

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable James E. Chellis, Master in Equity

Appellate Case No. 2016-000704  
Circuit Court Case No. 2013-CP-18-00519

RECEIVED

AUG 16 2017

SC Court of Appeals

Wells Fargo Bank, N.A., ..... Respondent,

v.

Richard B. Cunningham; Latisa L. Cunningham; Sumter Housing,  
Inc.; and Drakesborough Homeowner Association, Inc., ..... Defendants,

of whom

Latisa L. Cunningham is the ..... Appellant.

RETURN IN OPPOSITION TO MOTION TO RECONSIDER

The Court rightly dismissed Ms. Cunningham’s frivolous appeal, and it should summarily deny her motion to reconsider that ruling.<sup>1</sup> Her stated grounds for reconsideration are patently incorrect:

(1) Only a single judge of this Court signed the dismissal order—a point that is expressly rebutted by Rule 240(j), SCACR; and

(2) No third party owns the property at issue—a point that is expressly rebutted by the Master’s Deed that American Homes 4 Rent Properties Ten, LLC, attached as Exhibit A to its motion for leave to file an amicus brief in this matter.

<sup>1</sup> Concurrently with filing her motion to reconsider the dismissal of this appeal, Ms. Cunningham filed a so-called “Constitutional Challenge” in the circuit court, in which she seeks a declaration that “ALL State Statues [sic] involving Foreclosure and Foreclosure proceedings” are unconstitutional under the 1886 South Carolina Constitution, the Constitution of Maryland, and the United States Constitution. A copy of that filing is attached for the Court’s review..

In short, the Court properly held that this appeal is moot because the property at issue has already been sold to a third party, and nothing in Ms. Cunningham's motion changes this conclusion. Accordingly, the Court should affirm that decision by denying Ms. Cunningham's request to reinstate this appeal and put an end to Ms. Cunningham's abuse of the Judiciary at the appellate level.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

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1221 Main Street, Suite 1600  
Columbia, South Carolina 29201  
(803) 454-6504  
*todd.carroll@wcsr.com*

Attorneys for Respondent

August 14, 2017

Exhibit A

Ms. Cunningham's "Constitutional  
Challenge"

In Propria Persona  
Cunningham, Latisa L.  
[1227 Wild Goose Trl,  
Summerville, SC [29483]]

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS  
Civil Action No. 2013-CP-18-00519

STATE OF SOUTH CAROLINA,  
ALAN WILSON-ATTORNEY GENERAL,  
[WELLS FARGO BANK, N.A.]

**NOTICE OF CONSTITUTIONAL  
CHALLENGE RULE 5.1  
AND INJUNCTION**

Plaintiff(s)

vs.

LATISA L. CUNNINGHAM., (Corporate Person)  
Cunningham, Latisa L., In Propria Persona  
1227 Wild Goose Trl  
Summerville, SC [29483]

Defendant in Error,

*Cheryl Anderson*  
CLERK OF COURT  
DORCHESTER COUNTY

2017 AUG -8 PM 1:36

CERTIFIED COPY

**NOTICE OF CONSTITUTIONAL CHALLENGE RULE 5.1  
AND INJUNCTION**

**TAKE NOTICE THAT** pursuant to the [FRCP Rule 5.1(a)] the defendant listed in the above-styled action will make an application for:

1. Short leave to be granted for the application; and
2. Relief under [24(1) of the FRCP] on the following grounds:

- A. Challenge of the constitutionality of ALL State Statues involving Foreclosure and Foreclosure proceedings including and but not limited to the Writ of Assistance.

The following is a list of Constitutional Rights that are being violated by State Statues. Also, I reserve the right to adopt other States Constitutional Rights under the United States Constitution Article IV Section 4 (Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof) and Section 2 (The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States):

**CONSTITUTION OF SOUTH CAROLINA OF 1886**

# DECLARATION OF RIGHTS

## ARTICLE I

- 1) **SECTION 1.** All political power is vested in and derived from the people only; therefore, they have the right at all times to modify their form of government.
- 2) **SECTION 3.** The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
- 3) **SECTION 4.** No bill of attainder, ex post facto law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument shall be passed, and no conviction shall work corruption of blood or forfeiture of estate.
- 4) **SECTION 13(A).** Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property. Private property must not be condemned by eminent domain for any purpose or benefit including, but not limited to, the purpose or benefit of economic development, unless the condemnation is for public use.
- 5) **SECTION 21.** No person shall in any case be subject to martial law or to any pains or penalties by virtue of that law, except those employed in the armed forces of the United States, and except the militia in actual service, but by the authority of the General Assembly.
- 6) **SECTION 22.** No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.
- 7) **SECTION 23.** The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms.

