

11
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-in-Equity Judge

Case No.: 2012-CP-42-3549
2012-CP-42-2874

Appellate Case No. 2016-000099

U.S. Bank, NA, as trustee relating to the Chevy Chase Funding, LLC Mortgage
Backed Certificates, Series 2004-B,

Plaintiff,

v.

Alyce F. Otto, Individually; Alyce F. Otto Trustee Under Declaration of Trust
of Alyce F. Otto dated the 17th of November 2009; TD Bank, NA; The United
States of America, acting by and through its agency, the Internal Revenue
Service; Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas
Trust Under Declaration of Trust dated May 25, 2004; Mark Warner Kerhulas,
as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of
Trust dated May 25, 2004; Jackson L. Munsey, Jr.; Citibank, NA,

Defendants,

Of whom Jackson L. Munsey, Jr., is the

Appellant.

and

U.S. Bank, NA and Alyce F. Otto are the

Respondents.

Alyce F. Otto, Trustee,

Plaintiff,

v.

Jackson L. Munsey, Jr.,

Defendant,

RECORD ON APPEAL

David R. Price, Jr., Esq.
PO Box 2446
Greenville, SC 29602

Samuel B. Tooker, Esq.
PO Box 2446
Greenville, SC 29602

Erin Culbertson, Esq.
114 Manly St.
Greenville, SC 29601

ATTORNEYS FOR APPELLANT

Kenneth C. Anthony, Jr., Esq.
PO Box 3565
Spartanburg, SC 29304-3565

Sarah Patrick Spruill, Esq.
PO Box 2048
Greenville, SC 29602

ATTORNEYS FOR RESPONDENT
ALYCE F. OTTO

Erica Greer Lybrand, Esq.
Post Office Box 100200
Columbia, SC 29201

Richard Carlton Keller, Esq.
420 North 20th Street
Suite 3400
Birmingham, AL 35203

ATTORNEYS FOR RESPONDENT
U.S. BANK, NA AS TRUSTEE TO
THE CHEVY CHASE FUNDING,
LLC MORTGAGE BACKED
CERTIFICATES, SERIES 2004-B

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
) IN THE COURT OF COMMON PLEAS
)

Alyce F. Otto, Trustee,
Plaintiff,

vs.

Jackson L. Munsey, Jr.,
Defendant.

ORDER OF REFERENCE

C.A. No.: 2010-GP-42-2874
Non Jury

Upon motion of Kenneth C. Anthony, Jr. of the Anthony Law Firm, P.A. Attorney for Plaintiff, this is a foreclosure action and is a proper matter to refer to The Honorable Gordon Cooper, as Master-in-Equity for Spartanburg County, pursuant to Rule 53 of the SOUTH CAROLINA RULES OF CIVIL PROCEDURE (SCRCP).

NOW, THEREFORE, IT IS ORDERED, pursuant to Rule 53 of the SCRCP that the above-titled matter be and the same hereby is referred to The Honorable Gordon Cooper, Master-in-Equity for Spartanburg County, to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in this cause and any appeal from the final judgment in this cause shall be to the South Carolina Court of Appeals.

M. Hope Blackley
Clerk of Court

July 6, 2012

Spartanburg, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
JUL 6 2012
HOPE BLACKLEY

\\250svr01\anthony\DATA\Clients\Otto, Alyce P\12-467\Order of Reference.WPD

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the Chevy Chase Funding,
LLC Mortgage Backed Certificates, Series 2004-B,

Plaintiff,

v.

Alyce F. Otto, individually; Alyce F. Otto, Trustee Under
Declaration of Trust of Alyce F. Otto dated the 17th day of
November 2009; TD Bank, NA; The United States of
America, acting by and through its agency, the Internal
Revenue Service; Laura Kerhulas Giese, as Co-Trustee of
the Theodore Ernest Kerhulas Trust Under Declaration of
Trust dated May 25, 2004 ; Mark Warner Kerhulas, as Co-
Trustee of the Theodore Ernest Kerhulas Trust Under
Declaration of Trust dated May 25, 2004 ; Jackson L.
Munsey, Jr.; Citibank, NA;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 12-CP-42-3549

ORDER OF REFERENCE

Deficiency Judgment Waived

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 OCT 15 AM 11:11
M. HOPE BLACKLEY

(005071-00160)

Pursuant to Rules 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled case is an action for
foreclosure and may be referred to a Master in Equity or Special Referee in the above-entitled county by order of a circuit court judge or
the clerk of court.

IT IS HEREBY ORDERED, that this action is referred to the Honorable Gordon G. Cooper, as Master in Equity to take
testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCP, and all matters arising from or reasonably related
to such action. The Master in Equity shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including
issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should
not be bound by the judgment of foreclosure. Further, the Master in Equity shall retain jurisdiction to hear any action contesting the
validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including but not limited
to Rule 60(b). Judicial sales will be conducted pursuant to S.C. Code Section 15-39-680 or on any other convenient sale's date as may be
determined by the Master in Equity/Special Referee.

The hearing shall be held in the Office of the Honorable Gordon G. Cooper, as Master in Equity for Spartanburg
County, located at:

Spartanburg County Courthouse,
3rd Floor, 180 Magnolia Street
Spartanburg, SC 29306

Spartanburg, South Carolina

Oct. 15, 2012.

M. Hope Blackley
Circuit Court Judge for Spartanburg County or
Clerk of Court for Spartanburg County
Natalie Bishop DC

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the Chevy Chase
Funding, LLC Mortgage Backed Certificates, Series 2004-B,

Plaintiff,

v.

Alyce F. Otto, individually; Alyce F. Otto, Trustee Under
Declaration of Trust of Alyce F. Otto dated the 17th day of
November 2009; TD Bank, NA; The United States of
America, acting by and through its agency, the Internal
Revenue Service; Laura Kerhulas Giese, as Co-Trustee of the
Theodore Ernest Kerhulas Trust Under Declaration of Trust
dated May 25, 2004; Mark Warner Kerhulas, as Co-Trustee
of the Theodore Ernest Kerhulas Trust Under Declaration of
Trust dated May 25, 2004; Jackson L. Munsey, Jr.; Citibank,
NA;

Defendant(s).

(005071-00160)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 12-CP-42-3549

CERTIFICATE OF DEFAULT AND NON-MILITARY
SERVICE

Deficiency Judgment Waived

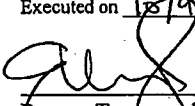
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CLERK OF COURT
SPARTANBURG COUNTY
2012 OCT 15 AM 11:11
M. HOPE BLACKLEY

The undersigned attorney for Plaintiff asserts that more than thirty (30) days have elapsed since the service of the Summons and Complaint upon the Defendant(s). The following Defendant(s) has/have not answered, plead, or otherwise defended this action, pursuant to Rule 55(a), SCRCP: TD Bank, NA, Jackson L. Munsey, Jr., and Citibank, NA. Therefore, the Defendant(s) TD Bank, NA, Jackson L. Munsey, Jr., and Citibank, NA, are in default.

According to Plaintiff's business records, affidavit(s) of service, search(es) of the Department of Defense or any other obtained information, the Defendant(s) Alyce F. Otto, individually, Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November 2009, Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004, Mark Warner Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004, and Jackson L. Munsey, Jr., are not in the Military Service of the United States as contemplated by the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq.

I certify under penalty of perjury under the laws of the United States of
America that the foregoing is true and correct.

Executed on 10/19/12


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)

Reginald P. Corley (SC Bar #69453)

Ellie C. Floyd (SC Bar #68635)

Eve Moredock Stacey (SC Bar #5300)

Robert P. Davis (SC Bar #74030)

Vance L. Brabham, III (SC Bar #71250)

Andrew W. Montgomery (SC Bar #79893)

Cheryl H. Fisher (SC Bar #15213)

Jennifer W. Rubin (SC Bar #16727)

Michael P. Morris (SC Bar #73560)

Mary R. Powers (SC Bar #16534)

William S. Koehler (SC Bar #74935)

Jaclynn B. Goings (SC Bar #77501)

Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive
Columbia, SC 29210
(005071-00160)

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

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
CASE NO. 12-CP-42-3549

**MOTION AND ORDER
INFORMATION FORM
AND COVER SHEET**

U.S. Bank, NA as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed Certificates, Series 2004-B ☒ Plaintiff
v.

Alyce F. Otto, individually; Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November 2009; TD Bank, NA; The United States of America, acting by and through its agency, the Internal Revenue Service; Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004; Mark Warner Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004; Jackson L. Munsey, Jr.; Citibank, NA; ☐ Defendant

Check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
John P. Fetner (SC Bar #77460)
Andrew W. Montgomery (SC Bar #79893)
Andrew A. Powell (SC Bar #100210)
220 Executive Center Drive, Columbia, SC 29210
telephone: 803-744-4444

Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
William S. Koehler (SC Bar #74935)
Jaclynn B. Goings (SC Bar #77501)
Kelsey K. Lipscomb (SC Bar #77519)
Taryn M. Zange (SC Bar #70357)

fax: 803-343-7013

**name, S.C. Bar no. and address of
Defendant's attorney**

telephone:
email: other:

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

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: YES/NO

SECTION II: Motion Fee

☒ PAID — AMOUNT: \$25.00

☐ EXEMPT:

- ☐ 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, SCRCPP)
☐ 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: Referred to Master by Motion and Order of Court

SECTION III: Motion Type

☐ Written motion attached

☒ Form Motion —

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

Signature of Attorney for Plaintiff/Defendant

October 9, 2012
Date submitted

JUDGE'S SECTION

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

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____

(print name)

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED — AMOUNT DUE: _____

SCCA/233 (1/2003)

COPY



ROGERS TOWNSEND
ATTORNEYS AT LAW

ROGERS TOWNSEND & THOMAS, PC
DEFAULT SERVICES DEPARTMENT

POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210
P 803.744.4444 F 803.343.7017
WWW.RTT-LAW.COM

October 9, 2012

The Honorable Gordon G. Cooper
Master in Equity for Spartanburg County
Post Office Box 5666
Spartanburg, SC 29304

Re: U.S. Bank, NA as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed
Certificates, Series 2004-B vs. Rudrick & Alyce Otto
Case No. 12-CP-42-3549; Spartanburg County
Our File No. 005071-00160

Dear Sir/Madam:

I am enclosing originals and copies of a proposed Motion and Order of Reference along with our check in the amount of \$100. I would appreciate your having the originals executed and returning the clocked copies to my office in the envelope provided.

Thank you for your kind assistance in this matter. Do not hesitate to contact me should you have any questions or need anything further.

Rogers Townsend & Thomas, PC
Default Servicing Section

Enclosures

cc: Kenneth Anthony
The Anthony Law Firm, PA
P.O. Box 3565
250 Magnolia Street (29306)
Spartanburg, SC 29304
Attorney for Alyce F. Otto, individually

Kenneth Anthony
The Anthony Law Firm, PA
P.O. Box 3565
250 Magnolia Street (29306)
Spartanburg, SC 29304

FILED
CLERK OF COURT
2012 OCT 15 AM 11:10
M. ROBE BLANKLEY

Attorney for Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the
17th day of November 2009

George Conits
55 Beattie Place, Suite 700
Greenville, SC 29601
Attorney for The United States of America, acting by and through its agency, the Internal
Revenue Service

David L. Walsh, Attorney at Law
PO Box 5156
Spartanburg, SC 29304
Attorney for Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust
Under Declaration of Trust dated May 25, 2004

David L. Walsh, Attorney at Law
PO Box 5156
Spartanburg, SC 29304
Attorney for Mark Warner Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas
Trust Under Declaration of Trust dated May 25, 2004

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 OCT 15 AM 11:10
M. HOPE BLANCHETT

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the Chevy
Chase Funding, LLC Mortgage Backed
Certificates, Series 2004-B,

Plaintiff,

v.

Alyce F. Otto, individually; Alyce F. Otto,
Trustee Under Declaration of Trust of Alyce
F. Otto dated the 17th day of November 2009;
TD Bank, NA; The United States of America,
acting by and through its agency, the Internal
Revenue Service; Laura Kerhulas Giese, as
Co-Trustee of the Theodore Ernest Kerhulas
Trust Under Declaration of Trust dated May
25, 2004 ; Mark Warner Kerhulas, as Co-
Trustee of the Theodore Ernest Kerhulas Trust
Under Declaration of Trust dated May 25,
2004 ; Jackson L. Munsey, Jr.; Citibank, NA;

Defendant(s).

(505071-00160)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2012-CP-42-3549

ORDER DENYING DEFENDANT
JACKSON L. MUNSEY, JR.'S MOTION TO
SET ASIDE DEFAULT AND LEAVE TO
FILE ANSWER OUTSIDE OF TIME

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -6 PM 3:34
M. HOPE BLACKLEY

This matter came before me for a hearing held May 6, 2013 at 2:30 PM, regarding Defendant Jackson L. Munsey, Jr.'s ("Munsey") Motion to Set Aside Default and Leave to File Answer Outside of Time. Erica G. Lybrand appeared on behalf of the Plaintiff. Erin Culbertson appeared on behalf of Defendant Munsey. Other parties appearing are as follows:

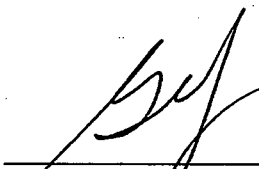
Kenneth C. Anthony, Jr on behalf of ALYCE F. OTTO. *AK*

Based on the record and arguments made at the hearing, the Court denies Munsey's motion as Munsey has failed to put forth a satisfactory explanation for his default. As Munsey has not met this initial burden in seeking to set aside the entry of default against him, this Court need not consider the factors as set forth in *Wham v. Shearson Lehman Brothers*.

#1
AK

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant Munsey's Motion to Set Aside Default and Leave to File Answer Outside of Time is denied and Munsey shall remain in default.

AND IT IS SO ORDERED.



Gordon G. Cooper
Master-in-Equity for Spartanburg County

Spartanburg, South Carolina

May 6, 2013

A CERTIFIED COPY
M. Hope Blackley
CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature] D.C.
DATED 5/10/13

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -6 PM 3:34
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2012-CP-42-3549

U.S. Bank, NA as Trustee relating to)
The Chevy Chase Funding, LLC)
Mortgage Backed Certificates,)
Series 2004-B,)

Plaintiff,)

-vs-)

Alyce F. Otto, individually;)
Alyce F. Otto, Trustee Under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09; TD Bank, NA;)
The United States of America,)
Acting by and through its agency,)
The Internal Revenue Service;)
Laura Kerhulas Giese, as co-)
Trustee of the Theodore Ernest)
Kerhulas Trust Under Declaration)
Of Trust dated 5/25/04; Mark)
Warner Kerhulas, as co-Trustee of)
The Theodore Ernest Kerhulas)
Trust Under Declaration of Trust)
Dated 5/25/04; Jackson L. Munsey,)
Jr.; and Citibank, NA,)

Defendants.)

And)

Jackson L. Munsey, Jr.)

Cross-Claim Plaintiff,)

-vs-)

Alyce F. Otto, Individually; and)
Alyce F. Otto, Trustee under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09,)

Cross-Claim Defendants.)

ORDER TO CONSOLIDATE WITH
C. A. NO.: 2012-CP-42-2874

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -6 PM 4:44
M. HOPE BLANCHLEY

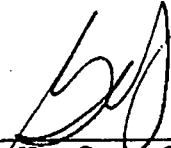
#/pe

This matter is before the Court on Defendant Jackson L. Munsey, Jr.'s ("Munsey"), Motion to Consolidate. The Motion was heard before me on May 6, 2013, at which time Munsey was represented by Erin Culbertson, the Plaintiff was represented by Erica Lybrand, and the Defendant Alyce F. Otto, Individually and as Trustee ("Otto"), was represented by Ken Anthony.

I have carefully reviewed the Motion of Munsey, the Plaintiff's Return to Munsey's Motion, and the procedural history of this case. I have also considered the oral arguments on the parties' legal theories.

Based upon the facts of the case and applicable law, this Court hereby orders that the instant matter, bearing Civil Action No. 2012-CP-42-3549 be consolidated with a companion action filed by Otto against Munsey, bearing Civil Action No. 2012-CP-42-2874. The Court holds that the two actions involve the same property, the same parties, and a single source of money for the payment of the subject mortgage. Thus, pursuant to the standard of Rule 42 of the South Carolina Rules of Civil Procedure, I find that there are multiple common questions of law and fact. In the interests of judicial economy, the two actions are hereby consolidated.

IT IS SO ORDERED.


The Hon. Gordon G. Cooper
Spartanburg County Master in Equity

FILED
CLERK OF COURT
2013 MAY -6 PM 4:44
M. H. C. BLOOMLEY

Spartanburg, SC
May 6, 2013



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
Case No. 2012-CP-42-3549
Case No. 2012-CP-42-2874

U.S. Bank, NA, as trustee relating to the)
Chevy Chase Funding, LLC Mortgage)
Backed Certificates, Series 2004-B,)
Plaintiff.)

v.)
Alyce F. Otto, Individually; Alyce F. Otto)
Trustee Under Declaration of Trust of)
Alyce F. Otto dated the 17th of November)
2009; TD Bank, NA; The United States)
of America, acting by and through its)
agency, the Internal Revenue service;)
Laura Kerhulas Giese, as Co-Trustee of the)
Theodore Ernest Kerhulas Trust Under)
Declaration of Trust dated May 25, 2004;)
Mrk Warner Kerhulas, as Co-Trustee of)
the Theodore Ernest Kerhulas Trust Under)
Declaration of Trust dated may 25, 2004;)
Jackson L. Munsey, Jr.; Citibank, N.A.;)
Defendants.)

ORDER AS TO OTTO VS. MUNSEY

And

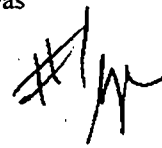
Alyce F. Otto, Trustee,)
Plaintiff.)
v.)
Jackson L. Munsey, Jr..)
Defendants.)

2015 DEC 15 PM 2:35
M. HOPE BLACKLEY

A hearing was held before me on November 24, 2015 in these two cases which were consolidated, one arising out of the foreclosure of the first mortgage against the subject property, the other arising out of the foreclosure of a Contract for Deed between these parties as to the same property. This Order relates to the foreclosure and termination of the Contract for Deed. At the time scheduled for hearing, the Court heard testimony and received evidence as to both cases. This Order relates to the action between these parties.

FINDINGS OF FACT

1. I find that this Court has jurisdiction of the parties and subject matter of this action.
2. I find that the parties entered a certain Contract for Deed as to property located at 1825 Fairview Farms Road, Campobello, SC on March 4, 2011, by which the Defendant Munsey was



to purchase from Otto the subject property. This was to be done by paying a total of One Million Four Hundred Thousand and no/100 (\$1,400,000) Dollars for the property. The essence of this transaction was that Munsey was to make a cash downpayment to Otto but then was to take on the responsibility of making the first mortgage payment on the property directly to the first mortgage holder, make the second mortgage payment directly to the second mortgage holder, make a third mortgage payment directly back to Otto, pay the Homeowners Association dues and assessments and any other costs associated with the property. If all such payments were made, the property would ultimately belong to Munsey.

3. I find that Munsey has failed to make all payments required by the Contract for Deed, which has resulted in foreclosure of the property by the first mortgager holder and default on the other obligations.

4. I find that, in light of the foreclosure by the first mortgage holder, Otto has waived her right to foreclose on the Contract for Deed and instead has elected to seek judgment against Munsey for amounts due under the Contract for Deed.

5. I find that the amount due Otto as a result of the default in the Contract for Deed are as shown on the attached Exhibit A, which is established through testimony and evidence presented at the hearing, giving all appropriate credits to Munsey.

6. I find that, since the first mortgage holder which brought the foreclosure action has waived any deficiency judgment against Otto, the amount actually due the first mortgage holder and for which Otto should have claim against Munsey should be adjusted based on the actual foreclosure sale, the amount of the judgment against Munsey should likewise be adjusted once the foreclosure sale occurs. Therefore, the actual amount of the judgment against Munsey will be adjusted after the foreclosure sale occurs on February 1, 2015. Therefore, this Court reserves the right to enter a Supplemental Order concerning the judgment amount.

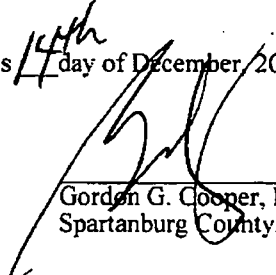
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7. I find that since the actual amount of judgment will not be entered until after the foreclosure sale, Munsey's rights to the property shall not terminate until the foreclosure sale and he shall not be required to deliver possession of the property until the time specified in the Order of Foreclosure.

NOW, THEREFORE, I CONCLUDE AND IT IS ORDERED that Otto have judgment against Munsey in the amount shown on the attached Exhibit A, subject to revision by Supplemental Order following the foreclosure sale.

IT IS FURTHER ORDERED that Munsey's rights in the property and rights under the Contract for Deed are hereby terminated and possession is to be delivered according to the terms of the Order of Foreclosure.

AND IT IS SO ORDERED this ^{14th} day of December 2015.



Gordon G. Cooper, Master-In-Equity
Spartanburg County, SC

Spartanburg, SC

SPARTANBURG COUNTY, SC
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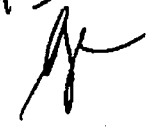
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EXHIBIT A

First Mortgage	\$1,183,451.00
Second Mortgage	\$177,564.00
Third Mortgage	\$15,008.49
Carolina First Payments	\$11,052.00
Greenspace	\$39,200.00
Attorney Fees	\$12,600.00
Attorney Costs	\$295.00
Returned Checks	(\$15,723.00)
Funds in Trust	(\$6,044.10)
TOTAL	\$1,417,403.39

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed Certificates, Series 2004-B,

Plaintiff,

v.

Alyce F. Otto, individually; Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November 2009; TD Bank, NA; The United States of America, acting by and through its agency, the Internal Revenue Service; Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004 ; Mark Warner Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004 ; Jackson L. Munsey, Jr.; Citibank, NA;

Defendants.

AND

Alyce F. Otto, Trustee,

Plaintiff,

v.

Jackson L. Munsey, Jr.,

Defendant.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2012-CP-42-03549

ORDER ON DEFENDANT JACKSON L. MUNSEY'S MOTION FOR RELIEF FROM ENTRY OF DEFAULT

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M. HOPE BLACKLEY

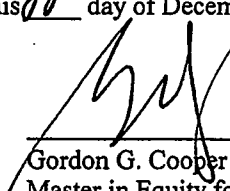
A hearing was held on November 24, 2015 on Defendant Jackson L. Munsey, Jr.'s Motion for Relief from the Default Judgment, which was filed on November 23, 2015, one day



prior to the trial in this matter. After reviewing motion, and hearing oral argument from counsel for all parties, the Court finds as follows:

1. Mr. Munsey failed to file a responsive pleading to the Complaint filed by Plaintiff U.S. Bank, N.A., as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed Certificates, Series 2004-B until December 27, 2012, which was more than thirty (30) days after Mr. Munsey was served on August 31, 2012. Accordingly, default was entered on October 15, 2012.
2. On February 4, 2013, Defendant Munsey filed a Motion to Set Aside Default and Leave to File Answer Outside of Time.
3. On May 6, 2013, a hearing was held on Defendant Munsey's motion and an order was entered on the same day denying the motion.
4. Defendant Munsey never sought relief from the entry of the May 6, 2013 order.
5. Accordingly, this Court finds that Mr. Munsey's Motion for Relief from Default Judgment is due to be denied on the grounds of *res judicata*, as this Court has previously denied a motion requesting the same relief in May 2013.

AND IT IS SO ORDERED this 22nd day of December, 2015.

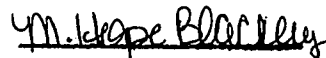
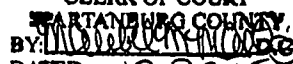


Gordon G. Cooper
Master in Equity for Spartanburg County

Spartanburg, South Carolina

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CLERK OF COURT
SPARTANBURG COUNTY
BY: 
DATED 12-23-15

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2012-CP-42-3549

U.S. Bank, NA as Trustee relating to)
The Chevy Chase Funding, LLC)
Mortgage Backed Certificates,)
Series 2004-B,)

Plaintiff,)

-vs-)

Alyce F. Otto, individually;)
Alyce F. Otto, Trustee Under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09; TD Bank, NA;)
The United States of America,)
Acting by and through its agency,)
The Internal Revenue Service;)
Laura Kerhulas Giese, as co-)
Trustee of the Theodore Ernest)
Kerhulas Trust Under Declaration)
Of Trust dated 5/25/04; Mark)
Warner Kerhulas, as co-Trustee of)
The Theodore Ernest Kerhulas)
Trust Under Declaration of Trust)
Dated 5/25/04; Jackson L. Munsey,)
Jr.; and Citibank, NA,)

Defendants.)

And)

Jackson L. Munsey, Jr.)

Cross-Claim Plaintiff,)

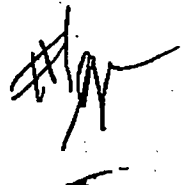
-vs-)

Alyce F. Otto, Individually; and)
Alyce F. Otto, Trustee under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09,)

Cross-Claim Defendants.)

ORDER ON JACKSON L. MUNSEY, JR.'S
MOTION TO ALTER OR AMEND

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This issue is before me on Defendant Jackson L. Munsey, Jr.'s ("Munsey") Motion to Alter or Amend Order (the "Motion"), related to this Court's Order as to Otto v. Munsey, dated December 14, 2015 (the "Otto Order"). At a hearing on the Motion held before this Court on February 15, 2016, counsel for the parties were given the opportunity to argue their respective positions, all of which were more fully stated and argued in their written submissions to the Court. Additionally, counsel for Plaintiff U.S. Bank ("Plaintiff") and counsel for Defendants Laura Kerhulas Giese and Mark Warner Kerhulas were present for the hearing.

After a thorough review of Munsey's Motion, Defendant Alyce F. Otto's ("Otto") Return to Motion to Alter or Amend Order, common and statutory law, and oral arguments presented by counsel at the hearing, I find that Munsey's Motion, based upon Rules 59(e) and 60(b)(1), SCRCP, is granted, and the Order is hereby amended as follows:

(1) Exhibit A. The document attached hereto as Exhibit A and incorporated herein by reference is hereby also deemed attached to and incorporated into the Otto Order.

(2) Reference to Foreclosure Sale Date. The foreclosure sale date of the Plaintiff's mortgage, as referenced in Section 6 of the Otto Order is hereby corrected to read "February 1, 2016."

(3) Munsey's Interest in the Property. To accurately reflect the Court's ruling from the bench at the hearing on November 24, 2015, the Otto Order is hereby amended to include the following Finding of Fact:

I find that Munsey has no equitable interest in the property, and consequently no equitable right of redemption, because he is not a junior lienholder.

(4) No Additional Bond Required. In response to Otto's Return to Motion, which requested that the Court require Munsey to post a *supersedeas* bond (in addition to that bond in

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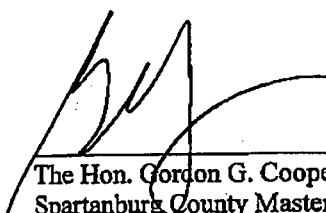
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the amount of \$243,000.00, posted with the Clerk of Court on January 29, 2016 (the "Bond")) to stay the proceedings pending his appeal, the Otto Order is hereby amended to include the following Conclusion of Law:

The proceedings shall be stayed without the requirement of an additional *supersedeas* bond pending the disposition of Munsey's appeal in this matter. The Bond currently on deposit with the Clerk of Court shall stand as bond for the entire case, and hence secures a stay of execution of both the Otto Order and the Order of Foreclosure issued by the Court on December 22, 2015 (the "Foreclosure Order"). Further, pending the disposition of Munsey's appeal, no final judgment amount shall be established by either the Otto Order or this Order. A final judgment amount will only be determined by the Court in a separate damages hearing subsequent to the foreclosure sale of the Plaintiff's mortgage as ordered by this Court in the Foreclosure Order.

All other terms and conditions of the Otto Order shall remain in full force and effect.

IT IS SO ORDERED.


The Hon. Gordon G. Cooper
Spartanburg County Master-in-Equity

Spartanburg, SC
Dated: April 19, 2016

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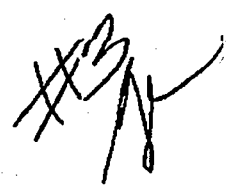


EXHIBIT A

First Mortgage	\$1,183,451.00
Second Mortgage	\$177,564.00
Third Mortgage	\$15,008.49
Carolina First Payments	\$11,052.00
Greenspace	\$39,200.00
Attorney Fees	\$12,600.00
Attorney Costs	\$295.00
Returned Checks	(\$15,723.00)
Funds in Trust	(\$6,044.10)
TOTAL	\$1,417,403.39

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the Chevy
Chase Funding, LLC Mortgage Backed
Certificates, Series 2004-B,

Plaintiff,

v.

Alyce F. Otto, individually; Alyce F. Otto,
Trustee Under Declaration of Trust of Alyce F.
Otto dated the 17th day of November 2009; TD
Bank, NA; The United States of America, acting
by and through its agency, the Internal Revenue
Service; Laura Kerhulas Giese, as Co-Trustee of
the Theodore Ernest Kerhulas Trust Under
Declaration of Trust dated May 25, 2004 ; Mark
Warner Kerhulas, as Co-Trustee of the
Theodore Ernest Kerhulas Trust Under
Declaration of Trust dated May 25, 2004 ;
Jackson L. Munsey, Jr.; Citibank, NA;

Defendants.

AND

Alyce F. Otto, Trustee,

Plaintiff,

v.

Jackson L. Munsey, Jr.,

Defendant.

(505071-00160 EL1)

Erica G. Lybrand, Esquire
Richard C. Keller, Esquire
Attorneys for the Plaintiff

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2012-CP-42-03549

**JUDGMENT OF FORECLOSURE AND
SALE**

Deficiency Judgment Waived

2015 DEC 22 AM 9:25
M. HOPKINS, CLERK

Kenneth Anthony, Jr., Esquire
Attorney for Alyce F. Otto, individually and Alyce F. Otto, Trustee Under Declaration of
Trust of Alyce F. Otto dated the 17th day of November 2009

George Conits, Esquire
Attorney for The United States of America, acting by and through its agency, the Internal Revenue
Service

David Walsh, Esquire
Attorney for Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust
Under Declaration of Trust dated May 25, 2004 and Mark Warner Kerhulas, as Co-Trustee of the
Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004

Erin Culbertson, Esquire
Attorney for Jackson L. Munsey, Jr.

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the above-entitled matter
was referred to the undersigned. A hearing was held November 24, 2015 at 9:30A.M. Evidence was
presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on August 21, 2012.
2. The Summons and Complaint were filed on August 21, 2012.
3. Service was made upon all Defendant(s) as shown by the proof(s) of service filed
herein.
4. The Defendants Alyce F. Otto, Laura Kerhulas Giese, Mark Warner Kerhulas, and
Jackson L. Munsey, Jr. are not in the Military Service of the United States of America, as
contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by
affidavit, certificate or order filed herein.
5. No Defendant raised any issues related to Plaintiff's standing to prosecute this action.
6. Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-22-
01 dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is
already of record in this case, that the mortgage loan which is the subject of this foreclosure action is
not eligible for modification pursuant to the terms of the Home Affordable Modification Program
(HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009,
Plaintiff's attorney has not received a counter affidavit from any Defendant(s).
7. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court
Administrative Order 2011-05-02-01 dated May 2, 2011.

8. Alyce F. Otto, individually and Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November 2009 (collectively herein referred to as "Otto") filed an Answer and Counterclaim through her attorney Kenneth Anthony, Jr. on September 10, 2012. Subsequently, Otto dismissed her counterclaim against Plaintiff with prejudice on July 21, 2014. Her Answer was later amended on July 15, 2015, in which she raised no additional allegations against Plaintiff, but contested the validity of the liens of Defendants Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004 and Mark Warner Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004.

9. Defendants Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004, and Mark Warner Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004, filed an Answer on September 14, 2012 by and through their attorney David L. Walsh.

10. The Defendant, The United States of America, has duly filed its Answer, which is of record herein, and as asserted therein has a 120 day right of redemption pursuant to 28 U.S.C.A. §2410(c).

11. The Defendant TD Bank, NA is represented by attorneys Jada Wylie and William Stork. An Answer was not filed, but a Notice of Appearance was filed on February 12, 2015.

12. The Defendant Jackson L. Munsey, Jr. ("Munsey") is represented by attorney Erin Culbertson. Munsey filed an Answer, Counterclaims and Crossclaims on December 27, 2012, after having already been deemed in default pursuant to the Certificate of Default filed on October 15, 2012. On January 25, 2013, counsel for the Plaintiff wrote a letter to the Clerk of Court for Spartanburg County in which it notified the Court that the Answer, Counterclaims and Crossclaims were received after Munsey was in default and that Plaintiff did not intend to accept or respond to the late Answer unless directed to do so from the Court. Thereafter, on February 4, 2013, Munsey filed a Motion to Set Aside Default and Leave to File Answer. An Order Denying Munsey's Motion to Set Aside Default was entered on May 6, 2013. Munsey renewed his Motion to be Relieved of Default on November 23, 2015. That Motion was denied prior to the hearing on the Plaintiff's foreclosure action on November 24, 2015.

13. The Defendants Jackson L. Munsey, Jr., TD Bank, NA, and Citibank, NA, are in default.

14. All Pro Se Defendants and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.

15. Rudrick G. Otto and Alyce F. Otto for value received, made, executed and delivered a(n) Adjustable Rate Note dated August 18, 2004 promising thereby to pay to Plaintiff or its predecessor the sum of \$999,500.00 with interest at 1.950% per annum. Other terms and conditions are stated in the Adjustable Rate Note, of record herein.

16. To better secure the payment of the Adjustable Rate Note described above, Rudrick G. Otto and Alyce F. Otto made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for Chevy Chase Bank, FSB, its successors and assigns (MIN# 100015305541858019) a certain real estate Mortgage in writing, dated August 18, 2004 covering real property in Spartanburg County, which is the same as that described in the Complaint. This Mortgage was filed on August 24, 2004, and is of record in the Office of RMC/ROD in Book 3290 at Page 70. Subsequently, this mortgage was assigned to U.S. Bank, N.A. as trustee relating to the Chevy Chase Funding LLC Mortgage Backed Certificates, Series 2004-B by assignment dated December 23, 2010 and recorded January 14, 2011 in Book 4429 at Page 658.

17. The sum of \$25,994.10 is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Adjustable Rate Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

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

(a) Principal due January 1, 2012 \$1,008,286.11

- (b) Interest from December 1, 2011 through November 24, 2015 \$129,017.00
- (c) Escrow Advances: \$20,154.43
 Hazard Insurance \$14,107.42
 Taxes \$6,047.01
- (d) Attorney's Fees and Costs \$25,994.10

**TOTAL debt secured by Adjustable Rate Note and Mortgage,
 including interest to date shown \$1,183,451.60**

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 1.950% per annum (pursuant to the terms of the Adjustable Rate Note and first Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the first Mortgage through the date to which such interest is computed.

19. Pursuant to 28 U.S.C.A §2410(c), the Defendant, The United States of America, has a right of redemption upon proper application to redeem the within property for 120 day from the date of sale of the subject property. Plaintiff is seeking the usual foreclosure of the first mortgage and has in the Complaint (or subsequently thereto in writing) expressly waived the right to a personal or deficiency judgment.

20. The following Defendant(s) may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendant(s) may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

a. TD Bank, NA, by virtue of a mortgage given by Rudrick G. Otto and Alyce F. Otto to Carolina First Bank in the amount of \$218,807.82, dated June 18, 2008, and recorded June 20, 2008 in Book 4100 at Page 708. TD Bank, NA is successor to Carolina First Bank. This mortgage was re-recorded July 22, 2008 in Book 4113 at Page 506.

b. The United States of America acting by and through its agent The Internal Revenue Service, by virtue of liens of record, including, but not limited to, a Notice of Federal Tax Lien Under Internal Revenue Laws against Alyce F. Otto, Identifying No. 622616410, in the amount of \$16,273.04, dated February 2, 2010, and recorded in Spartanburg County on February 11, 2010, in Book 13 at Page 43 and a Notice of Federal

Tax Lien Under Internal Revenue Laws against Alyce F. Otto, Identifying No. 816926111, in the amount of \$6,577.50, dated September 26, 2011, and recorded in Spartanburg County on October 12, 2011, in Book 14 at Page 932.

c. The United States of America acting by and through its agent The Internal Revenue Service, by virtue of liens of record, including, but not limited to, a Notice of Federal Tax Lien Under Internal Revenue Laws against Patrick & Associates, LLC and Alyce F. Otto, Identifying No. 664747910, in the amount of \$35,450.60, dated June 8, 2010, and recorded in Spartanburg County on June 17, 2010, in Book 13 at Page 527.

d. Laura Kerhulas Giese and Mark Warner Kerhulas as Co-Trustees of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004, by virtue of a judgment against Shamrock Realty Investments, LLC, Alyce F. Otto, and Patty Otto in the amount of \$571,329.90, dated December 27, 2011 and recorded on January 3, 2012 in Judgment Roll No. 2012-CP-42-0014.

e. Citibank, NA, by virtue of a judgment against Alyce F. Otto in the amount of \$12,396.66, dated May 2, 2012 and recorded on May 2, 2012 in Judgment Roll No. 2012-CP-42-0234.

f. Jackson L. Munsey, Jr. by virtue of that Memorandum of Contract for deed dated March 4, 2011 and recorded March 9, 2011 in Book 97-Z at Page 748.

IT IS THEREFORE ORDERED:

1. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Orders 2009-05-22-01 dated May 22, 2009 and 2011-05-02-01 dated May 2, 2011, and the foreclosure action may proceed.

2. There is due on the Adjustable Rate Note and first Mortgage set forth in the Complaint the sum of \$1,183,451.60, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

3. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

4. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously

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

5. The Defendant(s) liable for the aforesaid judgment debt of the Adjustable Rate Note and Mortgage including interest at the rate of 1.950% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

6. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Master in Equity or Special Referee or other court-appointed or designated agent or auctioneer at public auction at the Spartanburg County Courthouse, in the City of Spartanburg, and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the Note rate of 1.950%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

d. The sale shall also be subject to the right of redemption by the Defendant United States of America, pursuant to 28 U.S.C.A. §2410(c), for a period of 120 day from the date of sale of the subject property.

e. Purchaser shall pay for any statutory commission on sale from the

proceeds of the final bid amount.

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

g. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

7. The Court finds that Defendant Jackson L. Munsey, Jr., has no equitable right of redemption in the mortgaged property described hereinafter, based upon the fact that he is not a junior lienholder.

8. A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

9. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale.

10. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 20 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

11. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

12. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

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

FIRST: To the payment of the permitted costs, charges, and expenses of this action, including any Guardian ad Litem fee, Servicemember Civil Relief Act attorney fee, or any other attorney's awarded under this or any other Order of this Court;

2015 DEC 22 AM 9:25
M. ROBERT A. HILEY
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NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and the Plaintiff's attorney shall receive and disburse such funds only in absolute compliance with Plaintiff's principal, interest allowable advances, and related calculations of this Court, including the Court's award for attorney fees, court permitted charges and taxable costs pursuant to Rules 54 and 71 of the South Carolina Rules of Civil Procedure and the terms of the Note and Mortgage;

NEXT: Any surplus will be held pending further Order of the Court as provided for in the South Carolina Rules of Civil Procedure, particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

14. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Spartanburg County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

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

16. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

17. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

18. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of Deeds/Clerk of

Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

19. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

20. The following is a description of the property herein ordered to be sold:

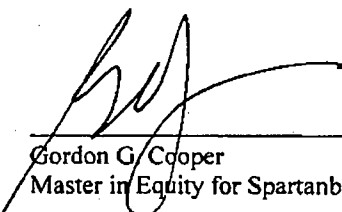
All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, containing 25.08 acres, more or less, and being shown and designated as Distribution Tract G on plat entitled "Survey for Greenspace of Fairview, LLC Tract 5" dated November 26, 2001, prepared by Joe E. Mitchell, Registered Land Surveyor, recorded in Plat Book 151, Page 523, and having such metes and bounds as appear thereon, incorporated herein by reference.

This being the same property conveyed to Rudrick G. Otto and Alyce F. Otto by deed of Fairview Associates, LLC, dated July 12, 2004 and recorded July 12, 2004 in Book 80-T at Page 257. Subsequently, Rudrick G. Otto conveyed his interest in the subject property to Rudrick George Otto, Trustee Under Declaration of Trust of Rudrick George Otto dated the 17th Day of November, 2009, dated November 18, 2009 and recorded November 24, 2009 in Book 95A at Page 435. Subsequently Alyce F. Otto conveyed her interest in the subject property to Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th Day of November, 2009, dated November 18, 2009 and recorded November 24, 2009 in Book 95A at Page 439. Subsequently, Rudrick George Otto died testate on December 2, 2009. Subsequently, Alyce F. Otto, Successor Trustee Under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009, conveyed that interest in the subject property to Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November, 2009, dated February 9, 2011 and recorded February 10, 2011 in Book 97V at Page 181.

Property Address: 1841 Fairview Farms
Campobello, SC 29322

TMS# 10300003.00

December 22, 2015
Spartanburg, South Carolina


Gordon G. Cooper
Master in Equity for Spartanburg County

H. HOPE ELCHLEY

2015 DEC 22 AM 9:25

#10
[Signature]

2012442 1031

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Alyce F. Otto, Trustee,

Plaintiff,

vs.

Jackson L. Munsey, Jr.,

Defendant.

LIS PENDENS

C.A. No.: 2010 CP 42-2874

Non Jury

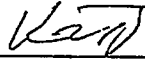
NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this Court upon Complaint of the above-named Plaintiff against the above-named Defendant. The premises covered and affected by the said action were, at the time of the making hereof, and at the time of the filing of this notice, described as follows:

All that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, County of Spartanburg, containing 25.08 acres, more or less, and being shown as Distribution Tract G on a plat of survey for Greenspace of Fairview, LLC, dated August 2, 2001, by Mitchell Surveying and recorded in Plat Book 151, Page 523. Reference is made to said plat and the record thereof for a more complete and accurate description.

This is a portion of the same property conveyed to Alyce F. Otto, Trustee, under Declaration of Trust of Alyce F. Otto dated the 17th day of November, 2009 by Deed of Alyce F. Otto recorded November 24, 2009 in Deed Book 95A, page 439. Also being a portion of the same property conveyed to Rudrick George Otto, trustee under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009 by Deed of Rudrick G. Otto recorded November 24, 2009 in Deed Book 95A, Page 435. Reference is also made to the deed from Alyce F. Otto, Successor Trustee under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009, to Alyce F. Otto, Trustee under Declaration of Trust of Alyce F. Otto dated the 17th day of November, 2009, said deed being dated February 9, 2011 and recorded February 10, 2011 in Deed Book 97V, Page 181.

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CLERK OF COURT
SPARTANBURG COUNTY
2012 JUL 1 PM 3:18
M. HOEHL

All referenced recordings are in the Register of Deeds Office for Spartanburg
County, South Carolina, unless otherwise noted herein.



Kenneth C. Anthony, Jr.
Attorney for Plaintiff
Post Office Box 3565
Spartanburg, SC 29304
864-582-2355
864-583-9772

July 6, 2012

FILED
CLERK OF COURT
Spartanburg County
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
) IN THE COURT OF COMMON PLEAS
)

Alyce F. Otto, Trustee,
Plaintiff,

vs.

Jackson L. Munsey, Jr.,
Defendant.

SUMMONS

C.A. No. 2010-GP-42-~~2874~~

Non Jury

TO THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
a copy of which is herewith served upon you, and to serve a copy of your Answer to the
Complaint on the undersigned at his office located at P.O. Box 3565, 250 Magnolia Street,
Spartanburg, S.C. 29304, within thirty (30) days after the service hereof, exclusive of the day of
such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in
this action will apply to the Court for the relief demanded in the Complaint.

Dated at Spartanburg, South Carolina, on June 28, 2012.


Kenneth C. Anthony, Jr.
THE ANTHONY LAW FIRM, P.A.
250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 582-2355
(864) 583-9772
kanthony@anthonylaw.com

July 6, 2012
Spartanburg, SC

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Alyce F. Otto, Trustee,
Plaintiff,

vs.

Jackson L. Munsey, Jr.,
Defendant.

COMPLAINT

C.A. No.: 2010-CP-42-
Non July

2874

Plaintiff would respectfully show unto this Court:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a citizen and resident of Spartanburg County, South Carolina.
2. Plaintiff is informed and believes that Defendant Jackson L. Munsey, Jr., is a citizen and resident of Richland County, South Carolina.

3. Plaintiff is the owner of the following described property:

All that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, County of Spartanburg, containing 25.08 acres, more or less, and being shown as Distribution Tract G on a plat of survey for Greenspace of Fairview, LLC, dated August 2, 2001, by Mitchell Surveying and recorded in Plat Book 151, Page 523. Reference is made to said plat and the record thereof for a more complete and accurate description.

This is a portion of the same property conveyed to Alyce F. Otto, Trustee, under Declaration of Trust of Alyce F. Otto dated the 17th day of November, 2009 by Deed of Alyce F. Otto recorded November 24, 2009 in Deed Book 95A, page 439. Also, being a portion of the same property conveyed to Rudrick George Otto, trustee under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009 by Deed of Rudrick G. Otto recorded November 24, 2009 in Deed Bok 95A, Page 435. Reference is also made to the deed from Alyce F. Otto, Successor Trustee under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009, to Alyce F. Otto, Trustee under Declaration fo Trust of Alyce F. Otto dated the 17th day of November, 2009, said

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SPARTANBURG COUNTY
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MICHOE BLACKBEE

deed being dated February 9, 2011 and recorded February 10, 2011 in Deed Book 97V, Page 181.

All referenced recordings are in the Register of Deeds Office for Spartanburg County, South Carolina, unless otherwise noted herein.

4. On or about March 4, 2011, Plaintiff entered into a Contract for Deed with Defendant for the purchase of the property described above, a copy of which is attached hereto.

5. Defendant has failed and refused to make payments as provided in said Contract for Deed and is now in default thereof.

6. Plaintiff has demanded said payments from the Defendant but he has failed and refused to pay same.

7. Plaintiff is informed and believes that she is entitled to have this Court issue its Order declaring the Contract for Deed cancelled and the property free and clear of any claim of the Defendant.

FOR A SECOND CAUSE OF ACTION

8. Plaintiff reiterates and realleges all of the allegations contained in Paragraphs 1 through 6 as fully as though set forth verbatim.

9. In the alternative, Plaintiff is informed and believes that she is entitled to judgment of foreclosure as to the interest, if any, of the Defendant, and to have the property sold at public auction in accordance with law and the practices of this Court

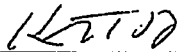
10. Plaintiff does not waive but specifically demands judgment against the Defendant for the full amount found to be due to the Plaintiff, with the right to enter personal judgment against the Defendant for any deficiency in this action.

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SPARTANBURG COUNTY
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M. HOPE BLACKBERRY

WHEREFORE, Plaintiff prays for judgment as follows:

1. All consideration and payments be forfeited as liquidated damages. The Contract for Deed declared cancelled and the property confirmed free of any claims of the Defendant.
2. In the alternative, that the property be sold at foreclosure, according to law and practices of this Court, with leave to seek a deficiency judgment, and that the proceeds of the sale be applied as follows:
 - A. To the costs and expenses of the within action and sale, and any outstanding real property taxes.
 - B. The payment in full of all sums due the Plaintiff under the Contract for Deed.
 - C. To the payment and discharge of any outstanding liens against the property in their order of priority.
 - D. Surplus, if any, to be distributed according to law.
3. For such other and further relief as may seem just and proper.

July 6, 2012
Spartanburg, SC


Kenneth C. Anthony, Jr.
THE ANTHONY LAW FIRM, P.C.
Attorney for Plaintiff
P.O. Box 3565 (29304)
250 Magnolia Street (29306)
Spartanburg, South Carolina
(864) 582-2355
(864) 583-9772
kanthony@anthonylaw.com

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SPARTANBURG COUNTY
2012 JUL -6 PM 3:18
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed Certificates, Series 2004-B,

Plaintiff,

v.

Alyce F. Otto, individually; Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November 2009; TD Bank, NA; The United States of America, acting by and through its agency, the Internal Revenue Service; Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004; Mark Warner Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004; Jackson L. Munsey, Jr.; Citibank, NA;

Defendant(s).

(005071-00160)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2012-CP-42- 3549

LIS PENDENS
Deficiency Judgment Waived

2012/4/20/12

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Rudrick G. Otto and Alyce F. Otto to Mortgage Electronic Registration Systems, Inc., as nominee for Chevy Chase Bank, FSB, its successors and assigns (MIN# 100015305541858019) dated August 18, 2004, and recorded in the Office of the RMC/ROD for Spartanburg County on August 24, 2004, in Mortgage Book 3290 at Page 70. Subsequently, this mortgage was assigned to U.S. Bank, N.A. as trustee relating to the Chevy Chase Funding LLC Mortgage Backed Certificates, Series 2004-B by assignment dated December 23, 2010 and recorded January 2011 in Book 4429 at Page 658.

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

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, containing 25.08 acres, more or less, and being shown and designated as Distribution Tract G on plat entitled "Survey for Greenspace of Fairview, LLC Tract 5" dated November 26, 2001,

prepared by Joe E. Mitchell, Registered Lane Surveyor, recorded in Plat Book 151, Page 523, and having such metes and bounds as appear thereon, incorporated herein by reference.

