

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE MASTER-IN-EQUITY
CHARLESTON COUNTY

Mikell Scarborough, Master-in-Equity

Case Number 2012-CP-10-2651

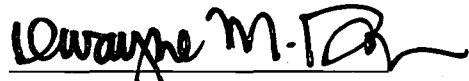
MEMORANDUM IN SUPPORT OF MOTION TO APPEAL

Frank a/k/a Frank W. Cook, Judith Cook and Ian Blake
Of Whom
Frank and Judith Cook are Appellants

v.

Bank of America, N.A., Respondents

Green Ford Wallace LLC



Dwayne M. Green (S.C. Bar # 9559)
602 Rutledge Avenue
Charleston, SC 29403
(843) 266-2629
Attorneys for Appellants

Background

This foreclosure action commenced with the Plaintiff Bank of America filing a Summons and Complaint with the Charleston County Clerk of Court on April 20, 2012. (Exhibit A- attached). The Defendants Frank and Judith Cook were served with a copy of these pleadings on April 26, 2012. On May 9, 2012, Frank and Judith Cook filed a timely answer with the Charleston County Clerk of Court (Exhibit B- attached). Due to a clerical error, the Defendants' filed answer was not served on counsel for the Plaintiff, but there is no dispute that the answer was timely filed within the 30 days proscribed by the rules, and that it was a matter on public record upon filing with the clerk of court.

On June 18, 2012, the Plaintiff/Respondents filed an affidavit of default and Order of Reference to the Charleston County Master-in-Equity on the basis that all named defendants in the action were in default and had failed to timely answer. (Exhibit C- attached). Within ten days of this responsive pleading, the Defendants filed an Amended Answer and Counterclaim against the Plaintiffs, requesting a jury trial (Exhibit D- attached).

In the Order of Reference to the Master in Equity, also filed June 18, the motion to refer was granted on the basis that "the parties hereto (excluding those defendants in default as shown by the annexed Affidavit of Default) have agreed and stipulated that the issue in this action be referred to Mikell R. Scarborough, as Master-in-Equity." (Exhibit C).

It was subsequently ruled by Judge Scarborough in his Order dated October 11, 2012 that the Defendants Frank and Judith Cook were not in default, having filed a timely answer with the clerk of court. Since the Defendants have neither agreed nor stipulated to the Order of Reference as stated in the Motion and Order of Reference (Exhibit C), they have asserted that they are entitled to a jury trial as requested in their June 28, 2012 Amended Answer. This Amended Answer was filed within ten days of the erroneous Motion for Default.


APPLICABLE LAW

References to the Master-in-Equity can be made upon order of the clerk or the court which the parties consent or there is a default. There was neither a default nor consent by the Defendants in this matter, yet the case was sill referred to the Master-in-Equity. Ordinarily, the decision to grant or deny a reference is not an appealable order although it may become so if the reference deprives the party of a jury. Williford v. Downs, 265 S.C. 319, 218 S.E.2d 242 (S.C. 1975) *quoting* Rainwater v. Merchants & Farmers Bank of Cheraw, 108 S.C. 206, 93 S. E. 770 (1917).

The Defendants' Amended Answer requested a trial by jury, which was required to be filed within ten (10) days of the last pleading directed to that issue. SCRCP, Rule 38(b). The Plaintiff's pleading asserting that the matter was non-jury was filed with the Clerk of Court on June 18, 2012 and the Amended Answer was filed within ten days of that filing, on June 28, 2012. As mentioned in our state constitution, "the right of a trial by jury shall be preserved inviolate." S.C. Constitution Art. I §14. In this action, a jury trial was properly requested within ten days of the Plaintiff's last pleading, yet the Order of Reference was granted on the basis of a default that was later held to be invalid.

CONCLUSION

Based on the same, the Appellants request that their request for a jury trial be granted with a remand to the Circuit Court, or in the alternative that this appeal be permitted to proceed so that the merits of the Appellants arguments may be fully considered by this Honorable Court.



Dwayne M. Green (S.C. Bar # 9559)
602 Rutledge Avenue
Charleston, SC 29403
(843) 266-2629
Attorneys for Appellants

November 13, 2012

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals for the State of South Carolina

APPEAL FROM THE COURT OF COMMON PLEAS
CHARLESTON COUNTY
THIRD JUDICIAL CIRCUIT

Mikell Scarborough, Master-in-Equity

Case No. 2012-CP-10-2651

Bank of America, N.A., Respondent,

v.

Frank W. Cook, Judith Cook and Ian Blake
Of Whom

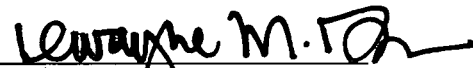
Frank Cook and Judith Cook are, Appellants.

PROOF OF SERVICE

I certify that I have served the Memorandum in Support of Motion to Appeal on all attorney of record, by depositing a copy of it in the United States Mail, postage prepaid, on November 13, 2012, addressed to the attorney of record, H. Guyton Murrell.