# CONSTITUTION OF MARYLAND DECLARATION OF RIGHTS

- 8) **ARTICLE 5.**
  - a) (1) That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to

the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty Charles the First to Cecilius Calvert, Baron of Baltimore.

(2) Legislation may be enacted that limits the right to trial by jury in civil proceedings to those proceedings in which the amount in controversy exceeds \$15,000.

- b) The parties to any civil proceeding in which the right to a jury trial is preserved are entitled to a trial by jury of at least 6 jurors.
  - c) That notwithstanding the Common Law of England, nothing in this Constitution prohibits trial by jury of less than 12 jurors in any civil proceeding in which the right to a jury trial is preserved.
- 9) **ARTICLE 6.** That all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct: Wherefore, whenever the ends of Government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought, to reform the old, or establish a new Government; the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.
- 10) **ARTICLE 19.** That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.
- 11) **ARTICLE 23.** In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction. The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of \$15,000, shall be inviolably preserved.

## THE CONSTITUTION OF THE UNITED STATES OF AMERICA

- 1) **ARTICLE 1 SECTION 9.** No Bill of Attainder or ex post facto Law shall be passed (A bill of attainder (also known as an act of attainder or writ of attainder or bill of pains and penalties) is an act of a legislature declaring a person or group of persons guilty of some crime and punishing them without privilege of a judicial trial. As with attainder resulting from the normal judicial process, the effect of such a bill is to nullify the targeted person's civil rights, most notably the right to own property (and thus pass it on to heirs), the right to a title of nobility, and, in at least the original usage, the right to life itself.

- 2) ARTICLE 1 SECTION 10 PARAGRAPH 1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.
- 3) ARTICLE 3 SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.
- 4) ARTICLE 4 SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.
- 5) ARTICLE 4 SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime. No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.
- 6) ARTICLE 6 PARAGRAPH 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
- 7) ARTICLE 6 PARAGRAPH 3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

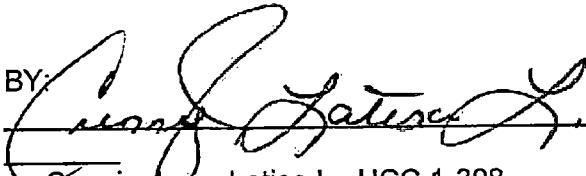
## **DECLARATION OF BILL OF RIGHTS**

- 8) AMENDMENT 7 – In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.
- 9) AMENDMENT 11 – The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.
- 10) AMENDMENTS 14, SECTION 1 - All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AND TAKE FURTHER NOTICE THAT the grounds for this Constitutional challenge are as follows:

1. Is the Statues listed, that I have challenged Constitutional?

Take further notice as an Officer who has taken an Oath to uphold the United States Constitution and the Constitution of South Carolina, he or she has an obligation to intervene in any proceedings or actions that violate my rights under the Constitution or be guilty of Treason and become a Tortfeasor.

BY:  8.3.17  
Cunningham, Latisa L., UCC 1-308 Dated:  
1227 Wild Goose Trl  
Summerville, SC [29483]

In Propria Persona  
Cunningham, Latisa L.  
[1227 Wild Goose Trl,  
Summerville, SC [29483]]

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS  
Civil Action No. 2013-CP-18-00519

STATE OF SOUTH CAROLINA,  
ALAN WILSON-ATTORNEY GENERAL,  
[WELLS FARGO BANK, N.A.]

**NOTICE OF CONSTITUTIONAL  
CHALLENGE AND  
INJUNCTION BRIEF**

Plaintiff(s)

vs.

LATISA L. CUNNINGHAM., (Corporate Person)  
Cunningham, Latisa L., In Propria Persona  
1227 Wild Goose Trl  
Summerville, SC [29483]

Defendant in Error,

### NOTICE OF CONSTITUTIONAL CHALLENGE BRIEF

CERTIFIED COPY  
2017 AUG - 8 PM 1:35  
*Latisa L. Cunningham*  
CLERK OF COURT  
DORCHESTER COUNTY

I, Cunningham, Latisa L. (Private American National state citizen) am challenging all Statues that govern the Foreclosure of this State including but not limited to the Writ of Assistance. The foreclosure action is overall governed by USC Title 12 which has never been ratified (never codified as Constitutional). Therefore, this means that the Foreclosure and Codes of the Great South Carolina are not constitutional. Being subject to the Special Laws that have been put in place for Foreclosure is a direct violation of my Civil and Constitutional Rights as an Owner of Properties (House, Car, etc.) for the following reasons:

1. According to South Carolina Constitution of 1886 Article 1 Section 3, explains that no citizen shall be deprived of property without due process of law. This means that the entire matter, including the contract that I signed must be put on trial to determine if it was a legal contract and if it violated my Civil and Constitutional Rights.
2. According to South Carolina Constitution of 1886 Article 1 Section 4, prohibits ex post facto laws being passed by Congress impairing the Obligation of Contract, which would have been the very act committed when Congress passed the Emergency Banking Act of 1933.
3. According to the United States Constitution Article 1 Section 10 Paragraph 1, states that no state should enter into any agreements that impair the Obligation of Contract in any fashion or form, which will point back to the Banking Act of 1933.