This being the same property conveyed to Rudrick G. Otto and Alyce F. Otto by deed of Fairview Associates, LLC, dated July 12, 2004 and recorded July 12, 2004 in Book 80-T at Page 257. Subsequently, Rudrick G. Otto conveyed his interest in the subject property to Rudrick George Otto, Trustee Under Declaration of Trust of Rudrick George Otto dated the 17th Day of November, 2009, dated November 18, 2009 and recorded November 24, 2009 in Book 95A at Page 435. Subsequently Alyce F. Otto conveyed her interest in the subject property to Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th Day of November, 2009, dated November 18, 2009 and recorded November 24, 2009 in Book 95A at Page 439. Subsequently, Rudrick George Otto died testate on December 2, 2009. Subsequently, Alyce F. Otto, Successor Trustee Under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009, conveyed that interest in the subject property to Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November, 2009, dated February 9, 2011 and recorded February 10, 2011 in Book 97V at Page 181.

Property Address: 1841 Fairview Farms
Campobello, SC 29322

TMS# 10300003.00

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)

Reginald P. Corley (SC Bar #69453)

Ellie C. Floyd (SC Bar #68635)

Eve Moredock Stacey (SC Bar #5300)

Robert P. Davis (SC Bar #74030)

Vance L. Brabham, III (SC Bar #71250)

Andrew W. Montgomery (SC Bar #79893)

Cheryl H. Fisher (SC Bar #15213)

Jennifer W. Rubin (SC Bar #16727)

Michael P. Morris (SC Bar #73560)

Mary R. Powers (SC Bar #16534)

William S. Koehler (SC Bar #74935)

Jaclynn B. Goings (SC Bar #77501)

Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive
Columbia, SC 29210

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

Columbia, South Carolina
August 20, 2012

FILED
CLERK OF COURT
STAFFORD COUNTY
2012 AUG 21 PM 1:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed Certificates, Series 2004-B,

Plaintiff,

v.

Alyce F. Otto, individually; Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November 2009; TD Bank, NA; The United States of America, acting by and through its agency, the Internal Revenue Service; Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004 ; Mark Warner Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004 ; Jackson L. Munsey, Jr.; Citibank, NA;

Defendant(s).

(005071-00160)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2012-CP-42-354

SUMMONS
(NON-JURY)
FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Waived

TO THE DEFENDANT(S) ABOVE NAMED:

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

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

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by U.S. Bank, NA as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed Certificates, Series 2004-B.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893)

Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
William S. Koehler (SC Bar #74935)
Jaclyn B. Goings (SC Bar #77501)
Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive
Columbia, SC 29210

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

Columbia, South Carolina
August 20, 2012

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 AUG 21 PM 1:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the Chevy Chase
Funding, LLC Mortgage Backed Certificates, Series
2004-B,

Plaintiff,

v.

Alyce F. Otto, individually; Alyce F. Otto, Trustee Under
Declaration of Trust of Alyce F. Otto dated the 17th day
of November 2009; TD Bank, NA; The United States of
America, acting by and through its agency, the Internal
Revenue Service; Laura Kerhulas Giese, as Co-Trustee
of the Theodore Ernest Kerhulas Trust Under
Declaration of Trust dated May 25, 2004 ; Mark Warner
Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas
Trust Under Declaration of Trust dated May 25, 2004 ;
Jackson L. Munsey, Jr.; Citibank, NA;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2012-CP-42- 35A

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE

MORTGAGE

Deficiency Judgment Waived

(005071-00160)

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Spartanburg County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101(b)(8) Plaintiff is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.
3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
4. The Subject note and mortgage are not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac; and, the current loan servicer is not currently participating in the Home Affordable Modification Program ("HMP").
5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

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SPARTANBURG COUNTY
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M. HEPBURN

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

7. Heretofore, on or about August 18, 2004, Rudrick G. Otto and Alyce F. Otto made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of \$999,500.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Rudrick G. Otto and Alyce F. Otto made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for Chevy Chase Bank, FSB, its successors and assigns (MIN# 100015305541858019) a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, containing 25.08 acres, more or less, and being shown and designated as Distribution Tract G on plat entitled "Survey for Greenspace of Fairview, LLC Tract 5" dated November 26, 2001, prepared by Joe E. Mitchell, Registered Land Surveyor, recorded in Plat Book 151, Page 523, and having such metes and bounds as appear thereon, incorporated herein by reference.

This being the same property conveyed to Rudrick G. Otto and Alyce F. Otto by deed of Fairview Associates, LLC, dated July 12, 2004 and recorded July 12, 2004 in Book 80-T at Page 257. Subsequently, Rudrick G. Otto conveyed his interest in the subject property to Rudrick George Otto, Trustee Under Declaration of Trust of Rudrick George Otto dated the 17th Day of November, 2009, dated November 18, 2009 and recorded November 24, 2009 in Book 95A at Page 435. Subsequently Alyce F. Otto conveyed her interest in the subject property to Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th Day of November, 2009, dated November 18, 2009 and recorded November 24, 2009 in Book 95A at Page 439. Subsequently, Rudrick George Otto died testate on December 2, 2009. Subsequently, Alyce F. Otto, Successor Trustee Under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009, conveyed that interest in the subject property to Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November, 2009, dated February 9, 2011 and recorded February 10, 2011 in Book 97V at Page 181.

Property Address: 1841 Fairview Farms
Campobello, SC 29322

TMS# 10300003.00

9. The Mortgage was signed, witnessed and probated August 18, 2004; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Spartanburg County on August 24, 2004 in Mortgage Book 3290 at Page 70. Subsequently, this mortgage was assigned to U.S. Bank, N.A. as Trustee relating to the Chevy Chase Funding LLC Mortgage Backed Certificates, Series 2004-B by assignment dated December 23, 2010 and recorded January 14, 2011 in Book 4429 at Page 658.

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

11. Subsequently, Rudrick G. Otto conveyed his interest in the subject property to Rudrick

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SPARTANBURG COUNTY
M. HOPE BBAILEY

George Otto, Trustee Under Declaration of Trust of Rudrick George Otto dated the 17th Day of November, 2009, dated November 18, 2009 and recorded November 24, 2009 in Book 95A at Page 435. Subsequently Alyce F. Otto conveyed her interest in the subject property to Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th Day of November, 2009, dated November 18, 2009 and recorded November 24, 2009 in Book 95A at Page 439. Subsequently, Rudrick George Otto died testate on December 2, 2009. Subsequently, Alyce F. Otto, Successor Trustee Under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009, conveyed that interest in the subject property to Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November, 2009, dated February 9, 2011 and recorded February 10, 2011 in Book 97V at Page 181..

12. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for January 1, 2012, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of January 1, 2012, the principal sum of \$1,008,286.11, with interest from December 1, 2011, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

13. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

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

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

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

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

A. TD Bank, NA, by virtue of a mortgage given by Rudrick G. Otto and Alyce F. Otto to Carolina First Bank in the amount of \$218,807.82, dated June 18, 2008, and recorded June 20, 2008 in Book 4100 at Page 708. Also including any other liens they may have. TD Bank, NA is successor to Carolina First Bank. This mortgage was re-recorded July 22, 2008 in Book 4113 at Page 506.

B. The United States of America acting by and through its agency The Internal Revenue Service, by virtue of liens of record, including, but not limited to, a Notice of Federal Tax Lien Under Internal Revenue Laws against Alyce F. Otto, Identifying No. 622616410, in the amount of \$16,273.04, dated February 2, 2010, and recorded in Spartanburg County on February 11, 2010, in Book 13 at Page 43

C. The United States of America acting by and through its agency The Internal Revenue Service, by virtue of liens of record, including, but not limited to, a Notice of Federal Tax Lien Under Internal Revenue Laws against Alyce F. Otto, Identifying No. 816926111, in the amount of \$6,577.50, dated September 26, 2011, and recorded in Spartanburg County on October 12, 2011, in Book 14 at Page 932

D. Laura Kerhulas Giese and Mark Warner Kerhulas as Co-Trustees of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004 , by virtue of a judgment against Shamrock Realty Investments, LLC, Alyce F. Otto, and Patty Otto in the amount of \$571,329.90, dated December 27, 2011 and recorded on January 3, 2012 in Judgment Roll No. 2012-CP-42-0014 Also including any other liens they may have.

E. Citibank, NA, by virtue of a judgment against Alyce F. Otto in the amount of \$12,396.66, dated May 2, 2012 and recorded on May 2, 2012 in Judgment Roll No. 2012-CP-42-0234 Also including any other liens they may have.

F. Jackson L. Munsey, Jr. by virtue of that Memorandum of Contract for deed dated March 4, 2011 and recorded March 9, 2011 in Book 97-Z at Page 748.

G. The United States of America acting by and through its agency The Internal Revenue Service, by virtue of liens of record, including, but not limited to, a Notice of Federal Tax Lien Under Internal Revenue Laws against Patrick & Associates, LLC and Alyce F. Otto, Identifying No. 664747910, in the amount of \$35,450.60, dated June 8, 2010, and recorded in Spartanburg County on June 17, 2010, in Book 13 at Page 527

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

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

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

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

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums

from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

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

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

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

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

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

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

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893)

Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
William S. Koehler (SC Bar #74935)
Jaclynn B. Goings (SC Bar #77501)
Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive
Columbia, SC 29210

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

Columbia, South Carolina
August 20, 2012

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 AUG 21 PM 1:29
M. HOPE BLACKLEY

NOTICE

1. As of August 17, 2012, you owe \$1,039,169.77. Because of interest, late charges, attorney fees and other charges that vary from day to day, the amount due on the day you pay may be greater.
2. U.S. Bank, NA as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed Certificates, Series 2004-B is the Creditor to whom the debt is owed. Capital One, NA. is the servicing agent for the Creditor to whom the debt is owed.
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Consumer, within thirty (30) days after the receipt of this notice, dispute the validity of the debt or any portion thereof.
4. If you, the Consumer, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain verification of the debt, and a copy of the verification will be mailed to you, the Consumer, by the Creditor's law firm.
5. If the Creditor named in this notice is different from the original Creditor, and if you, the Consumer, make a written request to the Creditor's law firm within the (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. This notice should not be construed as a thirty (30) day grace period. If, in writing, you dispute the debt or any portion thereof or if, in writing, you request the name and address of the original creditor within the thirty (30) day period that begins with your receipt of this notice, the law requires the Creditor's law firm to suspend its efforts (through litigation or otherwise) to collect the debt until the Creditor's law firm mails the requested information to you.
7. This notice pertains to your dealings with the Creditor's law firm as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time at which you must answer the complaint. The summons attached to the complaint is a command from the court, not from the Creditor's law firm, and you must follow its instructions even if you dispute the validity or amount of the debt. The advice in this notice also does not affect the Creditor's law firm's relations with the court. The Creditor's law firm may file papers in any such suit according to the court's rules and the judge's instructions.
8. This is an attempt to collect a debt, and any information obtained will be used for that purpose. The information provided in paragraphs 1 and 2 above has been provided to us by the Creditor or Servicer. If you have previously received a discharge in bankruptcy, this notice is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.

FILED
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SHARPE BLACKLEY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

U.S. Bank, NA as Trustee relating to)
The Chevy Chase Funding, LLC)
Mortgage Backed Certificates,)
Series 2004-B,)

Plaintiff,)

-vs-)

Alyce F. Otto, individually;)
Alyce F. Otto, Trustee Under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09; TD Bank, NA;)
The United States of America,)
Acting by and through its agency,)
The Internal Revenue Service;)
Laura Kerhulas Giese, as co-)
Trustee of the Theodore Ernest)
Kerhulas Trust Under Declaration)
Of Trust dated 5/25/04; Mark)
Warner Kerhulas, as co-Trustee of)
The Theodore Ernest Kerhulas)
Trust Under Declaration of Trust)
Dated 5/25/04; Jackson L. Munsey,)
Jr.; and Citibank, NA,)

Defendants.)

And)

Jackson L. Munsey, Jr.)

Cross-Claim Plaintiff,)

-vs-)

Alyce F. Otto, Individually; and)
Alyce F. Otto, Trustee under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09,)

Cross-Claim Defendants.)

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2012-CP-42-3549

**SUMMONS FOR COUNTERCLAIMS
AND CROSS-CLAIMS**
(Jury Trial Requested)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 DEC 27 PM 3:02
M. HORTON/BAILEY

TO THE PLAINTIFF AND CROSS-CLAIM DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims and Cross-Claims herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Counterclaims and Cross-Claims upon the subscribers at their office at Kehl Culbertson, LLC, 114 Manly Street, Greenville, South Carolina 29601, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to Answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Counterclaims and Cross-Claims.

Dated: December 21, 2012

Erin Culbertson
Erin Culbertson (SC Bar # 68271)

KEHL CULBERTSON, LLC
114 Manly St.
Greenville, South Carolina 29601
Telephone: 864/370-8222
Facsimile: 864/370-8227

FILED
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STARTED
2012 DEC 27 PM 3:02
H. J. CULBERTSON

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2012-CP-42-3549

U.S. Bank, NA as Trustee relating to)
The Chevy Chase Funding, LLC)
Mortgage Backed Certificates,)
Series 2004-B,)

Plaintiff,)

-vs-)

Alyce F. Otto, individually;)
Alyce F. Otto, Trustee Under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09; TD Bank, NA;)
The United States of America,)
Acting by and through its agency,)
The Internal Revenue Service;)
Laura Kerhulas Giese, as co-)
Trustee of the Theodore Ernest)
Kerhulas Trust Under Declaration)
Of Trust dated 5/25/04; Mark)
Warner Kerhulas, as co-Trustee of)
The Theodore Ernest Kerhulas)
Trust Under Declaration of Trust)
Dated 5/25/04; Jackson L. Munsey,)
Jr.; and Citibank, NA,)

Defendants.)

And)

Jackson L. Munsey, Jr.)

Cross-Claim Plaintiff,)

-vs-)

Alyce F. Otto, Individually; and)
Alyce F. Otto, Trustee under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09,)

Cross-Claim Defendants.)

ANSWER, COUNTERCLAIMS, and
CROSS-CLAIMS AGAINST DEFENDANT
ALYCE F. OTTO, INDIVIDUALLY AND
AS TRUSTEE
(Jury Trial Requested)

FILED
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SPARTANBURG COUNTY
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MICHAEL C. HANLEY

Defendant Jackson L. Munsey, Jr. ("Munsey"), in answer to the Complaint of Plaintiff, alleges and states as follows:

FIRST DEFENSE
(General Denial)

1. Each and every allegation that is not hereinafter admitted, explained, or modified is hereby denied.

2. The allegations contained in Paragraph 1 of the Complaint do not require a response.

3. The allegations contained in Paragraph 2 of the Complaint do not require a response.

3. The allegations contained in Paragraph 3 of the Complaint contain a legal conclusion about which Munsey lacks sufficient information to admit or deny.

4. Munsey lacks sufficient information to admit or deny the allegations contained in Paragraph 4 of the Complaint; such allegations are, therefore, denied, and strict proof thereof demanded.

5. The allegations contained in Paragraph 5 of the Complaint are admitted.

6. The allegations contained in Paragraph 6 of the Complaint are admitted.

7. Munsey lacks sufficient information to admit or deny the allegations contained in Paragraph 7 of the Complaint; such allegations are, therefore, denied, and strict proof thereof demanded.

8. In responding to the allegations contained in Paragraph 8 of the Complaint, Munsey craves reference to the document identified in this paragraph, avers that it speaks for itself, and denies any allegations that are contrary thereto or inconsistent therewith.

CLERK OF DISTRICT COURT
JANUARY 1, 2019
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JACKSON L. MUNSEY, JR.

9. In responding to the allegations contained in Paragraph 9 of the Complaint, Munsey craves reference to the document identified in this paragraph, avers that it speaks for itself, and denies any allegations that are contrary thereto or inconsistent therewith.

10. Munsey lacks sufficient information to admit or deny the allegations contained in Paragraph 10 of the Complaint; such allegations are, therefore, denied, and strict proof thereof demanded.

11. In responding to the allegations contained in Paragraph 11 of the Complaint, Munsey craves reference to the document identified in this paragraph, avers that it speaks for itself, and denies any allegations that are contrary thereto or inconsistent therewith.

12. The allegations contained in Paragraph 12 of the Complaint are denied and strict proof thereof is demanded.

13. The allegations contained in Paragraph 13 of the Complaint do not require a response.

14. The allegations contained in Paragraph 14 of the Complaint do not require a response.

15. The allegations contained in Paragraph 15 of the Complaint are denied and strict proof thereof demanded. Further, Munsey would affirmatively allege that he has paid all hazard insurance premiums and ad valorem real property taxes; as such, Plaintiff will be under no obligation to make such payments during the pendency of this litigation.

16. The allegations contained in Paragraph 16 of the Complaint are denied and strict proof thereof demanded.

17. In responding to the allegations contained in Paragraph 17 (and subparts) the Complaint, Munsey craves reference to the documents identified in this paragraph, avers that

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they speak for themselves, and denies any allegations that are contrary thereto or inconsistent therewith.

FACTUAL ALLEGATIONS

18. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

19. In March of 2011, Munsey entered into an agreement with Defendant Alyce F. Otto, as Trustee under the Declaration of Trust of Alyce F. Otto dated November 17, 2009 (collectively, with Defendant Alyce F. Otto, Individually, "Otto"), to purchase the property which is the subject matter of this foreclosure action (the "Property"). A copy of this agreement is attached hereto as Exhibit A and made a part hereof by reference (the "Agreement").

20. Pursuant to the terms and conditions of the Agreement, Munsey agreed to pay monthly payments directly to Otto's lender, the Plaintiff.

21. Munsey did, in fact, make all payments to Plaintiff in a timely fashion, from April, 2011, through August, 2012.

22. Munsey requested that Otto provide him with monthly statements from Plaintiff and that Otto provide him with online access to Otto's account with Plaintiff on numerous occasions. Otto failed and refused to do so.

23. At some point, Plaintiff inexplicably began returning checks to Otto and refusing to apply the payments made by Munsey to Otto's account

24. Otto failed to notify Munsey of any such refunded amounts or refused payments.

25. Munsey continued making all agreed payments to Plaintiff, unaware of any alleged default on Otto's account.

CLERK OF COURT
STANTON COUNTY
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M. LYNN C. AUSTIN

26. As a further condition of the Agreement, Otto agreed that the Property would not be further encumbered by any liens or judgments, and that the encumbering party would be responsible for the cost of removing the encumbrance, including costs, expenses, and attorney's fees.

27. In fact, Otto has permitted the following non-disclosed encumbrances to attach to and remain of record against the Property: (a) an IRS tax lien in the amount of \$16,273.04; (b) an IRS tax lien in the amount of \$6,577.50; (c) an IRS tax lien in the amount of \$35,450.60; (d) a judgment held by Laura Kerhulas Giese and Mark Warner Kerhulas, as co-Trustees of the Theodore Ernest Kerhulas Trust under Declaration of Trust dated May 25, 2004, in the amount of \$571,329.90; and (e) a judgment held by Citibank, NA, in the amount of \$12,396.66 (the "Encumbrances"), all of which are in direct violation of the Agreement.

28. The Agreement also contains a provision requiring Otto to indemnify and hold Munsey harmless from any and all costs, expenses, fees, or damages related to the Plaintiff's mortgage on the Property.

FOR A SECOND DEFENSE
(Waiver and Estoppel)

29. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

30. On the facts of this case, Munsey pleads that the Plaintiff should be estopped from asserting any claims against Defendants and that the Plaintiff has waived its right to present such claims.

FOR A THIRD DEFENSE
(Unclean Hands)

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SUPERIOR COURT
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M. JOE DELACROIX

31. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

32. The Plaintiff is prevented from recovery by the equitable doctrine of unclean hands.

FOR A FOURTH DEFENSE
(Prior Breach)

33. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

34. The Plaintiff may not recover because of its own prior breach of the Note.

FOR A FIFTH DEFENSE
AND BY WAY OF FIRST COUNTERCLAIM
(Negligent and Intentional Misrepresentation)

35. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

36. Plaintiff made false representations to Defendants in stating that any payments were not timely received.

37. Plaintiff made these false statements in an effort to further its own pecuniary interests.

38. Plaintiff owed Defendants a duty to communicate truthful information to them.

39. Plaintiff breached these duties by making false statements to Defendants.

40. Defendants justifiably relied on Plaintiff's representations.

41. As a proximate result of their reliance on Plaintiff's fraudulent representations, Defendants have incurred and will continue to incur actual and consequential damages.

42. Munsey is entitled to actual and punitive damages resulting from Plaintiff's fraudulent representations.

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H. HOFER, CLERK

FOR AN SIXTH DEFENSE
AND BY WAY OF SECOND COUNTERCLAIM
(Accounting)

43. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

44. Munsey requests a full and complete accounting from Plaintiff of every payment and transaction related to the loan or the Property.

FOR A SEVENTH DEFENSE,
BY WAY OF SECOND COUNTERCLAIM,
AND BY WAY OF FIRST CROSS-CLAIM
(Negligence and Gross Negligence)

45. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

46. Plaintiff and Otto owed a duty of care to Munsey, based on his relationship with Otto and pursuant to the terms and conditions of the Agreement.

47. Plaintiff and Otto breached this duty to Munsey by refusing to accept proper and timely payments, by returning the payments to Otto, and by failing to notify Munsey that the payments had been returned. Plaintiff and Otto were negligent, careless, willful, wanton, reckless, and grossly negligent in these actions and omissions.

48. As a direct and proximate result of Plaintiff and Otto's negligence, carelessness, willfulness, wantonness, recklessness, and gross negligence, Munsey has suffered economic harm.

49. Munsey is entitled to damages, both actual and punitive, from Plaintiff and Otto in an amount to be determined by a jury based on Plaintiff's and Otto's negligence, carelessness, willfulness, wantonness, recklessness, and gross negligence.

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KIMBERLY L. ADLEY

FOR AN EIGHTH DEFENSE
AND BY WAY OF SECOND CROSS-CLAIM
(Breach of Contract)

50. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

51. As stated above, pursuant to the terms and conditions of the Agreement, Otto was under an obligation not to allow any further encumbrances against the Property.

52. As further stated above, Otto has allowed the Encumbrances to be filed and remain of record against the Property.

53. Munsey is entitled to an Order requiring Otto to remove the Encumbrances, and is further entitled to damages from Otto in an amount to be determined by the jury for her breach of contract.

FOR A NINTH DEFENSE
AND BY WAY OF THIRD CROSS-CLAIM
(Fraud)

54. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

55. Otto made material, false representations to Munsey in order to induce him to not only enter into the Agreement, but also to continue making her mortgage payments to Plaintiff as described in the Agreement.

56. Even when not intentionally dishonest, Otto has made misrepresentations in reckless disregard of the truth.

57. Otto knew or should have known these representations were false. Otto intended that Munsey believe these false representations and remain ignorant of the true facts.

58. At all times, Munsey was ignorant of the falsity of Otto's representations to him.

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SPRINGFIELD
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H. H. BLACKEY

59. Munsey relied upon Otto's false representations.

60. As a proximate result of his reliance on Otto's fraudulent statements, Munsey has incurred and will continue to incur actual and consequential damages.

61. Defendants entitled to actual and punitive damages resulting from Plaintiff's fraudulent acts.

FOR A TENTH DEFENSE
AND BY WAY OF FOURTH CROSS-CLAIM
(Breach of Contract Accompanied by Fraudulent Act)

62. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

63. As alleged above, Otto breached her contract with Munsey.

64. Otto acted with fraudulent intent in breaching her contract with Munsey.

65. Otto acted fraudulently when she breached her contract with Munsey by failing to act with any sort of reasonable diligence or commercial fairness in notifying Munsey that Plaintiff had returned certain mortgage payments to her.

66. Munsey is entitled to actual and punitive damages from Otto, based upon her breach of contract accompanied by a fraudulent act, as well as attorneys' fees incurred in this action, pursuant to the attorneys' fees provision in the Agreement.

FOR AN ELEVENTH DEFENSE
AND BY WAY OF FIFTH CROSS-CLAIM
(Breach of Fiduciary Duty)

67. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

68. As a lender and seller of real property, Otto owed Munsey a fiduciary duty to account for Munsey's loan payments in a commercially standard and reasonable manner.

CLERK OF COURT
STATE OF CALIFORNIA
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H. ROSE BLAUGHER

69. Otto breached her fiduciary duty to Munsey by failing to notify Munsey of Plaintiff's return of Munsey's loan payments in a commercially standard and reasonable manner, and by failing to apply Munsey's loan payments as agreed.

70. As a direct and proximate result of Otto's breach of its fiduciary duty, Munsey has suffered actual and consequential damages and is entitled to recover these damages from Otto.

71. Munsey is also entitled to punitive damages resulting from Otto's breach of her fiduciary duties.

FOR A TWELFTH DEFENSE
AND BY WAY OF SIXTH CROSS-CLAIM
(Conversion)

72. Munsey reiterates all of the responses and allegations contained in the above paragraphs which are not inconsistent with the following allegations.

73. At no time was Otto entitled to receive payments made by Munsey to Plaintiff, pursuant to the terms of the Agreement.

74. When Plaintiff negligently and inexplicably began returning Munsey's payments to Otto, Otto converted those payments to her own use, in that she did not ensure that they were properly credited to her mortgage (for Munsey's benefit) and did not return the funds to Munsey.

75. Munsey has never granted permission for Otto to be in possession of the payments he made to Plaintiff pursuant to the Agreement.

76. Munsey has suffered, as a direct and proximate result of Otto's conversion of his payments to Plaintiff, economic harm in the form of additional interest, fees, costs, including the cost of defending this foreclosure action.

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DEPARTMENT OF
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HON. J. CLAGLEY

77. Munsey is entitled to damages, both actual and punitive, from Otto in an amount to be determined by a jury based on her conversion of the payments made by Munsey to Plaintiff.

WHEREFORE, having fully answered the Plaintiff's Complaint, Munsey prays as follows:

- (a) For the dismissal of Plaintiff's Complaint in its entirety;
- (b) For a full and complete accounting from Plaintiff;
- (c) For judgment against the Plaintiff, in an amount including actual and punitive damages, to be determined by the finder of fact;
- (d) For judgment against Otto, in an amount including actual and punitive damages, to be determined by the finder of fact;
- (e) For an award of attorney's fees and costs; and
- (f) For such other and further relief as this Court may deem just and proper.


Erin Culbertson (SC Bar # 68271)
KEHL CULBERTSON, LLC
114 Manly Street
Greenville, SC 29601
864/370-8222 864/370-8227 (fax)
Attorney for Defendant Jackson L. Munsey, Jr.

December 21, 2012
Greenville, SC

CLERK OF COURT
SPRINGFIELD
2012 DEC 27 PM 3:02
M. HOFFMAN

CONTRACT FOR DEED

PARTIES:

Purchaser: Jackson L. Munsey, Jr., an individual, with an address of 405 East Springs Road, Columbia, South Carolina 29223 (hereinafter referred to as "Purchaser").

In consideration of the monetary amounts as stated herein, the sufficiency of which is hereby acknowledged by both parties, and subject to the covenants and agreements hereinafter contained and provided, Seller hereby covenants and agrees to convey and assure to Purchaser and Purchaser hereby agrees to purchase from Seller the following described property, to wit:

PAGE 1 OF 20

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SPARTANBURG, SOUTH CAROLINA

particularly described as as Tract G of Greenspace of Fairview, LLC, more particularly and specifically described on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Property").

It is mutually covenanted and agreed that this Contract for Deed is made and entered into upon the following covenants and agreements:

1. The purchase price to be paid by Purchaser directly to or for the benefit of the Seller is the sum of \$1,400,000.00, said purchase price to be paid in the following manner:
 - (a) The credit of the sum of \$10,000.00 in check or electronic funds paid directly to Seller as a non-refundable deposit prior to the execution of this instrument;
 - (b) A note, a copy of which is attached hereto and incorporated herein, payable to the Seller in the current principal amount at closing of the Seller's note to Chevy Chase Bank, F.S.B., secured by a first mortgage to Chevy Chase Bank & Trust, or its successor and/or assign (hereinafter referred to as "Mortgage No. 1"), in the amount of \$1,061,968.32, under the same current or modified terms and conditions of the note and mortgage between the Seller and Mortgage No. 1 dated August 18, 2004. Said note shall be paid with monthly installments directly to the holder of Mortgage No.

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SPARTANBURG COUNTY
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M. DUTCHESLEY

the first payment of such Installment due and payable on April 1, 2011, and a like amount thereafter every month until April 1, 2016, when on that date the balance shall be due and payable. Purchaser acknowledges and agrees that this monthly Installment may adjust from time to time based on the terms and conditions set forth in loan documents upon notice from Mortgage No. 1. The Purchaser shall have the option to extend the maturity date to April 1, 2019 with a principal of reduction of five percent (5%) of the outstanding balance;

- (c) A note, a copy of which is attached hereto and incorporated herein, payable to the Seller in the current principal amount at closing of the Seller's note to Carolina First Bank, secured by a second mortgage to Carolina First Bank, or its successor and/or assigns (hereinafter referred to as "Mortgage No. 2") in the amount of \$193,665.68, under the payments to reflect the current or modified terms and conditions of the note and mortgage between the Seller and Carolina First Bank Mortgage No. 2 dated June 18, 2008. Said note shall be paid in monthly installments of \$1,842.00 directly to the holder of Mortgage No. 2, with the first payment due on March 17, 2011, and a like amount thereafter every month until June 17, 2013, when on that date the

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SPRINGFIELD, MA
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M. J. BULLLEY

balance shall be due and payable. The Purchaser hereby acknowledges and agrees that the original terms and conditions of this note contain a prepayment penalty;

- (d) The payment of the Seller's lien to the United States Internal Revenue Service (hereinafter referred to as the "IRS") in the estimated amount of \$14,601.71. In the event that said estimated payoff amount is in excess of the actual payoff amount, any excess shall be held in escrow by the closing attorney and shall be paid to the Seller after recorded satisfaction of the lien.
- (e) The payment of the 2010 *ad valorem* (real property) taxes now due and payable to Spartanburg County in the amount of \$5,978.87;
- (f) The payment of 2010 assessments due and payable to Greenspace of Fairview, LLC, along with penalties in the amount of \$4,590.34 plus \$500.13 due for fire ant treatment of the property;
- (g) The payment of arrears, penalties and legal fees of the first mortgage held by Mortgage No. 1 in the amount of \$50,839.96;
- (h) Intentionally Deleted.
- (i) The payment to Seller in cash or certified funds estimated in the amount of \$43,076.84 after payment of Seller's pro-rata portion of 2011 taxes and assessments;
- (j) The remaining sum shall be payable with a note, a copy of which is

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SPARTANBURG COUNTY
2011 DEC 27 PM 3:02
HUBBARD & ASSOCIATES, P.A.

attached hereto and incorporated herein, to the Seller in the principal amount of \$13,000.00 with an interest rate of two and one-half percent (2.5%) per annum to be amortized over seven years with a balloon payment due and payable in four years. Said note shall be paid directly to the Seller with the first payment of such installment due and payable on April 1, 2011, and a like amount thereafter every month until April 1, 2015, when on that date the balance, if any, shall be due and payable. Monthly payments may be anticipated and more than the required amount can be paid without penalty. Additional payments to principal may also be made without penalty. Purchaser shall make the monthly payments to the Seller at set forth under Paragraph 17 herein, or any other place of designation agreed upon by Purchaser and Seller. If any monthly payment is made after the 10th day of the month, a late fee of five percent (5%) will be charged (hereinafter referred to the "Late Payment Fee"). The Late Payment Fee will be charged for each and every month that the Purchaser makes payment after the 10th day of such month. Upon default, including failure to pay upon final maturity, the interest rate on the amount due from Purchaser shall be Nine and 00/100 (9.00%) percent per annum.

CLERK OF COURT
SPARTANBURGH, SOUTH CAROLINA
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H. J. LULAVILEY

2. Seller hereby represents and warrants that the Property is free and clear of all liens and encumbrances and other objections, except for those items set forth in the certified title opinion of Joshua O.C. Lonon, Esq. dated December 30, 2010, and updated as of the date of this instrument, attached hereto as Exhibit "B" and incorporated herein by reference. Purchaser hereby subordinates this Contract for Deed to first and second mortgages on the Property listed on Exhibit "B" under item(s) 16 and 17 and referenced herein as Mortgage No. 1 and Mortgage No. 2, respectively.
3. Upon Purchaser making all payments and performing all other covenants and agreements herein set forth to be performed by Purchaser, Seller shall convey the Property, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, to Purchaser free and clear of all liens, encumbrances and other objections by a good, fee simple general warranty deed. At the time of the conveyance of the Property by Seller to Purchaser, Purchaser shall be responsible for and pay (a) the cost of the preparation of the Deed and (b) the fees associated with the transfer and recording of the Deed and (c) the costs associated with or arising out of the transfer of the LLC shares.
4. Purchaser shall pay, when due, *ad valorem* (real property) taxes and other governmental charges for the tax year 2011, and thereafter for full

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Property as a result of Seller's acts or omissions, Purchaser after actual notice thereof, may in addition, cease to make payments to Seller under the note directly payable to Seller as called for set forth under Paragraph 1(j) and shall have the right of setoff against any amounts due for any such liens or encumbrances including costs arising therefrom and reasonable attorney fees. Should a judgment be filed against the Purchaser affecting the Property, or should an encumbrance be placed against the Property as a result of Purchaser's acts or omissions, Seller after actual notice thereof, may in addition, add to the principal balance of the promissory note under Paragraph 1(j) any amounts due for any such lien or encumbrances including costs arising therefrom and reasonable attorney fees.

6. Purchaser shall receive possession of the Property upon the execution of this Contract for Deed, and thereafter Purchaser shall be entitled to use and enjoy the Property to the same extent as if Purchaser had full and complete legal and equitable title thereto, subject to the terms, conditions, rules and regulations of the Conservation Easement and Greenspace of Fairview, LLC, as fully disclosed to the Purchaser prior to execution of this Contract for Deed.
7. Purchaser shall pay when due all charges for utility services, including, but not limited to, water, heating, gas, electricity, telephone and sewer

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service furnished to the Property.

8. Purchaser shall pay when due all fees and assessments associated with Greenspace of Fairview, LLC, in accordance with the restrictive covenants and/or operating agreement. Seller shall consult with Purchaser regarding any votes cast and exercising any voting rights under the Property's membership interest in Greenspace of Fairview, LLC.
9. In the event of a disallowance by the IRS and/or the South Carolina Tax Commission, which prevents both parties from the benefits of a deduction for interest or depreciation or capital gain on the Property, then it is hereby agreed by and between the parties hereto that those deductions disallowed by both parties resulting from transactions occurring after the date hereof shall accrue to the benefit of the Purchaser. As a result, upon receipt of the governmental agencies reports, commonly known as IRS Form 1098, for payment of interest of the respective first and second mortgages as set forth herein, issued by Mortgage No. 1 and Mortgage No. 2 to Seller, Seller shall issue the same governmental agencies reports for all interest payments paid by Purchaser on behalf of and directly to Seller. Seller may assign this task to Purchaser's obligations with Seller's verification of information reported.
10. Seller shall report to all credit reporting agencies the payment history of the Purchaser for each payment obligation hereunder. Seller may assign

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M. J. C. BULLOCK, JR.

this task to Purchaser's obligations with Seller's verification of Information reported.

11. Purchaser shall keep all improvements upon the Property in good repair and shall not commit waste or permit impairment or deterioration of said improvements. Purchaser accepts possession of the property in its present "AS-IS" condition as of the date of this Contract for Deed. It is understood and agreed that Purchaser accepts and assumes any and all risk of loss to all trees, shrubs, or other damage to the property due to fire or other casualty, acts of God and the elements from the date hereof. It is understood and agreed between the Seller and Purchaser that Purchaser will maintain a policy of hazard insurance on the Property in an amount not less than \$1,400,000.00 and will name Seller on such policy as a loss payee and provide Seller annual notice of same.
12. The following shall constitute events of default of Purchaser hereunder:
 - (a) The Purchaser's failure to pay an installment of principal or interest, or any other sum, within thirty (30) days of the date when it is due under this instrument. Any default by Purchaser under any one of the notes referred to hereinabove in Paragraph 1 shall be deemed a default under all of the notes.
 - (b) The Purchaser's assignment of any or all of Purchaser's interest in the Property, without the Seller's prior written consent.

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- (c) The Purchaser's failure to maintain the Property in good condition and in compliance with all restrictive covenants and in compliance with the Conservation Easement and the rules and regulations promulgated by Greenspace of Fairview, LLC and the restrictive covenants, as fully disclosed to the Purchaser prior to execution of this Contract for Deed.
- (d) The commencement of any proceeding under the Federal Bankruptcy Code or any law of the United States or of any state relating to Insolvency, receivership or debt adjustment by the Purchaser, or the commencement of any such proceeding against the Purchaser which results in the institution of any such proceedings against the Purchaser and is consented to by the Purchaser or remains undismissed for sixty (60) days, or the Purchaser is adjudicated a bankrupt, or a trustee or receiver is appointed for any substantial part of the Purchaser's property, or the Purchaser makes an assignment for the benefit of creditors, admits in writing an inability to pay debts generally as they become due or becomes insolvent.
- (e) The Purchaser's failure to pay when due and payable all *ad valorem* (real property) taxes against the Property.
- (f) The Purchaser's failure to maintain a policy of hazard insurance on

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the Property in an amount not less than \$1,400,000.00 and to name Seller on such policy as a loss payee, and to provide Seller annual notice of same.

- (g) The Purchaser's failure to pay, when due, all fees and assessments associated with Greenspace of Fairview, LLC in accordance with the restrictive covenants and/or operating agreement.

13. Upon the occurrence of any event of default or other nonperformance or noncompliance by Purchaser of any term or condition herein, Seller shall give Purchaser written notice of same and Purchaser shall cure such default, non-performance or non-compliance within thirty (30) days after the Purchaser's receipt of written notice thereof from Seller. In the event that Purchaser fails to cure such default, nonperformance or noncompliance, then the Seller at its option, may seek to divest the Purchaser of its interest under the terms of this Contract for Deed. The Seller's interest in the Property shall be treated as the interest of the holder of a third mortgage on the Property and the remedy of the Seller shall be to foreclose the interest of the Purchaser in the same manner as the Seller would foreclose the interest of the Purchaser as if the Seller were the Mortgagee under a third mortgage and the Purchaser were the Mortgagor, and the Purchaser shall be liable for all costs arising therefrom including reasonable attorney fees. The remedies set forth herein shall

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instances are not exclusive, but cumulative and in addition to all other remedies which may exist under the law.

14. In the event Seller fails, neglects, or refuses to perform, in whole or part, any of the covenants, agreements, or obligations herein provided upon the part of the Seller to be performed, Purchaser shall give Seller written notice of same and Seller shall cure such default, non-performance or non-compliance within thirty (30) days after the Seller's receipt of written notice thereof from Purchaser. In the event that Seller fails to cure such default, nonperformance or noncompliance, then the Purchaser, at its option, is hereby authorized and empowered, at the cost of the Seller, to perform or cause to be performed, any or all of said covenants, agreements and obligations, and expend such sums of money as may be reasonable therefore, or for any other purpose which is, in the opinion of the Purchaser, reasonably necessary for the protection of the Property. All such sums of money so expended by Purchaser, together with interest thereon, at the rate of five percent (5%) from the several dates of expenditure thereof until paid, shall become indebtedness under this agreement and shall be repaid by Seller to the Purchaser, immediately upon demand, at the address of the Purchaser as set forth in Paragraph 17 herein. Any failure, neglect, or refusal by Seller to repay the sums as herein provided shall constitute a default hereunder and the Seller shall be

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liable for any and all costs arising therefrom including reasonable attorney fees. Purchaser, at its option, may deduct from any payments due directly to Seller under the terms and conditions of this agreement as set forth under Paragraph 1(j). In the event Purchaser fails, neglects, or refuses to perform, in whole or part, any of the covenants, agreements, or obligations herein provided upon the part of the Purchaser to be performed, Seller shall give Purchaser written notice of same and Purchaser shall cure such default, non-performance or non-compliance within thirty (30) days after the Purchaser's receipt of written notice thereof from Seller. In the event that Purchaser fails to cure such default, nonperformance or noncompliance, then the Seller, at its option, is hereby authorized and empowered, at the cost of the Purchaser, to perform or cause to be performed, any or all of said covenants, agreements and obligations, and expend such sums of money as may be reasonable therefore, or for any other purpose which is, in the opinion of the Seller, reasonably necessary for the protection of the Property. All such sums of money so expended by Purchaser, together with interest thereon, at the rate of five percent (5%) from the several dates of expenditure thereof until paid, shall become indebtedness under this agreement and shall be repaid by Purchaser to the Seller, immediately upon demand, at the address of the Seller as set forth in Paragraph 7

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herein. Any failure, neglect, or refusal by Purchaser to repay the sums as herein provided shall constitute a default hereunder and the Purchaser shall be liable for any and all costs arising therefrom including reasonable attorney fees.

15. Failure or delay of either party hereto to enforce any right or to exercise any option available because of any default hereunder shall not constitute a waiver of the right to exercise same in the event of any subsequent default.

16. At all times while this Contract for Deed is in effect or while said Property is occupied by Purchaser, Seller shall not be liable or responsible for any activities or accidents that may occur on or in connection with Purchaser's use of said Property. Purchaser shall be solely responsible for any damage, injury or other loss, to persons or property that may occur upon the property as a result of the negligent, unlawful or willful act or omission of the Purchaser or their visitors and shall defend, indemnify and hold the Seller harmless for any damage, loss or expense resulting therefrom.

17. All notices, requests and other communications between the parties and or in connection with this Contract for Deed shall be in writing and mailed by registered or certified mail, return receipt requested, at the below address, until written notice to the contrary:

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Seller: 101 E. Rutherford Street
Landrum, SC 29356
Purchaser: 405 East Springs Road
Columbia, SC 29223

18. This Contract for Deed represents the entire agreement between the parties, and no warranties, representations, promises or statements have been made by either party unless endorsed hereon in writing and duly executed by the parties.
19. This Contract for Deed shall be construed according to the laws of South Carolina.
20. This Contract for Deed shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. All rights and remedies given to either party herein, or by law, shall be cumulative and alternative. If any provision of this Contract for Deed is held invalid or unenforceable, the remainder of it shall not be affected thereby and to this end the provisions hereof are declared severable.
21. The Seller represents that there is no real estate commission due to any real estate broker as a result of the execution of this contract for deed for the future transfer of legal title to the subject property.
22. The parties acknowledge that the Property is currently encumbered by mortgages which give the mortgagee(s) the right to demand immediate

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payment in full from the mortgagor in the event of any full or partial transfer of legal or equitable title by the mortgagor (the "Due on Sale Clause"). This Contract for Deed may be construed to be in violation of the Due on Sale Clause and may cause the Mortgagee(s) to demand full payment on its/their respective note(s). The mortgage(s) also allow(s) for the mortgagee(s) to bring a foreclosure action upon the subject property for failure to make payments when due, failure to insure the property or other violations of the terms of mortgage(s), which could result in a loss of the Purchaser's equitable interest in the subject property and other damages to the Purchaser. The Seller expressly agrees to hold the Purchaser harmless and to indemnify the Purchaser for proximate damages resulting from enforcement of the Due on Sale Clause of the mortgage(s). The Seller also expressly agrees to hold the Purchaser harmless and to indemnify the Purchaser for proximate damages or for any violation of the terms of the mortgage(s) that is/are not the fault of the Purchaser.

[SIGNATURES ON FOLLOWING PAGES]

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M. HOPE BLAUNLEY

IN WITNESS WHEREOF, the undersigned party hereto has caused this Contract
for Deed to be executed the day and year first above written.

WITNESSES:

AS TO SELLER:

Witness No. 1

Witness No. 2 Notary

Alyce F. Otto, as Trustee under the
Declaration of Trust of Alyce F. Otto
dated November 17, 2009, Seller

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that
she saw the within named Alyce F. Otto, as Trustee under the Declaration of Trust of
Alyce F. Otto dated November 17, 2009, Seller, sign, seal and as its act and deed,
deliver the within written Contract for Deed and that she with the other witness whose
name is subscribed above witnessed the execution thereof.

Witness No. 1

SWORN to and before me this _____ day of March, 2011.

Notary Public for South Carolina

My commission expires: 4/6/2012

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M. HOPE BLAUGLEY

IN WITNESS WHEREOF, the undersigned parties hereto has caused this Contract
for Deed to be executed the day and year first above written.

AS TO PURCHASER:

Witness No. 1

Jackson L. Munsey, Jr., Purchaser

Witness No. 2/Notary

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that
she saw the within named Jackson L. Munsey, Jr., Purchaser, sign, seal and as his act
and deed, deliver the within written Contract for Deed and that he with the other
witness whose name is subscribed above witnessed the execution thereof.

SWORN to and before me this 4th day of March, 2011.

[Signature] (SEAL)

Notary Public for South Carolina
My commission expires: 4/6/2011

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EXHIBIT A

PROPERTY DESCRIPTION
1825/1841/1835 Fairview Farms Road
Tax Map No. 1 03-00 003.00

All that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, County of Spartanburg containing 25.08 acres, more or less, and being shown as Distribution Tract G on a plat of survey for Greenspace of Fairview, LLC, dated August 2, 2001 by Mitchell Surveying and recorded in Plat Book 151 at page 523. Reference is made to said plat and the record thereof for a more complete and accurate description.

This being a portion of the same property conveyed to Alyce F. Otto, Trustee under Declaration of Trust of Alyce F. Otto dated the 17th Day of November, 2009 by Deed of Alyce F. Otto recorded November 24, 2009 in Deed Book 95 A at page 439. Also, being a portion of the same property conveyed to Rudrick George Otto, Trustee under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009 by Deed of Rudrick G. Otto recorded November 24, 2009 in Deed Book 95 A at page 435. Reference is also made to the deed from Alyce F. Otto, Successor Trustee under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009 to Alyce F. Otto, Trustee under Declaration of Trust of Alyce F. Otto dated the 17th day of November, 2009, said deed being dated February 9, 2011 and recorded February 10, 2011 in Deed Book 97-V, Page 181.

All referenced recordings are in the Register of Deeds Office for Spartanburg County, South Carolina unless otherwise noted herein.

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2012-CP-42-3549

U.S. Bank, NA as Trustee relating to)
The Chevy Chase Funding, LLC)
Mortgage Backed Certificates,)
Series 2004-B,)

Plaintiff,)

-vs-)

Alyce F. Otto, individually;)
Alyce F. Otto, Trustee Under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09; TD Bank, NA;)
The United States of America,)
Acting by and through its agency,)
The Internal Revenue Service;)
Laura Kerhulas Giese, as co-)
Trustee of the Theodore Ernest)
Kerhulas Trust Under Declaration)
Of Trust dated 5/25/04; Mark)
Warner Kerhulas, as co-Trustee of)
The Theodore Ernest Kerhulas)
Trust Under Declaration of Trust)
Dated 5/25/04; Jackson L. Munsey,)
Jr.; and Citibank, NA,)

Defendants.)

And)

Jackson L. Munsey, Jr.)

Cross-Claim Plaintiff,)

-vs-)

Alyce F. Otto, Individually; and)
Alyce F. Otto, Trustee under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09,)

Cross-Claim Defendants.)

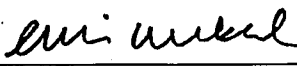
CERTIFICATE OF SERVICE

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The undersigned certifies that she served the **SUMMONS and ANSWER, COUNTERCLAIMS, AND CROSS-CLAIMS** in the above-captioned matter, by depositing the same into the U.S. Mail, first class delivery, postage prepaid, addressed as follows:

Mary R. Powers
Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29202
ATTORNEY FOR THE PLAINTIFF

Kenneth C. Anthony, Jr.
PO Box 3565
Spartanburg, SC 29304
ATTORNEY FOR THE DEFENDANT ALYCE F. OTTO



Erin Culbertson

December 21, 2012
Greenville, SC

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PL. HON. E. BLAUNLEY

1	STATE OF SOUTH CAROLINA)	
2	COUNTY OF SPARTANBURG)	COURT OF COMMON PLEAS
3	U.S. BANK, NA, AS TRUSTEE RELATING)	
4	TO THE CHEVY CHASE FUNDING, LLC,)	
5	MORTGAGE BACKED CERTIFICATES,)	
6	SERIES 2004-B,)	
7	PLAINTIFF,)	
8	-VS-)	TRANSCRIPT OF MOTIONS
9		(2012CP42-3549)
10	ALYCE F. OTTO, INDIVIDUALLY; ALYCE F.)	
11	OTTO, TRUSTEE UNDER DECLARATION OF)	
12	TRUST OF ALYCE F. OTTO, DATED 11/17/09;)	
13	TD BANK, NA; THE UNITED STATES OF)	
14	AMERICA, ACTING BY AND THROUGH ITS)	
15	AGENCY, THE INTERNAL REVENUE)	
16	SERVICE ; LAURA KERHULAS GIESE, AS)	
17	CO-TRUSTEE OF THE THEODORE ERNEST)	
18	KERHULAS TRUST UNDER DECLARATION)	MAY 6, 2013
19	OF TRUST DATED 5/25/04; MARK WARNER)	
20	KERHULAS, AS CO-TRUSTEE OF THE)	
21	THEODORE ERNEST KERHULAS TRUST)	
22	UNDER DECLARATION OF TRUST DATED)	
23	5/25/04; JACKSON L. MUNSEY, JR., AND)	
24	CITIBANK, NA,)	
25	DEFENDANTS.)	Spartanburg, South Carolina

18	REFERENCE HELD:	MAY 6, 2013.
19	BEFORE:	HONORABLE GORDON G. COOPER,
20		MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.
21	APPEARANCES:	ROGERS, TOWNSEND & THOMAS, PC
22		BY: ERICA G. LYBRAND, ESQUIRE,
23		Attorneys for the Plaintiff.
24		THE ANTHONY LAW FIRM, PA
25		BY: KENNETH C. ANTHONY, JR., ESQUIRE,
		Attorneys for Alyce Otto, Individually and as Trustee
		under Declaration of Trust of Alyce F. Otto.

