,120.54	50.28
243	01/01/25	67,120.54	750.22	328.61	421.61	66,698.93	49.96
244	02/01/25	66,698.93	750.22	326.55	423.67	66,275.26	49.64

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 7

CBH 5/2007 Loan Application

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Exhibit # 7

Number of Pages 5

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2018-D2 Store Myrtle Beach, SC 29577
843-205-2068

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower," as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of a person other than the Borrower (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse or other person who has community property rights pursuant to state law will not be used as a basis for loan qualification, but his or her liabilities must be considered because the spouse or other person has community property rights pursuant to applicable law and Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

If this is an application for joint credit, Borrower and Co-Borrower each agree that we intend to apply for joint credit (sign below):

Borrower Cindy B Hunt — Co-Borrower

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for:				Agency Case Number	Lender Case Number
	VA	X	Conventional ☐ Other (explain):		7510046466
	FHA		USDA/Rural Housing Service		

Amount	Interest Rate	No. of Months	Amortization Type:				
$147,208.00	6.3750%	360		X	Fixed Rate		Other (explain):
					GPM		ARM (type):

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state & ZIP) — No. of Units: 1

195-D Willow Greens Drive, Conway, SC 29526

Legal Description of Subject Property (attach description if necessary) — Year Built: 1998

Unit 195-D, Phase 6 of Willow Greens HPR

Purpose of Loan				Property will be:		
	Purchase		Construction ☐ Other (explain):	X	Primary Residence	☐ Secondary Residence ☐ Investment
X	Refinance		Construction-Permanent			

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot	(b) Cost of Improvements	Total (a + b)
	$	$	$	$	$0.00

Complete this line if this is a refinance loan.

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements ☐ made ☐ to be made
2003	$125,000.00	$0.00	Consolidation loan	Cost: $

Title will be held in what Name(s)	Manner in which Title will be held	Estate will be held in:
Cindy B Hunt	Individual	X Fee Simple ☐ Leasehold (show expiration date)

Source of Down Payment, Settlement Charges, and/or Subordinate Financing (explain)
Equity

III. BORROWER INFORMATION

Borrower's Name (include Jr. or Sr. if applicable)				Co-Borrower's Name (include Jr. or Sr. if applicable)			
Cindy B Hunt							
Social Security Number	Home Phone (incl. area code)	DOB (mm/dd/yyyy)	Yrs. School	Social Security Number	Home Phone (incl. area code)	DOB (mm/dd/yyyy)	Yrs. School
[redacted]	(843) 234-3749	01/16/1957	18.0				
X Married ☐ Separated / ☐ Unmarried (include single, divorced, widowed)	Dependents (not listed by Co-Borrower): no. ages			☐ Married ☐ Separated / ☐ Unmarried (include single, divorced, widowed)	Dependents (not listed by Borrower): no. ages		
Present Address (street, city, state, ZIP) 195 Willow Greens Drive Apt D Conway, SC 29526	X Own ☐ Rent 4.0 No. Yrs.			Present Address (street, city, state, ZIP)	☐ Own ☐ Rent ____ No. Yrs.		
Mailing Address, if different from Present Address				Mailing Address, if different from Present Address			

If residing at present address for less than two years, complete the following:

Former Address (street, city, state, ZIP)		Former Address (street, city, state, ZIP)	
☐ Own ☐ Rent ____ No. Yrs.		☐ Own ☐ Rent ____ No. Yrs.	

IV. EMPLOYMENT INFORMATION

Name & Address of Employer		Yrs. on this job	Name & Address of Employer		Yrs. on this job
C B Hunt Attorney at Law 195 Willow Greens Drive Apt D Conway, SC 29526	X Self Employed	14.0		☐ Self Employed	
		Yrs. employed in this line of work/profession			Yrs. employed in this line of work/profession
Position/Title/Type of Business	Business Phone (incl. area code)		Position/Title/Type of Business		Business Phone (incl. area code)
Attorney / Law	(843) 234-3749				

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If employed in current position for less than two years or if currently employed in more than one position, complete the following:

Borrower — IV. EMPLOYMENT INFORMATION (cont'd) — Co-Borrower

Name & Address of Employer	Self Employed	Dates (from - to) / Monthly Income	Name & Address of Employer	Self Employed	Dates (from - to) / Monthly Income
	☐	/ $		☐	/ $
Position/Title/Type of Business	Business Phone (incl. area code)		Position/Title/Type of Business	Business Phone (incl. area code)	
Name & Address of Employer	☐ Self Employed	Dates (from - to) / Monthly Income	Name & Address of Employer	☐ Self Employed	Dates (from - to) / Monthly Income
		/ $			/ $
Position/Title/Type of Business	Business Phone (incl. area code)		Position/Title/Type of Business	Business Phone (incl. area code)	

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION

Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	$ 10,505.00	$	$ 10,505.00	Rent	$	
Overtime			0.00	First Mortgage (P&I)	578.28	$ 918.34
Bonuses			0.00	Other Financing (P&I)		
Commissions			0.00	Hazard Insurance		
Dividends/Interest			0.00	Real Estate Taxes	59.65	59.50
Net Rental Income			0.00	Mortgage Insurance		
Other (before completing, see the notice in describe other income," below)			0.00	Homeowner Assn. Dues	250.00	160.00
			0.00	Other:		
Total	$ 10,505.00	$	$ 10,505.00	Total	$ 887.93	$ 1,137.84

* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Describe Other Income

Notice: Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.

B/C		Monthly Amount
		$

VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required. If the Co-Borrower section was completed about a non-applicant spouse or other person, this Statement and supporting schedules must be completed about that spouse or other person also.

Completed. ☐ Jointly ☒ Not Jointly

ASSETS — Description	Cash or Market Value
Cash deposit toward purchase held by:	$
List checking and savings accounts below	
Name and address of Bank, S&L, or Credit Union: Coastal Federal, 2619 Oak Street, Myrtle Beach, SC 29577	
Acct. no. [redacted]	$ 1.00
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$

Liabilities and Pledged Assets. List the creditor's name, address, and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities, which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.

LIABILITIES	Monthly Payment & Months Left to Pay	Unpaid Balance
Name and address of Company: COASTAL FE	$ Payment/Months: 578.00 / 158	$ 90,769.00
Borrower — Acct. no. [redacted]		
Name and address of Company: COASTAL FE	$ Payment/Months: 542.00 / 14	$ 7,311.00
Borrower — Acct. no. [redacted]		
Name and address of Company: CITI	$ Payment/Months: 20.00 / 30	$ 586.00
Borrower — Acct. no. [redacted]		

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VI. ASSETS AND LIABILITIES (cont'd)

Name and address of Bank, S&L, or Credit Union		Name and address of Company	$ Payment/Months	
		HSBC/GATWY	10.00 40	$ 400.00
Acct. no.	$	Borrower		
Stocks & Bonds (Company name/ number & description)	$	Acct. no. [redacted]		
		Name and address of Company Coastal Federal, 2619 Oak Street Myrtle Beach, SC 29577	$ Payment/Months 369.55 147	$ 54,500.00
Life insurance net cash value	$	Borrower		
Face amount: $0.00		Acct. no. [redacted]		
Subtotal Liquid Assets	$ 1.00	Name and address of Company	$ Payment/Months	$
Real estate owned (enter market value from schedule of real estate owned)	$ 195,000.00			
Vested interest in retirement fund	$	Acct. no.		
Net worth of business(es) owned (attach financial statement)	$	Name and address of Company	$ Payment/Months	$
Automobiles owned (make and year)	$			
		Acct. no.		
Other Assets (itemize)	$	Alimony/Child Support/Separate Maintenance Payments Owed to:	$	
		Job-Related Expense (child care, union dues, etc.)	$	[redacted]
		Total Monthly Payments	$ 572.00	
Total Assets a.	$ 195,001.00	Net Worth (a minus b)	$ 41,434.00	Total Liabilities b. $ 153,566.00

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet.)

Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
195 Willow Greens Drive Apt D Conway, SC 29526	Cond	$ 195,000	$ 145,269	$	$ 848	$ 60	$
	Totals	$ 195,000	$ 145,269	$	$ 948	$ 60	$

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

Alternate Name	Creditor Name	Account Number

VII. DETAILS OF TRANSACTION

a. Purchase price	$
b. Alterations, improvements, repairs	
c. Land (if acquired separately)	
d. Refinance (incl. debts to be paid off)	145,269.00
e. Estimated prepaid items	770.05
f. Estimated closing costs	1,550.70
g. PMI, MIP, Funding Fee	
h. Discount (if Borrower will pay)	
i. Total costs (add items a through h)	147,589.75

VIII. DECLARATIONS

If you answer "Yes" to any questions a through i, please use continuation sheet for explanation.

	Borrower Yes	Borrower No	Co-Borrower Yes	Co-Borrower No
a. Are there any outstanding judgments against you?		X		
b. Have you been declared bankrupt within the past 7 years?		X		
c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?		X		
d. Are you a party to a lawsuit?		X		
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment?		X		

(This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name, and address of Lender, FHA or VA case number, if any, and reasons for the action.)

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VII. DETAILS OF TRANSACTION (cont'd)

j. Subordinate financing	--
k. Borrower's closing costs paid by Seller	
l. Other Credits (explain) Cash Deposits	
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	147,200.00
n. PMI, MIP, Funding Fee financed	
o. Loan amount (add m & n)	147,200.00
p. Cash from/to Borrower (subtract j, k, l & o from i)	389.75

VIII. DECLARATIONS (cont'd)

If you answer "Yes" to any questions a through i, please use continuation sheet for explanation.	Borrower Yes	Borrower No	Co-Borrower Yes	Co-Borrower No
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.		X		
g. Are you obligated to pay alimony, child support, or separate maintenance?		X		
h. Is any part of the down payment borrowed?		X		
i. Are you a co-maker or endorser on a note?		X		
j. Are you a U.S. citizen?	X			
k. Are you a permanent resident alien?		X		
l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below.	X			
m. Have you had an ownership interest in a property in the last three years?	X			
(1) What type of property did you own—principal residence (PR), second home (SH), or investment property (IP)?	PR			
(2) How did you hold title to the home—solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?	S			

IX. ACKNOWLEDGEMENT AND AGREEMENT

Each of the undersigned specifically represents to Lender and to Lender's actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors and assigns and agrees and acknowledges that: (1) the information provided in this application is true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I have made on this application, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1001, et seq.; (2) the loan requested pursuant to this application (the "Loan") will be secured by a mortgage or deed of trust on the property described in this application; (3) the property will not be used for any illegal or prohibited purpose or use; (4) all statements made in this application are made for the purpose of obtaining a residential mortgage loan; (5) the property will be occupied as indicated in this application; (6) the Lender, its servicers, successors or assigns may retain the original and/or an electronic record of this application, whether or not the Loan is approved; (7) the Lender and its agents, brokers, insurers, servicers, successors, and assigns may continuously rely on the information contained in the application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the Loan; (8) in the event that my payments on the Loan become delinquent, the Lender, its servicers, successors or assigns may, in addition to any other rights and remedies that it may have relating to such delinquency, report my name and account information to one or more consumer reporting agencies; (9) ownership of the Loan and/or administration of the Loan account may be transferred with such notice as may be required by law; (10) neither Lender nor its agents, brokers, insurers, servicers, successors or assigns has made any representation or warranty, express or implied, to me regarding the property or the condition or value of the property; and (11) my transmission of this application as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or my facsimile transmission of this application containing a facsimile of my signature, shall be as effective, enforceable and valid as if a paper version of this application were delivered containing my original written signature.