November 13, 2012

GREEN FORD & WALLACE LLC



Dwayne M. Green
602 Rutledge Ave.
Charleston, SC 29403
T. 843.266.2626
F. 843.266.2627
Attorney for Appellants

RECEIVED

NOV 16 2012

SC COURT OF APPEALS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs

Frank Cook a/n/a Frank W Cook, Judith H Cook, and Ian Blake.

DEFENDANT(S)

IN THE COURT OF COMMON PLEAS

SUMMONS

(NON-JURY MORTGAGE FORECLOSURE)

C/2012 CP 102651

DEFICIENCY WAIVED

2012 APR 20 PM 3:03
JULIE J ARMSTRONG
CLERK OF COURT

FILED

F12-01801

TO THE DEFENDANTS ABOVE NAMED.

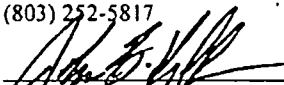
YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you. or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P.O. Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-in-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817


PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KEVIN T. HARDY
TERESA D. VAN VLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Columbia, South Carolina
April 20, 2012

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W Cook, Judith H Cook,
and Ian Blake.

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2012 CP 10 2651

DEFICIENCY WAIVED

2012 APR 20 PM 3:03
JULIE JARMSTRONG
CLERK OF COURT

FILED

F12-01801

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a corporation/limited liability company organized and existing under and by virtue of the laws of the United States of America; and that the Defendants Frank Cook a/k/a Frank W Cook, Judith H Cook, and Ian Blake, are upon information and belief, citizens and residents of the State of South Carolina.

2. Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Laws (1976) as amended.

3. That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Charleston, State of South Carolina.

4. That on or about May 15, 2008, for value received, Frank Cook, did execute and deliver to Bank of America, N.A., a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Frank Cook promised to pay to Bank of America, N.A. the sum of One Hundred Seventy-Five Thousand And 00/100 Dollars (\$175,000.00), together with interest thereon at the rate of Six And 625/1000 per cent (6.625%) per annum.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Frank Cook, did execute and deliver on May 15, 2008 unto Bank of America, N.A., a mortgage covering the following described property:

Legal description and property address:

All that certain lot, piece, parcel of land, situate, lying and being on the South side of Poplar Street in the City of Charleston, County of Charleston, State of South Carolina, known and designated as Lot 60 on a plat of 92 lots laid out for Carolina-Florida Realty, Company, which plat is recorded in the Charleston County RMC Office in Plat Book C, Page 128.

The said lot measuring and containing and butting and bounding to the North on Poplar Street, Thirty-five feet; to the East on Lot 62 One Hundred Two and Five-tenths feet; to the South on Lot 59 Thirty-four and Ninety-five Hundredths feet; and to the West on Lot 58 One Hundred Four and Twenty-six Hundredths feet; be all measurements a little more or less and all as shown on said plat.

This being the same property conveyed to Frank W Cook and Judith H Cook by deed of Yvonne Patricia Jamison dated September 4, 2007 and recorded September 5, 2007 in the Office of the Register of Deeds for Charleston County in Book R637 at Page 209.

13 Poplar Street, Charleston, South Carolina 29403
TMS# 463-12-03-136

6. Thereafter said mortgage was recorded in Book F660 at Page 114 on May 22, 2008 in the Office of the Register of Deeds of Charleston County.

7. The above referenced instrument constitutes a first lien priority mortgage.

8. That the Defendant, Ian Blake, is made a party by virtue of Contract of Sale from Frank Cook dated December 13, 2011 and recorded December 13, 2011 in the Office of the Register of Deeds in Book 0222 at Page 477.

9. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

10. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

11. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

12. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

13. The monthly payments due on said note and mortgage are in default since December 1, 2011, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of December 1, 2011 the sum of One Hundred Sixty-Seven Thousand Five Hundred Ninety-Two And 37/100 Dollars

(\$167,592.37), together with interest at the rate of Six and 625/1000 per cent (6.625 %) per annum from November 1, 2011 and also for the costs and disbursements of this action, including attorney's fees.

FOR A SECOND CAUSE OF ACTION
(EQUITABLE LIEN):

14. Plaintiff realleges and incorporates the allegations of the preceding paragraphs as if fully contained herein.
15. That by deed dated September 4, 2007 and recorded September 5, 2007, in the Office of the Register of Deeds of Charleston County in Book R637 at Page 209, Yvonne Patricia Jamison conveyed the subject property unto Defendants Frank W Cook and Judith H Cook:
16. That Defendants Frank W Cook and Judith H Cook received the benefit of the proceeds of Plaintiff's loan described in Paragraph Four (4) herein.
17. That Defendant Judith H Cook did not execute the mortgage described in Paragraph Five (5) herein.
18. That the aforesaid loan created a debt, duty or obligation owing from Defendant Judith H Cook to Plaintiff.
19. That the obligation of Defendant Judith H Cook attaches to the above real property.
20. That the parties intended, expressly or impliedly, that the above described real property serve as security for the payment of obligation.
21. That the aforesaid establishes an equitable lien upon Defendant Judith H Cook's interest in the above described real property.
22. Plaintiff is entitled to an Order of the Court establishing its equitable lien upon Defendant Judith H Cook's interest in the subject property and foreclosing Plaintiff's equitable lien.