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KEHL, CULBERTSON, ANDRIGHETTI, KORNFELD
BY: ERIN CULBERTSON, ESQUIRE,
Attorneys for Jackson Munsey, Jr.

Sarah Hollis, Court Reporter

1 THE COURT: All right. This is Case number 2012-3549, U. S. Bank, NA, versus Alcy F.
2 Otto, et al. It looks like we have got two Motions filed by the Defendant, by one of the
3 Defendants Jackson L. Munsey, Jr. One of them is the Motion to Set Aside Default and Leave to
4 File Answer Outside of Time and the other is a Motion to Consolidate. Are those the Motions
5 that we have pending?
6 MS. LYBRAND: Yes, Your Honor.
7 THE COURT: All right. Are we ready to proceed?
8 MS. CULBERTSON: We are Judge.
9 THE COURT: All right.
10 MS. CULBERTSON: I am Erin Culbertson. I am here on behalf of the moving Defendant
11 Jackson Munsey. I figured that maybe we could do the Default hearing first.
12 THE COURT: All right.
13 MS. CULBERTSON: That may result on our consolidation issue. And by way of background
14 there is a companion action pending. And to explain the situation between them all. My client
15 has purchased a piece of property in Campobello. A pretty significant piece of property at a
16 million and half dollars from the Defendant, Mrs. Otto. He purchased it by means of a bond for
17 title and Mrs. Otto is the mortgagor. Her mortgage is with U. S. Bank who has brought this
18 foreclosure action. U. S. Bank is foreclosing against Mrs. Otto and we are named as a Defendant
19 because our Bond for Title is of record. Mrs. Otto has also filed a foreclosure against my client
20 to foreclose that Bond for Title. So there are two foreclosures pending against the subject
21 property. My client is in default and I am not sure exactly what the date of default was, I am
22 sorry. I will double check that. But he was served the end of August and at that point he was in
23 fairly regular contact with Mr. Anthony who represents Mrs. Otto. And he was hopeful that they
24 were going to be able to get a reinstatement amount and make the foreclosure go away. In fact,
25 however, they weren't able to do so. When it became apparent that there wasn't going to be a

1 quick and amicable resolution my client hired me. I filed our Answer, I filed the Motion to Set
2 Aside the Default as well I filed the Motion to Consolidate the two actions. So we are here today
3 on my Motions. I don't think that there is any magic to any of this case. Obviously the "good
4 cause" standard is a lenient one. I think it is fairly important to look at the other three set aside
5 default issues which is the timing. My client clearly was in default and did not answer within his
6 thirty (30) day period. But as I said I think he was hopeful to reach a resolution such that an
7 Answer would not be necessary. As soon as he contacted me, I filed immediately. I think that
8 there is also several meritorious defenses in this action. Judge we have alleged that Chase, who is
9 the servicer of this loan, and also Judge by way of background I want you to know that my client
10 was making payments directly to Chase without going through Mrs. Otto. Chase began returning
11 all payments sending checks back to Mrs. Otto. Which we were not ever in the chain of
12 communication when all of that began happening. We simply were served with a Notice of
13 Default and the note got called due. The first we learned that our payments had been refused was
14 several months after they had started the foreclosure proceedings. So we filed some
15 Counterclaims and some Cross-claims saying that there is no reason for those payments to be
16 refused. Mrs. Otto breached her duty under our Bond for Title to communicate that information
17 with us. To date, I have never seen an accounting and I don't know why those payments began
18 being refused. So I believe that there are some meritorious defenses to take a look at. And then
19 the final default that we will talk about is prejudice to the non-moving party. And I would say
20 that the foreclosure is a classic example of no prejudice because their interest can continue to
21 accrue should this not get resolved. Any prejudice on their part can be resolved in the form of
22 monetary damages. Obviously, Ms. Lybrand is opposed to my Motion and does not want us to be
23 allowed to set aside our default. So I will be glad to stop and let her address it.
24 THE COURT: Ms. Lybrand.
25 MS. LYBRAND: Thank you, Your Honor. My name is Erica Lybrand from Rogers, Townsend

1 and I represent the Plaintiff in this matter. We have filed a Memorandum in Opposition to Ms.
2 Culbertson's motion. Basically what we were looking at and case law state, we understand and
3 we recognize that the Motion to be Relieved from Default as you know is completely within your
4 discretion. However, there is a recent case, *Regions Bank v. Owens*, which was appealed from
5 Judge Spence, a Lexington County foreclosure case. In that case, the Defendant had not filed an
6 Answer based upon conversations with his co-Defendant. He was under some understanding that
7 the co-Defendant was going to file an Answer and had hired an attorney to file an Answer on
8 behalf of both of them. When he figured out that was not the case, he went and hired an attorney.
9 The attorney filed a motion to be relieved from default. In that particular case Judge Spence held
10 that he hadn't provided a good explanation for the default and that under our State law in the State
11 of South Carolina before you can get to those *Wham* factors which are you know, timing,
12 prejudice and meritorious defenses, the Defendant first has to show a good reason, a good cause
13 for the default in the first place. And that is where Judge Spence ruled that Defendant in the
14 *Owens* case has failed to meet that first standard. That initial step in keeping to have his default
15 set aside. Whether it was relying on another attorney or another Defendant who promises you
16 that they are going to file an Answer on your behalf is not sufficient to show a reason for your
17 default. Especially in light of the fact that particular Defendant in that case did not call that other
18 attorney to confirm that they were going to file an Answer on his behalf and had failed to follow
19 up on the status of the case. We have similar facts in this case. Mr. Munsey believed that Mrs.
20 Otto and or her attorney were working out some sort of settlement, with the Plaintiff. He didn't
21 call my law firm to find out about the status of the imminent settlement. He didn't file an
22 Answer or seek to protect his interest in any way in light of the fact that the settlement which they
23 do all the time, would fall apart. So it is our position in this case that Mr. Munsey did not have
24 that initial step to be relieved from default and that he has not shown good reason or a good
25 excuse or a good explanation for the default in the first place. And that *Owens* case cited within

1 our Memorandum in Opposition hold that you have to meet that first step before you can get to
2 the *Wham* factor analysis. If you don't meet that first step there is no need even to move onto the
3 *Wham* factors. That would be our position. And just for purposes of covering all of the bases,
4 you know we would obviously hold that Mr. Munsey, who is not a party to the loan documents,
5 does not have any meritorious defenses against the Plaintiff. As you know and it is kind of
6 unusual for me to be arguing just one motion when there are other motions that also affect this
7 case but the second action that Ms. Culbertson has discussed between Mrs. Otto, who is the
8 mortgagor, and Mr. Munsey who lives on the property and were paying payments apparently, Mr.
9 Munsey in that case apparently is in default. And he could have asserted and claimed what
10 defenses or whatever he had against Mrs. Otto in that case. So it kind of seems like this is an
11 attempt to double dip. It is an attempt to come back and rectify a situation that they are unable to
12 fix in the other case or he should be filing a Motion to Set Aside Default in the other case if he has
13 claims against Mrs. Otto, but obviously we feel as though there are no meritorious defenses
14 against the Plaintiff with Mr. Munsey. And then prejudice, we are entitled to interest as long as
15 this foreclosure sits on your docket, Your Honor. But you know the value of the property might
16 decline, the physical nature of the property, and any kind of repairs that might need to be done or
17 that kind of thing might also decline. So prejudice is not just whether or not we are going to have
18 any financial issues, obviously we will collect our interest for as long as it sits but you know we
19 are concerned too about the property. It is a very nice piece of property. It is worth a lot of
20 money or it was worth a lot of money at the time. And every day that it sits in foreclosure there is
21 a possibility that it declines in value. So obviously that is an argument against prejudice but of
22 course we would say that no *Wham* factor immunity should be discussed in this case because Mr.
23 Munsey has failed to provide an explanation for the default.

24 THE COURT: Counsel anything further?

25 MS. CULBERTSON: Your Honor, I submitted an Affidavit from my client and in connection

1 with my Motion, so the Court is aware of basically all of the factors that I know. Your Honor, I
2 did not represent him prior to December of this year so I can't exactly speak to his state of mind
3 other than to say that he was hopeful of reaching a settlement. Once Mr. Anthony, well I think it
4 sought of became apparent that our two (2) clients were not going to get along very nicely and
5 play well. And so Mr. Anthony obviously said you need to go get your own lawyer and stop
6 calling me. And that is when I came on board. That is as much as I know about that, Your
7 Honor.

8 THE COURT: All right. Mr. Anthony did not represent Mr. Munsey, is that right?

9 MS. CULBERTSON: Correct.

10 THE COURT: All right. As far as the Motion filed by Mr. Munsey to Set Aside Default and
11 Leave to File an Answer. I am going to deny that Motion. I don't feel like that there has been
12 enough showing of the requirements of why he did not timely file an Answer. There has been no
13 excuse offered. Mr. Anthony did not represent Mr. Munsey. And I don't see that there is any
14 good cause showing why he did not respond. If you will prepare that Order.

15 MS. LYBRAND: I actually have a proposed Order.

16 THE COURT: All right. Is there a need to take up the other matter?

17 MS. CULBERTSON: I believe that there is Judge.

18 THE COURT: If I have denied the Motion to Set Aside Default.

19 MS. CULBERTSON: I mean obviously it is your call.

20 THE COURT: Thank you.

21 MS. CULBERTSON: I didn't mean - - -

22 THE COURT: All right.

23 MS. CULBERTSON: I do believe that it is worth taking a look at simply because it is the same
24 people, the same property and the same pot of money.

25 THE COURT: Well let me ask you this. What is the status of the other case?

1 MS. CULBERTSON: The other case is -- has a default been filed in our case?
2 MR. ANTHONY: I do not remember.
3 MS. CULBERTSON: I have never received notice of the default.
4 MS. LYBRAND: I can answer that.
5 MS. CULBERTSON: Sure.
6 MS. LYBRAND: There has not been a default filed yet. I believe it has been referred, though.
7 MR. ANTHONY: It has been referred.
8 THE COURT: It has been referred, yes.
9 MR. ANTHONY: We have not requested a hearing because we were trying to see how this was
10 going to play out. And both should be consolidated. It does make sense to me to consolidate
11 the two, so if the property is going to be sold it only needs to be sold once.
12 MS. CULBERTSON: There is no resolution to our action without a resolution to this action, I
13 believe.
14 THE COURT: All right.
15 MRS. CULBERTSON: And I prepared simply my Motion just based on Rule 42. Just assuming
16 that this was sort of the most classic example of judicial economy. It has the same parties, the
17 same property, and the same pot of money. If this loan is going to get reinstated or paid off it
18 only can come from my client's funds not from Mrs. Otto's funds.
19 MS. LYBRAND: And Your Honor, I would disagree. Obviously I filed a Memorandum in
20 Opposition but Mrs. Otto's action against Mr. Munsey is initially a breach of contract. This is a
21 contract for deed. So it is a legal claim. The judicial efficiency issue comes barreling into the
22 courtroom here where we are talking about a legal claim versus an equitable foreclosure action.
23 If these two (2) cases were consolidated, we would likely be facing a motion or an order vacating
24 this reference, Order of Reference and send it back down to the circuit court we would then be put
25 on the circuit court roster and have to deal with any legal claims possibly through a jury trial.

1 THE COURT: How did the matter get referred? Was it referred by agreement of counsel or was
2 there a - - -

3 MS. CULBERTSON: That question is to Mr. Anthony, I believe.

4 MR. ANTHONY: We filed that like we do other foreclosures. It is an equitable matter.

5 THE COURT: Right.

6 MS. LYBRAND: So you are saying there is no jury trial demand even though there is a jury trial.

7 MR. ANTHONY: I don't think that we requested a jury trial.

8 MS. LYBRAND: No, it does say non-jury, I am sorry.

9 MR. ANTHONY: Right.

10 MS. LYBRAND: Beyond that issue, this issue between them is a private contract. The Plaintiff
11 was never a part of it and never made aware of it. In fact, those issues of whether or not
12 somebody was supposed to be making payments or returning payments and that sort of thing is
13 completely outside the scope of our straight forward mortgage foreclosure action. We obviously
14 have a prior lien. We would wholeheartedly disagree that there are similar facts. There are
15 different Complaints and the relief sought against different parties. Mrs. Otto is seeking relief
16 against Mr. Munsey and we are seeking relief against Mrs. Otto. I just feel that if we brought
17 these two cases together that would add additional confusion to the issues in the case. And there
18 is really no need, as far as I am concerned, in that case it appears that Mr. Munsey is in default as
19 you just ruled Mr. Munsey in default in this case. Therefore, he doesn't have any defenses in his
20 Motion to Consolidate the two (2) cases. You know it seems a little bit not warranted at this
21 point. You know it looks like Mrs. Otto can just proceed with her case and we can just proceed
22 with our case that we have for litigation with Mrs. Otto. But it just doesn't seem like it would be
23 warranted. It doesn't seem like it would have the effect that a consolidation is supposed to have.
24 Actually it would have the opposite. It would make this case longer and more confusing.

25 MS. CULBERTSON: In response Your Honor, I would respond that we contend that it was

1 Chase's negligence in refusing to accept payments that led to this situation, wherein we are forced
2 to defend the foreclosure by both Chase and Mrs. Otto. This one action led to two lawsuits,
3 basically.

4 MS. LYBRAND: Again Your Honor, Mr. Munsey is in default and doesn't have that opportunity
5 to raise the specifics of those issue and we have - - -

6 THE COURT: Well he is in default on the foreclosure part.

7 MS. CULBERTSON: Right.

8 THE COURT: But if nothing has been filed in the other case, it hasn't been ruled on whether he
9 is in default on that one or not.

10 MS. LYBRAND: Yes. I think there hasn't been a Certificate of Default but the time period with
11 which to answer has certainly expired.

12 THE COURT: There maybe different issues in that case, I don' know.

13 MS. LYBRAND: Right. I feel like that it would add to the confusion especially in light of the
14 fact that you ruled that he is now in default in this case. So if he sought relief from or if he is not
15 in default in that case we would have a situation of whether or not we are now being forced to
16 defend claims against or from Mr. Munsey that we probably shouldn't be if he is in default and he
17 has no defenses against the Plaintiff. Those issues could be a very few things and cause a delay.

18 MS. CULBERTSON: Are there not counterclaims pending on behalf of Mrs. Otto?

19 MS. LYBRAND: Mrs. Otto who you know, she is a party to the loan documents and we are
20 willing to move forward with litigating at trying to work out a resolution but you know she is a
21 party to the loan documents. She is not in default. She filed her Answer and counterclaims and
22 we are willing to move forward and we are going to work with Mr. Anthony on those. But you
23 know if the two cases were consolidated I would fear that Mr. Munsey would then attempt to raise
24 additional counterclaims or defenses or get involved in the litigation in a way that it would force
25 the Plaintiff to have to defend against claims from Mr. Munsey when he is now in default.

1 THE COURT: Well I am going to consolidate the cases. Because I figure if I get everybody in
2 one room together even I can understand what is happening.
3 MS. LYBRAND: I wasn't trying to say that - - -
4 THE COURT: No, I understand. But the status of that is he is in default on the foreclosure part
5 of it but Mrs. Otto in her part of it she has got counterclaims against the Plaintiff.
6 MS. LYBRAND: That is correct.
7 THE COURT: But I don't know where Mr. Munsey is as far as the other case. I haven't
8 looked at that case because it is not before me.
9 MS. LYBRAND: Right.
10 THE COURT: But I think that it would be better and if we get to a point where one part slows it
11 down we can carve out one part and cease with the other. So at least we have got all the issues
12 and got all of the facts. We don't have to, two months later revisit all of the facts. We have got
13 all of the facts going on the same tract and we can deal with it that way. So as far as the default
14 being set aside it is denied on that but the Motion to Consolidate is granted.
15 MS. LYBRAND: Thank you, Judge.
16 THE COURT: If you will prepare that?
17 MS. LYBRAND: I will.
18 THE COURT: All right. Send it to everyone.
19 MS. LYBRAND: Yes sir.
20 THE COURT: All right.
21 MS. LYBRAND: Thank you, Judge.
22 THE COURT: All right. Have a good day.
23 MR. ANTHONY: Thank you.
24 MS. CULBERTSON: Thank you.
25 -----END OF MOTIONS HEARING-----

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1 STATE OF SOUTH CAROLINA

2

COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

4

5

CERTIFICATE

6

7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County of
8 Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and accurate
9 Transcript of Motions of the proceedings had at the hearing of the captioned case, before the
10 Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South Carolina, on the
11 6th day of May, 2013.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13

14



15

Sarah Hollis

16

Court Reporter

17

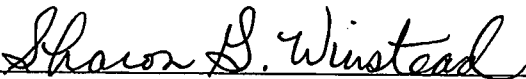
18 SWORN to before me this

19 5th day of February, 2016.

20 Spartanburg, South Carolina.

21

22



23 Notary Public for South Carolina

24 My Commission Expires: September 7, 2016.

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS

3 U.S. BANK, NA, AS TRUSTEE RELATING)
4 TO THE CHEVY CHASE FUNDING, LLC,)
5 MORTGAGE BACKED CERTIFICATES,)
6 SERIES 2004-B,)

7 PLAINTIFF,)

8 -VS-)

9 ALYCE F. OTTO, INDIVIDUALLY; ALYCE F.)
10 OTTO, TRUSTEE UNDER DECLARATION OF)
11 TRUST OF ALYCE F. OTTO, DATED 11/17/09;)
12 TD BANK, NA; THE UNITED STATES OF)
13 AMERICA, ACTING BY AND THROUGH ITS)
14 AGENCY, THE INTERNAL REVENUE)
15 SERVICE ; LAURA KERHULAS GIESE, AS)
16 CO-TRUSTEE OF THE THEODORE ERNEST)
17 KERHULAS TRUST UNDER DECLARATION)
18 OF TRUST DATED 5/25/04; MARK WARNER)
19 KERHULAS, AS CO-TRUSTEE OF THE)
20 THEODORE ERNEST KERHULAS TRUST)
21 UNDER DECLARATION OF TRUST DATED)
22 5/25/04; JACKSON L. MUNSEY, JR., AND)
23 CITIBANK, NA,)

24 DEFENDANTS.)

25 AND)

26 JACKSON L. MUNSEY, JR.,)

27 CROSS-CLAIM PLAINTIFF,)

28 -VS-)

29 ALYCE F. OTTO, INDIVIDUALLY; AND)
30 ALYCE F. OTTO, TRUSTEE UNDER)
31 DECLARATION OF TRUST OF ALYCE F.)
32 OTTO, DATED 11/17/09,)

33 CROSS-CLAIM DEFENDANTS.)

TRANSCRIPT OF TESTIMONY

(2012CP42-3549)

(2012CP42-2874)

November 24, 2015

Spartanburg, South Carolina

1 REFERENCE HELD:

NOVEMBER 24, 2015.

2 BEFORE:

HONORABLE GORDON G. COOPER,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

3
4 APPEARANCES:

ROGERS, TOWNSEND & THOMAS, PC
BY: ERICA G. LYBRAND, ESQUIRE,
Attorneys for the Plaintiff.

6

BURR & FORMAN, LLP
BY: RICHARD C. KELLER, ESQUIRE,
Attorneys for the Plaintiff.

7

8

THE ANTHONY LAW FIRM, PA
BY: KENNETH C. ANTHONY, JR., ESQUIRE,
Attorneys for Alyce Otto, Individually and as Trustee
under Declaration of Trust of Alyce F. Otto.

9

10

11

KEHL, CULBERTSON, ANDRIGHETTI, KORNFELD
BY: ERIN CULBERTSON, ESQUIRE,
Attorneys for Jackson Munsey, Jr.

12

13

GAINES & WALSH,
BY: DAVID L. WALSH, ESQUIRE,
Attorneys for Laura Kerhulas Giese and Mark Warner
Kerhulas, co-Trustees of the Theodore Ernest Kerhulas
Trust Under Declaration of Trust.

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Sarah Hollis, Court Reporter

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3	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4	ALAN BAXTER				
5	(Ms. Lybrand)	10		29	
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12	<u>EX.</u>	<u>DESCRIPTION</u>	<u>EXHIBITS</u>	<u>ID.</u>	<u>EV.</u>
13	<u>PLAINTIFFS:</u>				
14	PL. - 1	Copy of Note, dated August 18, 2004.			11
15	PL. - 2	Copy of Mortgage, Book 3290 at Page 70			11
16	PL. - 3	Copy of Assignment, Book 3290 Page 71.			13
17	PL. - 4	Copy of Title to Real Estate, Book 95-A, Page 439.			14
18	PL. - 5	Copy of Contract for Deed.			15
19	PL. - 6	Copy of Payment History.			16
20	PL. - 7	Copy of Two (2) Demand Letters.			17
21	PL. - 8	Affidavit of Statement of Account.			18
22	PL. - 9	Attorney's Fees Affidavit.			18
23	PL.-10	Affidavit of Costs.			18
24	PL.-11	Copy of Notice.			19
25					

1 **EXHIBITS CONTINUED**

2 **DEFENDANT OTTO EXHIBITS**

3			EXHIBITS		
4	<u>EX.</u>	<u>DESCRIPTION</u>		<u>ID.</u>	<u>EV.</u>
5	DEF.- 1	Copy of Contract for Deed.			45
6	DEF.- 2	Copy of TD Bank Statement.			48
7	DEF.- 3	Account Quick Report, December 31, 2012.			49
8	DEF.- 4	Copy of Settlement Statement.			50
9	DEF.- 5	Payoff Calculations.			52
10	DEF.- 6	Copy of Greenspace Invoice.			53
11	DEF.- 7	Capital Call.			53
12	DEF.- 8	Affidavit of Attorney's Fees.			54

13 **DEFENDANT MUNSEY EXHIBITS**

14			EXHIBITS		
15	<u>EX.</u>	<u>DESCRIPTION</u>		<u>ID.</u>	<u>EV.</u>
16	DEF.- 1	Copies of Three (3) Checks.			56

18 **DEFENDANT KERHULAS EXHIBITS**

19			EXHIBITS		
20	<u>EX.</u>	<u>DESCRIPTION</u>		<u>ID.</u>	<u>EV.</u>
21	DEF.- 1	Copy of Warranty Deed, Book 80-T, Page 257.			82
22	DEF.- 2	Copy of Mortgage 3 pages, Book 3290, Page 70.			83
23	DEF.- 3	Copy of Note, dated May 1, 2007.			84
24	DEF.- 4	Copy of Decree of Foreclosure and Sale.			85
25	DEF.- 5	Copy of Title to Real Estate, Book 95-A, Page 435.			86

1 DEFENDANT KERHULAS EXHIBITS CONTINUED:

2	EXHIBITS			
3	<u>EX.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
4	DEF.- 6	Copy of Title to Real Estate, Book 95-A, Page 439.		86
5	DEF.- 7	Copy of Title to Real Estate, Book 97-V, Page 181.		88
6	DEF.- 8	Copy of Certification of Trust, Book 97-V, Page 186.		89
7	DEF.- 9	Copy of Certification of Trust, Book 97-V, Page 173.		89
8	DEF.-10	Copy of Greenville County Public Index Sheet.		90
9	DEF.-11	Copy of Spartanburg County Public Index Sheet.		90

1 THE COURT: We go on the record in the case of U.S. Bank, NA as Trustee relating to the
2 Chevy Chase Funding, LLC, versus Alyce F. Otto, Individually, and Alyce F. Otto. Trustee Under
3 Declaration of Trust of Alyce F. Otto, et al. This is Case Number 2012CP42-3549 and
4 2012CP42-2874. Are we ready to proceed?
5 MS. LYBRAND: I believe so, Your Honor.
6 MR. ANTHONY: Yes sir.
7 THE COURT: All right.
8 MS. LYBRAND: We have a number of attorneys representing the multiple parties in this
9 matter.
10 THE COURT: All right. So why don't we go on the record as far as who is who and for whom.
11 MS. LYBRAND: Thank you, Your Honor. Erica Lybrand of Rogers Townsend for the Plaintiff.
12 MR. KELLER: Richard Keller of Burr & Forman for the Plaintiff as well, Your Honor.
13 THE COURT: All right.
14 MR. ANTHONY: Your Honor, I am Ken Anthony and I represent well she is listed as Alyce
15 Otto, but she actually goes by Patty, in both as a Defendant in the U. S. Bank action and in the
16 action that we commenced versus Mr. Munsey which has been consolidated with the U. S. Bank
17 foreclosure.
18 THE COURT: All right.
19 MS. CULBERTSON: Your Honor, Erin Culbertson on behalf of Jack Munsey.
20 THE COURT: All right.
21 MR. WALSH: Your Honor, my name is David Walsh and I am representing Mark Kerhulas and
22 Laura Kerhulas Giese, Trustees.
23 THE COURT: And they are judgment holders, is that correct?
24 MR. WALSH: That is correct.
25 THE COURT: All right. Any matters that we need to take care of preliminarily?

1 MS. CULBERTSON: Yes, Your Honor. I have filed a Motion for Relief from Entry of Default.
2 And I would like to address that before we proceed with today's hearing.
3 THE COURT: All right. Now counsel this was filed - - go ahead. Mr. Anthony you rise to
4 speak?
5 MR. ANTHONY: Yes. I saw an email yesterday and I know the Plaintiff's position is that this
6 is not proper. It has already been ruled upon and it is certainly not timely and we would take the
7 same position.
8 THE COURT: All right counsel. And that is my question. This matter has been pending well
9 since 2012.
10 MS. CULBERTSON: Yes, Your Honor.
11 THE COURT: And the Order relating to the entry of the default was addressed back in May
12 2013.
13 MS. CULBERTSON: Yes, Your Honor.
14 THE COURT: And there was no appeal from that and there was no motion for rehearing from
15 that so as far as I see that ruling on the setting aside of the default is the rule of this case. Now
16 what basis do you have for bringing this up again when I have already ruled on it?
17 MS. CULBERTSON: Well if I may, Your Honor. In the Motion Denying Default Relief it was
18 not interlocutory and it was not appealable. Furthermore, this is simply a renewed Motion for
19 Relief from the Default given that just as Your Honor pointed out this case has been pending for
20 two and a half years after you ruled on that original Motion holding us in default. The point
21 behind Your Honor Order was that U.S. Bank strongly opposed that Motion for Relief of Default
22 saying that they needed to proceed with the case. They had to keep it running along and that did
23 not happen, in fact the case has been going on for two and a half years since that point. Mr.
24 Anthony was allowed to amend this case as of July of this year. And Your Honor's ruling on that
25 matter said that although that Motion had been filed September 2013, through oversight it was

1 never served so Mr. Anthony was allowed to amend his case whereas Your Honor did not think
2 that my clients presented good cause under a pretty lenient Rule 55 (c) standard back in May of
3 2013. So it looks like we are dealing with you know two different leniencies. So I wanted to put
4 the Motion back in front of the Court simply to protect my client's interest and to protect the
5 record on appeal on this issue.

6 THE COURT: All right.

7 MS. CULBERTSON: That is all I needed to put on in this issue.

8 THE COURT: All right. Counsel?

9 MS. LYBRAND: Thank you, Your Honor. It is our position that Ms. Culbertson and her clients
10 are estopped from renewing this Motion that was previously ruled on as you mentioned in May of
11 2013. No 59(e) motion was had from your Order that was entered in May of 2013. And
12 additionally, just for clarification of the record as I understand it the Order was entered as a result
13 of the failure to meet the good cause standard. Not necessarily because of and I don't know
14 exactly what Ms. Culbertson just argued but specifically with regards to a case called *Regions*
15 *Bank v. Owens* which is entirely on point in this case. And Your Honor ordered that she failed to
16 meet that initial burden of even showing a good reason for the default and so we didn't even move
17 onto the factors in the *Wham* case but like I said as an initial matter the Plaintiff objects to any
18 Motion for Relief being heard at this point as it has already been ruled upon two (2) years ago and
19 it was filed on the eve of trial. There has been more than enough time for Ms. Culbertson to have
20 re-raised this issue and with regard to her comments as to Mr. Anthony's amendment Ms. Otto did
21 timely file an Answer and her Amendment was the result of a procedural issue as opposed to what
22 I understood to be new claims. So in that regard we would request that you deny this Motion and
23 allow us to proceed at the present time on the merits of this hearing today.

24 THE COURT: All right. Mr. Anthony anything?

25 MR. ANTHONY: We concur.

1 THE COURT: All right. And that is my feeling counsel that the fact that there was additional
2 things going in the main case does not give rise to a basis for a renewal of the Motion to Set Aside
3 Default. Once you are in default the fact that there is other things being renewed or amended or
4 whatever in the main case does not give a rise in my opinion to a basis for your client renewing
5 the Motion for Setting Aside. And counsel is correct. That was not a ruling on anything other
6 than that case, I can't remember the case.

7 MS. LYBRAND: *Regions Bank v. Owens.*

8 THE COURT: That was the case that it was not a showing of good cause and it still is not. So
9 as far as the Motion again that is before me to set aside default I am going to deny that motion and
10 proceed with this final hearing.

11 MS. CULBERTSON: Thank you, Your Honor.

12 THE COURT: All right. Counsel? Is the Plaintiff ready?

13 MS. LYBRAND: We are Your Honor and as a preliminary matter I don't know whether or not
14 both or either party intends to cross examine our witness. From what we had understood all of
15 the individual Defendants in this matter had consented to testimony by Affidavit except for Mr.
16 Munsey's counsel but I just want to make sure that we are all on the same page about how we are
17 going to proceed going forward. We are ready to call our witness but as to cross examination in
18 that regard I just didn't know about procedurally, we want both, and Mr. Munsey's counsel
19 present for objections in that nature of cross examination.

20 THE COURT: All right. Well lets deal with that.

21 MR. ANTHONY: We consented to the presentation by Affidavit, Your Honor. And did not
22 anticipate any cross examination if a witness is called.

23 THE COURT: All right.

24 MS. CULBERTSON: We do intend to cross examine the Bank's witness.

25 THE COURT: All right.

1 MS. LYBRAND: Thank you, Your Honor. The Plaintiff calls Alan Baxter.

2 THE COURT: All right sir.

3 **ALAN BAXTER, BEING DULY SWORN,**

4 **TESTIFIES AS FOLLOWS:**

5 **DIRECT EXAMINATION BY MS. LYBRAND.**

6 Q. Good morning Mr. Baxter. What company do you work for?

7 A. Capital One Bank.

8 Q. And where is the physical location of your office?

9 A. In Plainville, Texas.

10 Q. All right. And what is your job title at Capital One?

11 A. I am a Litigation Specialist.

12 Q. And what are some of your job duties as a Litigation Specialist?

13 A. Working with our litigation department, outside attorneys and litigation matters against
14 Capitol One.

15 Q. Okay. And what is Capitol One's relationship to the Plaintiff in this action, U. S. Bank,
16 NA as Trustee relating to the Chevy Chase Funding, LLC, Mortgage Backed Certificates,
17 Series 2004-B?

18 A. We are the servicer of the loan.

19 Q. And are you authorized to testify on behalf of the Plaintiff here today?

20 A. I am.

21 Q. In the ordinary course of your business or this business does Capitol One maintain records
22 for their mortgage loan that is the subject of this lawsuit today?

23 A. We do.

24 Q. And as part of your job duties are you familiar with those records maintained by your
25 company?

1 A. I am.
2 Q. And has Capitol One adopted the records of previous servicers on this loan?
3 A. Yes.
4 Q. And do you have personal knowledge of this mortgage loan based upon your review of
5 these records?
6 A. I do.
7 Q. All right. I am going to hand you two documents. Have you seen these documents
8 before?
9 A. Yes.
10 Q. Based upon your review of the records is this a copy of the note and the mortgage in this
11 matter?
12 A. Yes.
13 MS. LYBRAND: Your Honor, I would like to move to enter the Note as Plaintiff's Exhibit 1 and
14 the mortgage as Plaintiff's Exhibit 2.
15 THE COURT: Any objections?
16 MR. ANTHONY: No objections, to that.
17 MS. CULBERTSON: No.
18 THE COURT: All right. The note will be 1 and the mortgage will be two.
19 **MS. LYBRAND INTRODUCES INTO EVIDENCE A COPY OF A ADJUSTABLE RATE**
20 **NOTE DATED AUGUST 18, 2004, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 1.**
21 THE COURT: All right.
22 **MS. LYBRAND INTRODUCES INTO EVIDENCE A COPY OF A MORTGAGE**
23 **RECORDED IN MORTGAGE BOOK 3290 AT PAGE 070, MARKED AS PLAINTIFF'S**
24 **EXHIBIT NUMBER 2.**
25 THE COURT: All right.

1 Q. According to the note who is the borrowers on this mortgage loan?
2 A. Rudrick G. Otto and Alyce F. Otto.
3 Q. And when was the note signed?
4 A. August 18, 2004.
5 Q. And according to the note who was the original lender?
6 A. Chevy Chase Bank.
7 Q. And does this note cover the subject property address that we are here about today, 1841
8 Fairview Farms, Campobello, South Carolina?
9 A. It does.
10 Q. And at the time that the note was signed what was the principal amount borrowed under
11 the note?
12 A. Nine hundred ninety nine thousand five hundred (\$999,500.00) dollars.
13 Q. And is the note now endorsed to an entity or endorsed in blank?
14 A. Endorsed in blank.
15 Q. And is the Plaintiff in physical possession of the original note?
16 A. Yes.
17 Q. On the same date that the note was given did the borrowers also give a mortgage?
18 A. Yes.
19 Q. And is that mortgage also signed on the same date, August of 2004?
20 A. Yes.
21 Q. And what was that exact date. I am sorry?
22 A. August 18, 2004.
23 Q. August 18. And just for clarification of the record is that the same date on the note?
24 A. Yes.
25 Q. And does the mortgage cover the same property address?

1 A. It does.

2 Q. And does it constitute a first mortgage lien on the property address?

3 A. It does.

4 Q. And who signed the mortgage?

5 A. Also, Rudrick G. Otto and Alyce F. Otto.

6 Q. Has this mortgage been assigned?

7 A. Yes.

8 Q. Is this a copy of the assignment of the mortgage to the Plaintiff?

9 A. It is.

10 Q. And is the Plaintiff the current owner of the note and the mortgage?

11 A. They are.

12 MS. LYBRAND: I would like to move to admit the assignment of mortgage as Plaintiff's

13 Exhibit Number 3.

14 THE COURT: Any objections?

15 MR. ANTHONY: No objections.

16 THE COURT: All right. That will be Plaintiff's Exhibit 3.

17 **MS. LYBRAND INTRODUCES INTO EVIDENCE A COPY OF AN ASSIGNMENT**

18 **RECORDED IN BOOK 3290 AT PAGE 70, MARKED AS PLAINTIFF'S EXHIBIT**

19 **NUMBER 3.**

20 THE COURT: All right.

21 Q. I am going to hand you another document. Mr. Baxter have you ever seen this document?

22 Is this the document that was in the regular servicing file of Capital One?

23 A. It was not.

24 Q. Okay. Based upon your review of the records was Capital One ever notified that Mrs.

25 Otto transferred the property that we are here about today into a trust?

1 A. We were not.

2 Q. Was Capital One ever notified that Mrs. Otto conveyed the property at all into a trust or
3 any other entity?

4 A. No.

5 Q. Okay.

6 MS. LYBRAND: I would like to move to admit this as Plaintiff's Exhibit Number 4.

7 MR. ANTHONY: No objections to that either.

8 THE COURT: All right. That is Plaintiff's Exhibit 4.

9 **MS. LYBRAND INTRODUCES INTO EVIDENCE A COPY OF A TITLE TO REAL**
10 **ESTATE RECORDED IN BOOK 95. PAGE 439, MARKED AS PLAINTIFF'S EXHIBIT**
11 **NUMBER 4.**

12 THE COURT: All right.

13 Q. Would you please take a look at that for me again Mr. Baxter. Based upon your review
14 of the records was there any authorization or any other notes in the system with regards to
15 Mrs. Otto requesting authorization to convey the property into her trust?

16 A. No.

17 Q. And is transferring the property into a trust without authorization of the servicer or the
18 owner of the note a defaulting event pursuant to the terms of the note?

19 A. It is.

20 Q. Mr. Baxter have you ever seen this document?

21 A. No.

22 Q. Based upon your review of the records was this document obtained within the regular
23 servicing file of Capital One?

24 A. It was not.

25 Q. And based upon your review of the records was Capital One ever notified that Mrs. Otto

1 conveyed the property to Mr. Jackson Munsey or purported to convey an interest by
2 contract for deed?
3 A. No.
4 Q. And is there any record of Mrs. Otto requesting prior authorization to convey the property
5 to Mr. Munsey?
6 A. There is not.
7 MS. LYBRAND: We move to admit this as Plaintiff's Exhibit 5.
8 MR. ANTHONY: No objections.
9 THE COURT: This will be Plaintiff's Exhibit Number 5.
10 **MS. LYBRAND INTRODUCES INTO EVIDENCE A COPY OF A CONTRACT FOR**
11 **DEED, DATED MARCH 4, 2011, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 5.**
12 THE COURT: All right.
13 Q. Mr. Baxter again for the record is a conveyance of the property to Mr. Munsey by contract
14 for deed a defaulting event under the terms of the mortgage?
15 A. It is.
16 Q. In the ordinary course of its business does Capital One maintain an electronic payment
17 history for this loan?
18 A. Yes.
19 Q. And does that payment history record credits and charges to the loan?
20 A. It does.
21 Q. And is the payment history updated at or near the time that those credits are termed as
22 occurring?
23 A. Yes.
24 Q. I hand you this document. Based upon your review of this is this the payment history for
25 this loan?

1 A. It is.

2 MS. LYBRAND: I would like to move to admit this payment history as Exhibit 6.

3 MR. ANTHONY: No objections.

4 THE COURT: The payment history will be Exhibit 6.

5 **MS. LYBRAND INTRODUCES INTO EVIDENCE A COPY OF THE PAYMENT**
6 **HISTORY, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 6.**

7 THE COURT: All right.

8 Q. And at some point did the borrowers fall behind in their monthly mortgage payments and
9 default under the terms of the note?

10 A. They did.

11 Q. As a result of the borrower falling behind in their monthly mortgage payments was a
12 demand letter sent to them regarding the default for providing an opportunity to cure that
13 default?

14 A. It was.

15 Q. And is this two (2) separate letters that were sent?

16 A. Yes.

17 Q. And what are the dates on these letters?

18 A. November 2, 2011. Well both are November 2, 2011.

19 Q. And who were the letters addressed to?

20 A. Rudrick Otto and Alyce Otto.

21 Q. And again this letter was sent to multiple addresses is that correct?

22 A. Yes.

23 Q. And what is the mailing address on the addresses on the letters?

24 A. It is 101 East Rutherford Street, Landrum, South Carolina and 1841 Fairview Farms Road,
25 in Campobello, South Carolina.

1 Q. And the second letter 1841 is that the property address that we are here on today?
2 A. It is.
3 MS. LYBRAND: I move to admit the demand letters as Plaintiff's Exhibit 7.
4 MR. ANTHONY: No objections.
5 THE COURT: All right. Both letters then would be Plaintiff's Exhibit 7.
6 **MS. LYBRAND INTRODUCES INTO EVIDENCE COPIES OF TWO (2) DEMAND**
7 **LETTERS FROM CAPITAL ONE BANK, MARKED AS PLAINTIFF'S EXHIBIT**
8 **NUMBER 7.**
9 THE COURT: All right.
10 Q. Does the borrower owe certain sums of money to the Plaintiff?
11 A. Yes.
12 Q. And have you reviewed the records of the Plaintiff to determine what that amount is?
13 A. Yes.
14 Q. I hand you a copy of what is titled Affidavit of Verified Statement of Account. Can you
15 take a look at that for me, Mr. Baxter?
16 A. Yes.
17 Q. Have you ever seen that document?
18 A. Yes.
19 Q. Does it appear to be executed by an authorized representative of the Plaintiff?
20 A. It does.
21 Q. And is this an Affidavit regarding the amount of the debt owed in this case?
22 A. It is.
23 Q. And can you itemize for the record the amounts owed, for example indicate what the
24 principal amount due and accrued interest and any advances are individually?
25 A. The principal due is \$1,008,286.11. Interest due of \$129,017.00. Escrow advances for

1 hazard insurance of \$14,107.42. Taxes due of \$6,047.01. For a total of \$20,154.43. For
2 a total due of \$1,157,457.50.

3 Q. Okay. And is the Plaintiff asking for reasonable attorney's fees and costs as part of this
4 action?

5 A. Yes.

6 Q. All right.

7 MS. LYBRAND: Your Honor, I am moving to admit the Affidavit of Verified Statement of
8 Account, our Affidavit of Attorney's Fees and Affidavit of Costs.

9 THE COURT: Any objections?

10 MR. ANTHONY: No objections.

11 **MS. LYBRAND INTRODUCES INTO EVIDENCE AN AFFIDAVIT OF VERIFIED**
12 **STATEMENT OF ACCOUNT, DATED NOVEMBER 4, 2015, MARKED AS**
13 **PLAINTIFF'S EXHIBIT NUMBER 8.**

14 THE COURT: All right.

15 **MS. LYBRAND INTRODUCES INTO EVIDENCE AN AFFIDAVIT OF ATTORNEY'S**
16 **FEES, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 9.**

17 THE COURT: All right.

18 **MS. LYBRAND INTRODUCES INTO EVIDENCE AN AFFIDAVIT OF COSTS,**
19 **MARKED AS PLAINTIFF'S EXHIBIT NUMBER 10.**

20 THE COURT: All right.

21 MS. LYBRAND: As a final matter the Plaintiff would like to move to amend the Notice of the
22 Final Foreclosure Hearing for the record, Your Honor.

23 THE COURT: Any objections?

24 MR. ANTHONY: No objections, Your Honor.

25 THE COURT: All right. Exhibit Number 11.

1 MS. LYBRAND INTRODUCES INTO EVIDENCE A COPY OF A NOTICE OF FINAL
2 FORECLOSURE HEARING DATED NOVEMBER 3, 2015, MARKED AS PLAINTIFF'S
3 EXHIBIT NUMBER 11.
4 THE COURT: All right.
5 MS. LYBRAND: I don't know if in terms of would you rather us rest as to our witness and
6 present the remainder of our case or allow the cross to proceed at this time.
7 THE COURT: What other matters do you have?
8 MS. LYBRAND: I just need to itemize the debt including the total with the attorney's fees and
9 costs.
10 THE COURT: Well why don't you go ahead and do that.
11 MS. LYBRAND: Yes sir. Your Honor, we are asking for a total judgment amount including
12 attorney's fees and costs in the amount of \$25,994.10 for a total debt of \$1,183,451.60. And I
13 have no further questions, Your Honor.
14 THE COURT: All right. Lets go back and itemize that on the record.
15 MS. LYBRAND: Sure.
16 THE COURT: Lets go back to the principal.
17 MS. LYBRAND: The principal amount owed is \$1,008,286.11. Interest through today's date in
18 the amount of \$129,017.00. Escrow advances in the amount of \$20,154.43. Attorney's fees and
19 costs in the amount of \$25,994.10. For a total debt of \$1,183,451.60.
20 THE COURT: All right. And the Plaintiff is requesting a sale on what date?
21 MS. LYBRAND: The January sale, Your Honor.
22 THE COURT: And is this a waiver of deficiency?
23 MS. LYBRAND: It is a waiver of deficiency.
24 THE COURT: All right. And does the Plaintiff rest at this point?
25 MS. LYBRAND: The Plaintiff rest at this point, Your Honor.

1 THE COURT: All right. Mr. Anthony.

2 MR. ANTHONY: Your Honor, I didn't anticipate any cross examination and I should probably
3 ask Ms. Lybrand but I noticed in the workstation sheet, I don't remember the number of it, that
4 there were attorney advances and costs. Are those duplicated in the Affidavit from you?

5 MS. LYBRAND: The payment history includes all of the credits and debits to the account. So
6 any time that the servicer had paid my office or another office those would be of record as part of
7 the payment history. But the total amount due has been itemized out so that the attorney's fees
8 and costs are a separate line item from the escrow advances, interest and principal owed.

9 MR. ANTHONY: All right. Thank you.

10 THE COURT: All right. Does that satisfy your question?

11 MR. ANTHONY: Yes sir.

12 THE COURT: All right. Counsel.

13 MS. CULBERTSON: Thank you Judge.

14 **CROSS EXAMINATION BY MS. CULBERTSON.**

15 Q. I would like if we could Mr. Baxter just to ask a couple of questions about the previous
16 history, the payment history of the loan. Sometimes those are difficult to read and you
17 have more experience with that than we do. He doesn't have the actual exhibit. This is
18 Exhibit 6.

19 THE COURT: All right. Exhibit 6?

20 MS. CULBERTSON: Yes, Your Honor.

21 THE COURT: All right.

22 Q. Mr. Baxter if we could, we don't have to go all the way back to the beginning of time
23 necessarily, but if we look for example at May 23, 2011 and May 26, 2011 which is on the
24 seventh page of this exhibit statement, to go all the way back. Specifically there is a line
25 item dated May 26, which says Arm Loan Adjustment. This appears several times in this

1 statement I see and there is another one on May 23, for example. What does this Arm
2 Loan Adjustment mean?

3 A. It is an interest rate adjustment.

4 Q. And why was that included?

5 A. Because this is an adjustable rate mortgage.

6 Q. And so it would adjust between three (3) days times?

7 A. There would be adjustments periodically.

8 Q. Do you know what the note calls for as far as adjustments and the identification of same?

9 Well first it might be helpful if we would just establish what the interest rate is and how it
10 is determined, if you don't mind going through that with me. So when the note was
11 executed in August of 2004, what was the initial interest rate on the loan?

12 A. It was one point nine five (1.95).

13 Q. And was this an adjustable rate mortgage?

14 A. Yes.

15 Q. When was the first adjustment made? I think that it is under Section 2(B) on the first
16 page? It looks like it calls for October of 2004.

17 A. Oh, I am sorry yes.

18 Q. Would you agree with that?

19 A. Yes.

20 Q. Okay. And how is the rate determined on each interest rate change date?

21 A. By the LIBOR.

22 Q. Okay. And what is the LIBOR rate?

23 A. The London based index.

24 Q. And how specially is this note rate calculated?

25 A. The London based rate issue plus the additional of one-eight (1/8) of one (1) percent, I am

1 sorry, that is the rounding. Plus the addition of two point nine five (2.95%) percent plus a
2 rounding of point one two five (.125).

3 Q. And how frequently after that first change date in October of 2004, how frequently could
4 the rate change throughout the life of the loan? Well would you agree in that same
5 section 2(B) it says the first day of October 2004, and on every day of that month?

6 A. Every day and every month thereafter.

7 Q. You see that day of every month?

8 A. Right.

9 Q. So theoretically it could change on the first of the month.

10 A. Correct.

11 Q. Any month after August of 2004?

12 A. Yes.

13 Q. So if we could go back to this account statement where we were on Page 7, I believe.

14 A. Right.

15 Q. You are showing an adjustment on May 23 and May 26?

16 A. Yes. I had not looked at this before and I don't know why it would show two (2).

17 Q. And similarly on the next page, 4 on Page 6. Don't you agree that there is shown an
18 adjustment on July 11 as well as July 5. Excuse me, on July 1, I am sorry July 1 and 11,
19 on July 1 and July 5?

20 A. Yes.

21 Q. And do you have any explanation as to why that would change twice in the month?

22 A. Well both of those two are exactly the same. Point zero three one two five, they would be
23 exactly the same.

24 Q. Why would it be two (2) different line items?

25 A. I have no answer to that.

1 Q. Okay. Under the - - -
2 A. If I can say this - - -
3 Q. Excuse me.
4 A. Those are not the screens. Those are tracked. Actual interest rate changes. There are
5 other screens other than that.
6 Q. Okay. So what would this document represent then?
7 A. So this is a payment history of transactions that happened on the account. You know
8 credits and debits are going on the account. Not necessarily the interest rate changes.
9 Those are tracked separately and I have looked at interest rate changes on this payment
10 history.
11 Q. Thank you for that. If we could go back to the promissory note just again to establish how
12 the interest rate changes over time. What is the Bank's obligation to notify the borrower
13 of what each month's interest rate is?
14 A. I don't see that indicated.
15 Q. I think that it is on Page 3, Section 4. I believe that is what addresses this issue.
16 A. I am sorry. The note holder will deliver or mail to me a notice of any changes in the
17 amount of my minimum payment at least 25 days before the effective date of any change.
18 Q. And that notice further will show what the next interest rate should be and what the
19 payment amounts are to, is that correct?
20 A. Correct.
21 Q. Okay. So the payment could theoretically change on the first day of every month that
22 would mean that the note holder was obliged to provide notice of that change 25 days
23 before that so a statement would have to be sent out by say the fifth of the previous month,
24 somewhere near there?
25 A. Correct.