Acknowledgement. Each of the undersigned hereby acknowledges that any owner of the Loan, its servicers, successors and assigns, may verify or reverify any information contained in this application or obtain any information or data relating to the Loan, for any legitimate business purpose through any source, including a source named in this application or a consumer reporting agency.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X Cindy B. Hunt Cindy B Hunt	5-15-07	X	

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this lender is required to note the information on the basis of visual observation and surname if you have made this application in person. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)

BORROWER		CO-BORROWER	
	☐ I do not wish to furnish this information		☐ I do not wish to furnish this information
Ethnicity:	☐ Hispanic or Latino ☒ Not Hispanic or Latino	Ethnicity:	☐ Hispanic or Latino ☐ Not Hispanic or Latino
Race:	☐ American Indian or Alaska Native ☐ Asian ☒ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White	Race:	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White
Sex:	☒ Female ☐ Male	Sex:	☐ Female ☐ Male

To be Completed by Interviewer

This application was taken by:
- ☒ Face-to-face interview
- ☐ Mail
- ☐ Telephone
- ☐ Internet

Interviewer's Name (print or type): Karen Butcher

Interviewer's Signature: _____ Date: _____

Interviewer's Phone Number (incl. area code): (843) 205-2000

Name and Address of Interviewer's Employer:
Coastal Federal Bank
2819 Oak Street
Myrtle Beach, SC 29577

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CONTINUATION SHEET/RESIDENTIAL LOAN APPLICATION

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.	Borrower: Cindy B Hunt	Agency Case Number:
	Co-Borrower:	Lender Case Number: 7510046466

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X Cindy B. Hunt Cindy B Hunt	5 15 07	X	

Freddie Mac Form 65 7/05
ITEM 7300L5 (0508)

Fannie Mae Form 1003 7/05
DocMagic eForms · To Order Call: 1-800-658-5775
7510046466

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 8

Butcher Loan Officer's Information

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Exhibit # 8

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Karen Butcher
Mortgage Loan Officer

Branch Banking & Trust Co.

3894 Renee Drive
Myrtle Beach, SC 29579
(843) 903-8702
Fax (843) 236-9657
ksbutcher@BBandT.com

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 9

CD



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Exhibit # 9

Number of Pages 2

Time Certificate of Deposit

T 07 7 Month / 210 Day CD

COASTAL FEDERAL BANK

Member FDIC

Banking Center:
Coastal Federal Bank
1571 Hwy 544
Conway , SC 29526

Account Number: [redacted]

SSN/TIN: [redacted]

Account Name:
KEN INMAN LAW FIRM PC(ACTING THROUGH HENRY L. HAMILTON, ATTY, & JEFFREY E JOHNSON, ATTY) & C.B. HUNT

Issue Date: 10/09/2006

Term: 210 Days

Maturity Date: 05/07/2007

Deposit Amount: 434,744.90

NON-TRANSFERABLE NON-NEGOTIABLE

Signature and Title of Authorized Banking Center Signer

Rate Information: This Account is an interest bearing Account. The interest rate on the Account is 5.60 % with an annual percentage yield of 5.75 %.

The interest rate and annual percentage yield will not change for the term of the Account. The interest rate will be in effect until 05/07/2007 . Interest begins to accrue no later than the business day we receive credit for the deposit of non-cash items (for example, checks). Interest will be compounded daily and will be credited to the Account monthly. Interest on your Account will be credited by adding the interest to the principal. The annual percentage yield assumes interest will remain on deposit until maturity. A withdrawal will reduce earnings.

Balance Information: We use the daily balance method to calculate the interest on the Account. This method applies a daily periodic rate to the principal in the Account each day. We will use an interest accrual of 365 for each day in the year.

Limitations: You must deposit $1,000.00 to open this Account. You may not make additional deposits into this Account. You may not make withdrawals from your Account until the maturity date. You must maintain a minimum of $1,000.00 to earn the stated annual percentage yield.

Time Account Information: Your Account matures on 05/07/2007 . If you withdraw any of the principal before the maturity date, we will impose a penalty of (3) months interest whether earned or not. We will use the rate in effect on the date of withdrawal to calculate the penalty amount. The penalty may reduce earnings. The annual percentage yield assumes interest will remain on deposit until maturity. Deposits are permitted at maturity during the 10-calendar day grace period. This Account will automatically renew. You will have 10 days after the maturity date to withdraw funds without penalty.

Account Fees: Other fees may be imposed as disclosed in our Schedule of Fees.

You have chosen an interest payment method of:

Add interest to principal.

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Account Agreement - 7 Month CD T 07

Coastal Federal Bank

1571 Hwy 544
Conway, SC 29526

Account Title:
KENNETH C INMAN Primary
K.INMAN LAW FIRM PC (ACTING THROUG Trustee Owner

Date: 10/09/2006
Account Number: [redacted]
Andrew Hatchett

Agreement: X New Revised
Opening Deposit 434,744.90

Account Ownership

Individual
Joint with Right of Survivorship*
Informal Trust SC
Pay-on-Death (POD) NC**
Fiduciary Ownership***
SCUGMA/NCUTMA****
Formal Trust (Separate Agreement)
Sole Proprietorship
Corporation – For Profit
Corporation – Nonprofit
Partnership
Limited Liability Company - LLC

JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP G.S. 54B-129 *Required for North Carolina Accounts Only*

ou understand that by establishing a joint account under the provisions of North Carolina general Statute 54B-129 that:

1. The bank may pay the money in the account to, or on the order of, any person named in the account unless you have agreed with the bank that withdrawals require more than one signature; and
2. Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

1. Initial _____ 2. Initial _____ 3. Initial _____ 4. Initial _____

PAYABLE ON DEATH ACCOUNT G.S. 54B-130 *Required for North Carolina Accounts Only*

You understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54B-130 that:

1. During your lifetime you may withdraw the money in the account; and
2. By written direction to the bank you, individually or jointly, may change the beneficiary or beneficiaries; and
3. Upon your death the money remaining in the account will belong to the beneficiary or beneficiaries, and the money will not be inherited by your heirs or be controlled by will. 1. Initial _____ 2. Initial _____ 3. Initial _____ 4. Initial _____

*** FIDUCIARY OWNERSHIP ACCOUNT G.S. 54B-139** *Required for North Carolina Accounts Only*

You understand that by establishing a personal agency account under the provisions of North Carolina General Statue 54B-139 that the agent Named in the account may:

1. Sign checks drawn on the account, and
2. Make deposits into the account.

You also understand that upon your death the money remaining in the account will be controlled by your will or inherited by your heirs.

3. You agree this personal agency will continue if you subsequently become incapacitated or mentally incompetent, in accordance with North Carolina General Statute 54B-139 1. Initial _____ 2. Initial _____

**** FOR SCUMGA/NCUTMA OWNERSHIPS ONLY:**

ustodian's Initial _____ I am the Custodian and I designate _____ as successor custodian in the event my death, resignation, or legal incapacity.

Ve agree to give Coastal Federal Bank, referred to as CFB as used in this document and means Coastal Federal Bank, certain information with my/our plication to obtain a CFB account. I/We also authorize CFB to obtain consumer reports (including credit scores such as FICO scores) and other types of ancial and personal information about me/us from third parties, including consumer reporting agencies. CFB may obtain this information when I /we request a FB account and at any later time. I/We agree to furnish CFB with current information about my/our financial situation whenever CFB asks for this information.

Ve authorize CFB to use this information in the course of its banking business, such as when CFB: (a) decided whether to open an account for me/us; (b) views or collects my/our account; (c) assigns a category to my/our account that is needed to determine whether to make funds for certain deposits available oner than would otherwise be required by CFB's Funds Availability Schedule for Checking and Savings Accounts; and (d) other legitimate business needs. Ve agree that CFB may report information about my/our account to others at any time.

signing, I/we state that I/we have received a copy of, and agree to all the terms of the Depositor's Agreement & Disclosure Statements and Product/Service ormation Schedule of Fees. I/we, also state that all the information I/we have given is true. I/we states that I/we have received a copy of, agree to the terms and authorize disclosure pursuant to CFB's Privacy Policy. I/we certify that I/we are not opening this Account on behalf of a foreign financial institution as t term is defined in the Bank Secrecy Act.

Taxpayer Identification Number Certification

TIN: [redacted]

Taxpayer I.D. Number (TIN) – The number shown above is my correct taxpayer identification number.

Backup Withholding – I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

Exempt Recipients – I am an exempt recipient under the Internal Revenue Service Regulations.

certify under penalties of perjury the statements checked in this section and at I am a U.S. person (including a U.S. resident alien).