FOR A THIRD CAUSE OF ACTION
(UNJUST ENRICHMENT / RESTITUTION):

23. Plaintiff realleges and incorporates the allegations of the preceding paragraphs as of fully contained herein.
24. Plaintiff conferred a nongratiuitous benefit upon Defendant Judith H Cook and this Defendant realized some value from the proceeds of Plaintiff's mortgage.
25. It would be inequitable for Defendant Judith H Cook to retain this benefit without paying the Plaintiff its value, and Plaintiff is entitled to judgment against Defendant Judith H Cook, for the benefit of the value so conferred.
26. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.
27. That the servicer is participating in the Home Affordable Modification Program (HMP). The HMP modification process specified by the Guidelines or Supplemental Directive has been completed without

resulting in a modification because the borrower's financial status was not sufficient to support the modification process specified by the Guidelines or Supplemental Directive.

28. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

29. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

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

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

(2) That the said Plaintiff's mortgage be declared a first mortgage lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

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

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

Third, the surplus, if any, be distributed according to law.

(4) For an Order directing and empowering the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

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

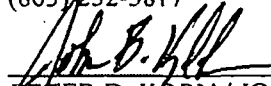
(7) For such other and further relief as may be just and proper.

(8) For an order satisfying any prior liens that may be of record, but have been paid in full.

(9) For an order establishing the Plaintiff's equitable lien against Defendant Judith H Cook interest in the subject property and foreclosing Plaintiff's equitable lien.

(10) For an order of judgment against Defendant Judith H Cook for the benefit of the value of his/her interest in the subject property.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817



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MEREDITH L. PRICKETT / KEVIN T. HARDY
TERESA D. VAN VLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Columbia, South Carolina
April 20, 2012

NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1601 As Amended

1. The amount of the debt is stated in paragraph 13 of the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. The debt as described in the Complaint attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor(s), within thirty (30) days after the receipt of this notice, disputes the validity of the debt or some portion thereof.
4. If the debtor(s) notify the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor(s) by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor(s) makes a written request to the creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor(s) by the creditor's law firm.
6. Written requests should be addressed to Korn Law Firm, P.A., Post Office Box 11264, Columbia, South Carolina 29211-1264.
7. This notice should NOT be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook, and Ian Blake


Defendant(s).

COURT OF COMMON PLEAS

Civil Action No. 2012-CP-10-2651

ANSWER OF DEFENDANTS

Frank Cook a/k/a Frank W. Cook and
Judith H. Cook

BY 
JULIE J. ARMSTRONG
CLERK OF COURT
2012 MAY -9 AM 11:15

FILED

Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook, answer
Plaintiff's Complaint below. Defendants deny each allegation that is not specifically
admitted or qualified below:

GENERAL DENIAL

1. Defendants admit the allegation contained in Paragraph 1 of the Complaint.
2. Defendants admit the allegation contained in Paragraph 2 of the Complaint upon information and belief.
3. Defendants are without information to admit or deny the allegations contained in Paragraph 3 of the Complaint and therefore deny same.
4. Defendants admit the allegation contained in Paragraph 4 of the Complaint upon information and belief.
5. Defendants admit the allegation contained in Paragraph 5 of the Complaint upon information and belief.

6. Defendants admit the allegation contained in Paragraph 6 of the Complaint upon information and belief.

7. Defendants admit the allegation contained in Paragraph 7 of the Complaint upon information and belief.

8. Paragraph 8 of the Complaint states a legal conclusion which these Defendants are required to neither admit nor deny.

9. Defendants admit the allegations in Paragraph 9 of the Complaint.

FOR A FIRST CAUSE OF ACTION
(Reformation)

10. Defendants reincorporate Paragraphs 1-9 of their Answer.

11. Defendants admit the allegations in Paragraph 11 of the Complaint.

12. Defendants admit the allegation contained in Paragraph 12 of the Complaint upon information and belief.

13. Defendants admit the allegation contained in Paragraph 13 of the Complaint upon information and belief.

14. Defendants are without information to admit or deny the allegations contained in Paragraph 14 and therefore deny same.

15. Defendants are without information to admit or deny the allegations contained in Paragraph 15 and therefore deny same.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of Mortgage)

16. Defendants incorporate paragraphs 1-15 of the Answer above.

17. Defendants admit the allegation contained in Paragraph 17 of the Complaint upon information and belief.

18. Defendants deny the allegation in Paragraph 18 of the Complaint.
19. Defendants deny the allegation in Paragraph 19 of the Complaint.
20. Defendants deny the allegation in Paragraph 20 of the Complaint.
21. Defendants deny the allegation in Paragraph 21 of the Complaint.
22. Defendants deny the allegation in Paragraph 22 of the Complaint.
23. Defendants deny the allegation in Paragraph 23 of the Complaint.
24. Defendants admit the allegation contained in Paragraph 12 of the Complaint upon information and belief.
25. Defendants deny the allegation in Paragraph 25 of the Complaint.
26. Paragraph 26 of the Complaint states a legal conclusion which these Defendants are required to neither admit nor deny.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

(Statute of Limitations; Waiver; Estoppel; Laches)

Plaintiff's claims are barred by the relevant statutes of limitation and statutes of repose and by the doctrines of waiver, estoppel and/or laches.