1 Q. In order to notify of the amount?

2 A. Yes.

3 Q. Okay. And do you have a record of statements sent to the borrower?

4 MS. LYBRAND: Your Honor, I object to that.

5 THE COURT: I agree with that. Counsel you are crossing into matters that are not between
6 your client and the Bank.

7 MS. CULBERTSON: If I could explain?

8 THE COURT: I want to know why you are going in that direction.

9 MS. CULBERTSON: Okay. The issue is that my client was not given the bank statements - - -

10 THE COURT: I understand. But they had no obligation to give your client bank statement?

11 MS. CULBERTSON: Correct. The lender did not.

12 THE COURT: Exactly.

13 MS. CULBERTSON: What I am trying to establish is that the lender was providing bank
14 statements to the note holder.

15 THE COURT: Regardless. Regardless of that. You are in default at this point. The question is
16 the damage. The debt.

17 MS. CULBERTSON: Correct.

18 THE COURT: Not notification.

19 MS. CULBERTSON: Okay.

20 THE COURT: So I will sustain the objection.

21 MS. LYBRAND: Thank you, Your Honor.

22 MS. CULBERTSON: Okay.

23 Q. I do have a couple of additional questions for you Mr. Baxter relating to the insurance that
24 was placed on the property, the hazard insurance which is part of the itemized debt which I
25 believe was Exhibit 8. The hazard insurance amount that is placed on the property?

1 A. Yes.

2 Q. Can you tell me how that number was established and what their obligation is as far as
3 purchasing that hazard insurance?

4 MS. LYBRAND: I am going to object again, Your Honor.

5 THE COURT: All right.

6 MS. LYBRAND: As to the issue with regard to force placing the hazard insurance. That has not
7 been an issue in this case, that was not brought up as a defense or a counterclaim. And this is just
8 an itemization of the amounts that were paid for those insurance policies which we had not
9 previously been notified that anybody took issue with. And so I just object to any questioning by
10 the third party.

11 THE COURT: Your Honor, I am allowed to cross examine as to damages and this is an element
12 of damages.

13 THE COURT: I am going to sustain that objection.

14 MS. LYBRAND: Thank you, Your Honor.

15 THE COURT: Because I don't think that hazard insurance covered anyone other than the
16 borrower and the Bank.

17 MS. LYBRAND: That is correct. It would have been the - - -

18 THE COURT: It had nothing to do with the contract for deed holder.

19 MS. LYBRAND: That is correct, Your Honor.

20 MS. CULBERTSON: Your Honor, I will renew my argument that this is an item of damages
21 about which I am allowed to cross examine.

22 THE COURT: I will sustain the objection.

23 MS. CULBERTSON: May I ask Mr. Baxter and according to your discretion what period of time
24 that hazard insurance covers?

25 MS. LYBRAND: I am going to renew my objection, Your Honor.

1 THE COURT: Counsel what I am trying to understand is that hazard insurance had nothing to do
2 with your client.

3 MS. CULBERTSON: Your Honor, it is a line item of damages.

4 THE COURT: Again it doesn't have anything to do with your client. The payment history does.
5 But your client has no interest in that insurance.

6 MS. CULBERTSON: Well Your Honor my client is an equitable property holder and has an
7 equitable right of redemption under this bond for title as to any lien against the property and so I
8 believe that we are fully entitled - - -

9 THE COURT: Excuse me. He has got an equitable right of redemption, is that what you are
10 saying?

11 MS. CULBERTSON: Yes, Your Honor.

12 THE COURT: When he is in default? Is that - - -

13 MS. CULBERTSON: Any title holder has an equitable right of redemption in a foreclosure
14 proceeding, Your Honor.

15 MS. LYBRAND: Your Honor, for the record we object to that.

16 THE COURT: And you are saying that your client is in default but he still has an equitable right
17 of redemption?

18 MS. CULBERTSON: Yes, Your Honor.

19 THE COURT: I am going to sustain the objection at this point. I am trying counsel to get you to
20 focus or to get me to focus on your damages that you are trying to track here.

21 MS. CULBERTSON: I understand.

22 THE COURT: I understand what your point is but I need to know where you are going as far as
23 an amount that affects your client.

24 MS. CULBERTSON: Your Honor simply this is going to be the debt that establishes the
25 foreclosure sale amounts that affect everything going forward with regards to the property to

1 which my client retains an equitable claim.

2 THE COURT: Okay. So it is your position that your client has an equitable claim even though
3 your client is in default in this action?

4 MS. CULBERTSON: The foreclosure filed by neither party has been adjudicated nor has the
5 property been sold to wipe out the client's equitable claim. And my position is I believe the case
6 law supports that a foreclosure is not complete until the sale. And so any point up until then, any
7 equitable rights in the property remain.

8 THE COURT: Notwithstanding the default of your client.

9 MS. CULBERTSON: Notwithstanding the default of my client. Yes, Your Honor.

10 THE COURT: All right. I am going to let you proceed but I am going to hold you on your track
11 with your client.

12 MS. CULBERTSON: That is fine, Your Honor. I understand that.

13 THE COURT: All right.

14 Q. The final question I have with regard to these damages was simply if Mr. Baxter would
15 establish for which years the property taxes were paid, which I believe will also be shown
16 on the payment history?

17 A. So all of the - - -

18 Q. Correct. If you can establish which year's property taxes were paid by the lender.

19 A. Based on this. Based on the payment history?

20 Q. I presume that we are showing your payment history for that?

21 A. The payment history would not show what year's taxes were being paid. It would say the
22 date that it was paid but it wouldn't necessarily say what year's taxes.

23 Q. Okay. That is fair. That is fair. And we would assume that the date that it was paid
24 would correlate with it - - -

25 A. Possibly.

1 Q. And the year's taxes and the amount?

2 A. Possibly.

3 Q. And could you just answer the question which dates were taxes paid on it?

4 MS. LYBRAND: Your Honor, we were not made aware that the taxes and insurance on this loan
5 were going to be in issue. And the witness actually has business records that would answer these
6 questions. However, we don't have them here in the courtroom today because we were not made
7 aware that this was going to be an issue. If this line of questioning continues, if we could be
8 granted leave to get those records for the witness.

9 THE COURT: Well lets see what he can do from these records.

10 A. County taxes were disbursed on December 3, 2014 at \$6,047.20.

11 Q. Mr. Baxter while we are on that what is the next line item underneath that same number?

12 THE COURT: Where are you on your document?

13 MS. CULBERTSON: It is Page 5 of Exhibit 6, I believe Your Honor.

14 THE COURT: All right.

15 Q. Mr. Baxter you said the line item was 6,047.01 and then underneath that there is a line
16 item of 17,483.48?

17 A. That would be the escrow payments.

18 Q. And what does that number represent?

19 A. At this point the escrow is actually negative so it went down to that. That is the amount in
20 escrow at that point. Do you want me to look for another one?

21 Q. Actually if you would flip a few further pages back to August 22, 2012. It is the tenth
22 page of this statement.

23 A. All right.

24 Q. There is shown an escrow refund of \$5,209.00?

25 A. Yes.

1 Q. Can you tell me what that was?
2 A. I am not sure what that represents.
3 Q. Similarly on August 21 it is \$5,208.00?
4 A. Again I am not sure what that represents.
5 Q. And then one more on the next page on July 16, \$5,306.00 as an escrow refund?
6 A. July what?
7 Q. July 16?
8 A. Yes, it is \$5,306.00. I don't know what that represents.
9 Q. And the next page there is one more on April 16, 2012. It is \$5300.02?
10 A. Again I don't know what that represents. We would have to be able to research that.
11 Q. And the final one that I see is March 16, 2012 on the next page back. An escrow refund
12 of \$10,601.00?
13 A. Correct.
14 Q. And a couple of pages back.
15 A. It is 4-16-2012.
16 Q. All right. Mr. Baxter I don't think that I have any further questions for you. And thank
17 you for your time today.
18 MS. LYBRAND: Your Honor, if I could redirect to clarify a couple of issues that Ms.
19 Culbertson asked about.
20 THE COURT: All right.
21 **REDIRECT EXAMINATION BY MS. LYBRAND.**
22 Q. Mr. Baxter, Ms. Culbertson asked you a couple of times about the arm rate changes.
23 Specifically, the ones from I think she said 2013?
24 A. Oh, yes.
25 Q. Where it happened twice in one month, May of 2013 and then again May 26?

1 A. Right.

2 Q. Did the payment amount based upon this record here, did the payment amount change?

3 A. What page was that on?

4 Q. I am looking for it again. May of 2011, May 23 and 26?

5 A. Yes.

6 Q. Based upon this payment history did the payment amount change?

7 A. No.

8 Q. Okay. And if we go back to the note where it indicates, you just discussed, and on Page 3

9 of the note, notices of changes?

10 A. Right.

11 Q. Can you read that first sentence please?

12 A. The note holder will deliver or mail to me a notice of any changes in the amount of my

13 minimum payment at least 25 days before the effective date of any change.

14 Q. And if the minimum payment amount is not going to change does this note require a notice

15 to the borrower?

16 A. No, it doesn't.

17 Q. Okay. In going back to the questions that Ms. Culbertson just asked you about the escrow

18 refunds.

19 A. Yes.

20 Q. Were any payments, any lump sum payments made in advance of those escrow refunds? I

21 think she was asking you about - - the last one she asked you about was March 16, 2012?

22 A. Yes.

23 Q. Yes there were lump sum payments made?

24 A. Yes, I just found that. Again as a matter of fact, there were.

25 Q. Okay. And would that have affected the escrow refunds?

1 A. Yes. As a matter of fact those appear and there is at least one bad check reversal. Yes
2 those possibly were the returned payments.
3 Q. Would you agree with me that on March 14 and March 15 of 2012 payments were made in
4 the amount of \$5300.00 and \$5301.00?
5 A. Yes, they were.
6 Q. Does that add up to \$10,601.00?
7 A. Yes, it does.
8 Q. Is that the amount of the escrow refund that was then put onto the account on March 16,
9 2012?
10 A. It was.
11 Q. And when a loan has a negative escrow balance and principal payments are made toward
12 the loan what is debited first, well what is credited first? What are those payments
13 credited to?
14 A. The negative escrow would be.
15 Q. So would that be the explanation for the negative escrow?
16 A. Yes.
17 Q. And if we go back to the escrow refund on 4-16-2012, was there a payment prior to that
18 escrow refund?
19 A. Yes. The exact same amount.
20 Q. Okay. And so is that the explanation for those escrow refunds?
21 A. It is. Yes.
22 Q. Okay.
23 MS. LYBRAND: That is all I have.
24 THE COURT: Any follow up questions?
25 MS. CULBERTSON: I do have one follow up question.

1 THE COURT: All right.

2 **RECROSS EXAMINATION BY MS. CULBERTSON.**

3 Q. I am sorry. I simply just don't understand what you all just went through. Obviously I
4 see the payments right before then - - -

5 THE COURT: Counsel I can't understand. It is perfectly clear to me.

6 MS. CULBERTSON: Well I - - -

7 THE COURT: That is a joke counsel. Lets go back over it.

8 MS. CULBERTSON: Yes sir.

9 Q. So Mr. Baxter lets go to the April 16 payment that you were just looking at. There is a
10 payment made on April 16 of \$5300.02?

11 A. Yes.

12 Q. When the next line item above that says escrow refund of that same amount. What does
13 that mean? Does that mean - - what is a refund? Whom is it refunded to?

14 A. This would have been refunded to the customer.

15 Q. So any time you see the number escrow refund that means it is bounced back to the note
16 holder?

17 A. Yes.

18 Q. Paid back to the borrower?

19 A. Yes.

20 Q. Why would a payment be returned to a borrower?

21 A. Because the account is in default and there are no arrangements to - - it is not either the
22 full amount due or there aren't any arrangements to bring the account current and the
23 account is in default.

24 Q. And can you tell me why that is shown as an escrow refund?

25 A. So my thought is that the payments were actually - - well they were posted to suspense.

1 They show as escrow and that is how they were refunded to the customer. In the event,
2 the account at this point also would have had an escrow advance balance. It was a
3 negative escrow.

4 Q. So why would the payments not be credited toward that negative escrow balance?

5 A. Actually I believe they were and then returned to the customer because it wasn't enough to
6 reinstate the account.

7 Q. Why would funds be returned to the borrower if there is a negative balance, a negative
8 escrow balance?

9 A. Because again we are not accepting payments that are less than the full amount due or we
10 have arrangements to pay the full amount due.

11 Q. And under the terms of your note you have the right to apply payments in a certain order,
12 isn't that correct?

13 A. Yes.

14 Q. And so typically how are those applied in a general sense? It is my understanding that
15 they generally pay late fees on negative balances?

16 A. Right.

17 Q. Interest spent as a whole?

18 A. These weren't applied as payments. None of these monies were ever applied as a
19 payment.

20 Q. And does this account statement that we are looking at here indicate why that is?

21 A. The intention - - I believe in this case the intention is they are taking money and then
22 because the account is past due they are going to the collection department to see if we are
23 going to authorize the money to be posted and in these cases if you look back through the
24 notes that are on the account the collection department's instructions were to return the
25 payments to the customer. That is because it is past due and in default.

1 Q. Is that, however, indicated any where in this statement if so?
2 A. Is what?
3 Q. Everything that you have just said about being in default and therefore not accepted?
4 A. Well yes. Because it didn't advance a due date. Okay. You look at two different things.
5 And so did you get on the account at that point it was December of 2011 and that is
6 indicated under the due date right there.
7 Q. The same date.
8 A. That transaction, that was applied with the 173 code which is a payment transaction. Did
9 not advance the due date from 2011 to January of 2012. So it was never posted as a
10 payment. And also you see there were no monies posted to principal. If you follow that
11 transaction along the principal paid zero, interest paid zero, escrow paid zero, okay. So it
12 went into suspense and that was pulled out and sent back to the customer.
13 Q. So you think when it says escrow deposit that essentially is the suspense account?
14 A. Yes.
15 Q. Okay. I think that I understand that now. Thank you very much.
16 THE COURT: Anything?
17 MS. LYBRAND: Nothing further, Your Honor.
18 MR. ANTHONY: Nothing, Your Honor.
19 THE COURT: You may step down sir. Thank you. All right counsel.
20 MS. LYBRAND: At this time we would just ask that judgment be entered in favor of the
21 Plaintiff in the amount itemized prior.
22 THE COURT: All right. Mr. Anthony?
23 MR. ANTHONY: We think they are entitled to that.
24 THE COURT: All right. Counsel?
25 MS. CULBERTSON: Your Honor, I would ask that in the event that the Court does order the

1 foreclosure and sale that you also establish a bond amount for an appeal.

2 THE COURT: All right. Mr. Walsh any matters on behalf of your client?

3 MR. WALSH: None, Your Honor, not at this time.

4 THE COURT: All right. Do you have a proposed Order?

5 MS. LYBRAND: I have not prepared a proposed Order because I was not sure about what we

6 might address today. I am not sure whether or not Mrs. Otto's consolidated matter with ours is

7 going to be addressed in the same Order or any issues with regard to Mrs. Otto and the Kerhulas

8 would be addresses in the same order. I am happy to prepare it and circulate it.

9 THE COURT: All right. Well I am going to find that you are entitled to the foreclosure and the

10 amount of the debt is as testified to by your witness.

11 MS. LYBRAND: Yes sir.

12 THE COURT: And if I want to have all of those matters - - Mr. Walsh's - - that is not an

13 additional matter that needs to be included.

14 MR. WALSH: Your Honor, my matter appears to be an issue of priority.

15 THE COURT: Right.

16 MR. WALSH: For the surplus and it doesn't appear to me that there is going to be a surplus but

17 if there is I think that we should raise that at that time at a surplus fund hearing.

18 THE COURT: Right. But is there a question of priority at this point?

19 MS. LYBRAND: I don't believe so.

20 MR. WALSH: Not with respect to them. They are number one (1).

21 THE COURT: Right. No, I mean as far as on down the line?

22 MR. ANTHONY: Well Your Honor, we were hoping to address Mr. Walsh's argument that for

23 the purpose that if our position is sustained that his judgments are not a lien against this property.

24 Then we would have an opportunity to try to reinstate this foreclosure action on our own between

25 now and the time of sale.

1 THE COURT: Okay.

2 MR. ANTHONY: If his judgment applies then it is probably futile for us to attempt to reinstate
3 the loan.

4 THE COURT: All right. I was not aware we were going in that direction possibly.

5 MR. ANTHONY: Of course, it is up to the Court.

6 THE COURT: Well I had rather get it all covered. We have got everybody here in this room.

7 MS. LYBRAND: Can I clarify for the record that the judgment that you have awarded is the total
8 judgment of the witness's testimony plus our attorney's fees and costs?

9 THE COURT: The total, right.

10 MS. LYBRAND: In the amount of One million one hundred eighty three thousand four hundred
11 fifty one & 60/100 (\$1,183,451.60)?

12 THE COURT: Correct.

13 MS. LYBRAND: Thank you, Your Honor.

14 THE COURT: All right. That is the amount of the judgment. And it is a waiver of the demand
15 for the deficiency?

16 MS. LYBRAND: That is correct. And I think that there was an issue about the equitable right
17 of redemption of Mr. Munsey that I would like the Court to address whether or not he would or
18 would not have that right. So that would be apart of the Order. Ms. Culbertson raised it. And if
19 the Court is ordering that he does in fact have that right I would like to make that part of the Order
20 and address it now and if not make that apart of the Order and address it now.

21 THE COURT: And what is your position on that?

22 MS. LYBRAND: My position is that there is no equitable right of redemption. One, particularly
23 because in the contract for deed that Mr. Munsey signed they made an explicit note that they are
24 violating the terms of the mortgage that we are here on, that we are foreclosing on today. And so
25 I don't believe equity requires that he get an equitable right of redemption in acknowledging and

1 purposely violating the terms of this mortgage that we are here about today but also because he is
2 in default and he has not previously raised any right to redemption prior to this morning. We
3 believe that if there is such a right that he has waived that right as part of being in default.
4 THE COURT: Counsel. Either one. Mr. Anthony?
5 MR. ANTHONY: I don't understand how there could be any right of redemption for Mr.
6 Munsey here. There is no credit between him and the first mortgage holder.
7 THE COURT: Counsel.
8 MS. CULBERTSON: Your Honor, just like a second mortgage holder can redeem the first
9 mortgage. Our equitable rights in the property have not been distinguished and will not be
10 distinguished until a foreclosure sale is ordered basically extinguishing our contract for deed
11 which operates similar to a junior lien to a first mortgage.
12 THE COURT: Well I don't know that you are a junior. I don't know how junior you are.
13 MS. CULBERTSON: Well we are pre-junior. There is a first mortgage and then there is a
14 second mortgage and then there is our contract for deed.
15 THE COURT: Well I don't know. I haven't looked at all of the dates but I am going to rule that
16 there is no equity of redemption.
17 MR. WALSH: Your Honor, if I may.
18 THE COURT: Yes sir.
19 MR. WALSH: I hesitate to wander into this but the fact that Mr. Munsey is in default and I agree
20 it would not affect whether or not he had a right of redemption. The right of redemption is
21 merely the right to pay the mortgage holder the amount due them.
22 THE COURT: Right.
23 MR. WALSH: Certainly I would think that a mortgage holder would want to be paid. And a
24 right of redemption is merely an equitable right that allows a junior lien holder or owner down the
25 line wherever to cough up the money but whether or not that would result in a clear title for Mr.

1 Munsey would be another thing.

2 THE COURT: Well that is the other issue.

3 MR. WALSH: And certainly it would be that but I don't think that a foreclosure would wipe out
4 their ability to cough up the money.

5 THE COURT: Are you joining on this side of the argument?

6 MR. WALSH: Your Honor, I don't think that it matters one way or the other to my client. It is
7 just that right of redemption is something that I have kind of gone into recently on some other
8 issues and I think Ms. Culbertson is right they should have that right of redemption. The right to
9 pay the mortgage holder but as to whether or not they get anything other than the first mortgage
10 paid off is another question that I gather to be wise for them to exercise the right of redemption
11 but I don't think they get cutoff.

12 THE COURT: And I appreciate your argument Mr. Walsh but I disagree with you.

13 MR. WALSH: Well you are a Judge.

14 THE COURT: And that is what I am ruling.

15 MS. LYBRAND: And all I was going to say is that our primary concern was any stated time for
16 the right of redemption or anything like that post foreclosure sale that would additionally delay
17 this matter for the Plaintiff as well. So while we don't believe that he has a right of redemption
18 in the event that there was such a right you know we just didn't want there to be some stated 120
19 day right of redemption.

20 THE COURT: No, I am founding that there is not one.

21 MS. LYBRAND: All right. Thank you, Your Honor.

22 THE COURT: And I think the Order as far as the Motion to Set Aside Default should be a
23 separate order because I don't want it included in the foreclosure order but I do want you to
24 prepare that order as well counsel.

25 MS. LYBRAND: I am happy to, Your Honor.

1 THE COURT: So if you will prepare that order and prepare the other order and circulate that to
2 all of the attorneys including Mr. Walsh for their review. The time line for the January sale, I am
3 going to make this for the February sale because there may be some issues that everyone here is
4 going to be dealing with. So the time line to get all of those documents done is January 8, 2016
5 for the February 1, 2016 sale date. And in your Notice of Sale go ahead and put that in there. It
6 is a waiver of the redemption. I don't think that we have to deal with the priorities unless we
7 have a surplus. But that would be nice. But I don't know but we will see. And the question of
8 the bond is an issue because the amount is normally determined in the event a borrower is
9 appealing. So I will have to look at that statutory requirement as far as the bond that would be
10 required and the appeal because there is not going to be a judgment but there is a return of the
11 property. So that same amount could flow down to the contract for deed holder but I will have to
12 look at that and if either of you wants to submit a brief letter memorandum of what the statutory
13 requirement would be in the event of an appeal by the contract for deed holder then I will take a
14 look at that and in the meanwhile I will take a look at it myself but I will wait - - do you want me
15 to set a date on which you - - -

16 MS. CULBERTSON: I will be glad to get it to you quickly Judge.

17 THE COURT: All right. What about December 14?

18 MS. CULBERTSON: That is fine, Your Honor.

19 THE COURT: That gets us past the Holiday and well in the time window to get everything
20 done prior to the February 1, sale date.

21 MS. CULBERTSON: Thank you.

22 THE COURT: Any other matters that we need to take care of or address?

23 MS. CULBERTSON: Judge, I do wonder are we proceeding with the other foreclosure that has
24 been consolidated with this one today?

25 MS. LYBRAND: I am done, Your Honor.

1 MS. CULBERTSON: She is done.

2 THE COURT: Okay.

3 MS. LYBRAND: This is a case that Mrs. Otto filed an action against Mr. Munsey back in May
4 when the original default Order, the original Order where Ms. Culbertson's client was held in
5 default. A second Order was filed the same date consolidating our foreclosure matter with Mrs.
6 Otto's matter.

7 THE COURT: Right.

8 MS. LYBRAND: And so I think that is what Ms. Culbertson is asking about as whether or not
9 they are resolving that issue between the two of them today.

10 MR. ANTHONY: It was my understanding that we were proceeding with that simultaneously.

11 THE COURT: And I thought that we were because of the consolidation. Someone correct me if
12 I am wrong but it is my understanding that we consolidated this matter back in May of 2013.

13 MR. ANTHONY: I think that we had a pre-trial a month or so ago and this hearing was set. But
14 that was my understanding from the pre-trial hearing that we were proceeding on the two at the
15 same time.

16 THE COURT: Right.

17 MR. ANTHONY: Because ours was an action for a foreclosure and if this is foreclosed we don't
18 need to come back and foreclose again.

19 THE COURT: Well it takes care of the whole issue as far as the foreclosure of the mortgage and
20 the foreclosure of any rights under the contract for deed.

21 MS. LYBRAND: I am going to stand firm that we are done and we have presented our case to
22 the extent that we have anything to do with that one our position is that anything that happens in
23 that case would be subordinate or subsequent to our foreclosure. But I don't know if they have
24 got damages or anything like that which they need to discuss. I mean if so we would like to step
25 out.

1 THE COURT: But that default was as to the combined action.

2 MR. ANTHONY: Yes. There was a default in both actions.

3 THE COURT: So as far as I am concerned the matter of the foreclosure of the first takes care of
4 any interest of the contract for deed holder, the debtor, and the default also applies to the
5 consolidated cases. Counsel.

6 MS. CULBERTSON: The only issue I believe Your Honor would be the interest.

7 THE COURT: Well the question that I have though is the amount of the debt that you are
8 entitled to go into. But the question of damages falls under the issue of the Complaint for the, I
9 am sorry, the Third Party Complaint that you had which you were in default.

10 MS. CULBERTSON: I am sorry, Your Honor, if I may. The damages in the reference were any
11 damages claimed by Mr. Anthony's client pursuant to that foreclosure. So just as we get to cross
12 examine on damages with that mortgage I would assume that we would be allowed to cross
13 examine as to damages in this foreclosure as well.

14 MR. ANTHONY: That is fine, Your Honor. We knew that, of course, we had substantially
15 more damages than the Plaintiff in this case because we had a second mortgage that was supposed
16 to be paid and we had a third mortgage that was supposed to be paid and we have Association
17 dues that were supposed to be paid and we of course have attorney's fees and costs as well. So
18 our damages are much higher than what has been presented thus far. It would include that
19 amount.

20 MS. CULBERTSON: Right.

21 THE COURT: Okay. So the issue now is, we have got the foreclosure of the first mortgage.

22 MS. LYBRAND: I have no objections to them having a damages hearing as long as my client
23 witness can be excused to fly back to Texas.

24 MR. ANTHONY: No objection to that.

25 MS. CULBERTSON: None, Your Honor.

1 THE COURT: All right. Then that takes care of your client witness. You can be excused. Mr.
2 Walsh how about you and your clients?
3 MR. WALSH: Again I don't think we have a dog in this fight unless there is a surplus at the end
4 which I am not thinking is likely. I don't know what the amount of the second and third
5 mortgages are.
6 THE COURT: Well I have not seen those possible numbers as far as the action in the other case
7 as far as the damages and I did not know whether that was going to be an issue or it was just going
8 to be a wash at that point.
9 MR. ANTHONY: I am sorry if we didn't make that clear but the contract for deed itself sets
10 forth what is supposed to be paid by Mr. Munsey.
11 THE COURT: Okay.
12 MR. ANTHONY: The first thing was a first mortgage.
13 THE COURT: Right.
14 MR. ANTHONY: And the second mortgage which was actually supposed to be paid off before
15 now. The third mortgage was back to my client and it has not been paid.
16 THE COURT: Okay.
17 MR. ANTHONY: And then there is a substantial amount of -- this subdivision that it is apart of
18 has a substantial amount of home owner association fees which were also their responsibility.
19 THE COURT: All right. So then what we need to do is lets take a break and readjust
20 everybody's position as far as -- you folks, I don't know whether you even need to be here at this
21 point.
22 MS. LYBRAND: No, I don't think so.
23 THE COURT: I mean you can stay but at this point we will be proceeding on the damages
24 hearing on the contract for deed issue, correct?
25 MS. LYBRAND: That is my understanding.

1 MR. ANTHONY: Yes sir.

2 THE COURT: All right. So Plaintiff and the Plaintiff's witness you can stay or leave,
3 whichever.

4 MS. LYBRAND: Thank you.

5 THE COURT: All right.

6 MR. WALSH: And again I don't think that I get involved unless there is a surplus.

7 THE COURT: Correct.

8 MR. WALSH: And we can reserve that until after the sale.

9 THE COURT: Right. And if there is a surplus you and your clients would be notified as to the
10 time line and the claim to be filed. And this again will be the February sale so you will see what
11 happens at the sale and then you will know immediately if there is going to be a surplus hearing.

12 MR. ANTHONY: Just to renew our position Your Honor. We were hoping to have a ruling on
13 that today so that we would know whether it was worthwhile for us to try to reinstate the first
14 mortgage. Because if those substantial judgments do apply to the property then it is almost
15 certain that there is no equity in the property and no reason to try to redeem it.

16 MR. WALSH: You are going to try to redeem the property? Well I guess I can come back.

17 THE COURT: Well I think the issue is which matters as far as applying to or encumbering the
18 property - - -

19 MR. ANTHONY: I am sorry. I didn't understand.

20 THE COURT: Are you talking about Mr. Walsh's judgment?

21 MR. ANTHONY: Yes, Mr. Walsh's judgment.

22 THE COURT: Okay.

23 MR. WALSH: There is a first mortgage and what is the second one?

24 THE COURT: That is TD Bank isn't it?

25 MR. WALSH: No doubt. And is there a mortgage after that?

1 MR. ANTHONY: Well it is back to the Ottos.
2 MR. WALSH: Okay.
3 MR. ANTHONY: It would be the first and second that we have to reinstate.
4 MR. WALSH: And do we know what the amount of the TD Bank mortgage is?
5 MR. ANTHONY: We do. I have got it here.
6 MR. WALSH: Two hundred thousand?
7 MR. ANTHONY: Roughly.
8 MR. WALSH: Okay.
9 THE COURT: Well do you want to - - -
10 MR. WALSH: I really - - and those two have to be paid off before we get into the - - okay, I
11 guess I can come back.
12 THE COURT: Well we are going to be five minutes. You know, take a break for five minutes.
13 MR. WALSH: Can we take 15 minutes? I need to forward a closing statement that I think may
14 be waiting for me at my office.
15 THE COURT: All right. Lets make it until eleven o'clock and we will start again. And if you
16 are not here we will start without you.
17 MR. WALSH: Thank you, Your Honor
18 THE COURT: All right. So we will readjust positions and start again at 11:00.
19 (RECESS)
20 BACK ON THE RECORD.
21 THE COURT: What we are going to proceed with at this point is that portion of this matter that
22 was consolidated in the present case that was the original case of 2012CP42-2874, Alyce F. Otto,
23 Trustee versus Jackson L. Munsey. Mr. Anthony are you ready to proceed?
24 MR. ANTHONY: Yes sir. We would like to proceed and we would like to call Alyce Otto to
25 the stand please.

1 THE COURT: All right.

2

ALYCE F. OTTO, BEING DULY SWORN,

3 TESTIFIES AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. ANTHONY.

5 Q. You are Alyce F. Otto?

6 A. Yes.

7 Q. I believe you sometimes also go by or is known as Patty?

8 A. That is correct.

9 Q. Correct. Patty did you have an occasion to enter into a contract for deed for the sale of
10 your home at Fairview Farms to Jackson L. Munsey, Jr?

11 A. I did.

12 Q. And I hand you this document and I want to ask you some questions about it. But first is
13 that the contract for deed to which we just referred?

14 A. Yes sir.

15 Q. All right.

16 MR. ANTHONY: Your Honor, we would like to offer this as our first exhibit.

17 THE COURT: Any objections counsel?

18 MS. CULBERTSON: No objections.

19 THE COURT: All right.

20 MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF A CONTRACT FOR
21 DEED, DATED MARCH 4, 2011, MARKED AS DEFENDANT OTTO'S EXHIBIT
22 NUMBER 1.

23 THE COURT: All right.

24 Q. Patty, I will hand you back what has now been marked as Defendant's Exhibit 1 and I
25 want to go through certain provisions of that document with you. As I just recited, this is

1 a contract for deed dated March 4, 2011 isn't it?

2 A. Yes sir.

3 Q. And it is for the sale of property at 1841 Fairview Farms Road in Campobello?

4 A. Yes sir.

5 Q. And it has a purchase price on the second page of \$1,400,000.00, correct?

6 A. Yes sir.

7 Q. Of which \$10,000.00 was to be paid down?

8 A. Correct.

9 Q. And then there were certain obligations that Mr. Munsey was to assume from you, correct?

10 A. Correct.

11 Q. And in fact if you flip toward the back of this document, several of the obligations that I

12 am about to recite were actually also memorialized as promissory notes that more or less

13 replicated the debt that he was supposed to pay on your behalf, correct?

14 A. Correct.

15 Q. The first thing that he was supposed to pay was the first mortgage on the property to

16 Chevy Chase Bank, correct?

17 A. Correct.

18 Q. And you have been here with me and heard testimony about what the amount of that debt

19 is to date?

20 A. Yes sir.

21 Q. And was Mr. Munsey supposed to make directly to the first mortgage holder the payments

22 that you had obligated yourself to make?

23 A. Yes sir.

24 Q. Did he do that?

25 A. For a short period of time.

1 Q. All right. Did he then default and failed to make those payments?
2 A. Yes sir.
3 Q. Is that why we are here this morning for the foreclosure of the first mortgage?
4 A. Correct.
5 Q. And again that debt to Chevy Chase was actually memorialized in a promissory note here
6 back to you on the same terms as your mortgage?
7 A. Correct.
8 Q. And then if we flip on over to Page 3, subparagraph C, which recites a second mortgage to
9 Carolina First Bank?
10 A. Correct.
11 Q. Was he supposed to pay that directly to Carolina First Bank?
12 A. Yes sir.
13 Q. Has he done that?
14 A. No sir.
15 Q. Was there actually a balloon payment as to that second mortgage?
16 A. There was.
17 Q. And when was it supposed to be paid in full by him?
18 A. In 2013.
19 Q. At the bottom of Page 3, does it recite a date of June 17, 2013, when that was supposed to
20 be paid?
21 A. Correct.
22 Q. And it has not been paid has it?
23 A. No sir.
24 MR. ANTHONY: And Your Honor, I don't think that I need to do it but as far as that first
25 mortgage debt goes I probably should refer on the record to the amount which was established by

1 the first mortgage as a total of \$1,183,451.60.

2 THE COURT: All right.

3 Q. Then as to the second mortgage Patty I am going to hand you this and I will ask you if that
4 is the latest statement you have from the second mortgage holder?

5 A. That is the latest statement that I have.

6 Q. And we will get that marked first.

7 THE COURT: All right.

8 MS. CULBERTSON: No objections.

9 **MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF A STATEMENT FROM**
10 **TD BANK, SHOWING A DUE DATE OF 06-17-13, MARKED AS DEFENDANT OTTO'S**
11 **EXHIBIT NUMBER 2.**

12 THE COURT: All right.

13 Q. And I notice at the top of that it shows a letterhead of TD Bank where the mortgage was
14 originally Carolina First Bank. Can you explain that to us?

15 A. TD Bank acquired Carolina First.

16 Q. Okay. So this is the same debt?

17 A. Yes sir.

18 Q. And what is the latest statement amount shown?

19 A. It is \$177,564.74.

20 Q. And again was Mr. Munsey supposed to make that payment directly to the second
21 mortgage holder?

22 A. Yes sir.

23 Q. And did he do that?

24 A. No.

25 Q. This was a second mortgage on the Fairview Farms house right?

1 A. It was.
2 Q. Was it secured by anything else?
3 A. Yes sir.
4 Q. What was that?
5 A. The Hare and the Hound Restaurant, my business.
6 Q. Okay. As a result of the fact that it was secured by your assets as well as the home, did
7 you make some payments on this loan to try to keep it from going into default?
8 A. I did.
9 Q. All right. I am going to hand you this and I will ask you if this is your calculation of the
10 payments that you made that Mr. Munsey should have made?
11 A. And that is correct.
12 MR. ANTHONY: May we have that marked?
13 THE COURT: Any objections?
14 MS. CULBERTSON: No objections.
15 **MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF AN ACCOUNT QUICK**
16 **REPORT FOR THE HARE AND HOUND, DATED DECEMBER 31, 2012, MARKED AS**
17 **DEFENDANT OTTO'S EXHIBIT NUMBER 3.**
18 THE COURT: All right.
19 Q. And I will hand you back what has now been marked as Defendant's Exhibit Number 3,
20 and I will ask you to tell us the amount of the payments that you made that he should have
21 made?
22 A. That was Eleven thousand fifty two & no/100 (\$11,052.00) dollars.
23 Q. While we are at that point let me digress for just a second. There was testimony that you
24 heard this morning from the first mortgage holder about some payments on the first
25 mortgage possibly being returned to the borrower which I presume would be you?

1 A. Correct.

2 Q. Did you in fact receive these payments back from the first mortgage holder when they
3 refused to accept them?

4 A. I did.

5 Q. What did you do with that money?

6 A. After conferring with my attorney I paid the second mortgage, made second mortgage
7 payments and then the rest was left in escrow.

8 Q. Okay. We will come back to that. Now going back to the contract for deed, which we
9 marked as our Exhibit 1. On Page 4, subparagraph D, required that certain tax liens were
10 going to be paid out of the closing with Mr. Munsey, am I correct about that?

11 A. That is correct.

12 Q. Okay. I want to hand you this document and ask you to identify it for us?

13 A. This is the settlement statement from the closing on the contract for deed.

14 Q. All right. Let me get that marked and then I will ask you a few more things about it.

15 A. Yes sir.

16 THE COURT: Exhibit 4.

17 MS. CULBERTSON: No objections.

18 **MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF A SETTLEMENT**
19 **STATEMENT, MARKED AS DEFENDANT OTTO'S EXHIBIT NUMBER 4.**

20 THE COURT: All right.

21 Q. All right. Let me hand you back what has now been marked as Defendant's Exhibit 4,
22 which you identified as the settlement statement and I will ask you to turn to the fourth
23 page, which is entitled additional disbursement sheet, and I will ask you if there is a line
24 item there showing the payment to the Internal Revenue Service to clear up those taxes?

25 A. There is.

1 Q. How much is it?
2 A. It is Fourteen thousand six hundred one & 71/100 (\$14,601.71) dollars.
3 Q. All right. I am going to refer you back to the contract for deed, Exhibit 1. And at the
4 bottom of Page 4, subparagraph J, which carries over onto the next page, it does a set-up,
5 essentially a third mortgage from Mr. Munsey back to you?
6 A. Correct.
7 Q. And again was there a promissory note signed that memorialized that in addition to the
8 contract for deed?
9 A. Yes sir.
10 Q. And that note was originally in the amount of \$13,000.00?
11 A. That is correct.
12 Q. And it was supposed to be paid on a monthly basis?
13 A. That is correct.
14 Q. Has that been paid?
15 A. No sir.
16 Q. Is Mr. Munsey in default on that payment as well?
17 A. Yes sir.
18 Q. I hand you this document and ask you if this is a calculation of the amount due on that
19 third mortgage at this point with interest and late fees included?
20 A. Yes, that is correct.
21 Q. Of \$21,859.39?
22 A. Correct.
23 MR. ANTHONY: We would offer this, Your Honor.
24 THE COURT: Exhibit 5.
25 MR. ANTHONY INTRODUCES INTO EVIDENCE A SHEET DATED NOVEMBER 24,

1 2015 AND ENTITLED AS PAYOFF CALCULATION, MARKED AS DEFENDANT

2 OTTO'S EXHIBIT NUMBER 5.

3 THE COURT: All right.

4 Q. I will hand you back for a second what is marked now as Exhibit 5 and I will ask you if
5 you see a credit on that on the next to the last line where there is an amount credited to Mr.
6 Munsey. Do you see that? It says \$6,044.10?

7 A. Yes sir.

8 Q. We talked earlier about a few payments that were returned to you by the first mortgage
9 holder and you applied some of those to the second mortgage, correct?

10 A. Yes sir.

11 Q. But is my law firm still holding this amount that is credited here, that was left over from
12 those payments that were sent back to you?

13 A. Yes sir.

14 Q. Okay. The next item that Mr. Munsey was supposed to pay under this contract for deed, I
15 believe was the Homeowners Association dues, am I correct?

16 A. Yes sir.

17 Q. And who does that get paid to?

18 A. Greenspace of Fairview.

19 Q. All right. Has he made those Homeowner Association payments?

20 A. No sir.

21 Q. All right. I hand you this document and ask you if that is the latest statement that you
22 have received from the Homeowners Association?

23 A. Yes, it is.

24 MR. ANTHONY: We offer this, Your Honor.

25 THE COURT: All right.

1 **MR. ANTHONY INTRODUCES INTO EVIDENCE A INVOICE FROM GREENSPACE**
2 **OF FAIRVIEW, LLC, DATED JULY 1, 2015, MARKED AS DEFENDANT OTTO'S**
3 **EXHIBIT NUMBER 6.**

4 THE COURT: All right.

5 Q. And Exhibit 6 shows a total due as of the last statement of \$19,200.00, correct?

6 A. That is correct.

7 Q. Has there been an additional capital call from the Homeowners Association?

8 A. Yes. There has been an additional capital call of \$20,000.00 on 5/24/2015.

9 Q. Would that also be the responsibility of Mr. Munsey?

10 A. Yes sir.

11 Q. I hand you this and ask you if this is a statement as to that capital call?

12 A. Yes sir.

13 Q. And that is not included in the statement that we just marked as Exhibit 6 is it?

14 A. No sir.

15 MR. ANTHONY: We offer that as Exhibit 7.

16 THE COURT: All right.

17 **MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF A CAPITAL CALL,**
18 **MARKED AS DEFENDANT OTTO'S EXHIBIT NUMBER 7.**

19 THE COURT: All right.

20 Q. Finally Patty this litigation obviously has been going on for about three (3) years now,
21 correct?

22 A. Yes sir.

23 Q. There have been a lot of activity and your deposition taken and various items produced.

24 Have you incurred a substantial amount of attorney's fees as a result?

25 A. I have.

1 Q. And does the contract for deed provide for Mr. Munsey to be responsible for that in the
2 event we wind up in this situation?
3 A. Yes sir, it does.
4 Q. And I will hand you this Affidavit which shows that we have incurred \$12,600.00 in
5 attorney's fees. And I just wondered does that sound about right to you?
6 A. Yes sir, it does.
7 Q. So you are asking that amount be added to the amounts that we have already stated, the
8 first mortgage balance, the second mortgage balance, the third mortgage to you, the fees
9 due to Greenspace and then our fees and costs that are itemized there?
10 A. Yes sir.
11 MR. ANTHONY: We offer this Affidavit.
12 THE COURT: Exhibit 8.
13 **MR. ANTHONY INTRODUCES INTO EVIDENCE AN AFFIDAVIT OF KENNETH C.**
14 **ANTHONY JR., AS TO ATTORNEY FEES, DATED NOVEMBER 24, 2015, MARKED**
15 **AS DEFENDANT OTTO'S EXHIBIT NUMBER 8.**
16 Q. Do you want the property to be foreclosed and sold if necessary to extinguish any interest
17 Mr. Munsey might claim in this property?
18 A. Yes sir.
19 Q. Thank you.
20 MR. ANTHONY: Your Honor that is all I have of this witness.
21 THE COURT: All right. Let me go over those figures one more time.
22 MR. ANTHONY: I am sorry. I didn't prepare you a total sheet but I didn't have the numbers
23 for the first mortgage.
24 THE COURT: All right. Lets just go over it for the record a breakdown of the numbers.
25 MR. ANTHONY: Those numbers are again according to the testimony from the first mortgage

1 holder this morning I wrote down a total of \$1, 83,451.60. The second mortgage which is now
2 the TD Bank, as of the last statement it was \$177,564.74. The payments that Mrs. Otto made on
3 the second mortgage which should have been paid by Mr. Munsey are \$11,052.00. The
4 \$13,000.00 note has now come to, I think \$21,859.39. That would be the third mortgage. The
5 Greenspace charges were \$19,200.00 for the regular dues and then the \$20,000.00 capital call for
6 a total of \$39,200.00 to Greenspace of Fairview, LLC. And then finally Your Honor our fees
7 were \$12,600.00 with cost of \$295.00.

8 THE COURT: All right. Counsel.

9 **CROSS EXAMINATION BY MS. CULBERTSON.**

10 Q. All right. I would like to go back over some of those numbers. You claim or you have
11 presented a statement from TD Bank that shows a balance due of \$177,564.74?

12 A. Yes ma'am.

13 Q. And you are also claiming \$11,052.00 that you paid to Carolina First as part of that spread
14 sheet that you paid to Carolina First as part of that spread sheet you gave us for The Hound
15 and The Hare?

16 A. The Hare and The Hound, yes ma'am.

17 Q. Explain to me how that is not double dipping, I mean that \$11,052.00 that you paid to
18 Carolina First in addition to the payoff to Carolina First?

19 A. The payoff to Carolina First I believe the statement is in 2013. Those payments I made in
20 2012. I believe that is the way that works.

21 Q. So the payoff to Carolina First would have already included any payments that you had
22 made?

23 A. That is correct. But I made those payments so it would be in addition to what the second
24 mortgage would be owed because I made the payments that Jack would have made.

25 Q. And the contract deed, he talked about this earlier in the earlier foreclosure but the

1 mortgage companies were not parties to that contract for deed, is that correct?

2 A. That is correct.

3 Q. So your obligations to the mortgage companies, both Capital One and TD Bank were not
4 extinguished by this contract for deed, is that correct?

5 A. That is correct.

6 Q. In other words you were still obligated to them to make those payments regardless of that
7 contract for deed?

8 A. I was.

9 Q. Mrs. Otto, I am going to hand you up three (3) checks here and I just ask you to take a look
10 at those and we will mark those once you have looked at them.

11 A. All right.

12 Q. And would you tell the Court what those documents are?

13 A. Those are the three payments that I received back from Capital One that we discussed
14 previously.

15 Q. And we agree that they total about \$15,000.00, approximately?

16 A. Yes ma'am.

17 Q. And you said that you paid \$11,000.00 to Carolina First out of the returned checks, is that
18 correct?

19 A. I paid that from The Hare and The Hound.

20 **MS. CULBERTSON INTRODUCES INTO EVIDENCE A COPY OF THREE CHECKS,**
21 **ABOVE IDENTIFIED, FROM CAPITAL ONE, MARKED AS DEFENDANT MUNSEY'S**
22 **EXHIBIT NUMBER 1.**

23 THE COURT: All right.

24 Q. All right. I will put this back in front of you in case you need to look at this. And then
25 you claim that additional \$6,044.00, you gave to Mr. Anthony to hold in trust?

1 A. The rest of the money was given to him, yes, the six thousand, whatever the number was.
2 Q. But that is not true is it. Mr. Anthony is actually holding my client's money in the amount
3 of \$6,044.00?
4 MR. ANTHONY: Your Honor, I think after looking at it that we probably should stipulate that
5 Mr. Munsey is entitled to a credit for the three (3) checks that have been presented assuming we
6 get to keep the funds that I have in escrow. I think that I probably got that confused.
7 THE COURT: All right.
8 Q. And Mrs. Otto at some point Mr. Munsey notified you that there were some liens against
9 the property that were in violation of that bond for title?
10 A. Yes.
11 Q. Specifically the loan that Mr. Walsh is here about today, the Kerhulas's judgment?
12 A. He did send me some letters concerning that.
13 Q. And would you take a look back at your bond for title, that document is still in front of
14 you. Paragraph 5 and I am just going to read it to confirm that I am reading accurately.
15 A. Neither party shall as a result of an act or omission, cause the property in any way to be
16 further encumbered, either voluntarily or involuntarily, without the written consent of the
17 other party and to immediately, after notice thereof, removed, or cause to be removed any
18 encumbrances placed against the property. Is that accurately read?
19 A. Yes.
20 Q. And further in that paragraph on the next page starting at the bottom of this page. Should
21 a judgment be filed against the Seller affecting the property, or should an encumbrance be
22 placed against the property as a result of Seller's acts or omissions, purchaser after actual
23 notice thereof, may in addition, cease to make payments to seller under the note payable to
24 seller. Is that correct? Am I reading that correctly?
25 A. That is correct.

1 Q. And further shall have the right of setoff against any amounts due for such liens or
2 encumbrances including costs arising therefrom.

3 A. Correct.

4 Q. Correct. Including reasonable attorney fees?

5 A. Correct.

6 Q. So do you allege that when Mr. Munsey put you on notice that there were encumbrances
7 and liens against the property in violation of this provision that he was not entitled to stop
8 making those mortgage payments to you?

9 A. He was not entitled. When he made notice of it that lien was not even well that judgment
10 was not applicable. We had already gone into foreclosure at the time that happened. He
11 had already been not making the payments.

12 Q. I am sorry. That is not the question that I asked you. Once you were on notice that
13 there were liens and encumbrances does that not immediately entitle the purchaser to stop
14 making payments under the note?

15 A. He had already stop making those payments.

16 MR. ANTHONY: Your Honor, I would note for the Court that Mr. Munsey is already in default
17 as we have indicated this is just a hearing on the damages.

18 MS. CULBERTSON: Your Honor, she is not entitled to that payment. She is not entitled to
19 those damages.

20 THE COURT: Well we are proceeding based on the default already. So the question is damages
21 and that is what we are doing at this point. Correct counsel?

22 MR. ANTHONY: Yes sir.

23 THE COURT: Counsel so the question at this point is the amount of damages, if any, correct?

24 MS. CULBERTSON: Yes, Your Honor.

25 THE COURT: All right. And this action for the termination or foreclosure of the contract for

1 deed was filed on July 6, 2012, is that correct?

2 MS. CULBERTSON: Yes, Your Honor.

3 THE COURT: All right.

4 MS. CULBERTSON: Your Honor, I think that we are probably a little bit hamstrung on any
5 other questions regarding damages given Your Honor's ruling on the default but if I may have just
6 two seconds to confer with my client.

7 THE COURT: All right.

8 MS. CULBERTSON: Your Honor, I don't think that I have any other followup questions, thank
9 you.

10 THE COURT: All right.

11 MR. ANTHONY: I have nothing further on this issue. If the Court's wants to hear the issue of
12 Mr. Walsh's client then I can proceed with that.

13 THE COURT: Well getting back to the question of the damages. I am not quite through with
14 that I don't think counsel as far as the issue on damages, money damages. Lets go back to this
15 question. In the event of the foreclosure of this contract for deed is there a seeking of deficiency?