Henry L Hamilton Date 9 Oct 06

Account Signature(s)

X _____
ESTATE KEN C INMAN BY:
X Henry L Hamilton
HENRY L HAMILTON IT'S ATTY
X _____
JEFFREY E JOHNSON, ATTY
X C B Hunt
C.B. HUNT ATTY

Number of Signatures required for withdrawal: 3

1387

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 10

Customer Profile

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Exhibit # 10

Number of Pages 6

1389

Customer Source - Customer Relationship Profile

Account

Customer Relationship Profile

CINDY B HUNT

195 WILLOW GREENS DR APT D

CONWAY SC 29526-9382

Tax ID Number	[redacted]
Main Phone	(843) 234-3749
Business Phone	(843) 234-3749
Email Address	
Keyword	
Address Type	Customer Primary Address
Birth Date	[redacted]
Identification	[redacted]
Privacy Act	OK to share information
Reg O	
Messages	No

Preferred Name	
Date Established	08/13/1993
Last Updated	05/30/2007
Branch Number	83
Officer	

Personal Account Relationship

Deposit Accounts	Account	Current Balance	Available Balance		Rate	Maturity Date	Direct Deposit	Relationship
Checking-Direct Free Interest	[redacted]	4,212.80	4,212.80		0.2500		No	Primary
Checking-Interest Checking	[redacted]	24,606.86	24,606.86		0.2500		No	Revocable Trust
Deposit Total		28,819.66	28,819.66					

Card Accounts	Account	Member	Status	
⊟ Debit	[redacted]		Open Card	View Profile 1
Checking	[redacted]			

Loan Accounts	Account	Current Balance	Available Balance		Rate	Maturity Date	Loan Exposure	Relationship
Transfer Management	[redacted]	0.00	0.00		0.0000			Borrower
Auto Fixed		Closed	0.00		6.0000	5/21/2008	0.00	Borrower
Conventional Mortgage		Closed	0.00		4.8750	10/2033	0.00	Primary
Conventional Mortgage		147,063.66	0.00		6.3750	6/2037	0.00	Borrower
⊟ Portfolio								Borrower
Commercial Loan		Closed	0.00		0.0000	10/5/2007	0.00	Borrower
Loan Total		147,063.66	0.00				0.00	

Other Accounts	Account	Current Balance	Available Balance					Relationship
Credit Card	[redacted]	0.00	0.00					Borrower
Other Total		0.00	0.00					

* Indicates an account level address exists

Commercial / Non-Personal Account Relationships

CINDY B HUNT DBA

Deposit Accounts	Account	Current Balance	Available Balance		Rate	Maturity Date	Direct Deposit	Relationship

Customer Source - Customer Relationship Profile

Checking-Iolta Checking	[redacted]	17,119.06	17,119.06	No Rate	No	Authorized Signer
Deposit Total		17,119.06	17,119.06			

' Indicates an account level address exists

Product Name: COASTAL BANKER GOLD CHECKING

Product Type: **94**

General Product Information:

- **Type** - Personal Checking Account
- **Interest** - Compounded daily and credited monthly to the account. Interest begins to accrue no later than the business day we receive credit for the deposit of non-cash items.
- **Minimum to Open** - $100.00
- **Minimum to Earn Interest** - $0.01
- **Fall Below Fee** - N/A
- **Early Close-out fee** - $15.00 fee is charged to the account if the account is closed before the first 90 days of the account opening.
- **Monthly Membership Fee** - $7.00

Benefits:

- Coastal Banker wallet style checks free or $7.00 discount on all other styles.
- Nationwide discount book.
- Free credit card protection service.
- Key ring service.
- Emergency cash advance.
- $150,000 Common Carrier Accidental Death Insurance.
- $10,000 24 Hour Accidental Death Insurance.
- Reduced closing costs on mortgage loans.
- Preferred rates on consumer loans.
- Free travelers checks.
- Free official checks.

Features:

- Monthly Easy Balance Statement with check images
- Account can be linked to PC Banking/Bill Pay
- 24 Hour Access Bank-By-Phone
- Free ATM or ATM VISA Check card
- Overdraft Protection Available (applicant must qualify) no annual fee
- Membership fee posted each month

COASTAL FEDERAL

6/13/2001

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Direct Access Free Interest Checking*

Customers qualify for this account in two ways:

1. By having a direct deposit of a payroll, Social Security, or recurring government check, or
2. By having a Coastal Federal Bank consumer or mortgage loan payment autodrafted from this account.

Product Type 27

Features

- Competitive interest rate
- No minimum balance
- No monthly service charge
- No per check charge
- Unlimited check writing
- Easy-to-balance monthly statement
- Return of check images for easy record keeping
- Free Instantly-Issued ATM/Debit Card
- Free Internet Banking with Free Bill Pay
- Only $25 to open

Fees

- No service charges are paid
- Early close-out fee - $15.00 fee is charged to the account if the account is closed before the first 90 days of the account opening.

* Customer purchases checks

Interest

- Competitive interest rate
- Interest paid on all balances

Current rate sheets are on the Intranet home page, under Quick Links, and appear by area. Rates are subject to change at any time.

IOLTA Business Plus Checking

A business Checking Account designed exclusively for IOLTAs in North and South Carolina. These accounts generate funds that are used to support legal aid, legal education for the public, and other activities that improve the quality of justice.

Product Type: 53

Benefits:

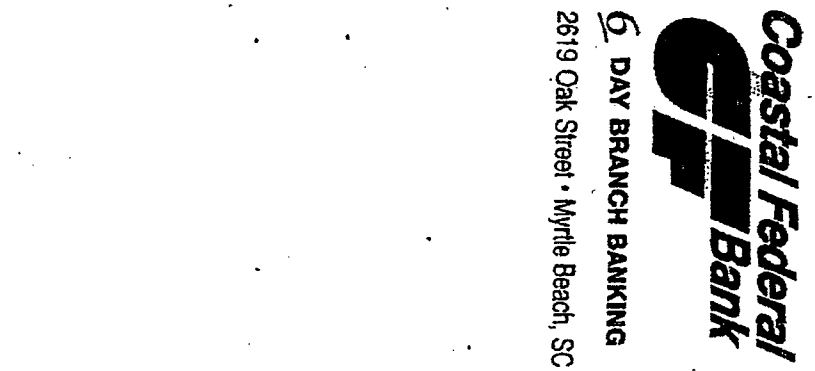
- No monthly maintenance Fee
- No transaction fees

Features:

- The minimum balance amount required to earn interest is $0.01
- Interested is compounded daily and credited monthly
- Interest begins to accrue no later than the business day credit is received for the deposit of non-cash items
- Interest on the account will be credited by adding the interest to the principal
- Tiered Interest Rates –
  Tier 1: $0 to $499.99
  Tier 2: $500.00 to $2499.99
  Tier 3: $2500.00 and greater
- Interest earned will be automatically sent to the appropriate Bar Foundation
- Monthly Easy Balance Statement with check images
- 24-Hour-Access Bank-by-Phone
- End-of-the-month statement cutoff
- Minimum opening deposit is $100
- Early close-out fee - $15.00 fee is charged to the account if the account is closed within the first 90 days of the account opening

IOLTA = Interest on Lawyers Trust Accounts

6/19/06



6 DAY BRANCH BANKING
2619 Oak Street • Myrtle Beach, SC 29577

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 11

Merger Account Documents

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Exhibit # 11

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Coastal Federal Bank
6 DAY BRANCH BANKING

There's opportunity here BB&T

**********5-DIGIT 29526
005
Cindy B. Hunt
195 Willow Green Dr. Unit D
Conway, SC 29526-9382

Welcome to BB&T.

We're pleased to tell you about your new BB&T accounts.

On August 20, 2007, Coastal Federal Bank will officially become BB&T, a financial institution that got its start in the Carolinas over 100 years ago. As BB&T, we will carry on a strong tradition of service to the citizens and businesses of this region.

The information below will tell you how your Coastal Federal Bank account(s) will change to BB&T account(s). This applies only to accounts that were opened prior to May 18, 2007. The enclosed **BB&T Personal Services Product and Pricing Guide** also contains important information about your account(s). You may find it helpful to read this letter and the BB&T Personal Services Product and Pricing Guide together.

A letter listing your new account number(s) will be mailed to you on August 27, 2007. In the meantime, we want you to know how your current Coastal Federal Bank accounts will change, so we have summarized your account information below. If you have any questions, you can find lots of helpful information on our special merger website — **BBT.com/welcome/coastalfederal.**

- We are regionally managed, allowing decisions to be made locally.
- You will be part of the #1 Bank of the Carolina Coast.
- You can enjoy greater banking convenience with over 1,400 BB&T locations and over 2,000 ATMs in 11 states.
- BB&T offers you an expanded range of products and services.

Coastal Federal Bank Account	Your New BB&T Account **All account numbers will be mailed August 27, 2007.**
[redacted] account number [redacted]	Interest Checking [redacted]
Consumer Loan account number [redacted]	BB&T Loan • Please refer to the enclosed BB&T Personal Services Product and Pricing Guide for information about your BB&T Loan.
Mortgage Loan account number [redacted]	BB&T Mortgage Loan • Prior to the merger you will receive a letter providing information about your BB&T Mortgage Loan.
Internet Banking	BB&T OnLine® • Your BB&T OnLine® User ID will be the same as your current User ID. • Your new password will be the last five digits of your Social Security number.

Continued on the next page...

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- Please visit www.bbt.com/personal/products/onlinebanking/mergerfaq for information about BB&T's free OnLine Banking and free unlimited OnLine Bill Payment.

If you have any questions, just stop by your local financial center, or call our toll-free merger information line at **1-877-468-5332**, seven days a week, 6 a.m. – midnight ET, now through October 22, 2007. And remember, you can find answers to many of your questions at **BBT.com/welcome/coastalfederal**.

There are a few other things we want to mention at this time:

- In addition to the separate letter you will receive listing your new BB&T account number(s), your new account number(s) will appear on your initial statement(s). In the meantime, please continue to use your existing Coastal Federal Bank documents preprinted with the Coastal Federal Bank account number and client information.
- If you have several accounts with Coastal Federal Bank, you may receive additional mailings.
- If you use Internet Banking with Coastal Federal Bank, your service will automatically convert to BB&T OnLine®. **Please begin using BB&T OnLine on Monday, August 20, 2007.**
- Please refer to the enclosed BB&T Personal Services Product and Pricing Guide for information about your BB&T ATM or Check Card.
- The **Bank Services Agreement** is also enclosed. Please read it carefully as it contains the terms and conditions that will govern your account(s) as of August 20, 2007.
- **Please visit BBT.com/welcome/coastalfederal for a complete listing of all BB&T checking accounts.**
- BB&T checking accounts have overdraft protection available through Regular Savings, BB&T Constant Credit or your BB&T Visa® Credit Card.*
  *With credit approval
- Banking transactions occurring after 2 p.m. will be posted on the following business day, with the exception of the financial centers in Horry and Georgetown counties, which will have a 5 p.m. cutoff time.

2100025381 SC-R-019-086-091-093

Deposit products are offered through Branch Banking and Trust Company.
Loan products are offered through Branch Banking and Trust Company, an Equal Housing Lender.

BBT.com Equal Housing Lender Member FDIC

Questions? Please stop by your local financial center, call 1-877-468-5332, or visit BBT.com/welcome/coastalfederal.