SECOND DEFENSE

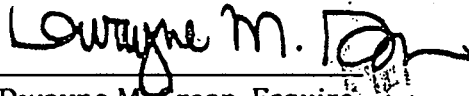
(Compliance with Contractual Obligations)

Defendant has paid and continues to pay all sums due to Plaintiff and has not breached his obligations with Plaintiff.

WHEREFORE, having fully answered Plaintiff's Complaint and asserting the above affirmative defenses, these defendants pray that the Complaint be dismissed with prejudice and that these Defendants be awarded the costs and reasonable attorney fees in association with this matter and other such relief as the Court may deem just and proper.

Respectfully submitted,

GREEN FORD & WALLACE



Dwayne M. Green, Esquire

Dwayne.Green@greenfordwallace.com

602 Rutledge Ave

Charleston, SC 29403

(843) 266-2626 telephone

(843) 266-2627 fax

Web: www.GreenFordWallace.com

May 8, 2012
Charleston, SC 29403

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Bank of America, N.A.,)
)
 Plaintiff,)
)
 vs.)
)
 Frank Cook a/k/a Frank W. Cook, Judith)
 H. Cook, and Ian Blake)
)
 Defendant(s).)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-2651


CERTIFICATE OF SERVICE

2012 MAY -9 AM 11:15
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

I, Helen J. Reynolds, legal assistant at Green Ford & Wallace LLC, hereby certify that I have this 8th day of May, 2012, served a copy of Defendant Frank Cook a/k/a Frank W. Cook and Judith H. Cook's Answer in the above-captioned case by depositing same in the U.S. Mail with sufficient postage prepaid, at the addressed as follows:

Mr. Samuel C. Waters, Esquire
 ROGERS, TOWNSEND & THOMAS, P.C.
 Post Office Box 100200
 Columbia, SC 29202-3200


 Helen J. Reynolds

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2012 JUN 18 PM 2:55

MOTION AND
ORDER OF REFERENCE

Bank of America, N.A.,

JULIE J. ARMSTRONG
CLERK OF COURT

PLAINTIFF,

BY 1

(NON-JURY MORTGAGE
FORECLOSURE)

vs.

C/A NO: 2012-CP-10-2651

Frank Cook a/k/a Frank W Cook, Judith H Cook, and
Ian Blake,


DEFICIENCY WAIVED

DEFENDANTS.

F12-01801


It appearing pursuant to Rule 53 – SCRCP, that the parties hereto (excluding those defendants in default as shown by the annexed Affidavit of Default) have agreed and stipulated that the issue in this action be referred to Mikell R. Scarborough, as Master in Equity for the above-entitled County, and that the Master in Equity shall have the authority to enter final judgment, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules; now, on motion of the undersigned attorney for the Plaintiff, by and with the consent of the Attorneys for the answering defendants, if any,

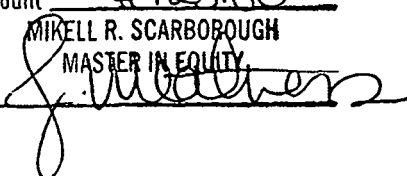
IT IS ORDERED that this case be referred to Mikell R. Scarborough, as Master in Equity to direct entry of final judgment in this action under Rule 53 (b), SCRCP. Any appeal from the final judgment entered by the Master in Equity shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.


PRESIDING JUDGE OR CLERK OF COURT

Charleston, South Carolina
6/15, 2012

I SO MOVE:


PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KEVIN T. HARDY
TERESA D. VAN VLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Date 6-18-2012
Amount \$125.00
PAID
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
By 

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

June 5, 2012

Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Bank of America, N.A. vs Frank Cook a/k/a Frank W Cook, Judith H Cook , and Ian
Blake
Docket No. 2012-CP-10-2651
Our file No. F12-01801

Dear Master in Equity:

Enclosed please find the original and two copies of the proposed Order of Reference, Affidavit of Default and Affidavit of Non-Military Service for the above foreclosure action, along with our check in the amount of \$125.00. Please have the originals signed and filed and return a clocked copy to us in the enclosed envelope. We have also attached the \$25.00 fee for the Motion, made payable to the Clerk of Court.

This is a foreclosure case that should, pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, be referred to a Master-In-Equity or Special referee. Pursuant to Rule 53(b), the Order of Reference may be signed by the Clerk of Court or a Circuit Court Judge.

Your assistance is very much appreciated.