In Conclusion, as a Private American National state citizen of the United States who is free pursuant to Executive Order 13132, which states "people of states are free and can only be restricted by that which is in the U.S. Constitution. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This Case should be vacated and removed from my credit report. I pray that this Court will grant this request.

According to the Federal Rule 5.1 the Attorney General has Sixty days to respond. If he does not respond I am instructing the Clerk of Court to seal this case, Vacate Judgments and Orders, and dismiss with Prejudice.

BY: *Cunningham, Latisa L.* *8.3.17*

Cunningham, Latisa L., UCC 1-308  
1227 Wild Goose Trl  
Summerville, SC [29483]

Dated:

In Propria Persona  
Cunningham, Latisa L.  
[1227 Wild Goose Trl,  
Summerville, SC [29483]]

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS  
Civil Action No. 2013-CP-18-00519

STATE OF SOUTH CAROLINA,  
ALAN WILSON-ATTORNEY GENERAL,  
[WELLS FARGO BANK, N.A.]

NOTICE OF CONSTITUTIONAL  
CHALLENGE RULE 5.1  
AND INJUNCTION

Plaintiff(s)

vs.

LATISA L. CUNNINGHAM., (Corporate Person)  
Cunningham, Latisa L., In Propria Persona  
1227 Wild Goose Trl  
Summerville, SC [29483]

Defendant in Error,

CERTIFIED COPY  
2017 AUG - 8 PM 1:36  
*Alana Hester*  
CLERK OF COURT  
DORCHESTER COUNTY

CERTIFICATE OF SERVICE

For the claim is with the knowledge I have sent a - copy - of the NOTICE OF CONSTITUTIONAL CHALLENGE RULE 5.1 AND INJUNCTION, by Certified Mail Return Receipt Requested, to the following location(s) on this 3rd day of August, in the year 2017:

Office of the Attorney General  
Honorable Alan Wilson  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, S.C. 29201

Dorchester County Sheriff's Office

Sheriff Luther C. Knight  
212 Deming Way  
Summerville, SC 29483

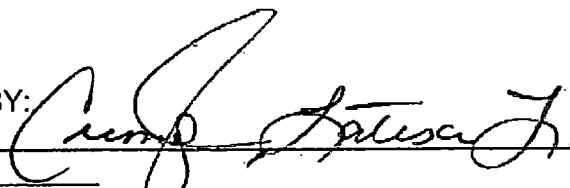
Dorchester County Courthouse  
Cheryl Graham  
Clerk of Court  
5200 E Jim Bilton Boulevard  
St George, SC 29477

CC: Brock & Scott, PLLC  
James M. Page  
Chad Burgess  
3800 Fernandina Road Suite 110,  
Columbia, SC 29210  
Attorney for the Plaintiff

CC: U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

CC: Department of Justice- South Carolina District  
First Union Building  
1441 Main Street, Suite 500  
Columbia, SC 29201

BY:

 8-3-17

Cunningham, Latisa L., UCC 1-308  
1227 Wild Goose Trl  
Summerville, SC [29483]

Dated:

For the claim is I, Cunningham, Latisa L., have given true and correct statements in the NOTICE OF CONSTITUTIONAL CHALLENGE RULE 5.1 AND INJUNCTION under Penalty of Perjury.

"I declare under penalty of perjury that the foregoing is true and correct.  
Executed on 3<sup>rd</sup> day of August, 2017".

Cunningham, Latisa L.

IN WITNESS WHEREOF, I have here unto set my hand and seal on this 3<sup>rd</sup> day of August, 2017.

BY: *Latisa L. Cunningham*  
Cunningham, Latisa L.

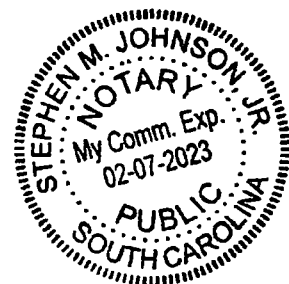
Before me, the undersigned authority in the County of Charleston in the State of South Carolina, personally appeared Cunningham, Latisa L., who has sworn to and subscribed before me this 3<sup>rd</sup> day of August, 2017.