BANKING INSURANCE INVESTMENTS 2100025381

Coastal Federal Bank
6 DAY BRANCH BANKING

There's opportunity here BB&T

**********5-DIGIT 29526
005
Cindy B. Hunt
195 Willow Green Dr. Unit D
Conway, SC 29526-9382

Welcome to BB&T.

We're pleased to tell you about your new BB&T accounts.

On August 20, 2007, Coastal Federal Bank will officially become BB&T, a financial institution that got its start in the Carolinas over 100 years ago. In fact, the bank that would eventually be known as BB&T was started by a small business owner. As BB&T, we will carry on a strong tradition of service to the businesses and citizens of this region.

The information below will tell you how your Coastal Federal Bank account(s) will change to BB&T account(s). This applies only to accounts that were opened prior to May 18, 2007. The enclosed **BB&T Business Services Product and Pricing Guide** also contains important information about your account(s). You may find it helpful to read this letter and the BB&T Business Services Product and Pricing Guide together.

A letter listing your new account number(s) will be mailed to you on August 27, 2007. In the meantime, we want you to know how your current Coastal Federal Bank accounts will change, so we have summarized your account information below. If you have any questions, you can find lots of helpful information on our special merger website — **BBT.com/welcome/coastalfederal.**

- We are regionally managed, allowing decisions to be made locally.
- You will be part of the #1 Bank of the Carolina Coast.
- We offer you a complete range of small business and commercial accounts to help your business grow.
- BB&T is consistently rated as one of the top small-business-friendly financial holding companies by the U.S. Small Business Administration.

Coastal Federal Bank Account	Your New BB&T Account **All account numbers will be mailed August 27, 2007.**
Commercial Loan account # [redacted]	BB&T Business Loan

- Please refer to the enclosed BB&T Business Services Product and Pricing Guide for information about your Business Loan.

If you have any questions, just stop by your local financial center, or call our toll-free merger information line at 1-877-468-5332, seven days a week, 6 a.m. – midnight ET, now through October 22, 2007. And remember, you can find answers to many of your questions at **BBT.com/welcome/coastalfederal.**

There are a few other things we want to mention at this time:

- In addition to the separate letter you will receive listing your new BB&T account number(s), your new account number(s) will appear on your initial statement(s). In the meantime, please continue to use your existing Coastal Federal Bank documents preprinted with the Coastal Federal Bank account number and client information.
- If you have several accounts with Coastal Federal Bank, you may receive additional mailings.

Continued on the next page...

- If you use Internet Banking with Coastal Federal Bank, your service will automatically convert to BB&T Business OnLine®. **Please begin using BB&T Business OnLine on Monday, August 20, 2007.**
- Please refer to the enclosed BB&T Business Services Product and Pricing Guide for information about your BB&T ATM or Check Card.
- The **Commercial Bank Services Agreement** is also enclosed. Please read it carefully as it contains the terms and conditions that will govern your account(s) as of August 20, 2007.
- **Please visit BBT.com/welcome/coastalfederal for a complete listing of all BB&T checking and money market accounts.**
- Banking transactions occurring after 2 p.m. will be posted on the following business day, with the exception of the financial centers in Horry and Georgetown counties, which will have a 5 p.m. cutoff time.

Coastal Federal Bank
6 DAY BRANCH BANKING

There's opportunity here BB&T

**********AUTO**5-DIGIT 29526
075
Cindy B. Hunt
195 Willow Green Dr. Unit D
Conway, SC 29526-9382

Welcome to BB&T.

We're pleased to tell you about your new BB&T accounts.

On August 20, 2007, Coastal Federal Bank will officially become BB&T, a financial institution that got its start in the Carolinas over 100 years ago. As BB&T, we will carry on a strong tradition of service to the citizens and businesses of this region.

The information below will tell you how your Coastal Federal Bank account(s) will change to BB&T account(s). This applies only to accounts that were opened prior to June 15, 2007. The enclosed **BB&T Personal Services Product and Pricing Guide** also contains important information about your account(s). You may find it helpful to read this letter and the BB&T Personal Services Product and Pricing Guide together.

A letter listing your new account number(s) will be mailed to you on August 23, 2007. In the meantime, we want you to know how your current Coastal Federal Bank accounts will change, so we have summarized your account information below. If you have any questions, you can find lots of helpful information on our special merger website — **BBT.com/welcome/coastalfederal.**

- We are regionally managed, allowing decisions to be made locally.
- You will be part of the #1 Bank of the Carolina Coast.
- You can enjoy greater banking convenience with over 1,400 BB&T locations and over 2,000 ATMs in 11 states.
- BB&T offers you an expanded range of products and services.

Coastal Federal Bank Account	Your New BB&T Account **All account numbers will be mailed August 23, 2007.**
Mortgage Loan account number [redacted]	BB&T Mortgage Loan

- Prior to the merger you will receive a letter providing information about your BB&T Mortgage Loan.

If you have any questions, just stop by your local financial center, or call our toll-free merger information line at **1-877-468-5332**, seven days a week, 6 a.m. – midnight ET, now through October 22, 2007. And remember, you can find answers to many of your questions at **BBT.com/welcome/coastalfederal.**

There are a few other things we want to mention at this time:

- In addition to the separate letter you will receive listing your new BB&T account number(s), your new account number(s) will appear on your initial statement(s). In the meantime, please continue to use your existing Coastal Federal Bank documents preprinted with the Coastal Federal Bank account number and client information.
- If you have several accounts with Coastal Federal Bank, you may receive additional mailings.
- If you use Internet Banking with Coastal Federal Bank, your service will automatically convert to BB&T OnLine®. **Please begin using BB&T OnLine on Monday, August 20, 2007.**

Continued on the next page...

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- Please refer to the enclosed BB&T Personal Services Product and Pricing Guide for information about your BB&T ATM or Check Card.
- The **Bank Services Agreement** is also enclosed. Please read it carefully as it contains the terms and conditions that will govern your account(s) as of August 20, 2007.
- **Please visit BBT.com/welcome/coastalfederal for a complete listing of all BB&T checking accounts.**
- BB&T checking accounts have overdraft protection available through Regular Savings, BB&T Constant Credit or your BB&T Visa® Credit Card.*
  *With credit approval
- Banking transactions occurring after 2 p.m. will be posted on the following business day, with the exception of the financial centers in Horry and Georgetown counties, which will have a 5 p.m. cutoff time.

7600018378 SC-R-091

BBT.com Equal Housing Lender. Member FDIC.

Deposit products are offered through Branch Banking and Trust Company.
Loan products are offered through Branch Banking and Trust Company, an Equal Housing Lender.

Questions? Please stop by your local financial center, call 1-877-468-5332, or visit BBT.com/welcome/coastalfederal.

Coastal Federal Bank
6 DAY BRANCH BANKING

There's opportunity here BB&T

**********5-DIGIT 29526
005
Cindy B. Hunt
Costella Hunt Davis
195 Willow Green Dr. Unit D
Conway, SC 29526-9382

Welcome to BB&T.

We're pleased to tell you about your new BB&T accounts.

On August 20, 2007, Coastal Federal Bank will officially become BB&T, a financial institution that got its start in the Carolinas over 100 years ago. As BB&T, we will carry on a strong tradition of service to the citizens and businesses of this region.

The information below will tell you how your Coastal Federal Bank account(s) will change to BB&T account(s). This applies only to accounts that were opened prior to May 18, 2007. The enclosed **BB&T Personal Services Product and Pricing Guide** also contains important information about your account(s). You may find it helpful to read this letter and the BB&T Personal Services Product and Pricing Guide together.

A letter listing your new account number(s) will be mailed to you on August 27, 2007. In the meantime, we want you to know how your current Coastal Federal Bank accounts will change, so we have summarized your account information below. If you have any questions, you can find lots of helpful information on our special merger website — **BBT.com/welcome/coastalfederal**.

- We are regionally managed, allowing decisions to be made locally.
- You will be part of the #1 Bank of the Carolina Coast.
- You can enjoy greater banking convenience with over 1,400 BB&T locations and over 2,000 ATMs in 11 states.
- BB&T offers you an expanded range of products and services.

Coastal Federal Bank Account	Your New BB&T Account **All account numbers will be mailed August 27, 2007.**
Coastal Banker Gold Checking account number [redacted]	Interest Plus Checking

- Your BB&T Interest Plus Checking account will have no monthly maintenance fee for the first statement cycle after the merger. After that, your $5 monthly membership fee will remain the same.
- Your "club benefits" and insurance will continue through BB&T's The Plus Package. You will receive a separate mailing with a new insurance certificate and details of other benefits. Your current insurance coverage will remain in effect through August 31, 2007. Your new coverage will begin September 1, 2007. Please see the enclosed BB&T Personal Services Product and Pricing Guide for more information about The Plus Package.

If you have any questions, just stop by your local financial center, or call our toll-free merger information line at 1-877-468-5332, seven days a week, 6 a.m. – midnight ET, now through October 22, 2007. And remember, you can find answers to many of your questions at **BBT.com/welcome/coastalfederal**.

There are a few other things we want to mention at this time:

- In addition to the separate letter you will receive listing your new BB&T account number(s), your new account number(s) will appear on your initial statement(s). In the meantime, please continue to use your existing Coastal Federal Bank documents preprinted with the Coastal Federal Bank account number and client information.

Continued on the next page...

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- If you have several accounts with Coastal Federal Bank, you may receive additional mailings.
- If you use Internet Banking with Coastal Federal Bank, your service will automatically convert to BB&T OnLine®. **Please begin using BB&T OnLine on Monday, August 20, 2007.**
- Please refer to the enclosed BB&T Personal Services Product and Pricing Guide for information about your BB&T ATM or Check Card.
- The **Bank Services Agreement** is also enclosed. Please read it carefully as it contains the terms and conditions that will govern your account(s) as of August 20, 2007.
- **Please visit BBT.com/welcome/coastalfederal for a complete listing of all BB&T checking accounts.**
- BB&T checking accounts have overdraft protection available through Regular Savings, BB&T Constant Credit or your BB&T Visa® Credit Card.*

  *With credit approval
- Banking transactions occurring after 2 p.m. will be posted on the following business day, with the exception of the financial centers in Horry and Georgetown counties, which will have a 5 p.m. cutoff time.

2100028071 SC-R-055

Deposit products are offered through Branch Banking and Trust Company.
Loan products are offered through Branch Banking and Trust Company, an Equal Housing Lender.

BBT.com Equal Housing Lender. Member FDIC.

Questions? Please stop by your local financial center, call 1-877-468-5332, or visit BBT.com/welcome/coastalfederal.