16 MR. ANTHONY: Yes, Your Honor.

17 THE COURT: So there would be a question of a deficiency amount?

18 MR. ANTHONY: Yes, Your Honor.

19 THE COURT: So I want to get back to the damages.

20 MS. CULBERTSON: Yes sir.

21 THE COURT: And those that counsel partially hit as far as the damages that were - - what I am
22 trying to do is set that date of the filing of the original action. What amount was paid and when
23 or up to that date, to the default, because there is a significant difference between those dates and
24 when the payments were made and if they have been made and what constitutes a deficiency and
25 how much. So I need to clarify those numbers at least for me to understand the total amount that

1 you are seeking. Is that the total amount that is applicable based on the time frame? I don't
2 know if I am making any sense or not but that is where I am.

3 MS. CULBERTSON: Yes. Your Honor, I would argue that my client is entitled to credit for
4 any payments that he made from the date of the contract for deed going forward. If her damages
5 encompass basically the full amount of the debt then we should get a credit for the payments that
6 we made against that debt. And similarly we should get a credit for those refunded payments that
7 came back from Capital One, those three (3) checks that I put into the record.

8 THE COURT: Well that is what I am trying to clarify.

9 MS. CULBERTSON: Right.

10 THE COURT: As far as the -- the payments were to be made directly to the first mortgage.

11 MR. ANTHONY: The first and second.

12 THE COURT: First and second.

13 MR. ANTHONY: And the Homeowners Association.

14 THE COURT: Right. So there were payments made in there but they are already given credit in
15 that debt determination and first mortgage.

16 MS. CULBERTSON: Well Your Honor I think in the way that I am looking at it is a little bit of
17 a windfall for Mrs. Otto to establish as part of her debt all of our bond for title or contract for deed
18 payments as well as the full amount of the judgment claims since those payments stop being
19 accepted. See in other words, Your Honor, basically then the windfall is our equity built up in the
20 property and our contract for deed payments.

21 THE COURT: Well you are going off in a different direction here as far as equity in the
22 property. That is a question of an amount of value. Do you have someone here to testify to the
23 value of this property?

24 MS. CULBERTSON: No sir, not yet. But we will certainly bring an appraiser in.

25 THE COURT: I mean, today?

1 MS. CULBERTSON: No sir, we don't.

2 THE COURT: Okay.

3 MS. CULBERTSON: We will certainly raise an appraisal issue if that comes into it. By equity,
4 I am sorry, I meant our payments toward the contract.

5 THE COURT: Yes. But there may well be no equity in this property as far as that.

6 MS. CULBERTSON: Correct.

7 THE COURT: But lets see if I can refocus on the damages, the number. And the claim is for all
8 of these numbers. In other words, the first mortgage of \$1,183,451.60. The second mortgage
9 which is already in default and there was a balloon payment due already that has not been paid.
10 Giving credit for the payments that Mrs. Otto made of \$11,052.00. So the balance that is due on
11 the balloon is \$177,564.74, correct?

12 MR. ANTHONY: Yes, Your Honor.

13 THE COURT: And then there is the third mortgage that is going back to Mrs. Otto that is now
14 \$21,859.39. And then the Greenspace debt or lien of \$19,200.00. I don't know if that has been
15 paid or not.

16 MR. ANTHONY: It has not been paid, Your Honor.

17 THE COURT: And then there is the \$20,000.00 capital call. I don't know if it is due now or is
18 past due. It says May 24 and due by July 15, 2015. So it was due in July. And then the
19 attorney's fees. So whatever that number is that is what their claim for damage is.

20 MS. CULBERTSON: Your Honor, the attorney's fees are included in that third mortgage payoff
21 as well. So there is no need to be doubled up.

22 THE COURT: The attorney's fees for the - - -

23 MS. CULBERTSON: Yes, Your Honor. They are showing it on the third mortgage calculation.

24 MR. ANTHONY: Oh, she is correct Your Honor. I am sorry.

25 THE COURT: All right.

1. MR. ANTHONY: That is correct.

2 THE COURT: All right. Then that is not there. So the third mortgage then is a total of

3 Twenty one, is that the total amount?

4 MR. ANTHONY: That would include the attorney's fees.

5 THE COURT: All right.

6 MR. ANTHONY: I am sorry.

7 THE COURT: So whatever that total there is, that is the damages that are being sought, right

8 MR. ANTHONY: Right.

9 MS. CULBERTSON: With the addition of another credit.

10 THE COURT: Which was Six thousand whatever that number?

11 MS. CULBERTSON: No, Your Honor, which is the amount of those three (3) checks which I

12 presented in evidence which is about Fifteen thousand.

13 MR. ANTHONY: It is about Fifteen.

14 THE COURT: All right. I don't know why the Six thousand number - - -

15 MS. CULBERTSON: That is the credit that is a credit from that.

16 MR. ANTHONY: That is what we are still holding from that.

17 THE COURT: All eight.

18 MR. ANTHONY: If we keep the six thousand that we are holding he is entitled to a credit for

19 those three checks in full.

20 THE COURT: Okay. So you have got a balance of six thousand and some odd cents in your

21 trust account?

22 MR. ANTHONY: Yes sir.

23 MS. CULBERTSON: Six thousand forty four & 10/100 (\$6,044.10), I believe.

24 THE COURT: Okay.

25 MR. ANTHONY: But we have already knocked that off - - We have already reduced the, this is

1 the sheet and it is marked up here, one of the exhibits. What we have done here on this sheet is
2 took the third mortgage amount and added interest and late fees and apparently added attorney
3 fees and costs but then we have also given a credit for the amount that we are holding.
4 THE COURT: Okay.
5 MR. ANTHONY: So that amount is netted out.
6 THE COURT: You have already credited that amount?
7 MS. CULBERTSON: Yes, Your Honor. That has already been accounted for. What has not
8 been accounted for as far as your records go are the three (3) checks?
9 THE COURT: Are those three (3) checks?
10 MS. CULBERTSON: Yes, Your Honor.
11 THE COURT: But to do it accurately I should have taken the three checks total and then
12 subtracted the six thousand that we are holding and that would be the credit. I can do that real
13 quick.
14 THE COURT: So you would take off the three (3) checks plus the credit for the six?
15 MR. ANTHONY: No. The six is included in the three checks. Giving credit for the - - -
16 MS. CULBERTSON: The six thousand is not included in the three checks. The six thousand
17 was paid by my client to you.
18 MR. ANTHONY: Right. It was a result of the current check.
19 MS. CULBERTSON: No. Those were payments made directly by them to you and I will be
20 glad to put someone on the stand as to that.
21 MR. ANTHONY: Okay. I trust you. If Erin says so then that is fine.
22 THE COURT: All right.
23 MR. ANTHONY: We will credit the three (3) checks and the six thousand.
24 THE COURT: So those three checks total?
25 MS. CULBERTSON: We have those.

1 THE COURT: I don't have it but whatever the total is that is what it is.
2 MS. CULBERTSON: Yes sir.
3 THE COURT: Approximately five thousand per check?
4 MS. CULBERTSON: The amounts are. I will establish these for the record. One is Five
5 thousand two hundred nine, Five thousand two hundred eight and Five thousand three hundred
6 six.
7 THE COURT: So about Fifteen thousand seven twenty-three.
8 MR. WALSH: Yes, Your Honor.
9 THE COURT: So a credit of about Twenty one thousand, is that number right?
10 MR. ANTHONY: With the six, I think that is right.
11 THE COURT: With the six added to the fifteen.
12 MR. ANTHONY: But as I say we credited the six thousand against our calculations - - -
13 THE COURT: So you have already gotten that.
14 MS. CULBERTSON: Right. Correct.
15 MR. ANTHONY: Yes sir.
16 MS. CULBERTSON: So the only thing that we need to deal with is that Fifteen thousand.
17 THE COURT: All right. So it looks like that number is right around Sixteen thousand one
18 hundred thirty six something, at least to the third.
19 MS. CULBERTSON: That is the balance. I am sorry, Your Honor. That is the balance. You
20 are netting that Fifteen thousand out of the - - -
21 THE COURT: Right. Working off of that same sheet that I think that you are working off of.
22 MS. CULBERTSON: Okay.
23 THE COURT: It gives a credit for the - - so whatever?
24 MR. ANTHONY: I got Fifteen thousand seven hundred thirteen (\$15,713.00) dollars.
25 THE COURT: Okay. I was just doing it - - well whatever that number is between fifteen and

1 sixteen thousand.

2 MR. ANTHONY: Yes, Your Honor.

3 MS. CULBERTSON: Right. So that is the credit that we are entitled to that is not what the net
4 payoff is? I think that we are saying two (2) different numbers.

5 THE COURT: Yes, we are.

6 MS. CULBERTSON: Your Honor said -- you were trying to establish I believe a bottom line
7 number on this?

8 THE COURT: On that sheet that has the credit for the six thousand.

9 MS. CULBERTSON: Correct.

10 THE COURT: What is that? What that sheet is, would be what is due on the third mortgage,
11 right?

12 MS. CULBERTSON: Yes, Your Honor.

13 THE COURT: So what I am doing is taking that additional fifteen seventy three off of that.

14 MS. CULBERTSON: Okay.

15 THE COURT: So that number should be around ---

16 MS. CULBERTSON: I don't know. I was an English major.

17 MR. WALSH: It is Six thousand one hundred thirty six & 09/100 (\$6,136.09) dollars, Your
18 Honor.

19 THE COURT: All right. So that is the amount that is due on that third mortgage? Is that now
20 the number? Counsel do you agree with that number, is that the number?

21 MS. CULBERTSON: That is fine if you want to count it like that. Yes sir, that is fine sir.

22 THE COURT: I mean if there is another way of doing it. I see head shaking throughout the
23 room.

24 MS. CULBERTSON: Well I was going to suggest that fifteen thousand credit that we are talking
25 about.

1 THE COURT: Those three checks.

2 MS. CULBERTSON: The three checks. Those are related to the first mortgage. So if we want
3 to put them in a different column we can. I don't care where we put them because I think the
4 numbers at the end of the day will add up the same.

5 THE COURT: Well they can't go back to the first mortgage because that amount has been
6 established in the prior hearing and it won't be applied to that. Because that amount is what it is.

7 MS. CULBERTSON: And that is fine. We can establish this credit.

8 THE COURT: Just as long as it is somewhere.

9 MS. CULBERTSON: Right, right.

10 THE COURT: Okay, fine. All right. So the question is now what are the damages? I am
11 looking at you counsel?

12 MS. CULBERTSON: I know that you are.

13 THE COURT: What is your position as far as the damages?

14 MS. CULBERTSON: I mean I think Your Honor that these damages are you know the judgment
15 amount, the debt amount from the first mortgage does not count as straight up damages because
16 there is not a deficiency sought against Mrs. Otto. So I don't think that can be established as
17 damages against my client unless and until that property is sold. I don't know how we establish
18 the damages on that amount because again there is no deficiency sought. How do we establish
19 damages? And you know similar to the Carolina First, I don't know if they have filed an action
20 to reduce this to a judgment against her or this is just the amount due.

21 THE COURT: Well that amount was agreed to be paid, correct?

22 MS. CULBERTSON: Yes, Your Honor.

23 THE COURT: On the second. And that amount was due and is due.

24 MS. CULBERTSON: But she has not paid it. So why is she entitled to damages for that
25 amount?

1 THE COURT: Well the question is, had it not been for the nonpayment we would not be here.
2 So moving from that point what we have got to determine are the damages, the amounts that were
3 unpaid that caused her to be in this position which would include whatever those unpaid payments
4 are on the first. That is what I am trying to determine, what the actual damages are.
5 MS. CULBERTSON: My position Your Honor is we are not privy to the contract with the first
6 mortgage or the second mortgage holder. Her damages should be limited to what we would have
7 paid under our bond for title obligations.
8 THE COURT: So the - - -
9 MS. CULBERTSON: And not what flows further from that.
10 THE COURT: Then moving in that direction what is the amount that should have been paid
11 under the bond for title, your contract for deed?
12 MS. CULBERTSON: Well Your Honor the first mortgage payments, I believe that it would be
13 Mrs. Otto's obligation to establish these damages.
14 THE COURT: Well she has already established what she is claiming and now you have got to
15 come along and say no that is not right, this is what it would be and that is your limit under the
16 default.
17 MS. CULBERTSON: I understand, Your Honor.
18 THE COURT: That is where you have to go to say no that is not the damage. These are the
19 damages.
20 MS. CULBERTSON: Right. I understand.
21 THE COURT: Because what it goes directly to is the amount, if any, of a deficiency judgment
22 against your client based on the default under the bond for title.
23 MS. CULBERTSON: Okay.
24 THE COURT: So this is what they are claiming their damages are.
25 MS. CULBERTSON: All right. I understand.

1 THE COURT: All right.

2 Q. So I think Mrs. Otto what I will need you to do is go back over the payment history of the
3 loan with Mr. Munsey and establish for me what payments you claim were not made?

4 A. The contract for deed was for 1.4 million dollars. That included the first mortgage, the
5 second mortgage, the mortgage to me and the tax lien was paid. All I know is that I feel
6 that I am due what my contract said. I am not asking for anything other than that. My
7 damages are what and if you think that I am not going to be held accountable for that
8 second mortgage you as an attorney knows that is not so. So that is all I can say. You
9 know the payments reflected what he made in the first mortgage. They presented how
10 much was owed. So I assume that reflects the payments that were made. That reflects
11 the payments he made against the amount, the one point four (1.4) million that he bought
12 the property for and had the contract for deed for plus interest, attorney fees, and
13 everything. The second mortgage was originally one ninety four and it is now one seventy
14 seven. I think that it was one hundred and seventy before they added interest and
15 penalties. So I think he was given credit between the one ninety four and the one seventy
16 for payments made. My attorney fees are my attorney fees. Those are there. The
17 Greenspace items those are - - -

18 Q. All I am asking you right now is the first mortgage. And the note to you for
19 \$1,061,968.32. Can you establish what payments were made and what payments were
20 not made beginning on April 1, 2011?

21 A. The Bank established that with the payoff of the loan with the one million six whatever
22 that number was that you just quoted. The Bank established that. That reflects
23 everything that was made on that loan from the time that he executed it.

24 Q. I am going to ask you to go through month by month with me and explain it. And you
25 received monthly payments on this mortgage, is that correct?

1 A. I did.

2 Q. So every month you have received a statement that showed what payment had been made
3 and what amount was paid is that correct?

4 A. That is correct.

5 Q. So you were the only one in possession of those statements, is that correct?

6 A. Yes, other than the copies that I would have given to Jack.

7 Q. And so you need to establish for me what payments were made and what payments were
8 not made?

9 MR. ANTHONY: Your Honor, if I could object to that approach. I don't think that is
10 necessarily the proper way to establish that. I would point out to the Court that not only do we
11 have a contract for deed document that cited Mr. Munsey's obligations but as I pointed out in the
12 questioning of Mrs. Otto for each of those obligations an independent promissory note was signed
13 by Mr. Munsey saying I agree to pay not to the Bank but the contract for deeds says that you have
14 got to pay the Bank but the notes say that you have got to pay it to Mrs. Otto on each one of them.
15 So if he defaults the entire debt is due just like any promissory note. I didn't handle the closing
16 but I think that it was done that way for a reason.

17 THE COURT: Well a lot of times in the contract for deeds what you will have is an amortization
18 schedule, a set price, an amortization schedule where Mrs. Otto could track the payments and then
19 she would make the payments to whoever but in this case it was not set up that way. In this case,
20 the payment under this 1.4 million dollar contract for deed with a credit for the \$10,000.00 deposit
21 was pay the first mortgage payment, pay the second mortgage payment and pay the Greenspace,
22 pay the taxes, insurance and whatever. So that is the way that this one was set up.

23 MR. ANTHONY: Well it was in the contract for deed itself but attached as part of our Exhibit 1,
24 are these three (3) promissory notes that memorialize the debt that is established in the contract
25 for deed.

1 THE COURT: Okay.

2 MR. ANTHONY: And they provide for when you default, to be accelerated, just like always.

3 THE COURT: Well the one promissory note, the 193.

4 MR. ANTHONY: Which reflects the second mortgage.

5 THE COURT: Which was the second mortgage.

6 MR. ANTHONY: Yes sir.

7 THE COURT: So that was a note to her but it was based on the debt due on the second

8 mortgage.

9 MR. ANTHONY: Right. And both in the contract for deed and the promissory note it

10 ballooned.

11 THE COURT: Right.

12 MR. ANTHONY: So that one is already, I think, clearly due.

13 THE COURT: All right. The other is the payment to her on the third.

14 MR. ANTHONY: Correct.

15 THE COURT: Well what I will say is the third but there is not an obligation except for the

16 contract for deed that would reflect or encumber or encompass - - there it is right there. The

17 promissory note for one point one (1.1). Now is that the - - -

18 MR. ANTHONY: That is the first.

19 THE COURT: That would represent the first. Right?

20 MR. ANTHONY: Yes, Your Honor.

21 THE COURT: Okay. But the underlying basis for that figure is the first mortgage.

22 MR. ANTHONY: Correct.

23 THE COURT: The balance on the first mortgage. But she did not receive these payments. The

24 deal was to make the payments directly to the first mortgage, second mortgage holders?

25 MR. ANTHONY: That is correct.

1 THE COURT: Okay.

2 MR. ANTHONY: I will just note that the promissory note refers to well it creates reference to
3 the note to the bank for its term which includes the acceleration costs, etc. If I don't pay then the
4 whole debt is due.

5 THE COURT: All right. So there is not an amortization schedule for these notes separate and
6 apart from the obligations due on one and two.

7 MR. ANTHONY: There is actually an amortization schedule in here for the third.

8 THE COURT: The third, correct. Okay.

9 MR. ANTHONY: The others just rely on the payment.

10 THE COURT: All right. So the obligation starts at one point four million minus ten thousand.

11 MS. CULBERTSON: Well - - -

12 THE COURT: The original obligation.

13 MS. CULBERTSON: There was an additional cash portion of that payment.

14 THE COURT: Okay. Where is that?

15 MS. CULBERTSON: Item I.

16 THE COURT: Let me look at that.

17 MS. CULBERTSON: Yes sir. There is a \$43,000.00 cash payment.

18 THE COURT: All right. So lets get to the original debt.

19 MS. CULBERTSON: Yes. Your Honor.

20 THE COURT: It is what?

21 MS. CULBERTSON: The original debt is one point four (1.4) million but that is comprised of - -.

22 THE COURT: Right. But I mean after credits. So you have got one million four minus ten
23 minus something else.

24 MS. CULBERTSON: Okay. If we go down these line by line or it would be minus payments
25 made under the note to Capital One minus payments made under the note to Carolina First minus

1 the payment of the tax lien shown in Item D on the contract for deed and minus payment of the
2 property taxes shown in Item E. So a lot of these items were paid on the closing statement.
3 They were paid immediately on the day of closing. The only notes, the only loan obligations
4 were shown in this contract for deed as B, C, and J.

5 THE COURT: Well that is what I am trying to get to because the contract for deed holder, the
6 obligation is only, not only, but what is that number that we started out with in the contract for
7 deed. That is the one million four minus the ten minus the whatever.

8 MS. CULBERTSON: Yes, Your Honor.

9 THE COURT: Then minus whatever has been paid by the contract for deed holder. So it can't
10 be -- the damages can not be one point eight million dollars for the contract for deed holder
11 because their obligation is not that high. Do you see what I am saying?

12 MR. ANTHONY: Well yes Your Honor but I don't think that is taking into account the fact that
13 there is interest accruing.

14 THE COURT: It may well be but it is not at the 1.8 million. It is based on that debt. And that is
15 what I am trying to figure is what is the debt. What is their debt? The original debt then is
16 whatever the contract for deed is even though in other words you have got to figure your debt
17 figure on this one based on their debt, not on the Bank's debt. And that is where I am having a
18 problem with the damages here.

19 MR. ANTHONY: Well when he specifically took on the Bank's debt.

20 MS. CULBERTSON: But we didn't assume the Bank debt.

21 THE COURT: I understand that. I understand that.

22 MR. ANTHONY: But in effect you did because he signed the contract for deed that said I am
23 going to pay the Bank according to this note which is attached and shows the obligation. When
24 he doesn't do that and interest accrues and late charges accrue and attorney's fees accrue I think -
25 well it is inescapable that he is responsible for everything that he has created. That his default

1 has created. That is what he obligated himself to do was to pay the Bank according to the terms
2 of that note. The same way with the second mortgage. He obligated himself to pay under the
3 terms of that second mortgage. If there are additional late charges, interest or whatever accrues
4 on that note as a result of the default is what he signed on to be responsible for. And the third
5 just speaks for itself.

6 MS. CULBERTSON: And, Your Honor, I disagree because I believe Mrs. Otto and her husband
7 went and got this loan a long time ago and they enjoyed the benefit of the loan and lived in the
8 property a lot of years. We came long and agreed to make these payments. We did not assume
9 the loan. They did not enter into an assumption agreement with us. We agreed to make the
10 payments, absolutely. So we are on the book for payments for the period of our bond for title. I
11 will happily admit that.

12 THE COURT: Well the note says with interest from the date at the rate to and according to the
13 terms of that note given by the Ottos to Chase in 2004. I am trying to work my way through this
14 because this has been arranged in such a different way and obviously the way - - I mean it was
15 made basically, you assume my payments and you can have my property.

16 MS. CULBERTSON: Correct. Yes, Your Honor. I believe that was it.

17 THE COURT: I mean that looks like it. If you go to the bottom line. You give me this much
18 money and this much money and take over my payments or assume my payments you can have
19 the property.

20 MS. CULBERTSON: Yes sir.

21 THE COURT: And if you pay pursuant to the terms of those notes then when you are finished
22 then the property is yours. I mean isn't that the bottom line of this?

23 MS. CULBERTSON: Yes, Your Honor.

24 THE COURT: So he didn't make the payments, right?

25 MS. CULBERTSON: Correct.

1 THE COURT: So the question now is as a result of the failure to make the payments what are
2 the damages? In other words, it made the circle again after we are dealing with the issue.
3 MS. CULBERTSON: Correct.
4 THE COURT: What are the damages? The damages are - - but I think the issue is counsel if
5 there were not a demand for deficiency then we wouldn't be going through this exercise.
6 MS. CULBERTSON: Correct.
7 THE COURT: Is that correct?
8 MS. CULBERTSON: Yes sir, absolutely.
9 THE COURT: So at the end of the day that is what we are talking about.
10 MS. CULBERTSON: Yes sir.
11 THE COURT: So it becomes important to determine that amount.
12 MS. CULBERTSON: Yes sir.
13 THE COURT: If there is a deficiency.
14 MS. CULBERTSON: Correct, Your Honor. And I think given that there is not a deficiency in
15 the first mortgage foreclosure and I don't know what is happening in the second mortgage action
16 but that is not a damage that can flow when it doesn't exist uphill - - - .
17 THE COURT: Well it may well if they come after the obligation on the note when they have
18 been wiped out of the property. Mr. Anthony I am waiting for an answer to the damage issue.
19 MR. ANTHONY: To me if there is any validity to the arguments it is that last point that we
20 don't know what Mrs. Otto's ultimate obligation to the Bank is going to be. If in deed, since they
21 have waived the deficiency judgment. And if the Court wanted to reserve that issue I mean we
22 are going to know at the February sale. We are going to know what the property sells for and if
23 the Court wanted to substitute at that point that number whatever it turns out to be. There was a
24 judgment entered against Patty presumably that is the value of the land she is losing for the
25 amount of the first mortgage indebtedness equation. I could understand that approach. I don't

1 know if I enunciated that correctly.

2 THE COURT: No, I understand what you are saying but I am trying to - - -

3 MS. CULBERTSON: And that doesn't adjust the second mortgage.

4 MR. ANTHONY: The second to me, it is done. It has matured. He owes that. He owed that a

5 couple of years ago.

6 THE COURT: The second and the third I am not concerned with because those are obligations

7 that matured and he agreed to pay those obligations pursuant to the terms and that included the

8 balloon, correct?

9 MS. CULBERTSON: Yes, Your Honor.

10 MR. ANTHONY: That is right.

11 THE COURT: Let me look at that.

12 MS. CULBERTSON: What we are arguing is - - well I would argue that she is not entitled to

13 the third mortgage payments but I am not allowed to make that argument since we are in default.

14 THE COURT: Right.

15 MS. CULBERTSON: So when you are looking at his obligations under the contract for deed I

16 am hamstrung by not being able to argue contrary positions.

17 THE COURT: I understand that counsel but I didn't do that to you. That was done by the

18 virtue of your client's activity and that was my ruling based on case law. So lets move on from

19 hamstrung.

20 MR. ANTHONY: That is the bottom of page 3, Your Honor.

21 THE COURT: Three?

22 MR. ANTHONY: Yes sir.

23 THE COURT: All right. A note, a copy of which is attached and incorporated herein . . under

24 the payments are made current or modified by the terms and conditions of the said note and

25 mortgage . . . and a like amount until June 17, 2013, when on that date the balance shall be due

1 and payable. The purchaser acknowledges and agrees that the original terms and conditions of
2 this note . . . all right, so we are done with that one. He did not pay the balance due on the
3 balloon.

4 MS. CULBERTSON: I think my argument is that doesn't translate to damages that Mrs. Otto has
5 yet suffered.

6 THE COURT: I understand.

7 MS. CULBERTSON: Okay. And if for example you were to go to Carolina First and buy the
8 note for pennies on the dollar then that would no longer be an item of damages that she would be
9 entitled to.

10 THE COURT: Well I didn't hear anybody offer that throughout this.

11 MS. CULBERTSON: But I mean - - -

12 THE COURT: You know that is an option.

13 MS. CULBERTSON: All I am doing is saying that I am not sure how we calculate these
14 damages until everything has been reduced.

15 MR. ANTHONY: Well Your Honor if the Court proceeds as we requested which is having the
16 property foreclosed and the sale left open for the possibility of a deficiency then we are going to
17 know in February what it sells for. You wouldn't ever enter a deficiency until the redemption date
18 is passed and by that time we will of course know what the sale amount was and could put that,
19 we would have that number, once you knew the - - if there was an upset bid you would know
20 what the deficiency against Mr. Munsey was.

21 THE COURT: And that may be the only way to handle this in this case based on the way that
22 this contract for deed was set up because it doesn't make it easy for us to sit here and try to
23 determine what the actual damages are but we do know one thing and that is the first mortgage is
24 foreclosing and the bond for title will be foreclosed. So that interest will be taken care of in that
25 foreclosure. Now is it your intention also to foreclose this bond for title or are you just going to

1 seek whatever the damages are in the form of a deficiency or what is your intention at the end of
2 this?

3 MR. ANTHONY: Well Your Honor the reason we wanted to follow a parallel track here with
4 the other foreclosure is you know my client thinks that this is a realistic possibility. Well we have
5 had in mind all along trying to reinstate this first mortgage and second mortgage.

6 THE COURT: Okay.

7 MR. ANTHONY: And take the property back over. Our primary goal was to get rid of this
8 contract for deed.

9 THE COURT: Okay.

10 MR. ANTHONY: So that we can do that. And again that hinges somewhat on Mr. Walsh's
11 issue because if those judgments apply we probably are not interested in trying to do that. But
12 our goal was that we could foreclose the contract for deed and get his claim against the property
13 out of the way then we would be free to go back to the Bank and try to keep the property and that
14 is still our goal.

15 THE COURT: So it may well be counsel that the only way to handle this is there is no question
16 that there is a default under the contract for deed.

17 MS. CULBERTSON: There is no question that there is a default under the - - -

18 THE COURT: I understand that. I am saying it. You don't have to say it. But the other issue
19 is that if there is an amount to be paid by the contract for deed holder to Mrs. Otto we don't know
20 that amount and it is almost impossible to determine that today. So I would entertain the way to
21 do it is to go ahead and set this for sale. You can't determine the amount of the debt but if you
22 can word it that the debt will be determined at a subsequent hearing but it would be subject to a
23 second sale any way and that would be the March sale and then we would have more realistic
24 figures or at least we could determine what the numbers are. Do you see any particular - -

25 MS. CULBERTSON: My issue with that is - - -

1 THE COURT: I mean there are no payments being made on the property at this point to
2 anybody.
3 MS. CULBERTSON: Correct.
4 THE COURT: And your client is occupying the property.
5 MS. CULBERTSON: Correct.
6 THE COURT: So ---
7 MS. CULBERTSON: And ancillary another issue is going to come into place with regards to
8 your previous ruling about our right of equitable redemption and do you stand by that with regards
9 to this contract for deed as well.
10 THE COURT: Well does that contract for deed have it in it? The problem with that is how are
11 we going to determine if we don't have a number to determine the amount that the contract for
12 deed holder could bid in or a third party could bid in or even Mrs. Otto would bid in at the sale.
13 Do you see what I am saying?
14 MS. CULBERTSON: Because you are saying that there is a redemption.
15 THE COURT: Well no, that is not what I said.
16 MS. CULBERTSON: Well no Your Honor but what you are getting at is if the deficiency is held
17 open ---
18 THE COURT: Well they are seeking a deficiency. That is why I mentioned the March sale.
19 MS. CULBERTSON: All right.
20 THE COURT: Because that would be the second sale. So for the contract for deed holder to bid
21 in there has got to be a number. She has got to bid in her debt or be able to bid her debt at the
22 first sale. So unless we determine that number she can't bid or there is no basis for her bid. And
23 we don't have an appraisal to determine if there is any equity in the property that requires a
24 foreclosure.
25 MS. CULBERTSON: Would Your Honor entertain an option of allowing both parties to submit

1 appraisals and proposals for how the debt should be established or proposals of numbers of what
2 the debt amount should be with an explanation for how it was established. I think today we are
3 not - - -
4 THE COURT: No, we are beating the same - - and I keep opening doors and they don't get
5 closed.
6 MS. CULBERTSON: I feel like I have answered multiple questions.
7 THE COURT: Yes. And I don't know - - who is he?
8 MS. CULBERTSON: I am wondering that, too.
9 MR. ANTHONY: He actually is an attorney but not licensed to practice here. He is a friend of
10 Mrs. Otto.
11 THE COURT: Well okay. I know it is hard for you to be silent sir but you are not authorized to
12 appear in this Court as an attorney. Why don't we do that. Submit proposed Orders and a basis
13 for those. All right. Mr. Walsh, I see your hand back there.
14 MR. ANTHONY: Well Your Honor what I was going to request is I was wondering if the Court
15 would consider a recess giving me the right if Ms. Culbertson doesn't object to talk with my client
16 even though she still is seated on the stand.
17 THE COURT: Right.
18 MR. ANTHONY: And see if we can come to some proposal.
19 THE COURT: Do you have any objections to that?
20 MS. CULBERTSON: I have no objections. I don't.
21 THE COURT: All right. Well why don't we take a lunch break and we will come back and
22 maybe start up again. We have got the whole day. We scheduled the whole day and it looks like
23 it may well take it.
24 MS. CULBERTSON: Would you let me go ahead and hear Mr. Walsh's side of the thing before
25 we leave for lunch.

1 THE COURT: Well that is up to him. Are you - - -

2 MR. WALSH: Your Honor, it seems to me that the problem with the amount of the debt for Mrs.

3 Otto is the TD Bank amount. I don't know what TD Bank has done in this. I imagine that they

4 have said yes we are owed money and if there is any let us know. So I think TD Bank needs to

5 establish its debt for her to be able to establish what her damages are because if they pay that

6 money to her and she doesn't pay it to TD Bank I think that is maybe a double recovery or

7 something. So I think TD Bank needs to step up or determine what TD Bank is going to do and I

8 don't know what the pleadings are but that is kind of where your problem is in setting your

9 damages are.

10 THE COURT: Well Mr. Walsh you are jumping on everybody's side here today, aren't you?

11 MR. WALSH: No, Your Honor. I am just trying to keep this thing on a regular course.

12 THE COURT: Well that is what I am trying to do. It seems we are trying to do the same thing.

13 All right, Mr. Anthony are you prepared to address Mr. Walsh's issues at this point if we do that

14 or can we do that? And then what we will do is we will start up again about two o'clock, if that

15 suits everybody's schedule and we can hopefully during that time and Mr. Anthony counsel has

16 indicated that she has no objections to your talking to your client during that break. So we will

17 do that. Mr. Walsh if you are ready on your issue or whoever - - I think the issue is whether your

18 judgment or whatever it is encumbers this property.

19 MR. WALSH: I really hadn't prepared to present that but I guess I can try to wing it now.

20 THE COURT: Well do you want to wait until we come back at 2:00?

21 MR. WALSH: Well, no. I will present it right now.

22 THE COURT: All right.

23 MR. WALSH: I think maybe I can. Yes, Your Honor.

24 THE COURT: All right. And Mr. Walsh is here on behalf of - - -

25 MR. WALSH: Giese and Kerhulas. Laura Giese and Mark Kerhulas.

1 THE COURT: All right. Co-trustees of the Trust. All right. When you are ready counsel.
2 MR. WALSH: Your Honor, I am afraid that I didn't know to prepare exhibits for everybody. I
3 think most of them were previously attached to my Reply to Motion to Amend and Motion to
4 Disallow the Liens.
5 **CROSS EXAMINATION BY MR. WALSH.**
6 Q. Mrs. Otto it has been a while since I have seen you. How are you doing these days?
7 A. I am doing fine.
8 Q. Your name is Alyce F. Otto?
9 A. Correct.
10 Q. Are you also known as Patty Otto?
11 A. Yes sir.
12 Q. Mrs. Otto we are here on a piece of property folks have described as 1841 Fairview Farms
13 Road. Has that property also been known as 1842 Fairview Farms Road?
14 A. I believe so.
15 Q. And I am going to show you what I will represent is a warranty deed recorded on July 12,
16 2004 in Deed Book 80-T, Page 257 from Fairview Associates, LLC, to Rudrick G. Otto
17 and Alyce F. Otto for 25.08 acres distribution Tract G, is that the property that U. S. Bank
18 is foreclosing here today?
19 A. It is. Yes sir.
20 Q. And was Mr. Newton your attorney at that closing?
21 A. I don't remember.
22 Q. All right. So you and your husband acquired this property on July 12, 2004 or
23 thereabouts, I think the date on there is also July 12?
24 A. Yes.
25 Q. And I will also show you a mortgage recorded on August 24, 2004 recorded in Real Estate

1 Mortgage Book 3290 at Page 70, and this is a portion of a mortgage from Rudrick G. Otto
2 and Alyce F. Otto also covering Tract G, Greenspace 25.08 acres. Is that the mortgage
3 you gave to Chevy Chase Bank?
4 A. Yes.
5 Q. Do you know what you paid to purchase that property?
6 A. I don't.
7 MR. WALSH: May I introduce this as Kerhulas Exhibit Number 1.
8 THE COURT: All right. Any objections?
9 MR. ANTHONY: No objections, Your Honor.
10 MS. CULBERTSON: No.
11 **MR. WALSH INTRODUCES INTO EVIDENCE A COPY OF A WARRANTY DEED,**
12 **RECORDED IN DEED BOOK 80-T AT PAGE 257, MARKED AS DEFENDANT**
13 **KERHULAS'S EXHIBIT NUMBER 1.**
14 THE COURT: All right.
15 MR. WALSH: And this mortgage, this is not the full mortgage, I think that is probably of
16 record in here. This is just mine to show the date that this document was recorded.
17 THE COURT: Do you want this writing up here put in?
18 MR. WALSH: Well it doesn't really matter.
19 THE COURT: Well it does if you are going to put it in, if it is going to be scanned in I think we
20 should mark it out.
21 MR. WALSH: Okay.
22 THE COURT: I don't think that makes any difference as far as the validity of the document
23 itself.
24 MR. WALSH: And this is Kerhulas's Exhibit Number 2.
25 THE COURT: And this is just a portion of the mortgage?

1 MR. WALSH: Yes. It is just the first page and the description.
2 THE COURT: All right.
3 MR. WALSH INTRODUCES INTO EVIDENCE A COPY OF THREE PAGES OF THE
4 MORTGAGE RECORDED IN BOOK 3290 AT PAGE 70, MARKED AS DEFENDANT
5 KERHULAS'S EXHIBIT NUMBER 2.
6 THE COURT: All right.
7 Q. If you will note on here the third page. The Affidavit of Consideration doesn't state that
8 there was any money paid for that acquisition of the property, is that correct?
9 A. That is correct.
10 Q. And on the front page there the doc stamps that are paid for recording three seventy per
11 thousand the figure on the doc stamps is zero?
12 A. Yes.
13 Q. All right. Can you tell me what this is?
14 A. This is the note from me to the Kerhulas Trust for the teahouse.
15 Q. For the teahouse?
16 A. Yes.
17 Q. And is it one point four seven (1.47) million?
18 A. It is.
19 Q. And that is dated May 1, 2007?
20 A. It is.
21 Q. So you incurred that debt after you acquired this property that is the subject of the
22 foreclosure today?
23 A. Yes. We acquired that property in 2001.
24 Q. Okay. This deed states 2004?
25 A. All right. My husband was Fairview Associates.

1 Q. He was Fairview Associates, okay. So that was acquired in 2001.
2 A. Yes.
3 Q. And it was put in your name?
4 A. Yes.
5 Q. So at the time that you signed this note on May 1, 2007, you still owned this property,
6 Tract G, the 25.08 acres?
7 A. We did.
8 Q. Have you ever paid off that debt to the Kerhulas?
9 A. I have not.
10 Q. All right.
11 **MR. WALSH INTRODUCES INTO EVIDENCE A COPY OF A NOTE DATED MAY 1.**
12 **2007, MARKED AS DEFENDANT KERHULAS'S EXHIBIT NUMBER 3.**
13 **THE COURT:** All right.
14 Q. And can you tell me what this is?
15 A. This is the foreclosure from the Kerhulas.
16 Q. And that was entered over in Greenville County?
17 A. Yes.
18 Q. And it appears to have been entered on September 20, 2011?
19 A. Yes.
20 Q. Maybe September 21. I am looking at that back page there. And the amount of the debt
21 on which the foreclosure was based was One million eight-hundred nine dollars and some
22 change?
23 A. I guess that was it.
24 Q. The decree amount before the sale of the property?
25 A. Yes.

1 MR. WALSH: We offer this as Kerhulas's Exhibit Number 4.
2 THE COURT: Exhibit 4.
3 MR. WALSH INTRODUCES INTO EVIDENCE A COPY OF A DECREE OF
4 FORECLOSURE AND SALE, CASE NUMBER, 2009-CP-23-10866, MARKED AS
5 DEFENDANT KERHULAS'S EXHIBIT NUMBER 4.
6 THE COURT: All right.
7 Q. And I will show you two documents recorded in Deed Books 95-A, Page 435 and 439.
8 Can you tell me what these two (2) documents are?
9 A. These are documents establishing I guess the property going into a trust for my husband
10 and then one going in for myself.
11 Q. Okay. Can you tell us what the dates on those deeds are?
12 A. Yes. The 17th day of November 2009.
13 Q. The 17th day of November 2009, which is after you entered into the debt with the Kerhulas
14 Trustees on May 1, 2007?
15 A. Yes.
16 Q. Okay. So at the time that you transferred the property into the trust you still owed the
17 money to the Kerhulases?
18 A. I guess.
19 Q. Has that money been paid to this date?
20 A. No.
21 Q. What did you receive in consideration for the conveyance to the Trust?
22 A. I didn't receive anything.
23 Q. You didn't receive anything? No consideration?
24 A. No.
25 Q. All right.

1 MR. WALSH: We offer these.

2 THE COURT: Exhibit 5 and 6.

3 MR. WALSH INTRODUCES INTO EVIDENCE A COPY OF A TITLE TO REAL

4 ESTATE, RECORDED IN BOOK 95-A, PAGE 435, BY RUDRICK G. OTTO, MARKED

5 AS DEFENDANT KERHULAS'S EXHIBIT NUMBER 5.

6 MR. WALSH INTRODUCES INTO EVIDENCE A COPY OF A TITLE TO REAL

7 ESTATE, RECORDED IN BOOK 95-A, PAGE 437, BY ALYCE F. OTTO, MARKED AS

8 DEFENDANT KERHULAS'S EXHIBIT NUMBER 6.

9 THE COURT: All right.

10 Q. I will show you a document dated or at least recorded on February 10. It is dated
11 February 9 and recorded on February 10 and recorded in Deed Book 97-V, Page 181. Can
12 you tell me what that is?

13 A. It is the trust, putting I guess it is the property going into my trust.

14 Q. When did Rudrick, when did your husband die?

15 A. He died December 2, 2009.

16 Q. On December 2, 2009?

17 A. Yes.

18 Q. And so on this document you are acting as the successor Trustee under his Trust to convey
19 the property to yourself as Trustee under your Trust, is that correct?

20 A. To my trust.

21 Q. Okay. And the properties conveyed are the twenty five (25) acres, Tract G, which is the
22 property that we are here on today?

23 A. That is correct.

24 Q. The Lot A, Arthur B. Coggins and James E. Ashmore, what property is that?

25 A. I believe that is probably a piece of property that is attached to the Fairview, the

1 Greenspace.

2 Q. Okay. It is a good ways away. Is this maybe the Hare and Hound property in downtown
3 Landrum?

4 A. I don't think so.

5 Q. Okay. It is Block Map 1 08-05 and your Greenspace is 1 03-00?

6 A. No, it wouldn't be there. No.

7 Q. Okay. Whatever it is it is conveyed to you right?

8 A. Conveyed to the Trust.

9 Q. Conveyed to you as Trustee for the Trust, is that correct?

10 A. Yes.

11 Q. And what consideration did you receive for that conveyance?

12 A. None.

13 Q. No consideration?

14 A. No.

15 Q. And the Declaration of Trust of Alyce F. Otto, were you told that was a family trust?

16 A. Sir, I really don't remember what it was called. My husband was dying. An attorney for
17 estate planning said this was what needed to be done.

18 Q. Okay. Was this to avoid having any creditors come after your assets?

19 A. Absolutely not.

20 Q. Okay. So this is all subject to claims of your creditors, is that correct?

21 MR. ANTHONY: That question would call for a legal conclusion.

22 THE COURT: I will sustain that.

23 Q. What was your understanding of the reason for the creation of the Trust?

24 A. Probate.

25 Q. To avoid Probate?

1 A. It was said that - - well I don't know. Our estate lawyers said this is what was supposed
2 to be done. My husband was dying. I did what they said. You are asking me questions
3 that I can only tell you that I did what I was told to do.

4 MR. WALSH: I offer this as Exhibit 7.

5 THE COURT: All right.

6 **MR. WALSH INTRODUCES INTO EVIDENCE A COPY OF TITLE TO REAL ESTATE,**
7 **RECORDED IN DEED BOOK 97-V, PAGE 181, MARKED AS DEFENDANT**
8 **KERHULAS'S EXHIBIT NUMBER 7.**

9 THE COURT: All right.

10 Q. And I will show you two documents, recorded on February 10, 2011 in Deed Books 97-V,
11 Page 173 and Book 97-V, Page 186, Certifications of Trust for Alyce F. Otto and Rudrick
12 G. Otto. Are those documents relating to the Trust?

13 A. Yes sir.

14 Q. And it just puts on the record what the authority of the Trustee is. Is that your
15 understanding of it?

16 A. Yes.

17 Q. Does it state that it is a revocable? That each of them is revocable trust?

18 A. I really don't know.

19 Q. Okay. Lets look at Paragraph 3.

20 A. It says it is revocable.

21 Q. Okay. Do you know what that means?

22 A. I guess that it could be revoked.

23 Q. Okay. That means at any time you can just take the assets out of the Trust and put it back
24 in your name if you wanted to?

25 A. I don't know if that is what it means or not.

1 MR. WALSH: I offer this.

2 THE COURT: This will be Exhibit 8. And this will be 9.

3 MR. WALSH INTRODUCES INTO EVIDENCE A COPY OF A CERTIFICATION OF
4 TRUST, RECORDED IN BOOK 97-V, PAGE 186, MARKED AS DEFENDANT
5 KERHULAS'S EXHIBIT NUMBER 8.

6 MR. WALSH INTRODUCES INTO EVIDENCE A COPY OF A CERTIFICATION OF
7 TRUST, RECORDED IN BOOK 97-V, PAGE 173, MARKED AS DEFENDANT
8 KERHULAS'S EXHIBIT NUMBER 9.

9 THE COURT: All right.

10 Q. Mrs. Otto, I am going to show you what I will represent is an index from the Greenville
11 County Judicial Circuit showing the actions and the parties in the case of Laura Kerhulas
12 Giese, et al., versus Shamrock Realty, et al., including Alyce Otto. If you would, can you
13 tell me what the file date is?

14 A. It is 12-22-2009.

15 Q. And the disposition date on here?

16 A. It is September 21, 2011.

17 Q. And I will show you the last page which I will represent is the Spartanburg County public
18 index. Can you tell me what the file date for this is?

19 A. It is 1-3-2012.

20 Q. And does that indicate the deficiency judgment of the Kerhulas which was brought over to
21 Spartanburg County and filed on that date?

22 A. I guess. The amount is wrong.

23 Q. With regards to the amount that is wrong you went through the appraisal process and that
24 amount was reduced according to your appraisal?

25 A. Yes.

1 Q. All right.

2 MR. WALSH: I don't know if I should make this one exhibit or two.

3 THE COURT: We will make the Greenville County one of them and the Spartanburg another
4 one.

5 MR. WALSH: Yes sir.

6 THE COURT: Exhibits 10 and 11.

7 **MR. WALSH INTRODUCES INTO EVIDENCE A COPY OF A GREENVILLE COUNTY**
8 **PUBLIC INDEX SHEET FOR LAURA KERHULAS GIESE, ET AL., VERSUS**
9 **SHAMROCK REALTY INVESTMENTS, LLC, ET AL., (2009CP2310866), MARKED AS**
10 **DEFENDANT KERHULAS'S EXHIBIT NUMBER 10.**

11 THE COURT: All right.

12 **MR. WALSH INTRODUCES INTO EVIDENCE A COPY OF A SPARTANBURG**
13 **COUNTY PUBLIC INDEX SHEET FOR LAURA KERHULAS GIESE, ET AL., VERSUS**
14 **SHAMROCK REALTY INVESTMENTS, LLC, ET AL, (2012CP4200014), MARKED AS**
15 **DEFENDANT KERHULAS'S EXHIBIT NUMBER 11.**

16 THE COURT: All right.

17 Q. Mrs. Otto do you have the present ability to pay this - - and just for the record and I don't
18 have a copy of the document for some reason but that judgment that we just introduced
19 was reduced to, does this sound about right, \$228,329.90 plus interest from December 10
20 at 8%, it was pretty much cut in half. Do you currently have the ability to pay this
21 judgment?

22 A. No sir.

23 Q. All right.

24 MR. WALSH: Your Honor, that is all I have. I will be glad to present some legal arguments for
25 the benefit of the Court, but that is all I have from this witness.

1 THE COURT: All right. Mr. Anthony.

2 **REDIRECT EXAMINATION BY MR. ANTHONY.**

3 Q. Mrs. Otto, I am going to ask you some questions particularly pertaining to this Kerhulas
4 judgment. You entered into this transaction with them about May of 2007?

5 A. Right.

6 Q. Is that right?

7 A. Right.

8 Q. And the Court may be aware but you have operated the Hare and the Hound Restaurant in
9 Landrum for a number of years?

10 A. I have sir.

11 Q. And this Kerhulas property is what was called the teahouse on Lake Lanier?

12 A. Correct.

13 Q. And you bought this from them to operate as a second restaurant didn't you?

14 A. Correct.

15 Q. And you did in fact operate it as a restaurant there and made payments to the Kerhulas
16 according to your agreement?

17 A. Yes sir.

18 Q. And what happened in 2009 that caused you and your husband to deed your home into this
19 trust?

20 A. My husband became ill and his death was perceived so we knew he was dying and we
21 sought legal advice as far as estate planning and it was recommended that we put the
22 property in a trust.

23 Q. Whom did you go to?

24 A. Mr. Brennan in Spartanburg.

25 Q. Brennan, Jim Brennan?

- 1 A. Jim Brennan, yes sir.
- 2 Q. Who is an estate planning attorney?
- 3 A. Yes sir.
- 4 Q. And the two of you went to him for purposes of looking at your estate and recommending
5 what to do?
- 6 A. Correct.
- 7 Q. And his recommendation was that these properties be placed into the trust?
- 8 A. That is correct.
- 9 Q. Was there any discussion about doing this in an effort to avoid the Kerhulases or any other
10 creditors?
- 11 A. Absolutely not.
- 12 Q. In fact, at the time of his death and afterwards you were still operating the teahouse
13 restaurant weren't you?
- 14 A. I was.
- 15 Q. And you were still making payments to the Kerhulases?
- 16 A. I was.
- 17 Q. All right. You certainly wasn't in default in payments when the deeds went into the trust?
- 18 A. Correct.
- 19 Q. And you continued to make payments to the Kerhulases for how long after?
- 20 A. On through 2010. I left the teahouse in November of 2011.
- 21 Q. All right. So up until November of 2011 you were still trying to make a go of it?
- 22 A. I was.
- 23 Q. And you were still making payments to the Kerhulases?
- 24 A. Yes, in some form or another. Selling properties or whatever, yes.
- 25 Q. So with titling the properties into the trust, was that at any time intended to defeat the

1 Kerhulases or any other person or bank that you owed money to?

2 A. No sir.

3 Q. All right.

4 MR. ANTHONY: That is all I have, Your Honor.

5 THE COURT: Mr. Walsh?

6 **RECROSS EXAMINATION BY MR. WALSH.**

7 Q. Mrs. Otto the first payment you missed was the November 1, 2008 payment before you

8 started these trusts? That is what was alleged in the Complaint to the trial?

9 A. In 2008.

10 Q. November 1, 2008 was the first payment that you missed and you did make sporadic

11 payments occasionally but by 2009 you never made any payments after that except when

12 you sold property, is that correct?