Very truly yours,

Valerie Crowder
Legal Assistant

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FILED

AFFIDAVIT OF DEFAULT

Bank of America, N.A.,

2012 JUN 18 PM 2:55

(NON-JURY MORTGAGE FORECLOSURE)

PLAINTIFF,

JULIE J. ARMSTRONG
CLERK OF COURT

C/A NO: 2012-CP-10-2651

vs.

BY _____

DEFICIENCY WAIVED

Frank Cook a/k/a Frank W Cook, Judith H Cook, and Ian Blake,

DEFENDANTS.

F12-01801

PERSONALLY appeared before me, the undersigned attorney, who first being duly sworn, deposes and says:

That he is one of the attorneys for the Plaintiff above named; that the Summons and Complaint were served upon the Defendants Frank Cook a/k/a Frank W Cook, Judith H Cook, and Ian Blake, and that more than Thirty (30) days have expired, since such service during which time the Defendants Frank Cook a/k/a Frank W Cook, Judith H Cook, and Ian Blake, have failed to answer, appear or otherwise plead in this cause and, consequently, said Defendants are now in default.

KORN LAW FIRM, P.A.
P.O. Box 11264
1300 Pickens Street
Columbia, South Carolina 29211-1264

BY: *Teresa D. Van Vlake*
PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KEVIN T. HARDY
TERESA D. VAN VLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

SWORN to before me this
16 day of June, 2012.

Candy Rain (SEAL)
Notary Public for South Carolina
My Commission Expires: 6-18-19

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook, and Ian Blake

Defendant(s).

COURT OF COMMON PLEAS

Civil Action No. 2012-CP-10-2651

AMENDED ANSWER OF DEFENDANTS

Frank Cook a/k/a Frank W. Cook and
Judith H. Cook
(Jury Trial Demanded)

BY
JULIE J. ARMSTRONG
CLERK OF COURT

2012 JUN 28 PM 2:13

FILED
DWB

Defendants Frank Cook and Judith H. Cook, hereby submit this amended answer to Plaintiff's Complaint below. Defendants deny each allegation that is not specifically admitted or qualified below:

GENERAL DENIAL

1. Defendants admit the allegation contained in Paragraph 1 of the Complaint.
2. Defendants admit the allegation contained in Paragraph 2 of the Complaint upon information and belief.
3. Defendants are without information to admit or deny the allegations contained in Paragraph 3 of the Complaint and therefore deny same.
4. Defendants admit the allegation contained in Paragraph 4 of the Complaint upon information and belief.
5. Defendants admit the allegation contained in Paragraph 5 of the Complaint upon information and belief.

6. Defendants admit the allegation contained in Paragraph 6 of the Complaint upon information and belief.

7. Defendants admit the allegation contained in Paragraph 7 of the Complaint upon information and belief.

8. Paragraph 8 of the Complaint states a legal conclusion which these Defendants are required to neither admit nor deny.

9. Defendants admit the allegations in Paragraph 9 of the Complaint.

FOR A FIRST CAUSE OF ACTION
(Reformation)

10. Defendants reincorporate Paragraphs 1-9 of their Answer.

11. Defendants admit the allegations in Paragraph 11 of the Complaint.

12. Defendants admit the allegation contained in Paragraph 12 of the Complaint upon information and belief.

13. Defendants admit the allegation contained in Paragraph 13 of the Complaint upon information and belief.

14. Defendants are without information to admit or deny the allegations contained in Paragraph 14 and therefore deny same.

15. Defendants are without information to admit or deny the allegations contained in Paragraph 15 and therefore deny same.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of Mortgage)

16. Defendants incorporate paragraphs 1-15 of the Answer above.

17. Defendants admit the allegation contained in Paragraph 17 of the Complaint upon information and belief.

18. Defendants deny the allegation in Paragraph 18 of the Complaint.
19. Defendants deny the allegation in Paragraph 19 of the Complaint.
20. Defendants deny the allegation in Paragraph 20 of the Complaint.
21. Defendants deny the allegation in Paragraph 21 of the Complaint.
22. Defendants deny the allegation in Paragraph 22 of the Complaint.
23. Defendants deny the allegation in Paragraph 23 of the Complaint.
24. Defendants admit the allegation contained in Paragraph 12 of the Complaint upon information and belief.
25. Defendants deny the allegation in Paragraph 25 of the Complaint.
26. Paragraph 26 of the Complaint states a legal conclusion which these Defendants are required to neither admit nor deny.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

(Statute of Limitations; Waiver; Estoppel; Laches)

Plaintiff's claims are barred by the relevant statutes of limitation and statutes of repose and by the doctrines of waiver, estoppel and/or laches.

27. Defendants incorporate herein by reference all the allegations and statements contained above and below.
28. Plaintiffs have unclean hands in this matter.
29. It is axiomatic that one who seeks equity must have acted equitably.
30. Plaintiffs' conduct caused injury to Defendant.
31. Defendant request that the Plaintiffs' request for equitable relief be denied.

SECOND DEFENSE

(Compliance with Contractual Obligations)

Defendant has paid and continues to pay all sums due to Plaintiff and has not breached his obligations with Plaintiff.