There's opportunity here BB&T

44101
Cindy B. Hunt
C. B. Hunt
195 Willow Green Dr. Unit D
Conway, SC 29526-9382

Here are your new BB&T account numbers

Welcome to BB&T! As you know, Coastal Federal Bank is now officially part of BB&T. We look forward to a long relationship with you, and we're confident you'll be pleased with all the opportunities available to you as a BB&T client.

Your new BB&T account numbers are listed below. **If you opened one or more Coastal Federal Bank accounts on or after July 13, 2007, you'll receive separate letters for those accounts.**

Your former account name/number	Your new BB&T account number
IOLTA Checking, #[redacted]	#[redacted]

So that you can become familiar with your new account number(s), we'll include both your old and new account number(s) on your initial statements. The only exception will be loan statements and documents, which will list only the new BB&T account number.

If you have a checking, savings or line of credit account, you can continue to use your Coastal Federal Bank personalized checks, withdrawal tickets and deposit slips through July 31, 2008. Within the next few weeks, watch your mailbox for additional information on how to order new checks and other BB&T documents.

BB&T will provide your new account and routing numbers to any companies involved in direct deposits or automatic drafts to your accounts. These companies will be responsible for making the appropriate changes to your deposit or draft transactions upon receipt of our notifications of change. However, you should also contact these companies to make sure they have both your new BB&T account number and the **BB&T routing transit number: 053201607**. BB&T will continue to accept deposits and drafts with Coastal Federal Bank numbers for up to one year.

BB&T will accept wire transfers on your old Coastal Federal Bank account number(s) through November 30, 2007. As these wires are received, BB&T will mail you a Wire Notification of Change, providing your new BB&T account number and BB&T's routing transit number. Please notify the appropriate parties of your new account information and ask that they make the necessary changes as soon as possible in order to prevent future wires from being returned to the originator.

If you have any questions, please stop by your local financial center, or call BB&T Business Phone24 at **1-877-P24-BUSINESS (1-877-724-2874)** Monday through Friday, 8:30 a.m. to 5:30 p.m. ET, with automated service available 24/7. You can also find answers to many of your questions at **BBT.com/welcome/coastalfederal**.

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 12

Affidavit of Davis

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Exhibit # 12

Number of Pages 2

1408

Affidavit of Costella H. Davis

Personally appeared before me, Costella H. Davis, who being duly sworn, deposes and says that:

I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters set forth, except as to those matters as are stated on information and belief, and as to those, I have a good faith basis for believing them to be true.

1. I am currently and have been employed with the Federal Government for almost 32 years. My office is located in Washington, DC.

2. On January 19, 2008 I went to BB&T formerly Coastal Federal Bank on a mortgage matter.

3. I was helped by a young lady, Ms. Kaci Sansbury, who said she was not really working that Saturday but just came in to take care of some matters. However, she said she would try to assist me.

4. Ms. Sansbury proceeded to look up the information on the computer, trying the address of the property and then my social security number. Ms. Sansbury never asked me for any form of identification during our exchange. Ms. Sansbury told me I had an account with the bank and I told her "no I don't think so; I never had an account other than the mortgage loan with this bank." After going back and forth a few times because she was looking at an account with my social security number she asked me for my social security number again and I told her and she said yes you have an account and it's pretty nice. I asked Ms. Sansbury how much money I had in this account. Ms. Sansbury said "$29,000 and some odd dollars". I said "no I think there is some kind of a mistake. I'd know if I had that kind of money in an account."

5. Ms. Sansbury asked me to hold on and she went out to the teller area. While she was gone I was trying to think of what might be happening. I decided to call my cousin Cindy B. Hunt whom I knew had an account with this bank on my cell phone.

6. As the phone began to ring Ms. Sansbury came back and said that she'd made a mistake. The account belongs to Cindy B. Hunt and I was down as her beneficiary. My cousin answered the phone saying "hello" and I said "hi Cindy, it's Costella never mind every things ok I'll talk with you later" and I hung up.

KANSAS CITY REGION
2011 MAY 10 AM 9
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7. Ms. Sansbury and I talked a little more and she gave me her card and asked me to call her when I got home. I thanked her and left the bank.

FURTHER DEPONENT SAYS NOT.

Costella H. Davis
Senior Contract Specialist
Dept of Homeland Security
202-447-5571 (wk)
costella.davis@dhs.gov

Sworn to before me this 3 day June

~~Of~~ , 2008.

(L.S.)

My commission expires: 1/14/2013

1410 48

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 13

Craven to CBH

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Exhibit # 13

Number of Pages 3

1412



Branch Banking & Trust Co.
Legal Department
200 West Second St., 3rd Floor (27101)
P.O. Box 1255
Winston-Salem, NC 27102-1255

March 10, 2008

Ms. Cindy B. Hunt
195 Willow Green Drive, Unit D
Conway, SC 29526-9362

Dear Ms. Hunt:

We acknowledge your unhappiness with the acknowledgement of the existence of your checking account at Branch Banking and Trust Company ("BB&T"). The acknowledgement of the account's existence was simply a harmless mistake for which BB&T apologizes; however, the mere acknowledgment to Ms. Hunt Davis that an account existed does not give rise to any legal claim against BB&T.

There is no claim for breach of fiduciary duty as no fiduciary relationship was ever established with BB&T. In the Bank Services Agreement (herein "BSA") to which terms you agreed when becoming an account holder at BB&T, there is a section containing rules applicable to all accounts which specifies the relationship between an accountholder and BB&T. That section is item 24 of the BSA and it states:

> "When you open any account with the Bank, a debtor/creditor relationship is created. Opening an account with the Bank does not create a fiduciary relationship between the Bank and the Depositor. You agree not to assert any claim against the Bank based on an assertion that the Bank serves in a fiduciary capacity."

Therefore, you can not make a legal claim for breach of fiduciary duty against BB&T based on our acknowledgment of the existence of an account with BB&T. In addition, there is no statute in South Carolina creating a right to confidentiality of the banks records pertaining to the accounts of depositors. Finally, the oral acknowledgment of the existence of a bank account without additional account information does not qualify as a financial record that must be protected. See Taylor v. NationsBank, N.A., 365 Md. 166, 776 A.2d 645 (2001). This is the only case we have been able to located which is factually identical to this situation.

In addition, BB&T did not breach a contractual duty of confidentiality with you. You have suffered no actionable damages as a result of the accidental disclosure of the existence of your checking account with BB&T. The BSA provides that:

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> "Subject to applicable law, we will disclose information to third parties about you and your accounts or the transfers you make: (i) where it is necessary for completing transfers; (ii) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, (iii) in order to comply with government agency or court orders; (iv) as otherwise required or permitted by law or government regulation; (v) if you give us permission; and (vi) as stated in the BB&T Corporation Consumer Privacy Notice."

The Consumer Privacy Notice provides that BB&T can collect information about you in the following categories: information we receive from you on applications, personal financial statements, and other oral, written, or electronic communications, such as your name, address, social security number, assets and income; information about your transactions with us, other companies in the BB&T Corporate Family or others, such as your account balance and payment history; information we receive from third parties, including persons providing services in connection with your transactions and credit bureaus, such as your credit history; information we obtain from others to verify information provided by you, such as your employment history and credit or other relationships with third parties; and information collected from our Internet web sites, such as information you provide to us and information necessary to manage your online session with us.

The Consumer Privacy Notice further states that

> "We do not disclose information about you to companies outside of the BB&T Corporate Family, except as required or permitted by law. For example, we may disclose information about you to third parties to assist us in servicing your loan(s) or account(s) with us, to government entities in response to subpoenas or other governmental information requests, and to credit bureaus. In addition, we may disclose the information we collect about you described above to companies that perform marketing services on our behalf and to financial institutions for the purpose of jointly offering financial products and services to you, such as mortgage life insurance. See 81 A.L.R.4th 377."

The mere acknowledgment of the existence of your checking account did not result in any action adverse to you as a depositor. In fact, the only time a court has awarded damages for breach of contract or breach of confidentiality is when the bank has released information concerning the financial status of a depositor's account to a third party and the third party has used the information to take action adverse to the depositor. As this was an accidental disclosure to a private third-party of the existence of an account at BB&T (as opposed to any negative information about your finances or any financial information related to the account such as activity or balances), and the third party, as we understand it, is your cousin and as a private individual is not in a position take any adverse action against you based on obtaining information that you have an account at BB&T, you would only be able to obtain de minimis, if any, damages as no actual financial information was released.

As we recognize your unhappiness with the accidental acknowledgment of your account's existence, BB&T is willing to reimburse you for any medical expenses incurred due to emotional distress caused by the event prior to the date of this letter if you will forward to me your invoices from medical professionals who provided services to you. Please provide such invoices to me prior to March 17, 2008 if you wish to accept BB&T's offer.

Sincerely,

David L. Craven
Senior Vice President, Division General Counsel

DLC:chg

cc: Judy Teal, BB&T

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 14

CBH to FDIC

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2010 NOV 15 P 3:13

Exhibit # 14

Number of Pages 2

1417

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MAR 2 4 2008
FDIC
KANSAS CITY REGION

Cindy B. Hunt
195 D Willow Greens Drive
Conway, SC 29526
843 234-3749

12 March 2008

FDIC Consumer Response
2345 Grand Blvd.
Suite 100
Kansas City, MO 64108

Re: 1) Complaint 2) Request to Investigate

Dear Sirs,

Please accept this letter as a formal complaint and request to investigate on my behalf based on the following facts:

1) I have been a customer at CFB/BB&T of Conway SC for 13 years.
2) In May 2000 I made account number 0552006407 Payable on Death with Costella Hunt Davis as the named beneficiary.
3) As of the writing of this letter I am alive and well. However, on 19 January 2008 Costella Davis visited the BB&T on a home mortgage matter.
4) Mrs. Davis provided a bank employee with her social security number only, in reference to the mortgage matter. Whereupon the BB&T employee proceeded to tell Mrs. Davis that she could not find any mortgage accounts for her and that the only account that she had for her was a checking account. The bank employee insisted and stated that Mrs. Davis had a checking account at BB&T with about 30 thousand dollars in it. Mrs. Davis insisted that she had never had a checking account at BB&T.
5) This went on for about 45 minutes. The BB&T employee finally realized that this was not Mrs. Davis' account but was in fact my checking account.
6) The BB&T employee never asked Mrs. Davis for identification or a death certificate. Again, this was a POD account.
7) Mrs. Davis advised me of this communication with the bank on the evening of 19 January. I contacted Danny Fogle of BB&T on Tuesday 22 January 2008.
8) Thereafter, Mr. Fogle advised me that Judy Peel would be handling this matter. Judy Peel and Danny Fogle have apologized for the mistake. However, Judy Peel is yet to provide me with the requested documentation as to how my three accounts are being protected so that this will not happen again in the future.