13 A. We sold property and I also gave credits to Mark to let him keep the payments---.

14 Q. There was a payment to Mark Kerhulas?

15 A. Quiet a large one. And a three hundred thousand dollar lot, yes sir.

16 Q. All right.

17 MR. WALSH: That is all I have.

18 THE COURT: Mr. Anthony.

19 **REDIRECT EXAMINATION BY MR. ANTHONY.**

20 Q. Tell us a little bit more about that lot that you transferred?

21 A. The property I had divided into three (3) lots. It was next to the teahouse property. The

22 entire plan of the project was to sell off those lots to reduce the debt and the teahouse. So

23 I would be into the teahouse for something that was reasonable. I sold one (1) lot and I

24 gave all of the money from that lot to reduce the debt of the teahouse. I also started a spec

25 house which I put \$289,000.00 in building and to try to sell this spec house to reduce the

1 debt. So that continued up until well I mean all through 2010. And at that point I had
2 \$289,000.00 in the house and I sold the one (1) lot for Three hundred thousand. So I
3 continued to try to get support from you know trying to get investors. I did everything I
4 could to keep the teahouse going. I didn't try to avoid anything. I tried to keep it going
5 until the day that I walked out.

6 Q. And the three hundred thousand payment was about when?

7 A. That was in 2010.

8 Q. All right. Thank you.

9 MR. ANTHONY: That is all I have.

10 **RECROSS EXAMINATION BY MR. WALSH.**

11 Q. And none of those payments ever brought the loan back current? You were always
12 continually in default after November 1, 2008?

13 A. I never made the regular payment, no sir. But yes after 2008, I made a payment before
14 2009 but no I never was, I was always trying to keep ahead of it, yes.

15 THE COURT: All right. Mr. Walsh any argument?

16 MR. WALSH: Yes, Your Honor. The Statute of Elizabeth provides that a fraudulent transfer,
17 any transfers made for the purpose to delay, hinder, or defraud creditors and others of their just
18 lawful debts may be deemed and taken to be clearly and utterly void, frustrated and of no effect,
19 any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the
20 contrary notwithstanding. That is the *Albertson v. Robinson case*, 638S.E.2d 81 at Page 83. That
21 is the Court of Appeals in 2006. There are certain rules in establishing a fraudulent transfer. The
22 first rule is a creditor needs to establish the grantor was indebted to the creditor at the time of the
23 transfer. Okay. And I have established that the debt arose on May 1, 2007 and the transfer to the
24 Trust was on November 18, 2008. That was the first fraudulent conveyance. The conveyance
25 was voluntary. You know there wasn't any requirement that she make this conveyance. She told

1 us because they found out her husband was sick but she also stated that it was without
2 consideration. And the grantor failed to retain sufficient property to pay his indebtedness to the
3 creditor in full. Not merely at the time of the transfer but in the final analysis when the creditors
4 seek to collect the debt. That is *Mathis v. Burton*, 460 S.E.2d 406, at Page 408, Court of Appeals
5 1995. Quoting *Albertson v. Robinson*. And they at one point said well the judgment wasn't
6 obtained until after the debt. The case of *Matthews v. Montgomery*, addresses that issue, at 7
7 S.E.2d 841, a 1940 case from the Court of Appeals. It does not matter whether a creditor
8 obtained the judgment against a property owner before the conveyance: It is only necessary that
9 the debt should have been in existence or the right of action have accrued at or before the time of
10 the transfer. And of course, we have proven that the debt existed prior to the transfer. It may be
11 reduced to a judgment at a later date. We have shown that it has been reduced to judgment. To
12 determine whether a person is such an existing creditor as can invoke the protection of the Statute
13 of Elizabeth the inception of the debt or obligation is the time which controls and not the date of
14 the subsequent entry of judgment. And again *Albertson v. Robinson* quotes *Matthews v.*
15 *Montgomery*. And in *Durham v. Blackard*, which is a 1993 Court of Appeals case, also cited in
16 *Mathis v. Burton*. Conveyances can be set aside for existing creditors as well as for subsequent
17 creditors. For existing creditors, conveyances can be set aside in two instances. First, when the
18 challenged transfer was made for a valuable consideration. That is not the case here. She has
19 testified that there was no consideration. It will be set aside if the Plaintiff establishes that (1) the
20 transfer was made by the grantor with the actual intent of defrauding his creditors and (2) the
21 grantor was indebted at the time of the transfer, and the grantor's intent is imputable to the
22 grantee. Second, where the transfer was not made on a valuable consideration, as is the case
23 here, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity,
24 the transfer will be set aside if the Plaintiff shows that the grantor was indebted to him at the time
25 of the transfer. Again we have shown the May 1, 2007 debt and the November 1, 2008 transfer.

1 The conveyance was voluntary, which it was. And the grantor failed to retain sufficient property
2 to pay the indebtedness to the Plaintiff in full, not merely at the time of the transfer, but in the
3 final analysis when the creditor seeks to collect his debt. That is *Durham v. Blackard* as cited in
4 *Mathis v. Burton*. And one other case is probably applicable here, *Windsor Properties,*
5 *Incorporated v. Dolphin Head Construction*, 331 S.C. 466 at Page 471 and 498 S.E.2d 858 at
6 Page 860, a 1998 case. With a voluntary inter-family transfer, which is here, a transfer
7 voluntarily from a person to that person's trust for their benefit. The burden shifts to the
8 transferee, that is the trustee of the trust, to establish the transfer was valid. Where transfers to
9 members of the family are attacked either upon the ground of actual fraud or on account of their
10 voluntary character, the law imposes the burden on the transferee to establish both a valuable
11 consideration, which she has already testified that there was none and the bona fides of the
12 transaction by clear and convincing testimony. So I would move that you find that the Kerhulas
13 Trust does apply to the standards of a junior lien. I don't know that it will do us much good but it
14 will also apply to her other property which she has transferred into this Trust. Thank you, Your
15 Honor.

16 THE COURT: Mr. Anthony.

17 MR. ANTHONY: Well Your Honor, you have heard the testimony and it is uncontradicted that
18 the reason for putting this into the Trust was the illness and expected death of her husband. And I
19 think that is borne out by the fact of the attorney they went to, Jim Brennan, who is known to be a
20 very fine estate planning attorney and that was the reason that they went there not to try to avoid
21 creditors. There is not a showing that this lender, Mrs. Otto is any less able to pay this judgment
22 than she would have been otherwise. I would point out that she and it ties into what we have
23 been here about all day. The only other asset that she has got of any significant is this home there
24 and she is selling that to Mr. Munsey for an amount essentially to take the debt off of me and you
25 can have it. So there was no equity there in that property that was being sold. She is in no

1 different financial position by virtue of selling that. There is not any evidence to show that she
2 became any less able to pay the Kerhulas debt once this property was transferred because this
3 property appears to not have any equity any way. So there is no evidence of intent. I mean it is
4 called a fraudulent transaction and fraud requires an intent. And there is no testimony been
5 presented whatsoever by the Kerhulas to show that this was done in an intention to defeat their
6 judgment and as the Court has heard there were payments made long after the property was
7 transferred. Sizable payments made long after the property was transferred. We ask the Court to
8 find that there was no fraudulent intent and that the judgments are not valid against this property.
9 People are free to title property however they desire and on the advice of their attorney and this
10 was what was recommended and what was done.

11 THE COURT: All right.

12 MR. WALSH: Well I think that he overlooked that when there is a voluntary transfer between
13 family members the burden is on her and it doesn't matter whether fraud is shown or not it is just
14 a matter of whether or not she can pay the debt. Also, I would refer the Court to South Carolina
15 Code Section 62-7-505, the South Carolina Trust Code. It states, creditors' claims against settlor.
16 Whether or not the terms of a trust contain a spendthrift provision, the following rules apply.
17 During the lifetime of the settlor, the property of a revocable trust is subject to claims of the
18 settlor's creditors. And the Kerhulas Trust is one of her creditors. Thank you.

19 THE COURT: Mr. Anthony any response to that?

20 MR. ANTHONY: No. Nothing further.

21 THE COURT: What is that Code section again?

22 MR. WALSH: It is 62-7-505.

23 THE COURT: All right. I am going to find that this judgment does encumber this property.

24 MR. WALSH: Thank you, Your Honor.

25 MR. ANTHONY: Your Honor, is that ruling based on the Code Section?

1 THE COURT: That is the Code Section based on the fact that the -- and when Mr. Walsh was
2 going through that the buzz word that caught my ear was the revocable portion. If it is revocable
3 that interest is subject to the creditors during the life time of the settlor. So the Code Section is
4 what I am finding it on, well the transfer itself was done without consideration during the term so
5 it does apply based on really both of those issues. One, the Code Section as far as the Trust and
6 then again a revocable trust and the other is the transfer was made during the existence of the debt
7 without consideration into this Trust. All right.

8 MR. ANTHONY: What I am trying to clarify Your Honor is not that the transaction has to be
9 reversed but simply a ruling based on the Code Section that the judgments apply regardless of the
10 Trust.

11 THE COURT: Well the transfer is not set aside.

12 MR. ANTHONY: That is all I am asking.

13 THE COURT: But the encumbrance or this judgment encumbers the property. We are not
14 setting aside the transfer.

15 MR. ANTHONY: That was what I was asking.

16 THE COURT: It is just a finding that whatever is left of this ---

17 MR. WALSH: The assets are subject to the judgment.

18 THE COURT: Right.

19 MR. ANTHONY: Thank you, Your Honor. That is all I wanted to clarify.

20 THE COURT: So we will re-adourn at 2:15.

21 MR. WALSH: Do I need to draft an Order to that effect or will it be ---

22 THE COURT: It won't be any where else. So you need to draft an Order.

23 MR. WALSH: Yes sir.

24 (RECESS)

25 THE COURT: We are back on the Record in Case Number 2012-CP42-3549. Mr. Anthony.

1 MR. ANTHONY: May it please the Court, I appreciate opposing counsel allowing me to talk
2 with my client over the break and I hope that - - well I feel like that I have got a solution to the
3 question or the answer for the Court. In part of the Court's ruling on the Kerhulas judgment to
4 resolve that because it looks like there is no possibility of reinstatement of the first mortgage at
5 this point. The first thing that I did Your Honor was I cleaned up this sheet that I prepared on the
6 third mortgage to make it cleaner, if that is all right.

7 THE COURT: All right.

8 MR. ANTHONY: And it just pertains to the third mortgage. Now the balance, the interest and
9 then tell us what that amount would be due today and without that confusing credit that was on
10 there before and the attorney's fees are not logged in so they are separately stated in the Affidavit
11 that has been handed up. So my proposal at this point, Your Honor, is that we essentially waive
12 our foreclosure action. Since that is being taken care of by the first mortgage foreclosure action.
13 Since there is no sense in our trying to foreclose the contract for deed when the first mortgage
14 action is taking it away, well taking care of that aspect of it having the property sold and therefore
15 no reason to hold the sale open and no reason to seek a deficiency judgment at this point. So then
16 the only, in the same way a bank sometimes will choose not to foreclose their mortgage but rather
17 simply collect on the note. And so we would then ask the Court just to award a judgment in the
18 amount that the Court finds appropriate based on the Contract for Deed and the notes that were
19 attached to the Contract for Deed. And the way that we would calculate this is I prepared this
20 summary sheet to see if I can keep my numbers and myself straight here. And the way that we
21 would calculate that, the amount that was due under the Contract for Deed is just as I have set
22 forth here. The first mortgage as established by the Bank. The second mortgage as established
23 by the TD Bank statement. The third mortgage is established by the sheet that I have just handed
24 up to the Court. The Greenspace debt, the attorney's fees and costs which is set forth in the
25 Affidavit and the credit for the three (3) checks that have been put into evidence that were

1 returned by the first mortgage holder. That would give a total of One million four hundred
2 twelve three hundred ninety five & 49/100 (\$1,412,395.49) dollars. What we would prefer to do
3 less somehow we get a windfall on the first mortgage if it is bid in for less and there is no
4 deficiency we would be content for the Court to not enter this judgment until after the sale price of
5 the property is determined at the February sale and then just substitute for this top number that we
6 have got whatever the sale price is because that will have established the value of the property
7 which we have lost as a result of the failure to make the payments under the Contract for Deed. If
8 it sells for Seven hundred thousand then this total will be reduced by the difference and that would
9 be substituted for the first line. If it sells for Nine hundred fifty thousand dollars that would
10 become the first line of that total. I hope that this - - all of that makes sense to me, over the last
11 hour that I have sat and thought about it. I hope that is an eligible solution to the problem we are
12 trying to determine what is due under the Contract for Deed without the necessity of some how
13 having - - - Your Honor after I thought about it, there is no way that I can see to have a deficiency
14 judgment anyway because once the property has been sold by the Bank at the February sale
15 nobody can come in and bid it in this action because the property has already been sold with a
16 private sale.

17 THE COURT: All right. Counsel.

18 MS. CULBERTSON: Judge first of all I point out that there is still the money left in trust with
19 Mr. Anthony's office that he had agreed previously to discount which was Six thousand forty four
20 & 10/100 (\$6,044.10) dollars.

21 THE COURT: Lets stop at that point. Is that in these figures?

22 MR. ANTHONY: It is not. I forgot it.

23 THE COURT: Okay. All right.

24 MR. ANTHONY: I was still thinking that it was included in the fifteen. But I stipulated earlier
25 when Erin said so that it was a credit.

1 THE COURT: So this figure - - -

2 MR. ANTHONY: And I will be glad to have my office run this again and bring it back.

3 THE COURT: That number would be, the fifteen thousand - - -

4 MS. CULBERTSON: No, Your Honor. I think it would make more sense just to add another
5 line item under returned checks just for trust account purposes.

6 MR. ANTHONY: Right. Trust account funds.

7 MS. CULBERTSON: A credit of - - -

8 MR. ANTHONY: A credit of \$6,044.10.

9 THE COURT: So that would be minus six, what is that amount?

10 MS. CULBERTSON: Six zero four four point one zero.

11 THE COURT: Okay.

12 MS. CULBERTSON: But on a larger scale Judge, I still think that conceptually this is not an
13 accurate representation of damages under the contract for deed. Mr. Anthony made reference to a
14 deficiency under the first mortgage. They are not seeking a deficiency so whether the property
15 sells for Seven hundred thousand dollars or Two million dollars that does not matter under the
16 contract for deed. And over lunch I was sort of thinking about it in my mind that the analysis
17 should be how would Mrs. Otto be made whole under the contract for deed. In my opinion that is
18 the analysis we are looking at to determine her damages. And on its face which means we have
19 to look back to the contract for how it handles default and in Paragraph 13 on Page 12, which in
20 this case Notice of Default, Right to Cure, and then stipulates that seller's interest shall be treated
21 as interest of the holder of a third mortgage and the remedy of seller shall be to foreclose the
22 interest of the purchaser in the same manner as the seller would foreclose the interest of the
23 purchaser. So it does not allow for the proposal that Mr. Anthony has just made to the Court.

24 THE COURT: Well it does say the remedies set forth are not exclusive. On the next page, Page
25 13.

1 MS. CULBERTSON: Your Honor I would assume that if the contract which was negotiated
2 between the parties stipulated how a default would be handled the Court should refer to the terms
3 of that contract as to how to establish damages but even without regard for that, I still think
4 conceptually there is a gap here. Mrs. Otto was going to be made whole under the contract for
5 deed if my client had performed. He would have ultimately paid off the first mortgage, paid off
6 the second mortgage and paid off the third mortgage and she would deed the property to him.

7 THE COURT: Correct.

8 MS. CULBERTSON: Correct. Now if the property under the first mortgage, if the first
9 mortgage forecloses the property they are going to satisfy their mortgage under the foreclosure
10 proceedings and they are not seeking a deficiency against Mrs. Otto and Mrs. Otto will no longer
11 own the property. So the result would be - - -

12 THE COURT: But here the property is lost as a result of the inaction or nonpayment of your
13 client.

14 MS. CULBERTSON: Understood. But I am trying to get conceptually at the damages on it. If
15 we had performed she wouldn't own the property anymore and the Bank would be paid off. We
16 didn't perform and the Bank is going to be paid off and she is not going to own the property any
17 more but that doesn't necessarily cause her any damages because the Bank is not seeking a
18 deficiency against her for any gap there in the middle.

19 THE COURT: So the fact that the Bank is not seeking a deficiency then excuses a default or any
20 judgment by your client?

21 MS. CULBERTSON: No sir. I don't think that it excuses any default but I think that it
22 establishes a zero damage number, well maybe not a zero damage number. I think she would
23 have incurred attorney fees in defending that foreclosure action. But if the theory is to be made
24 whole under the contract for deed and the first mortgage company is going to foreclose and their
25 mortgage will be paid off at the foreclosure sale and they are not seeking deficiency then at the

1 end of the day Mrs. Otto has not suffered any money damage and we should not be accountable
2 for One point one million dollars worth of damages on that. It is sort of analysis to you know if
3 we had paid off, if Mr. Munsey got a loan and paid off the Bank, paid off Capital One, the payoff
4 to Capital One and this example would not translate as well, but the payoff to Capital One would
5 be whatever their payoff amount was and not one penny would go to Mrs. Otto.
6 THE COURT: All right.
7 MS. CULBERTSON: Correct. Again if we had performed under the contract for deed it did not
8 anticipate Mrs. Otto making any more money than what she had made, than what she had been
9 paid in cash at the closing and her second mortgage.
10 THE COURT: Okay.
11 MS. CULBERTSON: So I see anything above and beyond as a windfall. Particularly if the
12 Court rules that she is entitled to any surplus funds.
13 THE COURT: Okay. Mr. Anthony.
14 MR. ANTHONY: Well, Your Honor, to say that if my client loses a property that is worth seven
15 fifty or nine fifty or a million two that she has suffered no damage that is just ludicrous. We are
16 agreeing and suggesting that the number, the amount of her loss when she loses the property is
17 whatever the sale price turns out to be. I think that there is no more accurate way to ascertain
18 what her damage on that line item is. To say oh well, you have lost the property but you don't
19 have to pay the Bank any money so you don't have any damages. Well she just lost a very
20 valuable asset that was supposed to make her some money. I can see that number being reduced.
21 I can't see it going to zero.
22 MS. CULBERTSON: I think Your Honor if we had performed under the mortgage she would
23 have been entitled to more money for the property upon a payoff of the first mortgage.
24 THE COURT: Well the only thing that I am concerned with well not the only thing but is the
25 loss that she will be subject to at some point the possibility of an action by the second mortgage.

1 MS. CULBERTSON: I agree, Your Honor.

2 THE COURT: And also she has lost the third mortgage. Now I don't know whether she has
3 incurred the Greenspace debt but that will be foreclosed with the property.

4 MR. ANTHONY: Greenspace has already sued her and obtained a judgment in the amount of
5 Forty five hundred, I believe.

6 THE COURT: Against her personally?

7 MR. ANTHONY: Against her personally. It is forty five hundred ninety dollars. So there is no
8 reason to think that they won't pursue the larger amount at some point. Particularly that Twenty
9 thousand dollar capital call.

10 THE COURT: Well I was not aware of that judgment.

11 MR. ANTHONY: No. But that is included in the amount that we submitted.

12 THE COURT: The Thirty nine thousand two hundred?

13 MR. ANTHONY: Yes sir.

14 MS. CULBERTSON: Judge while you are ruminating there is a couple of - - -

15 THE COURT: While I am doing what?

16 MS. CULBERTSON: While you are ruminating.

17 THE COURT: Ruminating.

18 MS. CULBERTSON: There are a couple of more new options I would like to throw at you.

19 THE COURT: Okay.

20 MS. CULBERTSON: One is when the Munseys, when Jack Munsey entered into this contract
21 for deed part of the purchase price was a reinstatement fee to Capital One of fifty three thousand
22 and some odd dollars which is reference to the contract for deed as one of the line items it
23 comprises, that One point four million dollar purchase price. It is close to fifty one thousand
24 dollars. So that indicates that Mrs. Otto was already in default with Capital One before we were
25 even on the scene.

1 THE COURT: But that just enabled you to start at zero at the time the contract for deed went
2 into effect.

3 MS. CULBERTSON: Correct Your Honor. That was necessary to be paid in order to reinstate
4 that first mortgage so they didn't foreclose.

5 THE COURT: Right. That is what I am saying. It brought them to zero and everybody
6 basically started the clock running again with that reinstatement figure.

7 MS. CULBERTSON: Correct, correct. But you know Mr. Anthony's argument that my client's
8 default is the only reason that we are here isn't exactly true. And then one other item that I was
9 looking at over lunch on this account statement we got from the first mortgage holder, Mrs. Otto
10 only claims that she got those three (3) checks back totaling that Fifteen thousand dollar number
11 that we have been given credit for but there is another refund shown on here of Ten thousand
12 dollars, ten thousand six zero one. So I think that amount needs to be accounted for.

13 THE COURT: I don't know that there is a check or anything else evidencing that.

14 MS. CULBERTSON: Well the lender indicates they made that refund to her.

15 THE COURT: Let me see if I can -- is that figure right, first mortgage, is that the right figure?

16 MR. ANTHONY: The first mortgage.

17 THE COURT: All right. Okay. One eight three four six one six.

18 MR. ANTHONY: Actually I left the sixty cents off.

19 THE COURT: No, I was thinking that it was higher than that. Okay. The obligation on the
20 Greenspace part of that has been reduced to a judgment.

21 MR. ANTHONY: Yes, Your Honor.

22 THE COURT: And what is the result of the rest of it? Is it going to be foreclosed or is there any
23 outstanding obligation that will follow?

24 MR. ANTHONY: I don't know what will become of the rest of that debt. I think that we have
25 got a couple of representatives of Greenspace in the courtroom. They have proven before that

1 they don't mind suing over the dues.

2 THE COURT: But that is a restriction. It is not a personal liability. It is a restrictive covenant
3 so to speak.

4 MR. ANTHONY: Well it is a personal obligation of the owner of the property.

5 THE COURT: But I mean if the person - - -

6 MR. ANTHONY: Once they are not an owner anymore.

7 THE COURT: Right. It is not a personal it is a land flow or a land obligation as long as you are
8 an owner of the property or you can be sued as the property owner it is entering a judgment
9 against the property.

10 MR. ANTHONY: Well I don't want to say anything to the detriment of my client.

11 THE COURT: I understand.

12 MR. ANTHONY: I would think that it is her obligation up until the foreclosure sale.

13 THE COURT: Foreclosure sale. Right.

14 MR. ANTHONY: And it would continue to accrue and could be collected. Now once the
15 person takes title then that purchaser at the foreclosure sale becomes subject to the dues and
16 assessments. I would think.

17 THE COURT: Right.

18 MR. ANTHONY: I would think that even though they are named - - well are they named in the
19 foreclosure action?

20 THE COURT: I think that I saw that name in there.

21 MR. ANTHONY: I don't think that forecloses the debt. Forecloses any lien against the
22 property.

23 THE COURT: No maybe they weren't.

24 MR. ANTHONY: I don't think so.

25 MS. CULBERTSON: Your Honor, I think that the Four thousand five hundred ninety judgment

1 that Mr. Anthony referenced has been paid off but not satisfied. That was a line item on the
2 closing statement. That is my understanding of it. There has been a subsequent judgment lien
3 taken for Six thousand dollars but it was filed after the Lis Pendens in this matter. So I think it is
4 going to be wiped out by virtue of its later filing.

5 THE COURT: There is a Four thousand five hundred ninety & 34/100 (\$4,590.34) dollars line
6 item in the HUD-1.

7 MR. ANTHONY: I must have picked up the wrong judgment.

8 MS. CULBERTSON: I think that it is still of record, actually.

9 MR. ANTHONY: There is another judgment.

10 MS. CULBERTSON: Since that matches up with that line item perfectly and it corresponds to an
11 earlier date I think that it has been paid off but not satisfied. And then there is a subsequent Six
12 thousand dollar judgment.

13 MR. ANTHONY: That is correct. That is right.

14 THE COURT: Okay.

15 MS. CULBERTSON: Which was entered after the Lis Pendens in the foreclosure was filed.

16 THE COURT: All right. So that is no longer a consideration.

17 MR. ANTHONY: Well the Six thousand is a judgment and it is included in the numbers that we
18 gave the Court as having accrued since Mr. Munsey took on the obligation of making payments.

19 THE COURT: But the foreclosure will extinguish that encumbrance.

20 MS. CULBERTSON: The Six thousand.

21 THE COURT: It will not follow her.

22 MR. ANTHONY: Well no, Your Honor, because I think it is as Ms. Culbertson said, it was
23 taken after the Lis Pendens was filed.

24 THE COURT: Okay.

25 MR. ANTHONY: And it is my understanding that would be since they were not named as a

1 party in this action they can still pursue her.

2 THE COURT: All right.

3 MR. ANTHONY: They couldn't pursue the property.

4 THE COURT: All right. Anything further counsel?

5 MR. ANTHONY: No, Your Honor.

6 MS. CULBERTSON: No sir.

7 MR. ANTHONY: I can't think of any better solution so if the Court adopts our proposal we are
8 prepared to waive our right to actually have the contract for deed foreclosed and simply to proceed
9 under the language that you pointed out at the top of page 13, the availability of other remedies,
10 one of which would be just entering a judgment for the amount due under the contract for deed
11 and the accompanying notice.

12 THE COURT: And also this is a -- I am going to start at the end of the bus first. This is a
13 termination of this contract for deed.

14 MR. ANTHONY: Yes sir.

15 MS. CULBERTSON: If that is the Court ruling.

16 THE COURT: No, I mean that is what and basically a finding that there was a breach and that
17 this terminates the contract for deed. Now the question is as a result of the breach the contract is
18 terminated and a judgment is entered for this amount which represents the damages.

19 MR. ANTHONY: Correct.

20 THE COURT: And at this point the only amount that is ascertainable is the second mortgage.
21 The third mortgage whatever amount is due there, whatever judgments as far as the Greenspace,
22 the attorneys' fees and costs with those other credits is the final number I can not determine until
23 the sale of the foreclosure even though it is a deficiency waived whatever that sells for at the sale I
24 will take that into consideration and the difference will be the top number. So I will not
25 determine the debt, in my way that I am going to calculate it, until the result of the sale on

1 February 1, 2016.

2 MR. ANTHONY: Yes, Your Honor. And at least in my analysis, I thought that I heard the
3 Court say the difference would be the top number. In my analysis the bid price would be the top
4 number.

5 THE COURT: That is what I am saying. Right. So whatever the property sells for at the sale
6 the difference between that number and this top number would be the amount. Do you see what I
7 am saying?

8 MR. ANTHONY: Your Honor, I think that is backwards.

9 THE COURT: No, if the property sells for Eight hundred thousand and the debt is one point one,
10 I am saying that difference of five hundred thousand would be the top number. Are we going
11 through the same - - - ?

12 MR. ANTHONY: Yes sir.

13 THE COURT: So that is what I am saying.

14 MR. ANTHONY: Yes sir.

15 THE COURT: And if you want to so that you will have a complete order at this point, well the
16 only order at this point would be the termination of the contract based on the breach.

17 MR. ANTHONY: Right.

18 THE COURT: And the final order will not be entered until after the sale on February 1, 2016,
19 and that will also - - I am thinking of what counsel had requested as far as an amount in the event
20 of an appeal bond. I am trying to determine that but I will have to determine that when those
21 memos are sent in. So that would be my ruling. That there is a breach. And I am trying to work
22 out in my mind the delivery of possession date but I think that is going to have to coincide with
23 the results of the sale. So whoever is the successful bidder at the sale, well because the worse
24 thing you don't want this quality of a residence vacant. It is my understanding that the property is
25 occupied at this point and to have it vacant for any period of time is not a good idea. I think the

1 delivery would coincide with the sale. So whoever is the successful bidder that would be the
2 delivery of possession unless there is an appeal. All right. I don't think that there is another way
3 to handle it because you are not going to deliver it and then un-deliver it because that is just not a
4 good way to handle it.

5 MR. ANTHONY: I will be glad to prepare that Order.

6 THE COURT: Counsel?

7 MS. CULBERTSON: I just wanted to clarify Your Honor that the only memo that you are really
8 looking for is the amount of the bond?

9 THE COURT: The appeal bond.

10 MS. CULBERTSON: Okay.

11 THE COURT: Right. And that is why I was going through that to try to figure it.

12 MS. CULBERTSON: Right.

13 THE COURT: We are kind of taking this thing as to different parcels here. And going back to
14 the issue of Mr. Walsh's judgment and I had thought about that and you had asked a question.
15 There was no fraud in the conveyance but what is still outstanding is the judgment is still
16 enforceable against the property that is in the trust because it is in a revocable trust.

17 MR. ANTHONY: Yes, Your Honor.

18 THE COURT: So I didn't want it -- if the order comes through any other way I don't want it to
19 be stated that way. There was no fraud and I don't find fraud. But I do find that it is
20 enforceable. So there is no setting aside of the transfers or anything else. So I want to make sure
21 that -- Mr. Walsh is not here but I want to clarify that portion of that order in the event it is any
22 other way.

23 MR. ANTHONY: I presume that he will present it to me and I will inform him of that.

24 THE COURT: All right. And then if you can make an order between the two of you, an order
25 that goes along with where we are.

1 MS. CULBERTSON: Since we have consolidated these cases it might just be best according to
2 Ms. Lybrand to prepare the order the same order as to the Capital One deficiency and her
3 foreclosure and ours as to the contract for deed. We will figure out the caption that makes some
4 sense.

5 THE COURT: All right.

6 MR. ANTHONY: Yes sir. I will send it to you.

7 THE COURT: All right. Then I will wait on you to do that. All right. Any other matters that
8 we need to handle?

9 MR. ANTHONY: No sir.

10 THE COURT: All right.

11 -----END OF HEARING-----

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1
2 STATE OF SOUTH CAROLINA

3 COURT OF COMMON PLEAS

4 COUNTY OF SPARTANBURG

5
6 CERTIFICATE

7
8 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County of
9 Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and accurate
10 Transcript of Testimony of the proceedings had at the hearing of the captioned case, before the
11 Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South Carolina, on the
12 24th day of November, 2015.

13 I do further certify that I am neither of kin, counsel nor interest to any party hereto.
14

15 

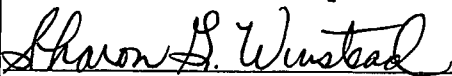
16 Sarah Hollis

17 Court Reporter
18

19 SWORN to before me this

20 2nd day of February, 2016.

21 Spartanburg, South Carolina.

22
23 

24 Notary Public for South Carolina

25 My Commission Expires: September 7, 2016.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG)

COURT OF COMMON PLEAS

3 U.S. BANK, NA, AS TRUSTEE RELATING)
4 TO THE CHEVY CHASE FUNDING, LLC,)
5 MORTGAGE BACKED CERTIFICATES,)
6 SERIES 2004-B,)

PLAINTIFF,

-VS-

7)
8 ALYCE F. OTTO, INDIVIDUALLY; ALYCE F.)
9 OTTO, TRUSTEE UNDER DECLARATION OF)
10 TRUST OF ALYCE F. OTTO, DATED 11/17/09;)
11 TD BANK, NA; THE UNITED STATES OF)
12 AMERICA, ACTING BY AND THROUGH ITS)
13 AGENCY, THE INTERNAL REVENUE)
14 SERVICE ; LAURA KERHULAS GIESE, AS)
15 CO-TRUSTEE OF THE THEODORE ERNEST)
16 KERHULAS TRUST UNDER DECLARATION)
17 OF TRUST DATED 5/25/04; MARK WARNER)
18 KERHULAS, AS CO-TRUSTEE OF THE)
19 THEODORE ERNEST KERHULAS TRUST)
20 UNDER DECLARATION OF TRUST DATED)
21 5/25/04; JACKSON L. MUNSEY, JR., AND)
22 CITIBANK, NA,)
23)

DEFENDANTS.

17 AND

18 JACKSON L. MUNSEY, JR.,

19 CROSS-CLAIM PLAINTIFF,

20 -VS-

21 ALYCE F. OTTO, INDIVIDUALLY; AND)
22 ALYCE F. OTTO, TRUSTEE UNDER)
23 DECLARATION OF TRUST OF ALYCE F.)
24 OTTO, DATED 11/17/09,)
25)

CROSS-CLAIM DEFENDANTS.

TRANSCRIPT OF TESTIMONY

(2012CP42-3549)

(2012CP42-2874)

February 15, 2016

Spartanburg, South Carolina

1 REFERENCE HELD:

FEBRUARY 15, 2016.

2 BEFORE:

HONORABLE GORDON G. COOPER,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

4 APPEARANCES:

ROGERS, TOWNSEND & THOMAS, PC
BY: ERICA G. LYBRAND, ESQUIRE,
Attorneys for the Plaintiff.

BURR & FORMAN, LLP
BY: RICHARD C. KELLER, ESQUIRE,
Attorneys for the Plaintiff.

THE ANTHONY LAW FIRM, PA
BY: KENNETH C. ANTHONY, JR., ESQUIRE,
Attorneys for Alyce Otto, Individually and as Trustee
under Declaration of Trust of Alyce F. Otto.

KEHL, CULBERTSON, ANDRIGHETTI, KORNFELD
BY: ERIN CULBERTSON, ESQUIRE,
Attorneys for Jackson Munsey, Jr.

GAINES & WALSH,
BY: DAVID L. WALSH, ESQUIRE,
Attorneys for Laura Kerhulas Giese and Mark Warner
Kerhulas, co-Trustees of the Theodore Ernest Kerhulas
Trust Under Declaration of Trust.

Sarah Hollis, Court Reporter

1 THE COURT: We are here on Case Number 2012CP42-3549 which is consolidated with Case
2 Number 2012CP42-2874 in the matter of U.S. Bank, NA as Trustee relating to the Chevy Chase
3 Funding, LLC, versus Alyce F. Otto, Individually, and Alyce F. Otto, Trustee Under Declaration
4 of Trust of Alyce F. Otto, et al. Also, included as the Defendants is the Kerhulas Judgment and
5 also the Defendant Jackson L. Munsey and CitiBank. The hearing today has been filed by Erin
6 Culbertson as the attorney for Jackson L. Munsey. Ms. Culbertson.

7 MS. CULBERTSON: Thank you, Judge. Your Honor we are here today based on my Motion
8 to Reconsider the Court's Order that was issued and the Order that Consolidated the Matter with
9 the Otto v. Munsey matter. And my Motion is based on two things, one we would ask that the
10 Order be amended to contain specific language that was included in the Court's Bench ruling but
11 not included in the Order reduced to writing. Specifically the Court ruled from the Bench that
12 Mr. Munsey did not have an equity right of redemption in the property and therefore would not be
13 entitled to notice of any surplus funds in the event of the foreclosure sale. So we would simply
14 ask that which was verbally ruled on by Your Honor be included in the written Order as well.
15 And then perhaps more importantly the Order that was issued by the Court referenced an Exhibit
16 A, List of Damages, but that Exhibit A was not attached to the Order. And in a Return to my
17 Motion, Judge, Mr. Anthony filed a Return on Friday and made reference to a request for a bond
18 that he was potentially going to be making and I wanted to make sure that we clear that up today
19 here as well. It is our position that the bond has already been paid in this case because these two
20 cases were consolidated. Briefs were submitted to Your Honor and Your Honor made a ruling.
21 The bond was set and in fact has been paid into Court in the amount of \$243,000.00. So I think
22 the bond amount was set.

23 THE COURT: All right. I don't have a copy of that Motion that was filed.

24 MR. ANTHONY: Of the Return?

25 THE COURT: Yes, the Return to the Motion.

1 MS. CULBERTSON: And additionally Judge, Mr. Anthony has handed around and circulated
2 his proposed Exhibit A, which we are saying should have been attached to the Order submitted to
3 the Court. And we have some objections to the items included here which I believe the Court
4 ruled differently from the Bench on. So we may need to establish what the Court's ruling from
5 the bench was and make sure it is Exhibit A, clearly is the same numbers.

6 THE COURT: All right. Mr. Anthony?

7 MR. ANTHONY: Your Honor, if it please the Court, I will hand up that Exhibit A, which you
8 ruled. Ms. Culbertson is correct it should have been attached to the Order which we submitted.
9 I apologize to the Court for our oversight apparently in not attaching it. We, first of all, don't
10 have any objections to the language about the right of redemption being barred and I presume that
11 according to Ms. Culbertson that is the Court's ruling. It seems appropriate. The Exhibit A,
12 Your Honor, we sort of talked through in the courtroom as to how that was going to be calculated
13 and then I tried to do that as best I could afterwards, going back and taking into account of
14 everything that was presented in the testimony in evidence determining the amount that I was
15 supposed to put into the Court's order. Of course, all of these action were consolidated because
16 of the fact and intention of what it appears to be that Mr. Munsey was going to make the first
17 mortgage payment, he was going to make the second mortgage payment, and he was going to
18 make the third mortgage payment to my client and there were other things that he was going to
19 pay such as homeowners association fees and the Court awarded attorney's fees and cost and then
20 there were certain checks that had been returned by U. S. Bank, or its predecessor, for which he
21 was to be given credit for those funds that have been deposited in my trust account. So that is our
22 best calculations, if there are objections to that I don't know what they are, but I can certainly
23 address them if there are. Further Your Honor, our request for a bond had to do with the fact that
24 the Court would reserve the right to amend Exhibit A, even though it wasn't attached to the Order,
25 the amount of the judgment ultimately after the foreclosure sale occurred which was scheduled to

1 occur on February 1 and, of course, did not occur and I noticed if you are looking at it that the
2 Order also mentioned February 1, 2015, so that certainly needs to be corrected in any order that
3 the Court issues, it should be February 1, 2016. And, of course, Mr. Munsey through counsel
4 filed an appeal of the foreclosure action and posted a bond which we think had to do with that
5 action, pertaining to the foreclosure action. Therefore, we think the Court ought to establish
6 some amount whether it is in the amount on Exhibit A or something else as a fixed money
7 judgment at this time which is subject to execution unless there is a bond filed in this action but of
8 course any collection efforts as to our judgment.

9 THE COURT: Ms. Culbertson.

10 MS. CULBERTSON: Your Honor these actions have been consolidated and for him to ask for a
11 separate bond I don't think is appropriate and Mr. Anthony could have submitted a brief
12 establishing that position at all the other times that we submitted briefs regarding the bond issue.
13 So again I believe that has been decided by the Court. Since this is not a foreclosure action this
14 portion of the matter is a collection action not a foreclosure and a bond is no where required.
15 And I believe that the enforceability of this damage amount is absolutely subject to the appeal of
16 the first mortgage foreclosure action and the sale of that property will determine what this
17 judgment amount will be. So I think that this judgment amount should not be collectible unless
18 and until the appeal is resolved in favor of U. S. Bank and that foreclosure is allowed to proceed
19 forward.

20 THE COURT: All right.

21 MS. CULBERTSON: My specific objections to the damages list or our specific objections to the
22 damages list, but I believe that Your Honor ruled from the bench that the Greenspace Homeowner
23 dues in the amount of \$39,200.00, the Court ruled that those were going to be wiped out by the
24 first mortgage foreclosure and therefore should not be included in this damages calculation. It
25 was our position and I will renew it again that the second mortgage has not been collected on.

1 TD Bank is a party to this action. They could have quite easily have filed, even just a cross claim
2 to collect on their debt, which would have saved them the whole \$150.00 it is going to take them
3 to file suit which they have not yet done. So in my opinion this inclusion of the second mortgage
4 to TD Bank of \$177,000.00 amount is a windfall to Mrs. Otto. I think that there is some double
5 dipping in here if you also include - - the whole second mortgage comes to \$177,000.00. You
6 have got Carolina First payments which is the same debt of \$11,000.00. And in fact, those
7 \$11,000.00 where the payments came out of the returned checks which were my client's funds
8 paid to U. S. Bank. So I think that there is some double dipping and some confusion here in
9 these numbers all of which we put on the record at the time of the trial.

10 THE COURT: All right. Mr. Anthony any thing?

11 MR. ANTHONY: Your Honor, I would just point out that I don't think that Mr. Munsey should
12 be able to order our collection merely by filing an appeal of the foreclosure action and of course
13 following the Court's ability to reduce judgment as a result of any deficiency that may be waived
14 and the Court was doing that in an effort to be fair to Mr. Munsey to be sure that he got credit for
15 anything that we did not have to pay as a result of the foreclosure. I still think that was
16 appropriate in the Court's eyes but now to come in and say well now that it is going to be two (2)
17 years before that deficiency amount is determined. We can't pursue any form of collection of the
18 money judgment which being entered would be allowing him to take advantage of the Court's
19 fairness by his own choice of filing an appeal and a bond to stop the foreclosure sale and
20 preventing the Court from determining the exact amount to any credit that he might be entitled.

21 MS. CULBERTSON: Your Honor, may I correct on one issue.

22 THE COURT: No, lets - - -

23 MS. CULBERTSON: All right.

24 THE COURT: Because we will be doing this the rest of the morning.

25 MS. CULBERTSON: Okay. I think this is important.

1 THE COURT: I understand counsel. Let me go ahead. The first thing that I am going to deal
2 with is the bond. I am not going to require a bond on the Munsey - Otto portion because that
3 amount is not determined. So the bond that has already been set is for the whole case for the
4 appeal bond, because I can't determine what the amount of the bond might, could, should be
5 because the amount of the damages in the Otto portion of this can not be determined until a sale
6 takes place. Now I understand the position that it may be a couple of years based on the appeal
7 but that is the way that this case is structured. So I can't determine the amount of the damages
8 due Otto until the sale takes place. The sale is not going to take place because the bond has been
9 set to prevent a foreclosure sale pending the appeal as provided by statute. So that takes care of
10 that issue, I think. And counsel I hope you are following me because I want you to prepare the
11 order.

12 MS. CULBERTSON: Yes sir, I will do that. Thank you.

13 THE COURT: Now the Exhibit A, this is the Exhibit A to that order.

14 MS. CULBERTSON: You are saying that is the one that you want attached?

15 THE COURT: Right.

16 MS. CULBERTSON: All right.

17 THE COURT: But that is what is at this juncture to claim damages. Which in my view of this
18 case, I would not have a final determination of the actual damages until a foreclosure sale takes
19 place and then we would come back for a damages hearing on the amount. But at that juncture,
20 this juncture, this for the damages, That was my understanding of what I said. Now that takes
21 care of the bond, this clarification as to Exhibit A, it should have been attached and it was not.
22 What were the other issues?

23 MS. CULBERTSON: Just the inclusion of the language about equitable right of redemption.

24 And no right to notice of the surplus funds in the event of a foreclosure sale.

25 THE COURT: All right. And the redemption, I ruled it was not. But as a party to the action, of

1 course, he will receive notice of any surplus funds to make a claim. So if I said he is not entitled
2 to it -- I don't think that I said that because the law requires that any party to a foreclosure action
3 has the right of notice. Now whether their claim is upheld at the surplus hearing, that is the
4 question of the evidence produced at the hearing.

5 MS. CULBERTSON: It is Your Honor's ruling then that Mr. Munsey does not have an equitable
6 interest and therefore no equitable right of redemption?

7 THE COURT: I think that is what I said at the hearing.

8 MS. CULBERTSON: Okay. I just wanted to make sure I had the language.

9 THE COURT: As far as the Otto, that was in the Otto portion of it, correct?

10 MS. CULBERTSON: Your Honor, we addressed it in both portions, actually.

11 THE COURT: But I don't think that you - - -

12 MS. CULBERTSON: And it was included in the U. S. Bank order, in that one it was included.

13 THE COURT: Let me look back at that order. I think the equity of redemption was barred.
14 That may have been the language. But let me look back at the order.

15 MS. CULBERTSON: Yes sir.

16 THE COURT: And I think that I want to mirror the language in the -- well the other one says
17 that the Court finds that the Defendant Jackson L. Munsey, Jr., has no equitable right of
18 redemption in the mortgage property described based on the fact that he is not a junior lien holder.

19 MS. CULBERTSON: Okay. I will put that language in.

20 THE COURT: All right. So that is the language. So mirroring the language of the other order.
21 Does that take care of the basis for the motions?

22 MS. CULBERTSON: Yes sir, that is everything.

23 THE COURT: All right. Then I will rely on you to prepare the appropriate order and to submit
24 it to Mr. Anthony for his review and approval before it gets to me.

25 MS. CULBERTSON: I will be glad to.

1 THE COURT: All right.

2 MS. CULBERTSON: Thank you, Judge.

3 MR. ANTHONY: Thank you, Your Honor.

4 THE COURT: All right. Have a good day.

5 -----END OF HEARING-----

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1 STATE OF SOUTH CAROLINA

2

COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

4

5

CERTIFICATE

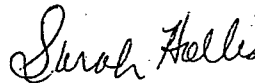
6

7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County of
8 Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and accurate
9 Transcript of Motions of the proceedings had at the hearing of the captioned case, before the
10 Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South Carolina, on the
11 15th day of February, 2016.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13

14



15

Sarah Hollis

16

Court Reporter

17

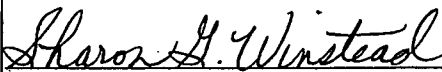
18 SWORN to before me this

19 4th day of May, 2016.

20 Spartanburg, South Carolina.

21

22



23 Notary Public for South Carolina

24 My Commission Expires: September 7, 2016.

25

EXHIBIT A

First Mortgage	\$1,183,451.00
Second Mortgage	\$177,564.00
Third Mortgage	\$15,008.49
Carolina First Payments	\$11,052.00
Greenspace	\$39,200.00
Attorney Fees	\$12,600.00
Attorney Costs	\$295.00
Returned Checks	(\$15,723.00)
Funds in Trust	(\$6,044.10)
TOTAL	\$1,417,403.39

CLERK OF COURT
SPARTANBURG COUNTY
2016 APR 19 PM 3:50
M. HOPE BLACKLEY

#4
AK

π 1 MIN

ADJUSTABLE RATE NOTE

(5 Year Fixed Pay/1 Month LIBOR Index/Payment and Rate Caps)

005071-

00/60

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES AND DECREASES MAY BE LIMITED AND MY INTEREST RATE INCREASES ARE LIMITED. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE LIMIT STATED IN THIS NOTE.

August 18, 2004
[Date]

SPARTANBURG
[City]

South Carolina
[State]

1841 FAIRVIEW FARMS RD, Campobello, SC 29322

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay Nine Hundred Ninety Nine Thousand Five Hundred and 00/100 Dollars (U.S. \$ 999,500.00) (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Chevy Chase Bank, F.S.B. 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

(A) Interest Rate

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at the yearly rate of 1.950 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7 (B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of October, 2004 and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date.

(C) Interest Rate Limit

My interest rate will never be greater than 19.900 %.

(D) The Index

Beginning with the first Interest Rate Change Date, my interest rate will be based on an Index. The "Index" is the one month London Interbank Offered Rate (LIBOR) as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day after the twenty-fifth day of the month immediately preceding the month in which the Interest Rate Change Date occurs is called the "Current Index."

If the Index or any Index previously substituted under this Section 2 (D) is no longer available, or is otherwise unpublished, the Note Holder may choose a new Index and a new Margin to result in a rate similar to the rate in effect at that time which is based upon comparable information. The Note Holder will give me notice of the choice.

(E) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding Two and 950/1000 percentage points (2.950 %) (the "Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the interest rate limit stated in Section 2 (C), the rounded amount will be my new interest rate until the next Interest Rate Change Date.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month. I will make my monthly payments, as described in Subsections B through F, below, on the first day of each month beginning on October 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. My monthly payments will be applied to interest before principal. If, on September 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 P.O. Box 17000, Baltimore, MD 21203, or at a different place if required by the Note Holder.

(B) Minimum Payment

As of the date of this Note, my "Minimum Payment" of principal and interest is \$ 3,669.41. This amount will remain the same for the first 60 monthly payments due under this Note. Thereafter, my Minimum Payment is subject to change as described in detail, below. I must make at least the Minimum Payment each month.

(C) Additions/Reductions to My Unpaid Principal

My Minimum Payment may be less than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe in full on the Maturity Date in substantially equal payments. If this occurs, each month that my Minimum Payment is less than the interest portion, the Note Holder will subtract the amount of that payment from the amount of the interest portion and will add the difference to my unpaid principal. The Note Holder also will add interest on the amount of this difference to my unpaid principal each month. The interest rate on the interest added to principal will be the rate set forth in Section 2 (A) above.

(D) Payment Changes

My Minimum Payment will change under the following circumstances:

(i) Payment Change Dates

My monthly Minimum Payment may change on the first day of October, 2009, and on that same day every 12th month thereafter. Each of these dates is called a "Payment Change Date." Before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay my unpaid principal in full on the Maturity Date in substantially equal installments at my new interest rate calculated pursuant to paragraph 2(E) above. My new monthly Minimum Payment will be set equal to the recalculated amount except that my new Minimum Payment will not be more than 7.500 percent greater or less than the amount of the last monthly payment that was due before the applicable Payment Change Date.

(ii) Adjustment Dates

Notwithstanding Subsection (i), above, on the 1st Payment Change Date and on each succeeding 5th Payment Change Date thereafter, my Minimum Payment will be adjusted as explained above, except that the described 7.500 percent limitation will not apply.

(iii) Other Changes

My monthly payment may also change as described in Section F, below.

(E) Payment Options

Additional payment options, such as: (i) a fully-amortizing payment (i.e., a payment that would be sufficient to repay the unpaid principal balance in full on the Maturity Date in substantially equal installments at the current Fully Indexed Rate); (ii) an interest-only payment (i.e., a payment equal to the interest accrued on the principal balance at the Fully Indexed Rate); and, (iii) a 15-year amortization option, may, at the Note Holder's discretion, be shown on my monthly statement. These payment options are shown for my convenience and may change each month based on changes in the Index (as described in Section 2 (D)) and changes in the amount of my principal balance. Although none of these optional payments is required, a timely payment made in accordance with any payment option shown on my monthly statement will be deemed to be in compliance with the terms of this Note. In all events, a payment option offered on my monthly statement will never be less than my Minimum Payment.