*Step M. Johnson*  
NOTARY PUBLIC

My Commission Expires: 02/07/2023

**AFFIDAVIT FOR RULE 5.1**  
Rule 5.1. Constitutional Challenge to a Statute

The Federal Civil Procedure Rule 5.1 states the following:



*Step M. Johnson*  
CLERK OF COURT  
DORCHESTER COUNTY  
2017 AUG -8 PM 1:35  
CERTIFIED COPY

(a) NOTICE BY A PARTY. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; or

(B) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned—or on the state attorney general if a state statute is questioned—either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) CERTIFICATION BY THE COURT. The court must, under 28 U.S.C. §2403, certify to the appropriate attorney general that a statute has been questioned.

(c) INTERVENTION; FINAL DECISION ON THE MERITS. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.

(d) NO FORFEITURE. A party's failure to file and serve the notice or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

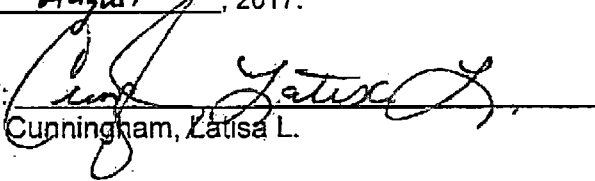
"I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 3<sup>rd</sup> day of August, 2017".


Cunningham, Latisa L.

IN WITNESS WHEREOF, I have here unto set my hand and seal on this 3<sup>rd</sup> day of August, 2017.

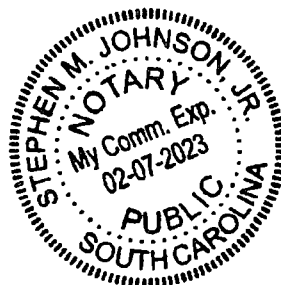
BY:

  
Cunningham, Latisa L.

Before me, the undersigned authority in the County of Charleston in the State of South Carolina, personally appeared Cunningham, Latisa L., who has sworn to and subscribed before me this 3<sup>rd</sup> day of August, 2017.

  
NOTARY PUBLIC

My Commission Expires: 02/07/2023



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PROOF OF SERVICE

---

I, the undersigned Legal Secretary of the law offices of Womble Carlyle Sandridge & Rice LLP, Attorneys for Respondent, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

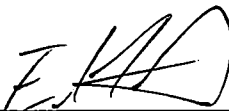
Pleading: Return in Opposition to Motion to Reconsider

Parties Served: Latisa L. Cunningham  
1227 Wild Goose Trail  
Summerville, SC 29483

*Appellant*

Thomas I. Howard, Jr.  
Brownlee Whitlow Praet & File, PLLC  
3255 Landmark Drive, Suite 301  
North Charleston, SC 29418

*Counsel for Prospective Amicus Curiae*



---

Edwin T. Mathis

August 14, 2017

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AUG 16 2017  
SC Court of Appeals

WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE  
A LIMITED LIABILITY  
PARTNERSHIP

1221 Main Street  
Suite 1600  
Columbia, SC 29201

Telephone: (803) 454-6504  
www.wcsr.com

Direct Dial: 803-454-7730  
Direct Fax: 803-381-9130  
E-mail: Todd.Carroll@wcsr.com

August 14, 2017

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

RECEIVED  
AUG 16 2017  
SC Court of Appeals

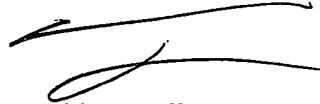
Re: Wells Fargo v. Cunningham  
Appellate Case No. 2016-000704

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Wells Fargo's Return in Opposition to Motion to Reconsider. Please file the originals and return a stamped copy to us in the enclosed envelope. Thank you.

With kind regards, I remain

Very truly yours,



M. Todd Carroll

MTC/tm  
Enclosures

cc: Latisa L. Cunningham  
Thomas I. Howard, Jr. Esq.

**P**

US POSTAGE & FEES PAID  
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LOCAL ZONE NO SURCHARGE  
COMMERCIAL BASE PRICING

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**PRIORITY MAIL 1-DAY™**

Todd Carroll  
Womble Carlyle  
1221 Main Street, Suite 1600  
Columbia SC 29201

**RECEIVED** 0024

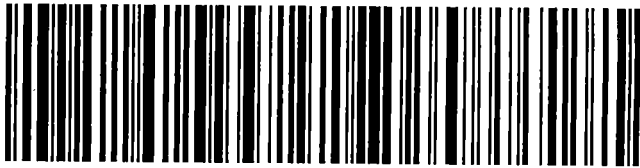
AUG 16 2017

SC Court of Appeals  
C076

SHIP TO: Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1220 Senate St  
Columbia SC 29201-3769



**USPS TRACKING #**



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