Within the last 6+ months Coastal Federal Bank has become BB&T. Prior to this I was never aware of any problems with the disclosure of my private information. Nor to my knowledge did CFB ever give away my money while I am still living.

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The following information is being provided:

Copy of the signature card, Letterhead of statement from BB&T,

Coastal Federal Bank account number: [redacted]
BB&T account number: [redacted], and

Addresses:
Costella Davis: 202 447-5571, 3807 Clairton Drive, Bowie, MD 20721
Judy Peel: 843 413-4248; BB&T PO Box 6676 Florence, SC 29502
Danny Fogle: 843 488-4640; BB&T 4th Ave. Conway, SC 29526

Please notify me of your findings and of what procedures are in place to prevent future occurrences.

With Kind Regards,
CB Hunt

CC: 1) NC Office of the Commissioner of Banks
2) SC Office of the Commissioner of Banking
3) Judy Peel – BBT Florence 4) Danny Fogle – BBT Conway

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 15

Teal to FDIC

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Exhibit # 15

Number of Pages 2

Branch Banking & Trust Co.
Coastal Administration
P.O. Box 6676
Florence, SC 29502
(843) 413-4252
Fax (843) 413-4280

April 11, 2008

Federal Deposit Insurance Corporation (FDIC)
Department of Supervision and Consumer Protection
2345 Grand Boulevard, Suite 100
Kansas City, MO 64108

Attention: Lynne Gottesburen
Reference # SCC2008F-001425-0

Dear Ms. Gottesburen:

On March 31, 2008, we received your letter along with the letter of complaint from Ms. Cindy B. Hunt. We hope the following information satisfies your requirement in responding to the resolution of the complaint.

- On January 16, 2008, Costella Hunt Davis inquired with Kaci Sansbury, Mortgage Lender, about her mortgage loan with Coastal Federal Bank and the paid interest amount for the last year of the loan.
- Kaci inquired into the mortgage loan system using Ms. Davis' social security number. No mortgage history was located but a checking account was located which Ms. Sansbury believed was in Ms. Davis's name initially. Ms. Sansbury then left to do additional research with another branch employee. The two then determined that Ms. Davis was not the owner of the account. Ms. Sansbury did not disclose to Ms. Davis whose account she had located when searching for a mortgage loan in Ms. Davis's name; however when Ms. Sansbury returned to her office, Ms. Davis was on her cell phone with Cindy Hunt and Ms. Davis asked if the checking account belonged to Cindy Hunt, her cousin. Because her question implied prior knowledge of the existence of the account, Kaci replied affirmatively and Ms. Davis relayed this information to Ms. Hunt on the phone.
- The request for a death certificate was not made nor was it necessary due to Ms. Davis inquiring about her previous mortgage loan.
- From February 1, 2008 until March 17, 2008, I have had numerous conversations with Ms. Hunt. I have explained that Coastal Federal Bank's procedure was to establish a Customer Profile for both the owner and beneficiary of an account. BB&T does not have the same procedure; therefore, BB&T identified beneficiary profiles and deleted them from the on-line system.
- Ms. Hunt requested a copy of her account signature card and it was mailed to her on February 26, 2008. During my conversation with Ms. Hunt on March 12, 2008, she acknowledged receipt of the signature card.

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- Ms. Hunt requested monetary restitution due to BB&T's alleged violation of several Banking Regulations. Please refer to the enclosed letter to Ms. Hunt from BB&T's Legal Counsel dated March 10, 2008 and Ms. Hunt's letter in response and copy of the "unclocked complaint" she references in her response to our Legal Counsel.

Based on the above facts and enclosed documents, we have determined that BB&T did not violate any privacy or banking regulations. We did not release any funds from Ms. Hunt's account to the beneficiary, Costella Davis or release any financial record information. And BB&T has deleted the Customer Profiles for beneficiaries on accounts acquired from the Coastal Federal Merger.

Thank you for allowing us for to respond to this issue.

Sincerely,

Judy Teal
Regional Branch Operations Manager
Senior Vice President

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 16

Setoff 855.00 against POD Account

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Exhibit # 16

Number of Pages 4

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BB&T Branch Banking and Trust Co.

An adjustment has been made to your account.

CINDY B HUNT

195 WILLOW GREEN DR UNIT D

CONWAY SC 29526-9382

Posting Date: 05/02/2008

Amount: $855.00

Account Number: [redacted]

Debit/Credit: DEBIT OR DEDUCTION

Description:

- ☐ Interest Adjustment
- ☐ Refund
- ☐ Encoding Error
- ☐ ATM/Check Card Error
- ☐ Unidentified Deposits
- ☒ Other Cash Items - See Explanation Below
- ☐ Miscellaneous - See Explanation Below

Explanation:
STATE TREASURER/STOP PAYMENT

This transaction was completed by:

SHEILA R BUFFKIN
COASTAL REGION ADMINISTRATION
(843)413-4252

Thank you for banking with BB&T.

8025 (0706)

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053101121
05/01/2008
0000009003773O9

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

RETURN REASON-C
STOP PAYMENT

053101121 04/28/2008
0000009003773O9

STATE OF SOUTH CAROLINA
Office Of State Treasurer
CONVERSE A. CHELLIS XXI, CPA
STATE TREASURER

129215923

OFFICE OF [illegible] DEFENSE
P230893146094007
DV 4391
03/18/2008
AMOUNT [redacted]

RETURN REASON
STOP PAYMENT

PAY-->$ ********855.00

PAY CINDY B HUNT
1415 2ND AVE STE 101
CONWAY, SC 29526

CONTINGENCIES ACCOUNT
WACHOVIA BANK, GREENVILLE, SC

CONVERSE A. CHELLIS III STATE TREASURER

⑈129215923⑈ ⑆053207768⑆ 2003233043787⑈ ⑈000008550⑆

⑈129215923⑈ ⑆053207768⑆ 2003233043787⑈ ⑈000008550⑆

053101121 04/28/2008
0000009003773O9

0215 89 9/28

0000377309

01105-81-8888 10977

B049103 07440 038 #00526 10:45 04/28/08
CSHCHK $855.00

PLEASE DO NOT FOLD OR MUTILATE
BANK MAY DEPOSIT IMMEDIATELY

053101121 05/01/2008
0000009003773O9

053000206 05/01/2008
[illegible]

↓Do not endorse or write below t

1427

Facsimile Transmittal

May 8, 2008

From: Stephanie Karnap
BB&T
310 Wright Blvd
Conway, SC 29526
Office: 843-488-4640 Fax: 843-488-4641

To: C B Hunt
Company:
Phone:
Fax: **234-3751**

This is a 2 page document (including cover sheet).

Message: Have A Great Day!

NOTE:
THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US. THANK YOU.

The recipient of this facsimile is entitled to request that the sender not send future unsolicited facsimile advertisements. The request must be returned by facsimile to (toll-free) 1-888-220-7035. Failure to comply with the request within 30 days is unlawful.

☐ **By checking this box, recipient requests not to receive future unsolicited facsimile advertisements.**

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discrepancies including any missing or diverted deposits;
ons regarding the use and access to your account by use of
checks, drafts or security codes, passwords, or other per-

plement security precautions regarding the use and
np; conduct background checks on any individual who has
hecks or reconcile your bank statements; independently
on who is responsible for reconciling your bank statement
nonthly basis; and comply with all other duties imposed on
under applicable law. Your failure to exercise ordinary care
nd will preclude you from asserting against the Bank any
your account.

ank processes its checks by automated means and is under
n presented for payment. You acknowledge that the Bank's
ture applies to all items presented for payment against your
other withdrawal orders presented directly over the counter
agree that such automated check payment and notification
easonable. You and the Bank, pursuant to applicable law,
nk shall be deemed to have exercised ordinary care if it
anual or mechanical examination of a random sampling of
ayment. These items may represent a sampling or selection
nts, or items which meet certain minimum criteria estab-
al or mechanical inspection (such as large amounts). The
ve acted in good faith and in accordance with reasonable
ying any items forged or altered so cleverly (as by unautho-
mp, facsimile machine or otherwise) that the unauthorized
lteration could not be detected by a reasonable person.

edures are general internal guidelines that do not establish
Bank than is otherwise established by the laws govern-
or or honest mistake will not be considered a failure of
ts obligations. If the Bank waives any of its rights as to you
more occasions, it will not be considered a waiver of the
ccasion.

agree that no legal proceeding or action may be commenced
any amounts alleged to have been improperly paid out of the
rized signature or endorsement, any alteration or any other
ransaction unless: (i) you have timely provided the written
d (ii) such proceeding or action shall have been commenced
e the statement containing the unauthorized transaction was
ied herein, a proceeding or action is commenced when you
nt jurisdiction, or if the action is subject to arbitration, when
otice of such action. Any proceeding or action not brought
e of the first statement containing the unauthorized transac-

rt any unauthorized transaction on your account, you agree to
ts investigation of the claim. This includes preparing an affi-
g whatever information the Bank requires concerning the
the circumstances surrounding the loss. You also agree to file
against any suspected wrongdoer and waive any claims
do so or if you enter into any settlement, compromise or resti-
rongdoer without the consent of the Bank. The Bank may
sement should you fail to file the criminal report or refuse to

gree to pursue all rights under any insurance policy you
laim against the Bank in connection with any unauthorized
ee to provide the Bank with all reasonable information about
uding the name of the insurance carrier, the policy number,
eductibles. The Bank's liability, if any, will be reduced by the
ceeds you are entitled to receive. At the Bank's request, you

Limitation of Liability. You agree that the Bank has a reasonable time to investigate the facts and circumstances surrounding any claimed loss and that the Bank has no obligation to provisionally credit your account. The Bank's maximum liability is the lesser of actual damages proved or the amount of the unauthorized withdrawals, reduced by an amount which could not have been realized by the use of ordinary care. In no event will the Bank be liable for special or consequential damages, including attorneys' fees incurred by you. The Bank will not be liable for any items that are forged or altered in such a way that such forgery could not be reasonably detected.

12. **STALE ITEMS.** The Bank is not obligated to pay items drawn on any account which are presented more than six (6) months after their date; however, if the Bank does in its discretion pay any such items, it may charge your account for such items.