(F) Payment Limitations

In all events, my unpaid principal balance can never exceed 110 percent of the principal amount I originally borrowed ("Original Balance"). If on any monthly statement any payment would cause my principal balance to exceed that maximum amount, my Minimum Payment on that statement will be adjusted to an amount that would cause my unpaid principal balance to equal 110 percent of my Original Balance. Thereafter, until otherwise changed in accordance with the terms of this Note, my Minimum Payment will be adjusted to an amount which would be sufficient to repay my then unpaid principal balance in full on the Maturity Date at my current interest rate in substantially equal payments.

4. NOTICES OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my Minimum Payment at least 25 days before the effective date of any change. The notice will contain the interest rate or rates applicable to my loan for each month since the prior notice or, for the first notice, since the date of this Note, and the payment amount applicable to the loan. The notice will also include information required by law to be given to me, and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. 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 make a full prepayment or partial prepayments, without paying any prepayment charge (subject to any Prepayment Penalty Addendum included in the Loan Documents). The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. A partial prepayment, will not result in a change in the amount or due dates of any of my monthly payment options unless the Note Holder agrees in writing to those changes. My partial prepayment may reduce the amount of some of my payment options after the first Payment Change Date following my partial prepayment. However, any reduction due to my partial prepayment could be offset by an interest rate increase. My partial prepayment will not affect the amount of my Minimum Payment following my partial prepayment unless I comply with the following: (1) notify the Note Holder in writing of my desire to have the Minimum Payment recalculated prior to the next scheduled Payment Change Date; (2) execute the loan modification documents required by the Note Holder to effectuate said recalculation; and (3) pay to the Note Holder a \$500.00 modification fee.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges (the "Maximum Rate"), 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, as my sole remedy (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me that 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.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the late charge will be five (5) percent 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 delivered or mailed to me.

(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.

8. 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 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.

9. 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.

[Handwritten signatures]

10. **WAIVERS** I and any other person who has obligations under this Note waive 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.

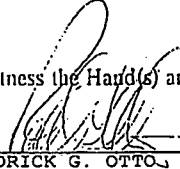
11. **UNIFORM SECURED NOTE**

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 that might result if I do not keep the promises that 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 these conditions are described as follows:

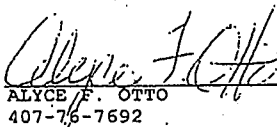
Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by the Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of the Security Instrument. Lender shall also not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in the Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an Assumption Agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in the Security Instrument. Borrower will continue to be obligated under the Note and Security Instrument unless Lender releases Borrower in writing. If Lender exercises the option to require immediate payment in full, 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 delivered or mailed within which Borrower must pay all sums secured by the Security Instrument. If the Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by the Security Instrument without further notice or demand on Borrower.

Witness the Hand(s) and Seal(s) of the Undersigned.


 RUDRICK G. OTTO
 367-38-8016

Date


 ALYCE F. OTTO
 407-76-7692

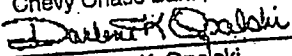
Date

Date

Date

Pay To The Order of
U.S. Bank, N.A. as Trustee

Without Recourse To
Chevy Chase Bank, F.S.B.



Darlene K. Opalski
Assistant Secretary

3 YEAR GRADUATED PREPAYMENT PENALTY
ADDENDUM TO NOTE

This Addendum is attached to and made part of that Note (the "Note") dated August 18, 2004 by and between RUDRICK G. OTTO and ALYCE F. OTTO

("Borrower(s)", and Chevy Chase Bank, F.S.B. ("Lender" or "Note Holder").
To the extent that this Addendum conflicts with the Note, this Addendum shall control. Unless specifically defined otherwise, all capitalized terms shall have the meanings set forth in the Note.

1. The paragraph of the Note entitled "Borrower's Right to Prepay," is hereby deleted and replaced with the following:

BORROWER'S RIGHT TO PREPAY

(A) Prepayment

I have the right to make payments of principal at any time before they are due. A "prepayment" is a payment of principal before it is due.

(B) Partial or Full Prepayments

I may make partial prepayments or a full prepayment. A "partial prepayment" is any amount paid in a month that is greater than the minimum payment amount due in such month. A "full prepayment" is a payment of the entire unpaid principal balance.

(C) Prepayment Penalty

If I make a full prepayment, I will pay a prepayment penalty according to the schedule below. If I make a partial prepayment, I will pay a prepayment penalty according to the schedule below if the total of all partial prepayments I have made during any 12-month period exceeds 20% of the original loan amount set forth in the Note. The prepayment penalty will apply only to the amount exceeding the 20% threshold. The Note Holder will deduct any partial prepayment penalty assessed from the prepayment amount before applying the prepayment against the principal balance.

(D) Prepayment Penalty Schedule

My prepayment penalty shall be equal to the following percentage of the amount of principal I prepay on the Prepayment Date. The "Prepayment Date" shall be the date on which I make the prepayment.

First Loan Year	(1st through the 12th month)	3%
Second Loan Year	(13th through the 24th month)	2%
Third Loan Year	(25th through the 36th month)	1%

(E) Notice

When I make a full or partial prepayment, I will tell the Note Holder in writing that I am doing so.

(F) Waiver of Prepayment Penalty

The Note Holder will waive the prepayment penalty if full prepayment is due to the sale of the subject property and I obtain the financing for my new property from the Note Holder within ninety (90) days of the Prepayment Date in an amount that is at least 90% of loan payoff amount.

(G) Effect of a Partial Prepayment

The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the amount or due dates of my monthly payment unless the Note Holder agrees in writing to those changes. If my Note is for an adjustable rate mortgage, my partial prepayment may reduce the monthly payment amount after the first Payment Change Date following any partial prepayment; however, any reduction due to any partial prepayment may be offset by an interest rate increase.

2. Other than as expressly set forth in this Addendum, the Note remains in full force and effect, according to its terms.

Rudrick G. Otto
RUDRICK G. OTTO

Date

Date

Alyce F. Otto
ALYCE F. OTTO

Date

Date

11.2

REN 3290 PAGE 070

Return To:
Document Control Dept.
7501 Wisconsin Avenue
Bethesda, MD 20814

Prepared By:
Larry Tsai, Loan Closer
Chevy Chase Bank, F.S.B.
7501 Wisconsin Avenue
Bethesda, MD 20814

MTG-2004-44018
Recorded 22 Pages on 8/24/2004 12:12:48 PM
Recording Fee: \$38.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



[Space Above This Line For Recording Data]

MORTGAGE

MIN

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated August 18, 2004 together with all Riders to this document.

(B) "Borrower" is RUDRICK G. OTTO and ALYCE F. OTTO

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3041 1/01

WMP-4A(SC) (2001)

Page 1 of 15

Notary:

VMP MORTGAGE FORMS - (800) 521-7291



SLM 3290 PAGE 071

SCHEDULE A:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, containing 25.08 acres, more or less, and being shown and designated as Distribution Tract G on plat entitled "Survey for Greenspace of Fairview, LLC Tract 5" dated November 26, 2001, prepared by Joe E. Mitchell, Registered Land Surveyor, recorded in Plat Book 151, page 523, and having such metes and bounds as appears thereon, incorporated herein by reference.

This being the same property conveyed to Fairview Associates, LLC by deed of Greenspace of Fairview, LLC dated December 27, 2001, recorded December 27, 2001 in Deed Book 74-Z, page 317, Register of Deeds for Spartanburg County. See deed of Fairview Associates, LLC conveying property to Rudrick G. Otto and Alyce F. Otto recorded July 12, 2004 in Deed Book 80-T, page 257, Register of Deeds for Spartanburg County.

Handwritten initials and a signature, possibly "H.D." and "J. H. H.", are present at the bottom of the page.

(D) "Lender" is Chevy Chase Bank, F.S.B.

Lender is a federally chartered savings bank organized and existing under the laws of the United States of America. Lender's address is 7501 Wisconsin Avenue, Bethesda, MD 20814.

(E) "Note" means the promissory note signed by Borrower and dated August 18, 2004.

The Note states that Borrower owes Lender Nine Hundred Ninety Nine Thousand Five Hundred and 00/100

(U.S. \$ 999,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than September 1, 2034.

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

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

☒ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☒ Other(s) [Specify] Legal Descrip.

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

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

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

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

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

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

In this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County of Spartanburg of Spartanburg County.

(Type of Recording Jurisdiction)

(Name of Recording Jurisdiction)

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

SUBJECT TO COVENANTS OF RECORD.

Parcel ID Number:

1841 FAIRVIEW FARMS RD
Campobello

which currently has the address of

(City), South Carolina 29322

(Street)

(Zip Code)

("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns,) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentally, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attach prior to this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

In writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these liens are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance 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. If 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, instrumentally 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 by any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

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

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

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

[Signature] *[Signature]*

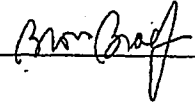
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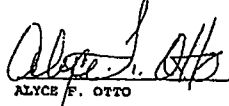
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Se 7. 5/7

 (Seal)
RUDRICK G. OTTO
-Borrower



 (Seal)
ALYCE F. OTTO
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

STATE OF SOUTH CAROLINA,
County of

Spartanburg
Personally appeared before me *the undersigned witness*
and made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed,
deliver the within written Mortgage; and that he/she with

, witnessed the execution thereof.

the other witness
Subscribed
Above

Sworn to before me this *18* day of *Aug 2004*

My Commission Expires:

2/24/07

JAR

Notary Public for South Carolina

REC 3290 PAGE 086

ADJUSTABLE RATE RIDER

(5 Year Fixed Pay/1 Month LIBOR Index/Payment and Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 18th day of August, 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 Adjustable Rate Note (the "Note") to Chevy Chase Bank, F.S.B. (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

1841 FAIRVIEW FARMS RD, Campobello, SC 29322
(Property Address)

THIS RIDER CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY MONTHLY PAYMENT INCREASES AND DECREASES MAY BE LIMITED AND MY INTEREST RATE INCREASES ARE LIMITED. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE LIMIT STATED IN THE NOTE.

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

1. INTEREST

(A) Interest Rate

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at the yearly rate of 1.950 %. The interest rate I will pay may change.

The interest rate required by this Section 1 is the rate I will pay both before and after any default described in Section 7 (B) of the Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the first day of October, 2004 and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date.

(C) Interest Rate Limit

My interest rate will never be greater than 19.900 %.

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(D) The Index

Beginning with the first Interest Rate Change Date, my Interest rate will be based on an Index. The "Index" is the one month London Interbank Offered Rate (LIBOR) as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day after the twenty-fifth day of the month immediately preceding the month in which the Interest Rate Change Date occurs is called the "Current Index."

If the Index or any Index previously substituted under this Section 1 (D) is no longer available, or is otherwise unpublished, the Note Holder may choose a new Index and a new Margin to result in a rate similar to the rate in effect at that time which is based upon comparable information. The Note Holder will give me notice of the choice.

(E) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new Interest rate by adding Two and 950/1000 percentage points (2.950 %) (the "Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the interest rate limit stated in Section 1 (C), the rounded amount will be my new Interest rate until the next Interest Rate Change Date.

2. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month. I will make my monthly payments, as described in Subsections (B) through (F), below, on the first day of each month beginning on October 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 the Note. My monthly payments will be applied to interest before principal. If, on

September 1, 2034, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date." I will make my monthly payment at, P.O. Box 17000, Baltimore, MD 21203, or at a different place if required by the Note Holder.

(B) Minimum Payment

As of the date of the Note, my "Minimum Payment" of principal and interest is \$3,669.41. This amount will remain the same for the first 60 monthly payments due under the Note. Thereafter, my Minimum Payment is subject to change as described in detail, below. I must make at least the Minimum Payment each month.

AD.

(C) Additions/Reductions to My Unpaid Principal

My Minimum Payment may be less than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid principal I owe in full on the Maturity Date in substantially equal payments. If this occurs, each month that my Minimum Payment is less than the interest portion, the Note Holder will subtract the amount of that payment from the amount of the interest portion and will add the difference to my unpaid principal. The Note Holder also will add interest on the amount of this difference to my unpaid principal each month. The interest rate on the interest added to principal will be the rate set forth in Section 1, above.

(D) Payment Changes

My Minimum Payment will change under the following circumstances:

(i) Payment Change Dates. My monthly Minimum Payment may change on the first day of October, 2009, and on that same day every 12th month thereafter. Each of these dates is called a "Payment Change Date." Before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay my unpaid principal in full on the Maturity Date in substantially equal installments at my new interest rate calculated pursuant to paragraph 1(E) above. My new monthly Minimum Payment will be set equal to the recalculated amount except that my new Minimum Payment will not be more than 7.500% greater or less than the amount of the last monthly payment that was due before the applicable Payment Change Date.

(ii) Adjustment Dates. Notwithstanding Subsection 1, above, on the 1st Payment Change Date and on each succeeding 5th Payment Change Date thereafter, my Minimum Payment will be adjusted as explained above, except that the described 7.500% limitation will not apply.

(iii) Other Changes. My monthly payment may also change as described in Section (F), below.

(E) Payment Options

Additional payment options, such as: (i) a fully-amortizing payment (i.e., a payment that would be sufficient to repay the unpaid principal balance in full on the Maturity Date in substantially equal installments at the current Fully Indexed Rate); (ii) an interest-only payment (i.e., a payment equal to the interest accrued on the principal balance at the Fully Indexed Rate); and, (iii) a 15-year amortization option, may, at the Note Holder's discretion, be shown on my monthly statement. These

Handwritten signature and initials

payment options are shown for my convenience and may change each month based on changes in the Index (as described in Section 1 (D)) and changes in the amount of my principal balance. Although none of these optional payments is required, a timely payment made in accordance with any payment option shown on my monthly statement will be deemed to be in compliance with the terms of the Note. In all events, a payment option offered on my monthly statement will never be less than my Minimum Payment.

(F) Payment Limitations

In all events, my unpaid principal balance can never exceed 110 percent of the principal amount I originally borrowed ("Original Balance"). If on any monthly statement any payment would cause my principal balance to exceed that maximum amount, my Minimum Payment on that statement will be adjusted to an amount that would cause my unpaid principal balance to equal 110 percent of my Original Balance. Thereafter, until otherwise changed in accordance with the terms of the Note, my Minimum Payment will be adjusted to an amount which would be sufficient to repay my then unpaid principal balance in full on the Maturity Date at my current interest rate in substantially equal payments.

3. NOTICES OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my Minimum Payment at least 25 days before the effective date of any change. The notice will contain the interest rate or rates applicable to my loan for each month since the prior notice or, for the first notice, since the date of the Note, and the payment amount applicable to the loan. The notice will also include information required by law to be given to me, and also the title and telephone number of a person who will answer any question I may have regarding the notice.

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 make a full prepayment or partial prepayments, without paying any prepayment charge (subject to any Prepayment Penalty Addendum included in the Loan Documents). The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under the Note. A partial prepayment, will not result in a change in the amount or due dates of any of my monthly payment options unless the Note Holder agrees in

[Handwritten signature]

writing to those changes. My partial prepayment may reduce the amount of some of my payment options after the first Payment Change Date following my partial prepayment. However, any reduction due to my partial prepayment could be offset by an interest rate increase. My partial prepayment will not affect the amount of my Minimum Payment following my partial prepayment unless I comply with the following: (1) notify the Note Holder in writing of my desire to have the Minimum Payment recalculated prior to the next scheduled Payment Change Date; (2) execute the loan modification documents required by the Note Holder to effectuate said recalculation; and (3) pay to the Note Holder a \$500.00 modification fee.

5. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by the Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by Federal Law as of the date of the Security Instrument. Lender shall also not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in the Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an Assumption Agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in the Security Instrument. Borrower will continue to be obligated under the Note and the Security Instrument unless Lender releases Borrower in writing. If Lender exercises the option to require immediate payment in full, 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 delivered or mailed within which Borrower must pay all sums secured by the Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by the Security Instrument without further notice or demand on Borrower.

REM 3290 PAGE 091

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



RUDRICK G. OTTO

Date



ALYCE F. OTTO

Date

Date

Date

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TT 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) CONTRACT FOR DEED

THIS CONTRACT FOR DEED made and entered into this 4th day of March, 2011,
between the following parties:

PARTIES:

Seller: Alyce F. Otto, as Trustee under the Declaration of Trust of
Alyce F. Otto dated November 17, 2009, with an address of 1841 Fairview
Farms Road, Campobello, South Carolina 29322 (hereinafter referred to as
"Seller").

Purchaser: Jackson L. Munsey, Jr., an Individual, with an address of 405
East Springs Road, Columbia, South Carolina 29223 (hereinafter referred
to as "Purchaser").

WITNESSETH:

In consideration of the monetary amounts as stated herein, the sufficiency of
which is hereby acknowledged by both parties, and subject to the covenants and
agreements hereinafter contained and provided, Seller hereby covenants and agrees to
convey and assure to Purchaser and Purchaser hereby agrees to purchase from Seller
the following described property, to wit:

1825, 1835 and 1841 Fairview Farms Road, Campobello, SC 29322, more

particularly described as as Tract G of Greenspace of Fairview, LLC, more particularly and specifically described on Exhibit "A" attached hereto and Incorporated herein by reference (hereinafter referred to as the "Property").

It is mutually covenanted and agreed that this Contract for Deed is made and entered into upon the following covenants and agreements:

1. The purchase price to be paid by Purchaser directly to or for the benefit of the Seller is the sum of \$1,400,000.00, said purchase price to be paid in the following manner:
 - (a) The credit of the sum of \$10,000.00 in check or electronic funds paid directly to Seller as a non-refundable deposit prior to the execution of this instrument;
 - (b) A note, a copy of which is attached hereto and incorporated herein, payable to the Seller in the current principal amount at closing of the Seller's note to Chevy Chase Bank, F.S.B., secured by a first mortgage to Chevy Chase Bank & Trust, or its successor and/or assign (hereinafter referred to as "Mortgage No. 1"), in the amount of \$1,061,968.32, under the same current or modified terms and conditions of the note and mortgage between the Seller and Mortgage No. 1 dated August 18, 2004. Said note shall be paid in monthly installments directly to the holder of Mortgage No. 1, with

the first payment of such Installment due and payable on April 1, 2011, and a like amount thereafter every month until April 1, 2016, when on that date the balance shall be due and payable. Purchaser acknowledges and agrees that this monthly installment may adjust from time to time based on the terms and conditions set forth in loan documents upon notice from Mortgage No. 1. The Purchaser shall have the option to extend the maturity date to April 1, 2019 with a principal of reduction of five percent (5%) of the outstanding balance;

- (c) A note, a copy of which is attached hereto and incorporated herein, payable to the Seller in the current principal amount at closing of the Seller's note to Carolina First Bank, secured by a second mortgage to Carolina First Bank, or its successor and/or assigns (hereinafter referred to as "Mortgage No. 2") in the amount of \$193,665.68, under the payments to reflect the current or modified terms and conditions of the note and mortgage between the Seller and Carolina First Bank Mortgage No. 2 dated June 18, 2008. Said note shall be paid in monthly installments of \$1,842.00 directly to the holder of Mortgage No. 2, with the first payment of such installment due and payable on March 17, 2011, and a like amount thereafter every month until June 17, 2013, when on that date the

balance shall be due and payable. The Purchaser hereby acknowledges and agrees that the original terms and conditions of this note contain a prepayment penalty;

- (d) The payment of the Seller's lien to the United States Internal Revenue Service (hereinafter referred to as the "IRS") in the estimated amount of \$14,601.71. In the event that said estimated payoff amount is in excess of the actual payoff amount, any excess shall be held in escrow by the closing attorney and shall be paid to the Seller after recorded satisfaction of the lien.
- (e) The payment of the 2010 *ad valorem* (real property) taxes now due and payable to Spartanburg County in the amount of \$5,978.87;
- (f) The payment of 2010 assessments due and payable to Greenspace of Fairview, LLC, along with penalties in the amount of \$4,590.34 plus \$500.13 due for fire ant treatment of the property;
- (g) The payment of arrears, penalties and legal fees of the first mortgage held by Mortgage No. 1 in the amount of \$50,839.96;
- (h) Intentionally Deleted.
- (i) The payment to Seller in cash or certified funds estimated in the amount of \$43,076.84 after payment of Seller's pro-rata portion of 2011 taxes and assessments;
- (j) The remaining sum shall be payable with a note, a copy of which is

attached hereto and incorporated herein, to the Seller in the principal amount of \$13,000.00 with an interest rate of two and one-half percent (2.5%) per annum to be amortized over seven years with a balloon payment due and payable in four years. Said note shall be paid directly to the Seller with the first payment of such installment due and payable on April 1, 2011, and a like amount thereafter every month until April 1, 2015, when on that date the balance, if any, shall be due and payable. Monthly payments may be anticipated and more than the required amount can be paid without penalty. Additional payments to principal may also be made without penalty. Purchaser shall make the monthly payments to the Seller at set forth under Paragraph 17 herein, or any other place of designation agreed upon by Purchaser and Seller. If any monthly payment is made after the 10th day of the month, a late fee of five percent (5%) will be charged (hereinafter referred to the "Late Payment Fee"). The Late Payment Fee will be charged for each and every month that the Purchaser makes payment after the 10th day of such month. Upon default, including failure to pay upon final maturity, the interest rate on the amount due from Purchaser shall be Nine and 00/100 (9.00%) percent per annum.

2. Seller hereby represents and warrants that the Property is free and clear of all liens and encumbrances and other objections, except for those items set forth in the certified title opinion of Joshua O.C. Lonon, Esq. dated December 30, 2010, and updated as of the date of this instrument, attached hereto as Exhibit "B" and incorporated herein by reference. Purchaser hereby subordinates this Contract for Deed to first and second mortgages on the Property listed on Exhibit "B" under item(s) 16 and 17 and referenced herein as Mortgage No. 1 and Mortgage No. 2, respectively.
3. Upon Purchaser making all payments and performing all other covenants and agreements herein set forth to be performed by Purchaser, Seller shall convey the Property, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, to Purchaser free and clear of all liens, encumbrances and other objections by a good, fee simple general warranty deed. At the time of the conveyance of the Property by Seller to Purchaser, Purchaser shall be responsible for and pay (a) the cost of the preparation of the Deed and (b) the fees associated with the transfer and recording of the Deed and (c) the costs associated with or arising out of the transfer of the LLC shares.
4. Purchaser shall pay, when due, *ad valorem* (real property) taxes and other governmental charges for the tax year 2011, and thereafter for a full tax

year until the Contract for Deed is completed. The tax map reference number for the property is: 1 03-00 003.00. Purchaser shall receive a pro-rata credit for 2011 taxes at the execution and closing of this Contract for Deed.

5. Neither party shall, as a result of an act or omission, cause the Property in any way to be further encumbered, either voluntarily or involuntarily, without the written consent of the other party and to immediately, after notice thereof, remove, or cause to be removed, any encumbrances placed against the Property. In the event that said encumbrances are not removed, the non-encumbering party, after thirty (30) days notice of intent, may institute whatever proceeding may be necessary or required in order to have said encumbrances removed or the Property released therefrom. For so removing said encumbrances or releasing said Property, the encumbering party shall be responsible for the payment of the non-encumbering party's costs, and expenses including, but not limited to reasonable attorney's fees. In the event the encumbering party, after demand, fails or refuses to pay said expenses, costs, or attorney's fees, the non-encumbering party may bring an action against the encumbering party for the costs and expenses of collection, including, but not limited to reasonable attorney's fees. Should a judgment be filed against the Seller affecting the Property, or should an encumbrance be placed against the

Property as a result of Seller's acts or omissions, Purchaser after actual notice thereof, may in addition, cease to make payments to Seller under the note directly payable to Seller as called for set forth under Paragraph 1(j) and shall have the right of setoff against any amounts due for any such liens or encumbrances including costs arising therefrom and reasonable attorney fees. Should a judgment be filed against the Purchaser affecting the Property, or should an encumbrance be placed against the Property as a result of Purchaser's acts or omissions, Seller after actual notice thereof, may in addition, add to the principal balance of the promissory note under Paragraph 1(j) any amounts due for any such lien or encumbrances including costs arising therefrom and reasonable attorney fees.

6. Purchaser shall receive possession of the Property upon the execution of this Contract for Deed, and thereafter Purchaser shall be entitled to use and enjoy the Property to the same extent as if Purchaser had full and complete legal and equitable title thereto, subject to the terms, conditions, rules and regulations of the Conservation Easement and Greenspace of Fairview, LLC, as fully disclosed to the Purchaser prior to execution of this Contract for Deed.
7. Purchaser shall pay when due all charges for utility services, including, but not limited to, water, heating, gas, electricity, telephone and sewer

service furnished to the Property.

8. Purchaser shall pay when due all fees and assessments associated with Greenspace of Fairview, LLC, in accordance with the restrictive covenants and/or operating agreement. Seller shall consult with Purchaser regarding any votes cast and exercising any voting rights under the Property's membership interest in Greenspace of Fairview, LLC.
9. In the event of a disallowance by the IRS and/or the South Carolina Tax Commission, which prevents both parties from the benefits of a deduction for interest or depreciation or capital gain on the Property, then it is hereby agreed by and between the parties hereto that those deductions disallowed by both parties resulting from transactions occurring after the date hereof shall accrue to the benefit of the Purchaser. As a result, upon receipt of the governmental agencies reports, commonly known as IRS Form 1098, for payment of interest of the respective first and second mortgages as set forth herein, Issued by Mortgage No. 1 and Mortgage No. 2 to Seller, Seller shall issue the same governmental agencies reports for all interest payments paid by Purchaser on behalf of and directly to Seller. Seller may assign this task to Purchaser's obligations with Seller's verification of information reported.
10. Seller shall report to all credit reporting agencies the payment history of the Purchaser for each payment obligation hereunder. Seller may assign

this task to Purchaser's obligations with Seller's verification of information reported.

11. Purchaser shall keep all Improvements upon the Property in good repair and shall not commit waste or permit impairment or deterioration of said Improvements. Purchaser accepts possession of the property in its present "AS-IS" condition as of the date of this Contract for Deed. It is understood and agreed that Purchaser accepts and assumes any and all risk of loss to all trees, shrubs, or other damage to the property due to fire or other casualty, acts of God and the elements from the date hereof. It is understood and agreed between the Seller and Purchaser that Purchaser will maintain a policy of hazard insurance on the Property in an amount not less than \$1,400,000.00 and will name Seller on such policy as a loss payee and provide Seller annual notice of same.
12. The following shall constitute events of default of Purchaser hereunder:
 - (a) The Purchaser's failure to pay an installment of principal or interest, or any other sum, within thirty (30) days of the date when it is due under this Instrument. Any default by Purchaser under any one of the notes referred to hereinabove in Paragraph 1 shall be deemed a default under all of the notes.
 - (b) The Purchaser's assignment of any or all of Purchaser's interest in the Property, without the Seller's prior written consent.

- (c) The Purchaser's failure to maintain the Property in good condition and in compliance with all restrictive covenants and in compliance with the Conservation Easement and the rules and regulations promulgated by Greenspace of Fairview, LLC and the restrictive covenants, as fully disclosed to the Purchaser prior to execution of this Contract for Deed.
- (d) The commencement of any proceeding under the Federal Bankruptcy Code or any law of the United States or of any state relating to insolvency, receivership or debt adjustment by the Purchaser, or the commencement of any such proceeding against the Purchaser which results in the institution of any such proceedings against the Purchaser and is consented to by the Purchaser or remains undismissed for sixty (60) days, or the Purchaser is adjudicated a bankrupt, or a trustee or receiver is appointed for any substantial part of the Purchaser's property, or the Purchaser makes an assignment for the benefit of creditors, admits in writing an inability to pay debts generally as they become due or becomes insolvent.
- (e) The Purchaser's failure to pay when due and payable all *ad valorem* (real property) taxes against the Property.
- (f) The Purchaser's failure to maintain a policy of hazard Insurance on

the Property in an amount not less than \$1,400,000.00 and to name Seller on such policy as a loss payee, and to provide Seller annual notice of same.

- (g) The Purchaser's failure to pay, when due, all fees and assessments associated with Greenspace of Fairview, LLC in accordance with the restrictive covenants and/or operating agreement.

13. Upon the occurrence of any event of default or other nonperformance or noncompliance by Purchaser of any term or condition herein, Seller shall give Purchaser written notice of same and Purchaser shall cure such default, non-performance or non-compliance within thirty (30) days after the Purchaser's receipt of written notice thereof from Seller. In the event that Purchaser fails to cure such default, nonperformance or noncompliance, then the Seller at its option, may seek to divest the Purchaser of its interest under the terms of this Contract for Deed. The Seller's Interest in the Property shall be treated as the Interest of the holder of a third mortgage on the Property and the remedy of the Seller shall be to foreclose the interest of the Purchaser in the same manner as the Seller would foreclose the interest of the Purchaser as if the Seller were the Mortgagee under a third mortgage and the Purchaser were the Mortgagor, and the Purchaser shall be liable for all costs arising therefrom including reasonable attorney fees. The remedies set forth herein in all

instances are not exclusive, but cumulative and in addition to all other remedies which may exist under the law.

14. In the event Seller fails, neglects, or refuses to perform, in whole or part, any of the covenants, agreements, or obligations herein provided upon the part of the Seller to be performed, Purchaser shall give Seller written notice of same and Seller shall cure such default, non-performance or non-compliance within thirty (30) days after the Seller's receipt of written notice thereof from Purchaser. In the event that Seller fails to cure such default, nonperformance or noncompliance, then the Purchaser, at its option, is hereby authorized and empowered, at the cost of the Seller, to perform or cause to be performed, any or all of said covenants, agreements and obligations, and expend such sums of money as may be reasonable therefore, or for any other purpose which is, in the opinion of the Purchaser, reasonably necessary for the protection of the Property. All such sums of money so expended by Purchaser, together with interest thereon, at the rate of five percent (5%) from the several dates of expenditure thereof until paid, shall become indebtedness under this agreement and shall be repaid by Seller to the Purchaser, immediately upon demand, at the address of the Purchaser as set forth in Paragraph 17 herein. Any failure, neglect, or refusal by Seller to repay the sums as herein provided shall constitute a default hereunder and the Seller shall be

liable for any and all costs arising therefrom including reasonable attorney fees. Purchaser, at its option, may deduct from any payments due directly to Seller under the terms and conditions of this agreement as set forth under Paragraph 1(j). In the event Purchaser falls, neglects, or refuses to perform, in whole or part, any of the covenants, agreements, or obligations herein provided upon the part of the Purchaser to be performed, Seller shall give Purchaser written notice of same and Purchaser shall cure such default, non-performance or non-compliance within thirty (30) days after the Purchaser's receipt of written notice thereof from Seller. In the event that Purchaser fails to cure such default, nonperformance or noncompliance, then the Seller, at its option, is hereby authorized and empowered, at the cost of the Purchaser, to perform or cause to be performed, any or all of said covenants, agreements and obligations, and expend such sums of money as may be reasonable therefore, or for any other purpose which is, in the opinion of the Seller, reasonably necessary for the protection of the Property. All such sums of money so expended by Purchaser, together with interest thereon, at the rate of five percent (5%) from the several dates of expenditure thereof until paid, shall become indebtedness under this agreement and shall be repaid by Purchaser to the Seller, immediately upon demand, at the address of the Seller as set forth in Paragraph 17

herein. Any failure, neglect, or refusal by Purchaser to repay the sums as herein provided shall constitute a default hereunder and the Purchaser shall be liable for any and all costs arising therefrom including reasonable attorney fees.

15. Failure or delay of either party hereto to enforce any right or to exercise any option available because of any default hereunder shall not constitute a waiver of the right to exercise same in the event of any subsequent default.
16. At all times while this Contract for Deed is in effect or while said Property is occupied by Purchaser, Seller shall not be liable or responsible for any activities or accidents that may occur on or in connection with Purchaser's use of said Property. Purchaser shall be solely responsible for any damage, injury or other loss, to persons or property that may occur upon the property as a result of the negligent, unlawful or willful act or omission of the Purchaser or their visitors and shall defend, indemnify and hold the Seller harmless for any damage, loss or expense resulting therefrom.
17. All notices, requests and other communications between the parties under or in connection with this Contract for Deed shall be in writing and mailed by registered or certified mail, return receipt requested, at the below address, until written notice to the contrary:

Seller: 101 E. Rutherford Street
Landrum, SC 29356

Purchaser: 405 East Springs Road
Columbia, SC 29223

18. This Contract for Deed represents the entire agreement between the parties, and no warranties, representations, promises or statements have been made by either party unless endorsed hereon in writing and duly executed by the parties.
19. This Contract for Deed shall be construed according to the laws of South Carolina.
20. This Contract for Deed shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. All rights and remedies given to either party herein, or by law, shall be cumulative and alternative. If any provision of this Contract for Deed is held invalid or unenforceable, the remainder of it shall not be affected thereby and to this end the provisions hereof are declared severable.
21. The Seller represents that there is no real estate commission due to any real estate broker as a result of the execution of this contract for deed or for the future transfer of legal title to the subject property.
22. The parties acknowledge that the Property is currently encumbered by mortgages which give the mortgagee(s) the right to demand immediate

payment in full from the mortgagor in the event of any full or partial transfer of legal or equitable title by the mortgagor (the "Due on Sale Clause"). This Contract for Deed may be construed to be in violation of the Due on Sale Clause and may cause the Mortgagee(s) to demand full payment on its/their respective note(s). The mortgage(s) also allow(s) for the mortgagee(s) to bring a foreclosure action upon the subject property for failure to make payments when due, failure to insure the property or other violations of the terms of mortgage(s), which could result in a loss of the Purchaser's equitable interest in the subject property and other damages to the Purchaser. The Seller expressly agrees to hold the Purchaser harmless and to indemnify the Purchaser for proximate damages resulting from enforcement of the Due on Sale Clause of the mortgage(s). The Seller also expressly agrees to hold the Purchaser harmless and to indemnify the Purchaser for proximate damages or for any violation of the terms of the mortgage(s) that is/are not the fault of the Purchaser.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned party hereto has caused this Contract
for Deed to be executed the day and year first above written.

WITNESSES:

AS TO SELLER:

Witness No. 1

Witness No. 2 Notary

Alyce F. Otto, as Trustee under the
Declaration of Trust of Alyce F. Otto
dated November 17, 2009, Seller.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that
she saw the within named Alyce F. Otto, as Trustee under the Declaration of Trust of
Alyce F. Otto dated November 17, 2009, Seller, sign, seal and as its act and deed,
deliver the within written Contract for Deed and that she with the other witness whose
name is subscribed above witnessed the execution thereof.

Witness No. 1

SWORN to and before me this ____ day of March, 2011.

(SEAL)

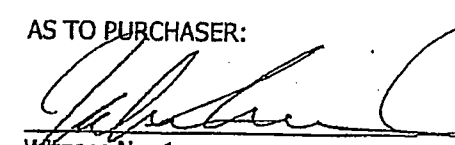
Notary Public for South Carolina

My commission expires: 4/6/2012

PAGE 18 OF 20

IN WITNESS WHEREOF, the undersigned parties hereto has caused this Contract
for Deed to be executed the day and year first above written.

AS TO PURCHASER:

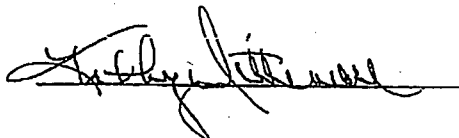

Witness No. 1 Jackson L. Munsey, Jr., Purchaser


Witness No. 2 Notary

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that
she saw the within named Jackson L. Munsey, Jr., Purchaser, sign, seal and as his act
and deed, deliver the within written Contract for Deed and that he with the other
witness whose name is subscribed above witnessed the execution thereof.



SWORN to and before me this 4th day of March, 2011.

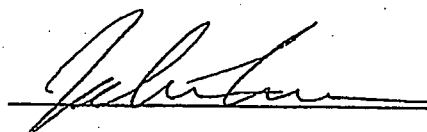
 (SEAL)
Notary Public for South Carolina
My commission expires: 6/6/2011

EXHIBIT A

PROPERTY DESCRIPTION 1825/1841/1835 Fairview Farms Road Tax Map No. 1 03-00 003.00

All that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, County of Spartanburg containing 25.08 acres, more or less, and being shown as Distribution Tract G on a plat of survey for Greenspace of Fairview, LLC, dated August 2, 2001 by Mitchell Surveying and recorded in Plat Book 151 at page 523. Reference is made to said plat and the record thereof for a more complete and accurate description.

This being a portion of the same property conveyed to Alyce F. Otto, Trustee under Declaration of Trust of Alyce F. Otto dated the 17th Day of November, 2009 by Deed of Alyce F. Otto recorded November 24, 2009 in Deed Book 95 A at page 439. Also, being a portion of the same property conveyed to Rudrick George Otto, Trustee under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009 by Deed of Rudrick G. Otto recorded November 24, 2009 in Deed Book 95 A at page 435. Reference is also made to the deed from Alyce F. Otto, Successor Trustee under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009 to Alyce F. Otto, Trustee under Declaration of Trust of Alyce F. Otto dated the 17th day of November, 2009, said deed being dated February 9, 2011 and recorded February 10, 2011 in Deed Book 97-V, Page 181.

All referenced recordings are in the Register of Deeds Office for Spartanburg County, South Carolina unless otherwise noted herein.



Capital One, N.A.
PO Box 21887
Eagan, MN 55121-0887

REPRESENTATION OF PRINTED DOCUMENT



7107 8381 6542 0202 4198

11 7

November 2, 2011

0-752-47419-0000006-001-01-000-000-000-000

RUDRICK OTTO
ALYCE OTTO
101 E RUTHERFORD ST
LANDRUM SC 29356-1523

RE: Loan No.0554185801
Property: 1841 FAIRVIEW FARMS RD
CAMPOBELLO SC 29322-8906
Principal Balance: \$1,018,477.09

Dear Rudrick Otto and ALYCE OTTO:

Under the provisions of your loan documents for the above referenced loan, you are hereby notified that your loan is now in default, because one or more monthly payments are past due.

We must receive payment in CERTIFIED FUNDS in the amount of *\$20,098.70, on or before December 2, 2011 (which date is not less than 30 calendar days from the date of this notice), the payment of which sum will cure the default. Only the TOTAL AMOUNT DUE to reinstate the loan will be accepted.

If payment is not received by December 2, 2011, additional costs, including attorneys' fees may be incurred for which you will be responsible. Your failure to cure the default on or before this date shall result in the acceleration (immediately becoming due and payable in full) of the entire sum secured by the loan security instrument (Deed of Trust or Mortgage) and the immediate institution of foreclosure proceedings by either strict foreclosure or by sale of the property by public auction.

As provided in the loan security instrument, you have the right to reinstate your loan after loan acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense you may have to the acceleration and sale.

You may be eligible for alternatives to foreclosure. If you would like to discuss these options, please contact our office at 1-877-230-8516 and request information about loss mitigation.

If you need additional assistance in meeting your obligation, you may contact a HUD approved counseling agency by calling HUD's toll-free housing counseling number at 1-800-569-4287.

Sincerely,

Collection Department
Mortgage Loan Servicing Division

* If payment is to be received by the last business day of the current month, this figure should be reduced by the amount of next month's payment.

XC046

REPRESENTATION OF PRINTED DOCUMENT

Servicemembers Civil Relief Act Notice Disclosure	U.S. Department of Housing and Urban Development Office of Housing	OMB Approval 2502-0584 Exp. 7/31/2012

Legal Rights and Protections Under the SCRA

Servicemembers on "active duty" or "active service," or a dependent of such a servicemember may be entitled to certain legal protections and debt relief pursuant to the Servicemembers Civil Relief Act (50 USC App. §§ 501-596) (SCRA).

Who May Be Entitled to Legal Protections Under the SCRA?

- Regular members of the U.S. Armed Forces (Army, Navy, Air Force Marine Corps and Coast Guard).
- Reserve and National Guard personnel who have been activated and are on Federal active duty
- National Guard personnel under a call or order to active duty for more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds
- Active service members of the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration.
- Certain United States citizens serving with the armed forces of a nation with which the United States is allied in the prosecution of a war or military action.

What Legal Protections Are Servicemembers Entitled To Under the SCRA?

- The SCRA states that a debt incurred by a servicemember, or servicemember and spouse jointly, prior to entering military service shall not bear interest at a rate above 6 % during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage, or during the period of military service in the case of any other obligation or liability.
- The SCRA states that in a legal action to enforce a debt against real estate that is filed during, or within 9 months after the servicemember's military service, a court may stop the proceedings for a period of time, or adjust the debt. In addition, the sale, foreclosure, or seizure of real estate shall not be valid if it occurs during, or within 9 months after the servicemember's military service unless the creditor has obtained a valid court order approving the sale, foreclosure, or seizure of the real estate.
- The SCRA contains many other protections besides those applicable to home loans.

How Does A Servicemember or Dependent Request Relief Under the SCRA?

- In order to request relief under the SCRA from loans with interest rates above 6% a servicemember or spouse must provide a written request to the lender, together with a copy of the servicemember's military orders. (Capital One, N.A., P.O. Box 21887 Eagan, MN 55121)
- There is no requirement under the SCRA, however, for a servicemember to provide a written notice or a copy of a servicemember's military orders to the lender in connection with a foreclosure or other debt enforcement action against real estate. Under these circumstances, lenders should inquire about the military status of a person by searching the Department of Defense's Defense Manpower Data Center's website, contacting the servicemember, and examining their files for indicia of military service. Although there is no requirement for servicemembers to alert the lender of their military status in these situations, it still is a good idea for the servicemember to do so.

How does a servicemember or dependent obtain information about the SCRA?

- Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. A military legal assistance office locator for all branches of the Armed Forces is available at <http://legalassistance.law.af.mil/content/locator.php>
- "Military OneSource" is the U. S. Department of Defense's information resource. If you are listed as entitled to legal protections under the SCRA (see above), please go to www.militaryonesource.com/scra or call 1-800-342-9647 (toll free from the United States) to find out more information. Dialing instructions for areas outside the United States are provided on the website.

form HUD-92070
(6/2011)

XC046



Capital One, N.A.
PO Box 21887
Eagan, MN 55121-0887

REPRESENTATION OF PRINTED DOCUMENT



7107 8381 6542 0202 4204

November 2, 2011

6-752-47419-0000007-001-01-000-000-000-000

RUDRICK OTTO
ALYCE OTTO
1841 FAIRVIEW FARMS RD
CAMPOBELLO SC 29322-8906

RE: Loan No.0554185801
Property: 1841 FAIRVIEW FARMS RD
CAMPOBELLO SC 29322-8906
Principal Balance: \$1,018,477.09

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If payment is not received by December 2, 2011, additional costs, including attorneys' fees may be incurred for which you will be responsible. Your failure to cure the default on or before this date shall result in the acceleration (immediately becoming due and payable in full) of the entire sum secured by the loan security instrument (Deed of Trust or Mortgage) and the immediate institution of foreclosure proceedings by either strict foreclosure or by sale of the property by public auction.

As provided in the loan security instrument, you have the right to reinstate your loan after loan acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense you may have to the acceleration and sale.

You may be eligible for alternatives to foreclosure. If you would like to discuss these options, please contact our office at 1-877-230-8516 and request information about loss mitigation.

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Sincerely,

Collection Department
Mortgage Loan Servicing Division

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XC046

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form HUD-92070
(6/2011)

XC046

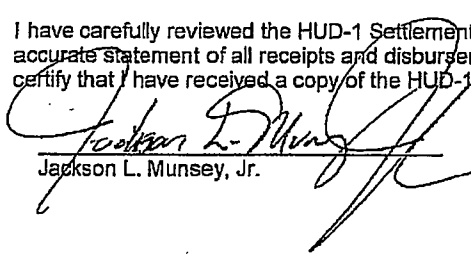
HUD-1 (3-88) RESPA, HB4305.2

L. SETTLEMENT CHARGES						PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price \$ @ %							
Division of Commission (line 700) as Follows:							
701. \$	to						
702. \$	to						
703. Commission Paid at Settlement							
704.	to						
800. ITEMS PAYABLE IN CONNECTION WITH LOAN							
801. Loan Origination Fee	%	to					
802. Loan Discount	%	to					
803. Appraisal Fee		to					
804. Credit Report		to					
805. Lender's Inspection Fee		to					
806. Underwriting Fee		to					
807. Tax Service Fee		to					
808. Flood Certification Fee							
809. Processing Fee							
810. YSP to Broker paid by Lender							
811.							
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE							
901. Interest From	to	@ \$	/day	(days	%)		
902. MIP Tollns. for Life of Loan for months to							
903. Hazard Insurance Premium for years to							
904.							
905.							
1000. RESERVES DEPOSITED WITH LENDER							
1001. Hazard Insurance	months @ \$		per month				
1002. Mortgage Insurance	months @ \$		per month				
1003. City/Town Taxes	months @ \$		per month				
1004. County Taxes	months @ \$		per month				
1005. Assessments	months @ \$		per month				
1006.	months @ \$		per month				
1007.	months @ \$		per month				
1008. Aggregate Adjustment	months @ \$		per month				
1100. TITLE CHARGES							
1101. Settlement or Closing Fee	to						
1102. Abstract or Title Search	to						
1103. Title Examination	to	Lonon Law Firm, LLC				450.00	
1104. Title Insurance Binder	to						
1105. Document Preparation	to						
1106. Notary Fees	to						
1107. Attorney's Fees	to	Lonon Law Firm, LLC				4,500.00	
(includes above item numbers:)							
1108. Title Insurance	to						
(includes above item numbers:)							
1109. Lender's Coverage	\$						
1110. Owner's Coverage	\$						
1111.							
1112.							
1113.							
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES							
1201. Recording Fees: Deed \$ 20.00; Mortgage \$; Releases \$						20.00	
1202. City/County Tax/Stamp: Deed ; Mortgage							
1203. State Tax/Stamp: Deed ; Mortgage							
1204. Spartanburg County Register of Deeds							
1205.							
1300. ADDITIONAL SETTLEMENT CHARGES							
1301. Survey to							
1302. Pest Inspection to							
1303.							
1304. 2010 property taxes to County Treasurer 1-03-00-003.00						5,978.87	
1305. See add'l disb. exhibit to						70,532.14	
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)						4,970.00	78,511.01

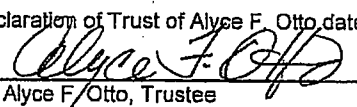
ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower: Jackson L. Munsey, Jr.
Seller: Declaration of Trust of Alyce F. Otto dated 11/17/09
Settlement Agent: Lonon Law Firm, LLC
(864)327-1764
Place of Settlement: 134 Oakland Avenue, Suite A
Spartanburg, SC 29302
Settlement Date: March 4, 2011
Property Location: 1825 Fairview Farms Road
Campobello, SC 29322
Spartanburg County, South Carolina

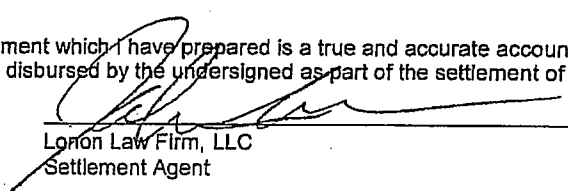
I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.


Jackson L. Munsey, Jr.

Declaration of Trust of Alyce F. Otto dated 11/17/09

BY: 
Alyce F. Otto, Trustee

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.


Lonon Law Firm, LLC
Settlement Agent

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

(MUNSEY-2992.PFD/2992/14)

ADDITIONAL DISBURSEMENTS EXHIBIT

Borrower: Jackson L. Munsey, Jr.
Seller: Declaration of Trust of Alyce F. Otto dated 11/17/09
Settlement Agent: Lonon Law Firm, LLC
 (864)327-1764
Place of Settlement: 134 Oakland Avenue, Suite A
 Spartanburg, SC 29302
Settlement Date: March 4, 2011
Property Location: 1825 Fairview Farms Road
 Campobello, SC 29322
 Spartanburg County, South Carolina

PAYEE/DESCRIPTION	NOTE/REF NO	BORROWER	SELLER
Greenspace of Fairview, LLC Judgment payoff	Alyce F. Otto		4,590.34
Internal Revenue Service IRS lien			14,601.71
Chevy Chase Delinquency to Chevy Chase			50,839.96
Greenspace of Fairview, LLC Fire ant treatment			500.13
Total Additional Disbursements shown on Line 1305		\$ 0.00	\$ 70,532.14

(MUNSEY-2992.PFD/2902/14)

DISBURSEMENTS SUMMARY / BALANCE SHEET

Borrower: Jackson L. Munsey, Jr.
Seller: Declaration of Trust of Alyce F. Otto dated 11/17/09
Settlement Agent: Lonon Law Firm, LLC
 (864)327-1764
Place of Settlement: 134 Oakland Avenue, Suite A
 Spartanburg, SC 29302
Settlement Date: March 4, 2011
Property Location: 1825 Fairview Farms Road
 Campobello, SC 29322
 Spartanburg County, South Carolina

INCOMING FUNDS

Jackson L. Munsey, Jr.	125,757.85
Total Incoming Funds	<u>125,757.85</u>

DISBURSEMENTS

County Treasurer	2010 property taxes	5,978.87
Greenspace of Fairview, LLC	Judgment payoff	4,590.34
H Internal Revenue Service	IRS lien	14,601.71
Chevy Chase	Delinquency to Chevy Chase	50,839.96
Greenspace of Fairview, LLC	Fire ant treatment	500.13
Greenspace of Fairview, LLC	Assessments	1,200.00
Declaration of Trust of Alyce F. Otto dated 11/17/0	Closing Proceeds	43,076.84
Lonon Law Firm, LLC	Settlement Agents Fees	4,950.00
Title Examination		450.00
Attorney's Fees		4,500.00
Spartanburg County Register of Deeds	Government Charges	20.00
Recording Fees		20.00
Number of checks - 8	Total Disbursements	<u>125,757.85</u>

(MUNSEY-2992.PFD/2992/14)

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT.