32. Defendants incorporate by reference all paragraphs above and below of their Answer.

33. Defendants state that the alleged breach was not a material breach of the agreement between the parties.

34. An action to foreclose is, at its core, an action for breach of contract.

35. An Action to foreclose was non-material, the Plaintiff and Bank of America N.A. have no cause of action to pursue this foreclosure.

36. Defendants incorporate the paragraphs above and below of their Answer and Counterclaim.

37. A Note and Mortgage are in essence a contract.

38. The Defendants made the payments to the mortgagee until this suit was filed.

39. The Plaintiff is effectively seeking to withdraw the benefit of the bargain from the Defendants in this action by wrongfully foreclosing on their property after they have paid thousands of dollars in fees for the loan origination and the closing and have been paying interest and principle to Bank of America, N.A.

40. The commencing of a foreclosure action without proper cause is a breach of contract.

41. If the Plaintiff had not breached the terms of the alleged not and mortgage, the Defendants would not have had to pay for an attorney and would not have had their credit impaired.

42. The Defendants request that this court award them actual damages, costs, and attorney fees.

43. Defendants incorporate herein by reference all the allegations and statements contained in paragraphs 1 through 43.

44. Plaintiff's complaint alleges a transfer from Bank of America, N.A. to the Plaintiff at some unspecified date.

45. The transfer must have occurred prior to the filing of the original complaint.

46. The Plaintiff is in violation of the Real Estate Settlement Procedure's provisions for notifying borrowers of the transfer of their loans.

47. The actions of the Plaintiff are representative of a pattern of noncompliance with RESPA.

48. Defendants request that this court grant an award of actual damages, costs, attorney's fees and statutory damages of \$1090.00.

WHEREFORE, having fully answered Plaintiff's Complaint herein, the Defendants

- (1) Request that this matter be heard before a Jury;
- (2) Expressly deny that the Plaintiff is entitled to any relief requested;
- (3) Pray that the Plaintiff's Complaint be dismissed with prejudice;

- (4) Pray that the court Award defendant special damages and actual damages;
- (5) Pray that the Court Award Statutory Damages;
- (6) That Defendant's costs and attorneys' fees be taxed against the Plaintiff.
- (7) And for such other and further relief as this Court may deem Just and Proper;

Respectfully submitted,

GREEN FORD & WALLACE



Dwayne M. Green, Esquire

Dwayne.Green@greenfordwallace.com

602 Rutledge Ave

Charleston, SC 29403

(843) 266-2626 telephone

(843) 266-2627 fax

Web: www.GreenFordWallace.com

June 22, 2012
Charleston, SC 29403

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Bank of America, N.A.,)
)
 Plaintiff,)
)
 vs.)
)
 Frank Cook a/k/a Frank W. Cook, Judith)
 H. Cook, and Ian Blake)
)
 Defendant(s).)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-2651

CERTIFICATE OF SERVICE

2012 JUN 28 PM 2: 14
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

FILED

I, Dwayne M. Green, Green Ford & Wallace LLC, hereby certify that I have on this 22 day of June, 2012, served a copy of Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook's Amended Answer in the above-captioned case by depositing same in the U.S. Mail with sufficient postage prepaid, at the addressed as follows:

Mr. Samuel C. Waters, Esquire
 ROGERS, TOWNSEND & THOMAS, P.C.
 Post Office Box 100200
 Columbia, SC 29202-3200

Respectfully submitted,

GREEN FORD & WALLACE

Dwayne M. Green

Dwayne M. Green, Esquire

Dwayne.Green@greenfordwallace.com

602 Rutledge Ave

Charleston, SC 29403

(843) 266-2626 telephone

(843) 266-2627 fax

Web: www.GreenFordWallace.com

June 22, 2012
 Charleston, SC 29403

June 22, 2012

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29402

RE: Bank of America, N.A., vs. Frank Cook a/k/a Frank
W. Cook, Judith H. Cook and Ian Blake
C/A# 2011-CP-10-2651
GFW File Number: 351

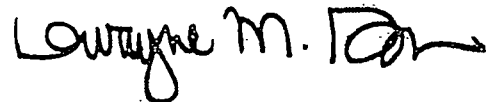
Dear Ms. Armstrong:

Enclosed please find an original and two copies of Defendant Frank W. Cook and Judith Cook's Amended Answer in the above-referenced matter. If you would, please file the original and return the two file-stamped copies in the self-addressed envelope I have enclosed for your convenience.

By copy of this letter to Samuel C. Waters, attorney for the Plaintiff, I am advising him of this filing.

With kind regards, I remain

Yours very truly,
GREEN FORD & WALLACE LLC



Dwayne M. Green

Enclosures

cc: Mr. Samuel C. Waters, Esquire
Mr. and Mrs. Frank W. Cook

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF CHARLESTON)

Bank of America, N.A.)

CASE NO.)

Plaintiff)

2012-CP-10-2651)

v.)

MOTION AND ORDER INFORMATION)
FORM AND COVER SHEET)

Frank Cook A/K/A Frank W. Cook, Judith H. Cook,)
And Ian Blake)

Defendant.)