13. **RIGHT OF SETOFF.** You hereby assign and grant to the Bank a security interest in all accounts as security for your obligations to the Bank existing now or in the future. The Bank reserves the right of setoff against any of your accounts without prior notice to you to repay any debt or obligation owed to us by you or any co-owner of your account as principal, endorser or guarantor. This means that we have the right to apply part or all of the funds in your account for the satisfaction of any debt you or any co-owner of the account owes us. If your account is an individual account, our right of setoff may be exercised to repay your debts, whether they are owed by you individually or jointly with others. All of the funds in a joint account may be used to repay the debts of any co-owner, whether they are owed individually, by a co-owner, jointly with other co-owners, or jointly with other persons or entities having no interest in your account. Debts subject to our right of setoff include those owed by you from another joint account in which you are a co-owner even though the debt may not have been directly incurred by you, as well as debts for which you are only secondarily liable. Our security interest and our right of setoff also applies: (i) when we give you credit for or cash a third party check which is returned to us unpaid for any reason or is counterfeit regardless of the timing of said return; (ii) to cover overdrafts created in any account held by you or in which you have an interest whether or not you consented to the overdraft or are otherwise responsible for it; (iii) to recover service charges or fees owed by you or any joint owner of your account; and (iv) to reimburse the Bank for any costs or expenses in enforcing its rights, including, without limitation, reasonable attorneys' fees and the costs of litigation to the extent permitted by law. We may exercise our right of setoff or security interest even if the withdrawal results in an early withdrawal penalty or the dishonor of subsequent checks. You agree that the Bank will not be responsible for dishonoring items presented against your account when the exercise of our right of setoff or security interest results in insufficient funds in your account to cover the items. Our right of setoff or security interest may be exercised before or after the death of an account holder and can follow the proceeds to any other account held at the Bank.

Failure of the Bank to exercise its right of setoff as provided herein on any occasion when the right arises does not affect the Bank's right to exercise its right of setoff at a later time for the same occurrence or for any subsequent occurrence. The security interest granted by this Agreement is consensual and is in addition to the Bank's right of setoff. Certain federal or state laws may be interpreted to protect funds received from federal or state agencies from setoff. You agree that our right of setoff applies to all funds deposited into your account, including funds received from the Social Security Administration and other federal or state agencies. By continuing to deposit these funds into your account you agree to allow the Bank to exercise its right of setoff against these funds, and not to assert any claim or defense that these deposits are exempt from setoff based on any federal or state law, rule or regulation.

14. **POSTDATED ITEMS.** You should not issue a postdated check. The Bank is authorized to disregard the date which appears on an item submitted for payment from your account. The Bank is not bound by notice of a postdated item. The Bank shall not be responsible for paying the item and debiting your account prior to the date on the item, regardless of whether or not the Bank has received notice of the postdated item. If the Bank recredits your account after paying a postdated check you agree to transfer to the Bank all of your rights against the payee or other holder of the check, and to assist the Bank in any legal action taken against that person.

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 17

Letter FDIC to Hunt

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Exhibit # 17

Number of Pages 1

FDIC
Federal Deposit Insurance Corporation
Division of Supervision and Consumer Protection
2345 Grand Boulevard, Suite 100
Kansas City, MO 64108

Consumer Response Center
1-800-378-9581
Fax number 703-812-1020

May 8, 2008
Ref. No.: SCC2008F-001425-0

Ms. Cindy B. Hunt
195 D Willow Greens Drive
Conway, South Carolina 29526

Re: Branch Banking and Trust Company
Winston-Salem, North Carolina

Dear Ms. Hunt:

We have reviewed your correspondence and information provided by the bank. You complained that the bank disclosed private information about your account at the bank to the beneficiary of the account without your permission. A copy of the bank's response is enclosed.

According to the bank, the only information provided was acknowledgement that the account in question belonged to you. The bank states that no financial information was released.

On June 1, 2000, the FDIC adopted a regulation ("the Privacy Rule") implementing the privacy provisions of the federal Gramm-Leach-Bliley Act. The Privacy Rule is set forth at 12 Code of Federal Regulations Part 332. The Privacy Rule limits the disclosure by financial institutions of "Non Public Personal Financial Information" about their consumers, such as the fact that an account exists It appears the bank failed to comply with the Privacy Rule when it released such information to Ms. Davis. The FDIC will follow up with the bank regarding its compliance with the Privacy Rule and request action be taken to prevent such an occurrence in the future.

Thank you for bringing this matter to our attention. The FDIC takes the concerns of consumers very seriously. Complaints such as yours are a vital component of the examination process, not only helping the FDIC tailor its examinations to focus on areas of concern, but also providing comment to banks on practices and policies. Your complaint will become part of the bank file that will be available during our next examination of the bank.

Sincerely,

Janet R. Kincaid
Janet R. Kincaid
Chief, Consumer Response Center

Enclosure
Cc: Branch Banking and Trust Company

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 18

Letter FDIC to BBT

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2010 NOV 15 P 3:13

Exhibit # 18

Number of Pages 2

FDIC
Federal Deposit Insurance Corporation
Division of Supervision and Consumer Protection
2345 Grand Boulevard, Suite 100
Kansas City, MO 64108

Consumer Response Center
1-800-378-9581
Fax number 703-812-1020

May 8, 2008
Ref. No.: SCC2008F-001425-0.

Ms. Lisa Nye
Quality Assessment/Chairman's Line Manager
BB&T Phone24 Call Center
2586 James B. White Highway, N
P.O. Box 632, Building A
Whiteville, North Carolina 28472

Re: Complaint of Cindy B. Hunt

Dear Ms. Nye:

This letter is in regard to the bank's response to the referenced consumer complaint.

The bank's response states that it has determined that no privacy or banking regulations were violated when the existence of Ms. Hunt's account was confirmed to Ms. Davis.

The Gramm-Leach-Bliley Act ("the Act") was signed into law on November 12, 1999. Subtitle A of title V of the Act, captioned Disclosure of Nonpublic Personal Information, 15 USC 6801, et.seq., limits the instances in which a financial institution may disclose nonpublic personal information ("NPI") about a consumer to nonaffiliated third parties. The Act required federal regulators of banks, including the FDIC, to prescribe regulations to carry out the privacy provisions of the Act. On June 1, 2000, the FDIC adopted such regulations ("the Privacy Regulation"), with respect to financial institutions supervised by the FDIC. The Privacy Regulation is set forth at 12 CFR Part 332. Compliance with the Privacy Regulation became mandatory on July 1, 2001.

"Nonpublic personal information" is defined in Section 332.3 of the Regulation in a manner that encompasses "any information about a consumer resulting from any transaction involving a financial product or service between [a financial institution] and a consumer." Sec. 332.3(o)(1)(ii). It includes "any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer." Sec. 332.3(o)(2)(i)(D).

Section 332.10(a) provides that a financial institution may not disclose NPI about a consumer to a nonaffiliated third party unless certain "opt out" requirements have been met or unless one of the exceptions set forth in the Privacy Regulation applies.

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The bank acknowledges that the teller replied affirmatively to Ms. Davis when asked if the bank held a checking account that belonged to Ms. Hunt. The bank thereby provided NPI regarding Ms. Hunt to a nonaffiliated third party. No argument has been made that the opt out requirements were met or that an exception to the Privacy Regulation applied to the disclosure. As a result, it appears that the bank's actions were not in compliance with the Privacy Regulation.

Please review and respond to this issue within 14 days of your receipt of this letter and advise this office of any action to prevent any similar occurrences in the future. If you disagree with our findings, please provide documentation to support your belief. If there are any questions, you may direct them to Consumer Affairs Specialist Lynne Gottesburen at 816-234-9010.

Sincerely,

Janet R. Kincaid

Janet R. Kincaid
Chief, Consumer Response Center

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 19

Letter FROM BOOZ TO FDIC

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Exhibit # 19

Number of Pages 2

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Branch Banking & Trust Co.

Legal Department
200 West Second St., 3rd Floor (27101)
P.O. Box 1255
Winston-Salem, NC 27102-1255

May 15, 2008

Ms. Janet R. Kincaid
Chief, Consumer Response Center
FDIC
Division of Supervision and Consumer Protection
2345 Grand Blvd., Suite 100
Kansas City, MO 64108

RECEIVED
2008 MAY 19 AM 9:01
FDIC
KANSAS CITY REGION

Re: SCC2008F-001425-0 / Complaint of Cindy B. Hunt

Dear Ms. Kincaid:

This letter is in response to your letter dated May 8, 2008 to Ms. Lisa Nye of BB&T. In response to your letter, BB&T asks that you re-examine Ms. Judy Teal's letter to the FDIC of April 11, 2008. Specifically, BB&T refers you to the factual description of the exchange between Kaci Sansbury and Castella Hunt Davis. At the time of Ms. Davis' inquiry, she was speaking on her cell phone with the complainant, Cindy Hunt. Ms. Sansbury had previously advised Ms. Davis that she had located a checking account which Ms. Sansbury initially believed to be in Ms. Davis' name. While on the phone with Ms. Hunt, Ms. Davis asked Ms. Sansbury if the checking account located belonged to Cindy Hunt, her cousin. Ms. Davis' question implied prior knowledge of the existence of the account. In fact, Ms. Davis held a beneficial interest in the account because she was named the beneficiary of the account.

This matter presents two issues as to whether Gramm-Leach-Bliley has been violated by BB&T. The first issue is a factual issue as to whether Ms. Davis already knew of the existence of the account, and the second issue is, even if Ms. Davis did not know of the existence of the account, whether she had a right to know of the existence of the account as a result of her being named a beneficiary of the account.

As a result of the two issues set forth above, it is the opinion of BB&T that you cannot make a determination that Gramm-Leach-Bliley was violated by BB&T under these circumstances.

In conclusion, BB&T would like to point out an exception to notice and opt-out requirements in Section 332.15(iv) that applies to persons holding a legal or beneficial interest relating to the consumer. As noted above, Ms. Davis held a beneficial interest relating to Ms. Hunt in that she was named a beneficiary of the account in question. Based on the foregoing, it is BB&T's position that it has not violated Gramm-Leach Bliley.

SCANNED
DATE: 5/19/08
INITIALS:

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To ensure that similar situations do not arise in the future, BB&T has counseled Kaci Sansbury to be careful to protect non-public information of our clients even in those situations in which a third party appears to have knowledge concerning a client's account or appears to be subject to Section 332.15(iv). BB&T is currently conducting bank-wide privacy training and Ms. Sansbury will participate in this training.

Sincerely,

Mark L. Booz
Senior Vice President, Litigation Practice Group Manager

cc: Michelle Walker
Judy Teal
B. J. Denny

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 20

Letter CBH TO FDIC

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Exhibit # 20

Number of Pages 5

Cindy B. Hunt
195 D Willow Greens Drive
Conway, SC 29526
843 234-3749

06 June 2008

RECEIVED
2008 JUN 10 AM 6:51
FDIC
KANSAS CITY REGION

Ms. J. Kincaid
FDIC Consumer Response
2345 Grand Blvd. Suite 100
Kansas City, MO 64108

Re: 1) Appeal of May 8, 2008 Decision
2) Complaint and Request to Investigate Stop Payment

Dear Ms. Kincaid,

First, I am writing this letter to appeal the decision of your May 8, 2008 letter: Reference No.: SCC2008F-001425-0.

I notified Danny Fogle of BB&T, City Exec for BB&T, of this matter on 22 January 2008 by leaving him a detailed voice message. I invite you to get a copy of that voice message.

On 23 January 2008 Mr. Fogle returned my call and stated to me among other things: "You know if Ms. Davis had left the bank with your money that I would have given it back to you." I said, Danny this does not change the fact that y'all have violated a slew of laws. Mr. Fogle said, "CB you have us dead to rights, she should not have disclosed your account balance. I have reprimanded Gail." I said, "Ms. Davis told me the person that she had spoken to was Kaci Sansbury." I went to ask him to have legal to call me. He concluded the conversation by saying that I could expect a call from the legal department.

On 31 January 2008 I called Mr. Fogle on his cell phone (he was in his truck on his way to a meeting in Charleston) to say that legal had not yet contacted me. Mr. Fogle, whom I have had an amicable banking relationship with for the past 13+ years, stated to me that "Michell Ward had instructed him not to talk to me anymore on this matter". Later in the day on 1/31 Judy Teal called where she stated **lie number one**: "no financial information had been released."

SCANNED
DATE: 6-11
INITIALS:

It is obvious to me that BB&T has 'closed rank' comfortable in the knowledge that the FDIC's investigation would consist solely of comparing letters after asserting the always sympathetic and unchallengeable computer problem, disclosing to you our discussions of monetary restitution, stating that no funds were released and no financial information disclosed to Ms. Davis.

When I wrote to the FDIC back in March I did so because I thought that the FDIC would do an 'actual' investigation. As such, I assumed that you would at least speak with Mr. Fogle since he works out of the Conway branch where the incident happened. Ms. Teal works out of Darlington/Florence. And I trusted that you would do a real investigation where I included the address and phone numbers of Ms. Teal, Ms. Davis and Mr. Fogle. And I hoped that you would speak with Ms. Sansbury after contacting Mr. Fogle. How foolish of me.

At no time have I ever advised Ms. Davis of the balance in my account. I am enclosing a copy of my bank statement that shows my balance on 1/19/2008 to be $29, 564.05.

After receiving Ms. Teal's letter of 4/11, had you spoken to Ms. Sansbury, Ms. Davis or Mr. Fogle before summarily dismissing my claim as per your 5/08/2008 letter to me, the FDIC would have sua sponte asserted against BB&T the charges of mail fraud, FDIC fraud and conspiracy based on the false statement of Ms. Teal: we did not release ... any financial record information, and to support this statement she provided a copy of Mr. Craven's letter to me.

To say the least, it concerns me greatly that I had alleged that BB&T violated Federal and state laws and the extent of your investigation was to compare the bank's letter to my letter where **neither I nor Judy Teal was a witness to the violations of law on 1/19.**

As such, my request on appeal is that you do now what you should have done - a full investigation that includes talking to witnesses, etc. and thereafter see to it that BB&T is charged with criminal violations of the law including computer fraud, misapplication, mail fraud, FDIC fraud and conspiracy.

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I make the above requests based on the enclosed affidavit of Ms. Davis and supporting documents.

> Please know that I have enough wisdom to realize that the FDIC may/will take the above requests to be a direct affront to its huge power. And I note that Ms. Teal in her written statement to you made you aware of our discussions of monetary restitution.

Furthermore, had the FDIC spoken to Ms. Sansbury, Mr. Fogle or Ms. Davis you would have learned that on 1/19 Ms. Sansbury was off duty when she spoke to Ms. Davis. As such, she got on the computer without authorization and subsequently exceeded her purpose for being on the computer where she disclosed my financial account balance information, insisted that my account was that of Ms. Davis and never asked for any ID or a death certificate.

This behavior evidences a *reckless disregard for* the financial health of the bank by Ms. Sansbury and BB&T. And I remind you that whether or not the Bank actually suffered a loss is not material. UNITED STATES v. McElroy, 910 F.2d 1016 (1990). The offense occurred and was complete when the misapplication took place on 1/19/2008. Lying, covering up, no speaking to the customer or closing rank will not change this fact or make it go away.

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Secondly, I am writing this letter to request an investigation of a recent Stop Payment involving my POD checking account. This is the same POD account that was involved in the 1/19/08 incident.

This is a formal complaint and request to investigate based on the following facts:

1) On 16 April 2008 I received a check from SCOID.
2) Thereafter, I cashed this check at BB&T. BB&T did not place a hold on my account for this check. I walked away with cash.
3) On 8 May 2008 I received a letter from BB&T stating that a STOP PAYMENT had been issued on the check on 5/2/08.
4) The letter from BB&T also stated that BB&T had gone into my POD account on 2 May 2008 and helped itself to: $855.00.
5) Highly upset I called BB&T on 5/8/08 and tried to speak with Danny Fogle about the stop payment and why BB&T helped themselves to my money as a opposed to contacting the State of South Carolina or calling me or making use of the judicial process. Mr. Fogle, again stated to me that BB&T had instructed him not to speak with me so he passed me on to Ms. Karnap.
6) Ms. Karnap advised me that BB&T was entitled to setoff as per the BSA. I stated that the BSA was never signed or agreed to by me and if the BSA applied to me that BB&T as per the recent disclosure had breached its own BSA. She continued to state that they were entitled to setoff as per the BSA and agreed to fax me that page of the BSA setoff language.
7) Thereafter, I contacted the SCOID. A few days later they advised me that the State of South Carolina had made an error in stopping payment on the check. Several days later I received a 2nd check from SCOID.
8) Because of BB&T's misapplication of the funds in my POD account, stealing money from my POD account and numerous other violations of state and Federal laws I closed this account on 19 May 2008.
9) On 19 May 2008 I spoke to Mr. Fogle by first acknowledging that he could not speak with me but that I wanted to thank him for the previous years of a good banking relationship.

On the day that BB&T stole $855.00 from my POD checking account it established a pattern of no regard for Federal or state laws. As a result of BB&T's stealing from my POD account I have suffered a loss of interest and I was deprived of use of the money for about 21 days. However, I was **exposed** to a much larger loss had I written checks that brought my account balance below $855.00.

Furthermore, BB&T has a unilateral and unconscionable Banking Service Agreement that I never agreed to or signed. And if the BSA applies to me BB&T breached the same BSA on 1/19/2008 where it failed to comply with the Privacy Rule and violated several other state and Federal laws and we did not subsequently enter into another agreement.

It is my position that BB&T is a bully, a loose cannon ball and a thief.

BB&T is presumed to know the law. Yet the behavior of BB&T and its employees on 1/19, 4/11 and 5/2 clearly evidences that the law does not apply to BB&T. Thus, the only questions in my mind at this time are:

I respectfully submit, will the FDIC continue to limit its investigation to a comparison of letters and will the FDIC continue to place nothing more than a note in BB&T's file as the result of BB&T's criminal behavior.

Please notify me of your findings and what actions that you have taken.

With Kind Regards,

CB Hunt

Enclosures:

Affidavit of Costella H. Davis (2 pages)
Account Balance (1 page)
Stop Payment from BB&T: cover letter & check from SCOID/State of SC (2 pages)
Fax from Ms. Karnap (2 pages)
Letter from State of SC and 2nd check (2 pages)
BSA (27 pages)

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 21

Letter TEAL TO FDIC

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Exhibit # 21

Number of Pages 2

1449



Branch Banking & Trust Co.
Coastal Administration
P.O. Box 6676
Florence, SC 29502
(843) 413-4252
Fax (843) 413-4280

June 27, 2008

RECEIVED
2008 JUL -1 AM 10:23
FDIC
KANSAS CITY REGION

Federal Deposit Insurance Corporation (FDIC)
Department of Supervision and Consumer Protection
2345 Grand Boulevard, Suite 100
Kansas City, MO 64108

Attention: Lynne Gottesburen
Reference # SCC2008F-001425-1

Dear Ms. Gottesburen:

On June 13, 2008, we received your letter along with the letter of complaint from Ms. Cindy B. Hunt. We hope the following information satisfies your requirement in responding to the resolution of complaint regarding a stop payment involving her POD checking account. The complaint is outlined on page 4 in Ms. Hunt's letter.

- On April 28, 2008, BB&T cashed for Ms. Hunt a State of South Carolina check payable to Cindy B. Hunt in the amount of $855.00.
- On May 1, 2008, the State of South Carolina check was returned stamped "Return Reason Stop Payment" to BB&T.
- On May 2, 2008, Ms. Hunt's checking account was debited $855.00 for the returned check. The checking account and the returned check were titled the same, Cindy B. Hunt; therefore, the bank exercised the right of setoff. (Reference page 10, section 13 of the enclosed Bank Services Agreement) BB&T mailed notification of the debit to her checking account and the returned check to Ms. Hunt.
- In April 2007, prior to the merger of BB&T and Coastal Federal Bank, letters regarding the account changes were mailed to clients. For personal accounts, the letter was accompanied with a Personal Services Product and Pricing Guide and a booklet titled "Bank Services Agreement/Constant Credit Agreement/Privacy Notice." Ms. Hunt included a copy of the booklet with her letter to you.
- On page 5 of the booklet in the first paragraph, there is information regarding the account Agreement between BB&T and the client. It also states that the client's continued use of the account following notice of amendment or a change to the account constitutes the client's acceptance of such changes. On August 20, 2007, the merger of BB&T and Coastal Federal Bank was completed and the accounts were changed in accordance with the notifications to the clients. Ms. Hunt continued to use her accounts that were converted to BB&T. (Reference page 1, section A of the enclosed Bank Services Agreement)

Based on the above information and the Bank Services Agreement, we have determined that the Bank handled the returned check properly.

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Thank you for the opportunity to respond to this issue.

Sincerely,

Judy Teal

Judy Teal
Senior Vice President
Regional Branch Operations Manager

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Blank