Plaintiff's Attorney: Teresa D. Van Vlakte, Esquire, Bar No. Address: P.O. Box 11264-- 1300 Pickens Street Columbia, SC 29211-1264 phone: (803) 252-5817 fax: e-mail: other:	Defendant's Attorney: Dwayne M. Green, Esquire, Bar No. 9559 Address: 602 Rutledge Avenue Charleston SC 29403 phone: (843) 266-2629 fax: (843) 266-2627 e-mail: dwayne.green@greenfordwallace.com other:
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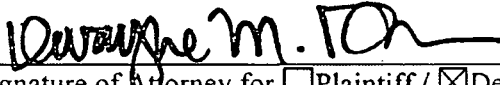
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Rescind Order of Reference and Default Judgment
 Estimated Time Needed: 15 minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

August 16, 2012
 Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION

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

 JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook and Ian Blake;

Defendant(s).

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-10-2651

**MOTION TO RESCIND ENTRY OF
JUDGMENT**

FILED
2012 AUG 16 PM 12:37
JULIE J. ARMS, CLERK OF COURT


TO: PETER KORN and VANESSA VAN VLAKE, ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that at a time not less than ten (10) days after service hereof, the Defendants Frank Cook and Judith Cook will move this Honorable Court for an Order Rescinding the Entry of Judgment and Order Referring this case to the Master entered June 18, 2012.

The grounds for this motion are that the Plaintiff falsely and erroneously filed a Certificate of Default and Non-Military Service on June 6, 2012, claiming that the Defendants had failed to file a timely answer in this matter. Defendants Frank Cook and Judith Cook and Dwayne Green did file an Answer in this matter on May 9, 2012 (attached), which answer was properly filed with the Charleston County Clerk of Court. Defendants inadvertently served their Answer upon counsel for another firm as evidenced by the attached Certificate of Service, however the Answer was clearly filed with the Clerk's office in a timely matter and is visible on the clerk's website as public record as of the Plaintiff's Motion for Default and Reference.

Defendants will move for an Order lifting the Entry of Judgment and awarding Defendants the costs and fees for filing this motion, as well as any other relief the court deems just and appropriate, in the event the Order of Reference and Motion for Default cannot be rescinded by consent.

GREEN FORD & WALLACE LLC



Dwayne M. Green (SC Bar #9559)

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Web: www.GreenFordWallace.com

August 16, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook and Ian Blake,

DEFENDANT(S).

F12-01801

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-10-2651

**ORDER DENYING DEFENDANT'S
MOTION TO RESCIND**

2012 OCT 11 PM 4:07
JULIE J. ARBUSTROM
CLERK OF COURT
BY

FILED

This is an action for foreclosure as to certain realty located in Charleston County. The summons and complaint were filed on April 20, 2012. The Defendants Frank Cook and Judith Cook were served with the pleadings on April 26, 2012. An affidavit of default as to Defendants Frank Cook and Judith Cook and an Order of Reference were filed on June 18, 2012.

The Defendants Frank Cook and Judith Cook filed a motion to rescind the order of reference. A hearing on the motion was held on September 18, 2012. Attorney Dwayne Green appeared on behalf of Defendants Frank Cook and Judith Cook. Attorney H. Guyton Murrell appeared on behalf of the Plaintiff.

The basis for the motion is that Defendants Frank Cook and Judith Cook timely filed an answer on May 9, 2012 but the answer was served on the wrong law firm in error. The Defendants Frank Cook and Judith Cook filed an amended answer and counterclaim on June 28, 2012. The court finds that the Defendants Frank Cook and Judith Cook were properly served with the pleadings on April 26, 2012 at 164 Pilgrim Point Drive, Lexington, South Carolina. The court finds that the Defendants Frank Cook and Judith Cook timely filed an answer on May 9, 2012 and the Defendants Frank Cook and Judith Cook are not in default. Therefore, the court grants the motion as to lifting the entry of default as to Defendants Frank Cook and Judith Cook.

The Defendants Frank Cook and Judith Cook have also made motion to rescind the order of reference. The court has reviewed the pleadings filed by of Defendants Frank Cook and Judith Cook. The court finds that the amended answer and counterclaim

filed June 28, 2012 was not timely filed as required by Rule 15 SCRPC. The court finds that the responsive pleading filed by Defendants Frank Cook and Judith Cook does not raise legal questions and the underlying foreclosure is an action in equity. The allegations of the answer relate to payment application and the equity court is the appropriate forum for the issue. The court finds that the motion to rescind the order of reference is denied. The court further finds that this matter is proper for this court's contested calendar and a status conference is scheduled for December 10, 2012 at 1:30 a.m., at which time any pre-trial motions will be heard and the court shall issue a scheduling order if the matter is not disposed of by motion.

THEREFORE, IT IS HEREBY ORDERED that the entry of default as to of Defendants Frank Cook and Judith Cook is hereby lifted,

IT IS FURTHER ORDERED that the motion to rescind the order of reference is hereby denied,

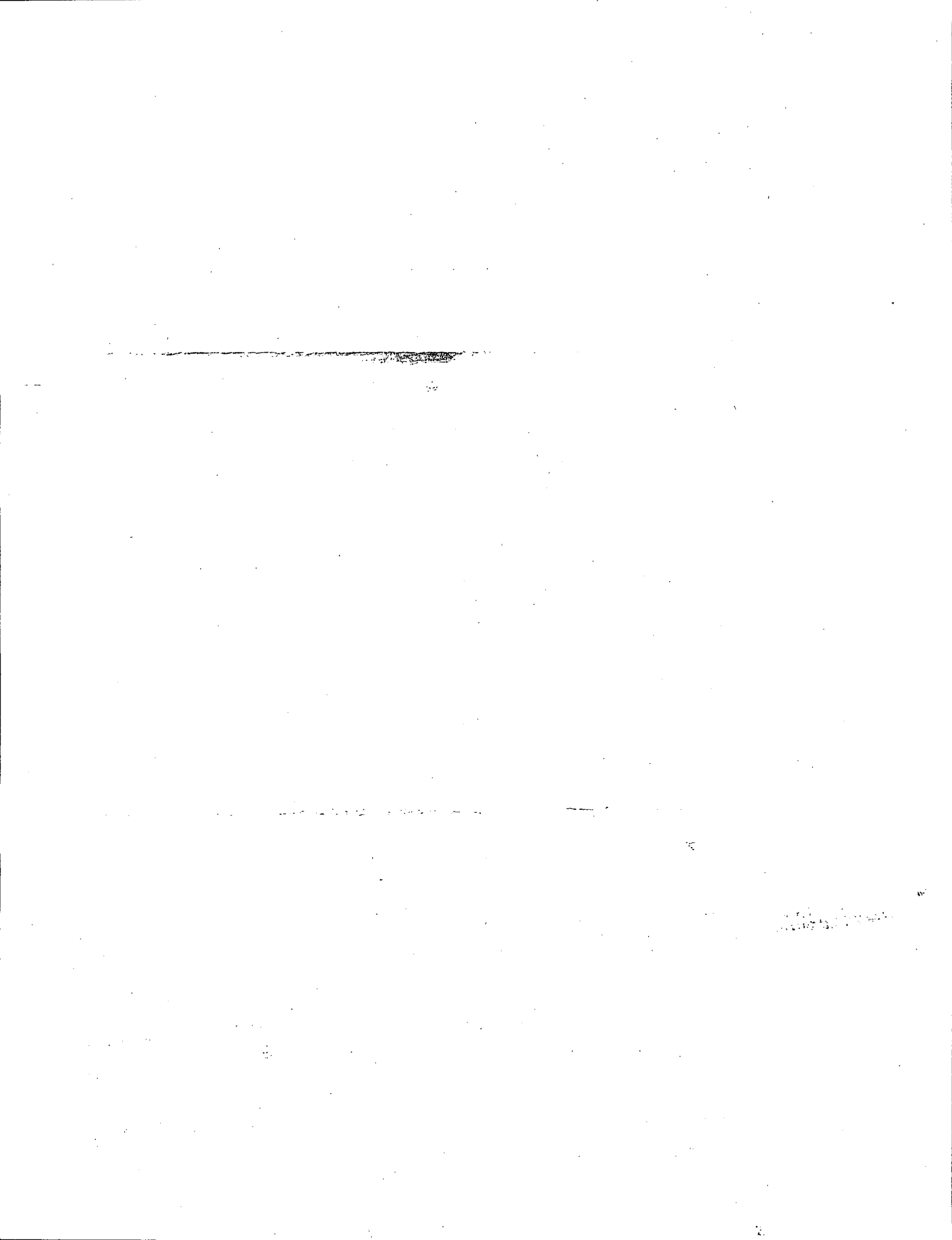
IT IS FURTHER ORDERED that a status conference is scheduled for December 10, 2012 at 10:30 a.m.

IT IS SO ORDERED.


The Honorable Mikell Scarborough

Charleston, South Carolina


_____, 2012



November 13, 2012

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
1015 Sumter Street
Columbia, SC 29211

Re: Bank of America, N.A., vs. Frank Cook, et al.
Appellate Case No. 2012-213304
GFW File No.: 00351

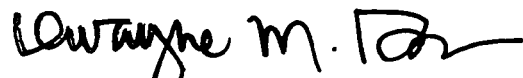
Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Appellant's Memorandum in Support of Motion to Appeal with Proof of Service for filing in the above referenced case. By copy of this letter, I am also serving the Respondent with this memorandum.

Should you have any questions or concerns, please do not hesitate to contact me.

With kind regards, I remain

Yours very truly,
GREEN FORD & WALLACE LLC



Dwayne M. Green
Attorney for Appellant

DMG/smb
Enc. – as stated

cc: H. Guyton Murrell, Esquire

RECEIVED

NOV 16 2012

SC Court of Appeals