Capital One

CAPITAL ONE N.A.
CAPITAL ONE N.A.
ESCROW DISBURSEMENT CLR
4WN 848 0554185801
0554185801

CHECK NO. 059732
7/16/2012

AMOUNT
*****\$5,306.00
VOID IF NOT CASHED WITHIN 90 DAYS

FUNDS DISBURSED FROM SUSPENSE ACCOUNT
Five Thousand Three Hundred Six and 00/100 Dollars

PAY TO THE ORDER OF
RUDRICK G OTTO
ALYCE F OTTO
101 E RUTHERFORD ST
LANDRUM SC 29356

AUTHORIZED SIGNATURE

⑈059732⑈ ⑆255071981⑆ 019⑈430120⑈6⑈

Disbursement Check Voucher

PAYEE NAME & ADDRESS
RUDRICK G OTTO
ALYCE F OTTO
101 E RUTHERFORD ST
LANDRUM SC 29356

CHECK NUMBER: 059732
CHECK DATE: 07/16/2012
PAYEE CODE: 0554185801

BATCH: 4WN

PAGE 1 OF 1

LOAN NUMBER	SHORT NAME/ INIT NAME/ PROPERTY ADDRESS	DESCRIPTION	TRAN CODE	DATE	AMOUNT DUE
0554185801	RG OTTO	REFUND PMT	307		5,306.00

Check Totals:

1 Item

\$5,306.00

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT.

Capital One

CAPITAL ONE N.A.
CAPITAL ONE N.A.
ESCROW DISBURSEMENT CLR
4WN 648 0554185801
0554185801

CHECK NO. 065861
7198 2550
MO/DAY/YR 08/21/2012

AMOUNT
*****\$5,208.00
VOID IF NOT CASHED WITHIN 90 DAYS

FUNDS DISBURSED FROM SUSPENSE ACCOUNT
Five Thousand Two Hundred Eight and 00/100 Dollars

PAY TO
THE ORDER
OF

RUDRICK G OTTO
ALYCE F OTTO
101 E RUTHERFORD ST
LANDRUM SC 29356

[Signature]
AUTHORIZED SIGNATURE

⑈065861⑈ ⑆255071981⑆ 019⑈430120⑈6⑈

Disbursement Check Voucher

PAYEE NAME & ADDRESS
RUDRICK G OTTO
ALYCE F OTTO
101 E RUTHERFORD ST
LANDRUM SC 29356

CHECK NUMBER: 065861
CHECK DATE: 08/21/2012
PAYEE CODE: 0554185801

BATCH: 4WN

PAGE 1 OF 1

LOAN NUMBER	SHORT NAME/ INIT NAME/ PROPERTY ADDRESS	DESCRIPTION	TRAN CODE	DATE	AMOUNT DUE
0554185801	RG OTTO	RETURN PMT	307		\$,208.00

Check Totals:

1 Item

\$5,208.00

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT.

Capital One

CAPITAL ONE N/A
CAPITAL ONE N/A
ESCROW DISBURSEMENT CLR
4WN 848 0554185801
0554185801

CHECK NO. 066010
7198 2550
MO/DAY/YR 08/22/2012

FUNDS DISBURSED FROM SUSPENSE ACCOUNT
Five Thousand Two Hundred Nine and 00/100 Dollars

AMOUNT
*****\$5,209.00
VOID IF NOT CASHED WITHIN 90 DAYS

PAY TO THE ORDER OF
RUDRICK G OTTO
ALYCE F OTTO
101 E RUTHERFORD ST
LANDRUM SC 29356

[Signature]
AUTHORIZED SIGNATURE

⑈066010⑈ ⑆255071981⑆ 019⑈430120⑈6⑈

Disbursement Check Voucher

PAYEE NAME & ADDRESS
RUDRICK G OTTO
ALYCE F OTTO
101 E RUTHERFORD ST
LANDRUM SC 29356

CHECK NUMBER: 066010
CHECK DATE: 08/22/2012
PAYEE CODE: 0554185801

BATCH: 4WN

PAGE 1 OF 1

LOAN NUMBER	SHORT NAME/ INIT NAME/ PROPERTY ADDRESS	DESCRIPTION	TRAN CODE	DATE	AMOUNT DUE
0554185801	RG OTTO	RETURN PNT	307		\$,209.00

Check Totals: 1 Item \$5,209.00

DEE-2004-35654
 Recorded 3 Pages on 7/12/2004 2:07:27 PM
 Recording Fee: \$10.00 Documentary Stamp: \$0.00
 Office of Register of Deeds, Spartanburg, S.C.
 Stephen Ford, Register



Prepared By:

Alex J. Newton
 Attorney at Law.
 101 N. Pine Street, Suite 303
 Spartanburg, S.C. 29302
 Telephone: 864-573-5299
 Fax: 864-573-5603
 File: 20040351

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that Fairview Associates, LLC in consideration of Ten Dollars (\$10.00) Dollars have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto Rudrick G. Otto and Alyce F. Otto their heirs and/or assigns, forever:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, containing 25.08 acres, more or less, and being shown and designated as Distribution Tract G on plat entitled "Survey for Greenspace of Fairview, LLC Tract 5" dated November 26, 2001, prepared by Joe E. Mitchell, Registered Land Surveyor, recorded in Plat Book 151, page 523, and having such metes and bounds as appears thereon, incorporated herein by reference.

This being the same property conveyed to Fairview Associates, LLC by deed of Greenspace of Fairview, LLC dated December 27, 2001, recorded December 27, 2001 in Deed Book 74-Z, page 317, Register of Deeds for Spartanburg County.

Grantee's Address: 1842 Fairview Farms Road
 Campobello, SC 29322

Block Map Reference: 1-03-00-003.00

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

And the Grantors do hereby bind themselves and their heirs, to warrant and forever defend all and singular premises unto the Grantee, his Heirs and Assigns against themselves and their heirs, and against any person whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, THE GRANTORS have set their hands and seals this the 12th July, 2004.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF:

Kerry C. Dawson
witness to sign here

Fairview Associates, LLC

By: [Signature] (SEAL)
Rudrick G. Otto

[Signature]
notary to sign here

(SEAL)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT

I, a Notary Public of the County and State aforesaid, certify that Fairview Associates, LLC By: It's member appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the 12th July, 2004

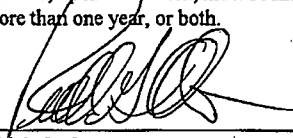
[Signature] (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: Feb. 25, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

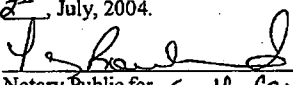
AFFIDAVIT

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

1. Property located at 1842 Fairview arms Road, bearing **Spartanburg** County Tax Map Number 1-03-00-003.00, was transferred by Fairview Associates, LLC to Rudrick G. Otto and Alyce F. Otto on July 2004.
2. The transaction was (check one):
☒ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$.
☐ not an arm's length real property transaction and the fair market value of the property is \$ ____*.
3. The above transaction is exempt, or partially exempt, from the recording fee as set forth in S. C. Code Ann. § 12-24-10 et. seq. because the deed is: _____.
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Seller(s) of the property.
5. I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


 Rudrick G. Ott

SWORN to before me this
 12th July, 2004.


 Notary Public for South Carolina

My Commission Expires: Feb. 25, 2013

95A - PG 435

BLOCK MAP REFERENCE NO:

1-03-00-003.00

1-08-05-015.00

DEE-2009-48391
Recorded 4 Pages on 11/24/2009 3:20:44 PM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



ADDRESS OF GRANTEE:

1841 Fairview Farms Rd.
Campobello, SC 29322

STATE OF SOUTH CAROLINA)

) TITLE TO REAL ESTATE

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS that RUDRICK G. OTTO, in consideration of the sum of One and no/100 (\$1.00) Dollar, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto RUDRICK GEORGE OTTO, TRUSTEE UNDER DECLARATION OF TRUST OF RUDRICK GEORGE OTTO DATED THE 17th DAY OF NOVEMBER, 2009, his successors and assigns forever:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN

Together with all and singular the rights, members, hereditaments an appurtenances to the said premises belonging or in anywise incident or appertaining; to have and to hold all and singular the said premises before mentioned unto the grantee and the grantee's successors and assigns, forever. And the grantor does hereby bind himself, his heirs, successors and assigns to warrant and forever defend all and singular the said premises unto the grantee and the grantee's successors and assigns, against the grantor, his heirs and assigns against the grantor and his heirs and assigns, and against any person whomsoever lawfully claiming or to claim the same, or any part thereof, except as to restrictions and easements of record, if any.

IN WITNESS WHEREOF, the grantor has hereunto set his hand and seal this 18 day of November, 2009.

SIGNED, Sealed and Delivered

285

EXHIBIT "A"

PARCEL ONE: An undivided one-half (1/2) interest in and to all that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, containing 25.08 acres, more or less, and being shown and designated as Distribution Tract G on plat entitled "Survey for Greenspace of Fairview, LLC Tract 5" dated November 26, 2001, prepared by Joe E. Mitchell, Registered Land Surveyor, recorded in Plat Book 151, page 523, and having such metes and bounds as appears thereon, incorporated herein by reference.

Being the same property conveyed to Rudrick G. Otto and Alyce F. Otto by Fairview Associates, LLC by deed recorded July 12, 2004 in Deed Book 80-T at page 257, RMC Office for Spartanburg County, S.C.

PARCEL TWO: An undivided one-half (1/2) interest in and to all that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. A, as shown on survey prepared for Arthur B. Coggins and James E. Ashmore dated February 11, 1983 and recorded in Plat Book 88, page 806, RMC Office for Spartanburg County, S.C. For a more particular description, reference is hereby made to the above referred to plat and record thereof.

Being the same property conveyed to Rudrick G. Otto and Alyce F. Otto by Garrick and Garrick Real Estate, LLC by deed recorded February 17, 2005 in Deed Book 82-J at page 96, RMC Office for Spartanburg County, S.C.

STATE OF SOUTH CAROLINA)
) AFFIDAVIT FOR EXEMPT TRANSFERS
 COUNTY OF SPARTANBURG)

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

1. I have read the information on the back of this affidavit and I understand such information.

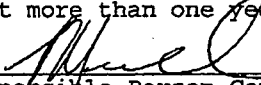
2. The property being transferred is located at Campobello, bearing Spartanburg County Tax Map Number 1-03-00-003.00 and 1-08-05-015.00, was transferred by Rudrick G. Otto to Rudrick George Otto, Trustee under Declaration of Trust of Rudrick George Rudrick dated the 17th day of November 2009.

3. The deed is exempt from the deed recording fee because (See Information section of affidavit): transfer to family trust

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ of No _____.

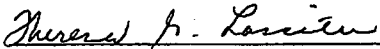
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: attorney

5. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


 Responsible Person Connection
 with the Transaction

SWORN to before me this
 24th day of November, 2009.

S. Michael Pack, Jr.
 Print or Type Name Here

 (Seal)
 Notary Public for South Carolina
 My Commission expires: February 25, 2013

4

95A- PG439

DEE-2009-46302
Recorded 4 Pages on 11/24/2009 3:21:00 PM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Registrar of Deeds, Spartanburg, S.C.
Stephen Ford, Register



BLOCK MAP REFERENCE NO:

1-03-00-003.00

1-08-05-015.00

ADDRESS OF GRANTEE:

1841 Fairview Farms Rd
Campobello, SC 29322

STATE OF SOUTH CAROLINA)

) TITLE TO REAL ESTATE

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS that ALYCE F. OTTO, in consideration of the sum of One and no/100 (\$1.00) Dollar, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto ALYCE F. OTTO, TRUSTEE UNDER DECLARATION OF TRUST OF ALYCE F. OTTO DATED THE 17th DAY OF NOVEMBER, 2009, her successors and assigns forever:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN

Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining; to have and to hold all and singular the said premises before mentioned unto the grantee and the grantee's successors and assigns, forever. And the grantor does hereby bind herself, her heirs, successors and assigns to warrant and forever defend all and singular the said premises unto the grantee and the grantee's successors and assigns, against the grantor, her heirs and assigns against the grantor and her heirs and assigns, and against any person whomsoever lawfully claiming or to claim the same, or any part thereof, except as to restrictions and easements of record, if any.

IN WITNESS WHEREOF, the grantor has hereunto set her hand and seal this 18 day of November, 2009.

SIGNED, Sealed and Delivered

95A- P6440

In the Presence of:

Rosa A. [Signature]
Paul [Signature]

Alyce F. Otto (SEAL)
ALYCE F. OTTO

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF SPARTANBURG)

The foregoing instrument was acknowledged before me this 18th day of November, 2009
by ALYCE F. OTTO .

William B. [Signature]
Notary Public for South Carolina
My commission expires 5-8-12

95A- PG 441

EXHIBIT "A"

PARCEL ONE: An undivided one-half (1/2) interest in and to all that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, containing 25.08 acres, more or less, and being shown and designated as Distribution Tract G on plat entitled "Survey for Greenspace of Fairview, LLC Tract 5" dated November 26, 2001, prepared by Joe E. Mitchell, Registered Land Surveyor, recorded in Plat Book 151, page 523, and having such metes and bounds as appears thereon, incorporated herein by reference.

Being the same property conveyed to Rudrick G. Otto and Alyce F. Otto by Fairview Associates, LLC by deed recorded July 12, 2004 in Deed Book 80-T at page 257, RMC Office for Spartanburg County, S.C.

PARCEL TWO: An undivided one-half (1/2) interest in and to all that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. A, as shown on survey prepared for Arthur B. Coggins and James E. Ashmore dated February 11, 1983 and recorded in Plat Book 88, page 806, RMC Office for Spartanburg County, S.C. For a more particular description, reference is hereby made to the above referred to plat and record thereof.

Being the same property conveyed to Rudrick G. Otto and Alyce F. Otto by Garrick and Garrick Real Estate, LLC by deed recorded February 17, 2005 in Deed Book 82-J at page 96, RMC Office for Spartanburg County, S.C.

95A-PS442

STATE OF SOUTH CAROLINA)
) AFFIDAVIT FOR EXEMPT TRANSFERS
COUNTY OF SPARTANBURG)

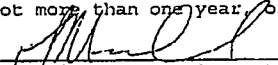
PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located at Campobello, bearing Spartanburg County Tax Map Number 1-03-00-003.00 and 1-08-05-015.00, was transferred by Alyce F. Otto to Alyce F. Otto, Trustee under Declaration of Trust of Rudrick George Rudrick dated the 17th day of November 2009.
3. The deed is exempt from the deed recording fee because (See Information section of affidavit): transfer to family trust

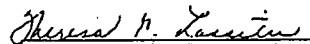
If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ of No ☐.

4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: attorney

5. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Responsible Person Connection
with the Transaction

SWORN to before me this
24th day of November, 2009. S. Michael Pack, Jr.
Print or Type Name Here

 (Seal)
Notary Public for South Carolina
My Commission expires: February 25, 2013

DEE 97 - V PG 181

DEE-2011-4594
Recorded 4 Pages on 2/10/2011 1:05:40 PM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



State of South Carolina

County of Spartanburg

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, Alyce F. Otto, Successor Trustee Under Declaration of Trust of Rudrick George Otto Dated the 17th day of November, 2009 (hereinafter called "Grantor"), in consideration of **Ten and 00/100 Dollars (\$10.00)**, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto Dated the 17th day of November, 2009, her successors and assigns:

See attached Exhibit A.

Grantee's Address:

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining;

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs and assigns forever. And the Grantor does hereby bind the grantor and the grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

DEC 97 - VPG 182

WITNESS the Grantor's hand and seal this the 9th day of February, 2011.

SIGNED, SEALED AND DELIVERED
in the presence of:

Declaration of Trust of Rudrick George Otto
Dated the 17th day of November, 2009

Marilyn J. Otto
J. C. Long

By: Alyce F. Otto (Seal)
Alyce F. Otto, Successor Trustee

State of South Carolina)

PROBATE

County of Spartanburg)

PERSONALLY APPEARED BEFORE ME the undersigned witness and made oath that (s)he saw the within-named Alyce F. Otto, Successor Trustee Under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009, sign, seal and as her act and deed deliver the within-written Title to Real Estate and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

Marilyn J. Otto

SWORN to before me this
9th day of February, 2011.

J. C. Long (SEAL)
Notary Public for South Carolina
My Commission Expires: 01/29/2017

EXHIBIT A

PARCEL ONE:

ALL OF THE GRANTOR'S RIGHT TITLE AND INTEREST IN AND TO:

ALL that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Spartanburg, containing **25.08 acres**, more or less, and being shown and designated as **Distribution Tract G** upon plat entitled "Survey for Greenspace of Fairview, LLC Tract 5" dated November 26, 2001, prepared by Joe E. Mitchell, RLS, recorded in **Plat Book 151, Page 523 806** in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

BMR: 1 03-00 003.00

ALSO:

PARCEL TWO:

ALL OF THE GRANTOR'S RIGHT TITLE AND INTEREST IN AND TO:

ALL that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. A upon plat of survey prepared for Arthur B. Coggins and James E. Ashmore dated February 11, 1983 and recorded in **Plat Book 88, Page 806** in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

BMR: 1 08-05 015.00

THIS ABOVE PROPERTY BEING the same property conveyed to Rudrick George Otto, Trustee Under Declaration of Trust of Rudrick George Otto Dated the 17th day of November, 2009, by deed dated November 18, 2009 and recorded November 24, 2009 in Deed Book 95-A, Page 435 in the Office of the Register of Deeds for Spartanburg County.

Alpe Otto

DEL 97 VPG 184

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

AFFIDAVIT FOR EXEMPT TRANSFERS

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

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located at multiple parcels, bearing Spartanburg County Tax Map Numbers 1 03-00 003.00 and 1 08-05 015.00, was transferred by Alyce F. Otto, Successor Trustee under Declaration of Trust of Rudrick George Otto dated the 17th day of November 2009 to Alyce F. Otto, Trustee under Declaration of Trust of Alyce F. Otto dated the 17th day of November 2009 on February 9, 2011.
3. The deed is exempt from the deed recording fee because (See Information section of affidavit): See No. 9 on the reverse.
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor
5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor, and upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Declaration of Trust of Rudrick George Otto dated the
17th day of November 2009

By:

Alyce F. Otto
Alyce F. Otto, Successor Trustee

SWORN to before me this February 9, 2011

Tammy Chang
Notary Public for South Carolina
My Commission Expires: 01/29/2018

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings.
- (14) Transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivision to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operated or to take functional control of electric transmission assets as defined the Federal Power Act.

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

U.S. Bank, NA as Trustee relating to)
The Chevy Chase Funding, LLC)
Mortgage Backed Certificates,)
Series 2004-B,)

Plaintiff,)

-vs-)

Alyce F. Otto, individually;)
Alyce F. Otto, Trustee Under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09; TD Bank, NA;)
The United States of America,)
Acting by and through its agency,)
The Internal Revenue Service;)
Laura Kerhulas Giese, as co-)
Trustee of the Theodore Ernest)
Kerhulas Trust Under Declaration)
Of Trust dated 5/25/04; Mark)
Warner Kerhulas, as co-Trustee of)
The Theodore Ernest Kerhulas)
Trust Under Declaration of Trust)
Dated 5/25/04; Jackson L. Munsey,)
Jr.; and Citibank, NA,)

Defendants.)

And)

Jackson L. Munsey, Jr.)

Cross-Claim Plaintiff,)

-vs-)

Alyce F. Otto, Individually; and)
Alyce F. Otto, Trustee under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09,)

Cross-Claim Defendants.)

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2012-CP-42-3549

**MOTION TO SET ASIDE DEFAULT
AND LEAVE TO FILE ANSWER
OUTSIDE OF TIME**

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 FEB -4 PM 3:23
M. HOPE BLACKLEY

NOW COMES the undersigned counsel for the Defendant and Cross-Claim Plaintiff Jackson L. Munsey, Jr. ("Munsey"), and hereby moves to set aside any default entered against Munsey in this matter, pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure.

Munsey is currently the occupant and purchaser of the real property which is the subject matter of this litigation. (Munsey Aff. ¶¶ 2, 3.) He is also currently involved in a separate foreclosure action with Defendant Alyce F. Otto ("Otto"), involving the same parcel of property. (Munsey Aff. ¶ 2.) When Munsey was served with this lawsuit, he was in contact with Otto's attorney, who was in the process of negotiating a settlement with Plaintiff in this matter. (Munsey Aff. ¶ 5.) Munsey believed that a settlement was imminent. (Id.)

When Otto's attorney stopped communicating with Munsey, he became aware that a settlement was not in the works and that it would be advisable for him to retain his own counsel. (Munsey Aff. ¶ 6.) He retained the law firm of Kehl Culbertson, LLC, in late December, and an Answer and Counterclaims were filed with the Spartanburg County Clerk of Court on December 27, 2012.

The standard for setting aside default is "good cause," and South Carolina courts have ruled that standard to be more lenient than the standard for setting aside a judgment for inadvertence or excusable neglect under SCRCP 60(b)(1). *Bage, LLC vs. Southeastern Roofing Co. of Spartanburg, Inc.*, 373 S.C. 457, 646 S.E.2d 153 (Ct. App. 2007). Further, South Carolina holds that rule 55(c) should be liberally construed to promote justice and allow parties to dispose of cases on the merits rather than procedural errors. See, e.g., *Dixon vs. Besco Engineering*, 328 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995); *Ricks vs. Weinrauch*, 293 S.C. 372, 360 S.E.2d 53 (Ct. App. 1987).

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M. HOPE BLACKLEY

The factors to be considered in setting aside a default are as follows: (1) the timing of defaulting party's motion for relief; (2) whether the party has a meritorious defense; and (3) the degree of prejudice to the other party if relief is granted. *Wham vs. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989). As stated in Munsey's Affidavit, he was diligently communicating and negotiating with Otto's counsel in both this matter and the Otto Foreclosure, which is a companion action, and believed a settlement was being negotiated. As soon as he learned otherwise, he retained counsel and filed an Answer. Further, his Answer, which is of record with this Court, contains numerous meritorious defenses, counterclaims, and cross-claims, which must be adjudicated in the interest of fairness. Finally, there is no prejudice to the Plaintiff if Munsey's default is set aside. Should Plaintiff prove its case on the merits, Plaintiff will be entitled to monetary relief in the form of daily-accruing interest; hence, there is no harm to Plaintiff in allowing Munsey to file his Answer, present his counter- and cross-claims, and fully and fairly adjudicate his claims.

This Motion is further based on common and statutory laws, the pleadings in this case, and any affidavits, documents, evidence or memoranda which may properly be filed with the Court at or in advance of the hearing in this matter.

WHEREFORE, undersigned counsel for Munsey respectfully requests that this Court set aside any default entered against him and allow him the opportunity to proceed with litigating his Answer, Counterclaims, and Crossclaims in the instant matter.

Erin Culbertson
Erin Culbertson (SC Bar # 68271)
KEHL CULBERTSON, LLC
114 Manly St. (29601)
Post Office Box 1904
Greenville, SC 29602
864/370-8222 864/370-8227 (fax)

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SPARTANBURG COUNTY
2013 FEB 14 PM 3:23
H. HOPE BLACKLEY

erin@upstatepropertylaw.com

Counsel for Defendant and Cross-Claim Plaintiff
Jackson L. Munsey, Jr.

January 29, 2013
Greenville, SC

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 FEB -4 PM 3:23
M. HOPE BLACKLEY

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

U.S. Bank, NA as Trustee relating to)
The Chevy Chase Funding, LLC)
Mortgage Backed Certificates,)
Series 2004-B,)

Plaintiff,)

-vs-)

Alyce F. Otto, individually;)
Alyce F. Otto, Trustee Under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09; TD Bank, NA;)
The United States of America,)
Acting by and through its agency,)
The Internal Revenue Service;)
Laura Kerhulas Giese, as co-)
Trustee of the Theodore Ernest)
Kerhulas Trust Under Declaration)
Of Trust dated 5/25/04; Mark)
Warner Kerhulas, as co-Trustee of)
The Theodore Ernest Kerhulas)
Trust Under Declaration of Trust)
Dated 5/25/04; Jackson L. Munsey,)
Jr.; and Citibank, NA,)

Defendants.)

And)

Jackson L. Munsey, Jr.)

Cross-Claim Plaintiff,)

-vs-)

Alyce F. Otto, Individually; and)
Alyce F. Otto, Trustee under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09,)

Cross-Claim Defendants.)

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2012-CP-42-3549

AFFIDAVIT OF JACKSON L. MUNSEY, JR.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 FEB -4 PM 3:23
M. HOPE BLACKLEY

Jackson L. Munsey, Jr., personally appearing before me, and being duly sworn, states the following:

1. I am a citizen and resident of the County of Spartanburg, State of South Carolina. I am over the age of eighteen and I am a Defendant and Cross-Claim Plaintiff in the above-captioned civil action. The information contained in this Affidavit is based on my personal knowledge.

2. I am currently the occupant of the property which is the subject matter of the above-captioned foreclosure, as well as a related foreclosure styled as Alyce F. Otto, Trustee vs. Jackson L. Munsey, Jr., bearing Spartanburg County Civil Action No. 2012-CP-42-2874 (the "Otto Foreclosure").

3. I am in the process of purchasing the subject property from Defendant Alyce F. Otto ("Otto"), pursuant to the terms and conditions of a Contract for Deed, as referenced in the Complaint of the above-captioned matter, and which is also the subject of the Otto Foreclosure.

4. I was served with the Summons, Complaint, and Lis Pendens in the above-captioned matter on August 31, 2012.

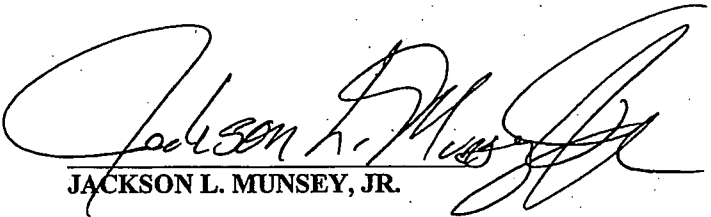
5. Prior to that date, and continuing for weeks afterwards, I was in communication with Otto's attorney, Ken Anthony, attempting to understand, negotiate, and resolve both the instant matter and the Otto Foreclosure. It was my understanding and belief that we would be able to settle with the Plaintiff and would not be forced to litigate this matter the Otto Foreclosure.

6. In November, Ken Anthony stopped communicating and corresponding with me and it became apparent that litigation was unavoidable. I retained counsel as soon as I was able to do so and filed an Answer and Counterclaims with this Court on December 27, 2012.

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SPARTANBURG COUNTY
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J. HOE B. JACKLEY

FURTHER AFFIANT SAYETH NOT.

Date


JACKSON L. MUNSEY, JR.

Sworn to before me this _____
day of January, 2013.



Notary Public for South Carolina
My commission expires: _____

My Commission Expires
October 26, 2019

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 FEB -4 PM 3:23
M. HOPE BLACKLEY

COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

C. A. NO.: 2012-CP-42-3549

U.S. Bank, NA as Trustee relating to)
The Chevy Chase Funding, LLC)
Mortgage Backed Certificates,)
Series 2004-B,)

Plaintiff,)

-vs-)

Alyce F. Otto, individually;)
Alyce F. Otto, Trustee Under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09; TD Bank, NA;)
The United States of America,)
Acting by and through its agency,)
The Internal Revenue Service;)
Laura Kerhulas Giese, as co-)
Trustee of the Theodore Ernest)
Kerhulas Trust Under Declaration)
Of Trust dated 5/25/04; Mark)
Warner Kerhulas, as co-Trustee of)
The Theodore Ernest Kerhulas)
Trust Under Declaration of Trust)
Dated 5/25/04; Jackson L. Munsey,)
Jr.; and Citibank, NA,)

Defendants.)

And)

Jackson L. Munsey, Jr.)

Cross-Claim Plaintiff,)

-vs-)

Alyce F. Otto, Individually; and)
Alyce F. Otto, Trustee under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09,)

Cross-Claim Defendants.)

MOTION TO CONSOLIDATE WITH
C. A. NO.: 2012-CP-42-2874

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 FEB -4 PM 3:23
M. HOPE BLACKLEY

NOW COMES the undersigned counsel for the Defendant and Cross-Claim Plaintiff Jackson L. Munsey, Jr. ("Munsey"), and hereby moves to consolidate the above-captioned matter with that currently pending foreclosure styled as Alyce F. Otto, Trustee vs. Jackson L. Munsey, Jr., bearing Civil Action Number 2012-CP-42-2874. The basis of this motion is that the two cases involve common questions of law and fact, involve the same parcel of real property, and pursuant to Rule 42 of the South Carolina Rules of Civil Procedure, should be consolidated in the interests of judicial economy.

This Motion is further based on common and statutory laws, the pleadings in this case, and any affidavits, documents, evidence or memoranda which may properly be filed with the Court at or in advance of the hearing in this matter.

WHEREFORE, undersigned counsel for Munsey respectfully requests that this Court inquire into the issues presented in this Motion, hold such hearings as the Court deems advisable, and issue its Order consolidating this matter with 2012-CP-42-2874, to be tried together as on action.

Erin Culbertson
Erin Culbertson (SC Bar # 68271)
KEHL CULBERTSON, LLC
114 Manly St. (29601)
Post Office Box 1904
Greenville, SC 29602
864/370-8222 864/370-8227 (fax)
erin@upstatepropertylaw.com

Counsel for Defendant and Cross-Claim Plaintiff
Jackson L. Munsey, Jr.

January 17, 2013
Greenville, SC

FILED
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SPARTANBURG COUNTY
2013 FEB -4 PM 3:23
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2012-CP-42-3549

U.S. Bank, NA as Trustee relating to)
The Chevy Chase Funding, LLC)
Mortgage Backed Certificates,)
Series 2004-B,)

Plaintiff,)

-vs-)

Alyce F. Otto, individually;)
Alyce F. Otto, Trustee Under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09; TD Bank, NA;)
The United States of America,)
Acting by and through its agency,)
The Internal Revenue Service;)
Laura Kerhulas Giese, as co-)
Trustee of the Theodore Ernest)
Kerhulas Trust Under Declaration)
Of Trust dated 5/25/04; Mark)
Warner Kerhulas, as co-Trustee of)
The Theodore Ernest Kerhulas)
Trust Under Declaration of Trust)
Dated 5/25/04; Jackson L. Munsey,)
Jr.; and Citibank, NA,)

Defendants.)

And)

Jackson L. Munsey, Jr.)

Cross-Claim Plaintiff,)

-vs-)

Alyce F. Otto, Individually; and)
Alyce F. Otto, Trustee under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09,)

Cross-Claim Defendants.)

**MOTION FOR RELIEF
FROM ENTRY OF DEFAULT**

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SPARTANBURG COUNTY
2015 NOV 23 PM 2:02
M. HOPE BLACKLEY

NOW COMES the undersigned counsel for the Defendant and Cross-Claim Plaintiff Jackson L. Munsey, Jr. ("Munsey"), and hereby moves to set aside any default entered against Munsey in this matter, pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure.

On December 27, 2012, Munsey filed a Summons, Answer, Counterclaims and Cross-Claims in the above-captioned matter, alleging certain affirmative defenses and compulsory counterclaims against Plaintiff US Bank, NA ("US Bank") and certain affirmative defenses and compulsory counter and cross-claims against Defendant Alyce F. Otto ("Otto"). On February 4, 2013, Munsey filed a motion to consolidate two pending actions bearing Civil Actions Numbers 2012-CP-42-3549 and 2012-CP-42-2874. On February 4, 2013, Munsey also filed a Motion to Set Aside Default and Leave to File Answer Outside of Time. Along with his Motion to Set Aside Default, Munsey also filed an Affidavit, containing certain factual allegations and attestations related to the "good cause" element of his Motion to Set Aside Default. All of the above documents and filings are of record with the Court.

On May 6, 2013, the Court held a hearing on Munsey's two pending motions. The Motion to Consolidate was granted, by Order dated and filed May 6, 2013. The Motion to Set Aside Default was denied, by Order dated and filed May 6, 2013.

Munsey again respectfully seeks relief from entry of default in the within matter, based upon the facts and arguments contained below.

As established by the Affidavit previously filed in this matter and as confirmed by the Affidavit of Stephanie Munsey, attached hereto as Exhibit A and made a part hereof by reference, Munsey is currently the occupant and purchaser of the real property which is the subject matter of this litigation. (Munsey Aff. ¶¶ 2, 3.) He is also currently involved in a separate foreclosure action with Defendant Alyce F. Otto ("Otto"), involving the same parcel of

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property. (Munsey Aff. ¶ 2.) When Munsey was served with this lawsuit, he was in contact with Otto's attorney, who was in the process of negotiating a settlement with Plaintiff in this matter. (Munsey Aff. ¶ 5; Stephanie Munsey Aff. ¶¶ 10-15.) Munsey even went so far as to deposit settlement funds with Otto's attorney, which he continues to hold to date. (Stephanie Munsey Aff. ¶ 13.) Munsey believed that a settlement was imminent. (Id.)

When Otto's attorney abruptly stopped communicating with Munsey, he became aware that a settlement was not in the works and that it would be advisable for him to retain his own counsel. (Munsey Aff. ¶ 6; Stephanie Munsey Aff. ¶ 16.) He contacted the law firm of Kehl Culbertson, LLC, in November of 2012 and retained the firm in mid-December. An Answer and Counterclaims were served on the opposing parties on December 21, 2012, and filed with the Spartanburg County Clerk of Court on December 27, 2012. Munsey's Motion to Set Aside Default was filed within a few weeks of that, on February 4, 2013.

Since that time, Otto has been granted leave of the Court TWICE to amend her Answer and Counterclaim (September 4, 2013 and April 7, 2015). The contested foreclosure hearing has been scheduled and canceled multiple times. New counsel of record has been permitted to make an appearance on behalf of Defendant TD Bank, NA (February 12, 2015). New counsel of record has been permitted to make an appearance on behalf of the Plaintiff (March 9, 2015). Defendants Laura Kerhulas Giese and Mark Warner Kerhulas have been granted leave of the court to amend their answer, file a cross-claim, and participate in discovery (July 13, 2015).

Munsey's original Answer and Counterclaims was filed less than 120 days after being served by US Bank, and less than 90 days after US Bank filed a Certificate of Default, during almost all of which Munsey was in regular communication with Otto's attorney attempting to settle the dispute. In fact, Otto's attorney even represented Munsey's wife, who is a member

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of the SC Bar, that he was not "going to call time on you," and continued to conduct settlement discussions with Munsey long based any default deadlines. (Stephanie Munsey Aff. ¶¶ 12-15.)

The standard for setting aside an entry of default is "good cause," and South Carolina courts have ruled that standard to be more lenient than the standard for setting aside a judgment for inadvertence or excusable neglect under SCRCP 60(b)(1). *Bage, LLC vs. Southeastern Roofing Co. of Spartanburg, Inc.*, 373 S.C. 457, 646 S.E.2d 153 (Ct. App. 2007). Further, South Carolina holds that Rule 55(c) should be liberally construed to promote justice and allow parties to dispose of cases on the merits rather than procedural errors. See, e.g., *Dixon vs. Besco Engineering*, 320 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995); *Ricks vs. Weinrauch*, 293 S.C. 372, 360 S.E.2d 535 (Ct. App. 1987).

The factors to be considered in setting aside a default are as follows: (1) the timing of defaulting party's motion for relief; (2) whether the party has a meritorious defense; and (3) the degree of prejudice to the other party if relief is granted. *Wham vs. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989). As stated in Munsey's Affidavit, he was diligently communicating and negotiating with Otto's counsel in both this matter and the Otto Foreclosure, which is a companion action, and believed a settlement was being negotiated. As soon as he learned otherwise, he retained counsel and filed an Answer. Further, his Answer, which is of record with this Court, contains numerous meritorious defenses, counterclaims, and cross-claims, which must be adjudicated in the interest of fairness. Munsey has been deposed and conducted significant discovery with US Bank. Finally, as has been shown by the fact that this case has been pending for almost three (3) years since the entry of Munsey's Answer and Motions, there is no prejudice to the Plaintiff if Munsey's default is set aside. Should Plaintiff prove its case on the merits, Plaintiff will be entitled to monetary relief in the form of daily-

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SPARTANBURG COUNTY
JAN 28 2015
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accruing interest; hence, there is no harm to Plaintiff in allowing Munsey to file his Answer, present his counter- and cross-claims, and fully and fairly adjudicate his claims.

This Motion is further based on common and statutory laws, the pleadings in this case, and any affidavits, documents, evidence or memoranda which may properly be filed with the Court at or in advance of the hearing in this matter.

WHEREFORE, undersigned counsel for Munsey respectfully requests that this Court set aside any entries of default and allow him the opportunity to proceed with litigating his Answer, Counterclaims, and Crossclaims in the instant matter.


Erin Culbertson (SC Bar # 68271)
KEHL CULBERTSON ANDRIGHETTI, LLC
114 Manly St. (29601)
Post Office Box 1904
Greenville, SC 29602
864/370-8222 864/370-8227 (fax)
erin@palmettolawfirm.com

Counsel for Defendant and Cross-Claim Plaintiff
Jackson L. Munsey, Jr.

November 23, 2015
Greenville, SC

FILED
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SPARTANBURG COUNTY
2015 NOV 23 PM 2:02
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

U.S. Bank, NA as Trustee relating to)
The Chevy Chase Funding, LLC)
Mortgage Backed Certificates,)
Series 2004-B,)

Plaintiff,)

-vs-)

Alyce F. Otto, individually;)
Alyce F. Otto, Trustee Under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09; TD Bank, NA;)
The United States of America,)
Acting by and through its agency,)
The Internal Revenue Service;)
Laura Kerhulas Giese, as co-)
Trustee of the Theodore Ernest)
Kerhulas Trust Under Declaration)
Of Trust dated 5/25/04; Mark)
Warner Kerhulas, as co-Trustee of)
The Theodore Ernest Kerhulas)
Trust Under Declaration of Trust)
Dated 5/25/04; Jackson L. Munsey,)
Jr.; and Citibank, NA,)

Defendants.)

And)

Jackson L. Munsey, Jr.)

Cross-Claim Plaintiff,)

-vs-)

Alyce F. Otto, Individually; and)
Alyce F. Otto, Trustee under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09,)

Cross-Claim Defendants.)

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2012-CP-42-3549

**AFFIDAVIT OF
STEPHANIE BLANTON MUNSEY**

M. HOPE BLACKLEY

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SPARTANBURG COUNTY

Stephanie Blanton Munsey, personally appearing before me, and being duly sworn, states the following:

1. I am a citizen and resident of the County of Spartanburg, State of South Carolina. I am over the age of eighteen and my husband, Jackson L. Munsey, Jr. ("Jack"), is the Defendant and Cross-Claim Plaintiff in the above-captioned civil action. The information contained in this Affidavit is based on my personal knowledge.

2. I am a member in good standing of the South Carolina Bar and have practiced law in the state of South Carolina for eighteen (18) years.

3. Along with Jack and our minor son, I am currently an occupant of the property which is the subject matter of the above-captioned foreclosure, which has been consolidated with a related foreclosure action styled as Alyce F. Otto, Trustee vs. Jackson L. Munsey, Jr. (the "Otto Foreclosure"). The consolidation was effected by Order of this Court dated May 6, 2013.

4. My husband is under contract to purchase the subject property from Defendant Alyce F. Otto ("Otto"), pursuant to the terms and conditions of a Contract for Deed dated March 4, 2011 (the "Contract"), as referenced in the Complaint of the above-captioned matter. A copy of the Contract is attached hereto as Exhibit A and made a part hereof by reference.

5. Shortly after the closing held on March 4, 2011, Jack began requesting login information and online access and/or monthly mortgage statements to the two mortgage accounts he was obligated to pay under the terms of the Contract. Otto consistently refused to allow him online access and failed to provide Jack with copies of each month's mortgage statements, despite her agreement and obligation to do so.

6. On April 15, 2012, Jack met with Otto personally at her place of business (after numerous previous requests via telephone and email) to request that she provide him the required

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SPARTANBURG COUNTY
JAN 23 2013
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JAN 23 2013

Form 1098 Mortgage Interest statement for each of the mortgages he was obligated to pay, in order that he could prepare his income taxes and take the allowable and agreed-upon deduction for his payments on the Contract. During this conversation, Jack learned from Otto that the Capital One/US Bank mortgage was in default. Jack and Otto together placed a call to Capital One, during which conference call, the customer service representative told Jack and Otto that all payments had been received, but had been misallocated to principal, and certain payments had been returned by check to Otto. Otto agreed to return all the wrongfully-refunded payments to Capital One; Capital One agreed to reallocate the principal reduction payments to regular monthly payments and to properly apply the refunded payments once received back from Otto. Otto further agreed to forward monthly mortgage statements to Jack and to issue the requisite Form 1098 statements within thirty (30) days.

7. In May of 2012, having received nothing from Otto, Jack and I became concerned about Otto's lack of communication; as a result, I personally searched the Spartanburg County public records. In my search, I discovered that two judgments and a federal tax lien had been filed against Otto since the closing date of March 4, 2011, which encumbrances were a direct and specific violation of Section 5 of the Contract.

8. Jack notified Otto of these violations, invoked his right under the Contract to withhold third mortgage payments directly to Otto until the encumbrances were cleared, and again requested the Form 1098 statements in a letter dated May 15, 2012. A copy of this letter is attached hereto as Exhibit B and made a part hereof by reference.

9. Jack continued to make mortgage payments directly to both Capital One (the first mortgage holder) and TD Bank (the second mortgage holder) throughout this period.

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10. Jack was served with the Summons, Complaint, and Lis Pendens in Otto Foreclosure on July 27, 2012.

11. On August 3, 2012, I had a telephone conference with Otto's attorney, Ken Anthony ("Anthony"), to discuss the litigation, during which Anthony requested that I provide him with evidence of Jack's payment history to Otto. I followed up our telephone conference with an email to Anthony, to which I attached a copy of Jack's earlier letter to Otto. This email is attached hereto as Exhibit C and made a part hereof by reference.

12. Over the course of the next two months, I was in regular communication with Anthony via telephone, email, and a face-to-face meeting. On September 5, 2012, I personally met with Anthony at his office, during which meeting he acknowledged that Capital One had returned certain monthly payments made by Jack to Otto. He showed me copies of several checks issued to Otto by Capital One, described as "refund payments." He informed me that Otto had "several other" returned checks from Capital One, but he did not have any information as to the number or amounts of the refunded payments. Anthony agreed to obtain and provide me with an accounting of all refunded payments from Capital One to Otto, as well as a reinstatement amount to bring the Capital One mortgage current. Capital Bank was unable and unwilling to communicate with Jack or me, due to the fact that Otto was the borrower of record and had never given Jack access to the account. Otto was unwilling to communicate with Jack and refused to allow him access to the account. Therefore, Anthony, as legal counsel for Otto, was the only person who could obtain the requested information for us.

13. I immediately provided Anthony with any and all information he requested, including verification of all mortgage payments Jack had made to Capital One, and

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consistently confirmed Jack's interest in reinstating the delinquent mortgage and settling both foreclosure actions.

14. I am attaching emails between Anthony and me from the period of August through November of 2012 collectively as Exhibit D, which are incorporated herein by reference. Of particular importance are the following:

- (a) August 20, 2012: I provided Anthony a full payment history for 2012. I renewed Jack's request for an accounting history from Otto's lenders. I asked Anthony to contact me so that we could discuss an extension of time within which to file an Answer to the Otto Foreclosure.
- (b) August 24, 2012: I asked Anthony to confirm that he was "agreeable to an extension since we were working towards a resolution in this matter." Anthony responded, "I am not going to call time on you."

15. In a show of good faith, I arranged for Jack to wire funds to Anthony in the amount of the September mortgage payment due to Capital One, as well as funds which represented the third mortgage payments to Otto from May to September of 2012, which were withheld pursuant to the Contract based on Otto's violation regarding the encumbrances. The total amount of funds paid into trust with Anthony was \$6,044.14, all as documented in emails contained in Exhibit D.

16. When Anthony finally obtained a reinstatement amount from Capital One (dated October 12, 2012, and forwarded to me on October 17, 2012), I immediately asked him again to account for all funds wrongfully returned to Otto by Capital One and to verify all funds he held in escrow related to the property, whether received from Jack, Otto, or Capital One, and he failed and refused to do so.

17. After review of the reinstatement amount, I requested that Anthony make an inquiry regarding certain amounts contained in that reinstatement figure, as it appeared that Capital One had included payment of the property taxes which had previously paid. I also

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provided Anthony with a paid tax receipt to provide to Capital One as part of this inquiry. Again, this request had to be made by Anthony since Capital One was unable and unwilling to communicate with either Jack or me, as Otto was the borrower of record and had never given Jack access to the account. Anthony was unwilling and/or refused to do so.

18. Jack was unwilling to provide funds for a reinstatement without a clear understanding and agreement as to what those funds represented, how the reinstatement funds would be applied, and a full accounting and return of all the wrongfully-refunded payments to Otto.

19. Throughout the next several weeks, I repeatedly asked Anthony to account for all funds wrongfully returned by Capital One to Otto, and he failed and/or refused to do so. I repeatedly asked Anthony to verify whether the reinstatement amount included a duplicative charge for property taxes, and he failed and/or refused to do so. My final direct email communication with Anthony was on November 9, 2012 (included as part of Exhibit D hereto), wherein I expressed my confusion and frustration with Anthony's lack of communication. I requested a response from him by November 14, 2012, in order to resolve all the outstanding issues as discussed and planned.

20. Within weeks after Anthony inexplicably ceased communicating with me and refused to further participate in resolving either the Capital One or the Otto Foreclosure, Jack and I met with Erin Culbertson, Esq., of Kehl Culbertson, LLC. Although we spoke with her in late November or early December, the earliest she could meet with us due to her schedule was mid-December. She immediately drafted and served responsive pleadings to both foreclosure actions on December 21, 2012, which was filed on December 27, 2012.

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21. Jack acted diligently in communicating with Anthony and providing all information requested. Consistent, regular communication with the opposing party's counsel, a deposit of funds to be held by opposing party's counsel pending a resolution of the matter, and a good-faith belief that opposing party's counsel will be true to his word and "not call time on you" seems to fall clearly under the "good cause" anticipated by Rule 55 (c) of the South Carolina Rules of Civil Procedure.

FURTHER AFFIANT SAYETH NOT.

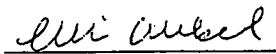
SIGNATURE PAGE TO FOLLOW

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WILLIAM ST. AUSTIN

November 23, 2015


STEPHANIE BLANTON MUNSEY

Sworn to before me this 23rd
day of November, 2015.


Notary Public for South Carolina
My commission expires: 6/30/2018

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M. HOPE BLACKLEY

Exhibit A

STATE OF SOUTH CAROLINA)

CONTRACT FOR DEED

COUNTY OF SPARTANBURG)

THIS CONTRACT FOR DEED made and entered into this 4th day of March, 2011,
between the following parties:

PARTIES:

Seller: Alyce F. Otto, as Trustee under the Declaration of Trust of
Alyce F. Otto dated November 17, 2009, with an address of 1841 Fairview
Farms Road, Campobello, South Carolina 29322 (hereinafter referred to as
"Seller").

Purchaser: Jackson L. Munsey, Jr., an individual, with an address of 405
East Springs Road, Columbia, South Carolina 29223 (hereinafter referred
to as "Purchaser").

WITNESSETH:

In consideration of the monetary amounts as stated herein, the sufficiency of
which is hereby acknowledged by both parties, and subject to the covenants and
agreements hereinafter contained and provided, Seller hereby covenants and agrees to
convey and assure to Purchaser and Purchaser hereby agrees to purchase from Seller
the following described property, to wit:

1825, 1835 and 1841 Fairview Farms Road, Campobello, SC 29322, more

particularly described as as Tract G of Greenspace of Fairview, LLC, more particularly and specifically described on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Property").

It is mutually covenanted and agreed that this Contract for Deed is made and entered into upon the following covenants and agreements:

1. The purchase price to be paid by Purchaser directly to or for the benefit of the Seller is the sum of \$1,400,000.00, said purchase price to be paid in the following manner:
 - (a) The credit of the sum of \$10,000.00 in check or electronic funds paid directly to Seller as a non-refundable deposit prior to the execution of this instrument;
 - (b) A note, a copy of which is attached hereto and incorporated herein, payable to the Seller in the current principal amount at closing of the Seller's note to Chevy Chase Bank, F.S.B., secured by a first mortgage to Chevy Chase Bank & Trust, or its successor and/or assign (hereinafter referred to as "Mortgage No. 1"), in the amount of \$1,061,968.32, under the same current or modified terms and conditions of the note and mortgage between the Seller and Mortgage No. 1 dated August 18, 2004. Said note shall be paid in monthly installments directly to the holder of Mortgage No. 1, with

the first payment of such installment due and payable on April 1, 2011, and a like amount thereafter every month until April 1, 2016, when on that date the balance shall be due and payable. Purchaser acknowledges and agrees that this monthly installment may adjust from time to time based on the terms and conditions set forth in loan documents upon notice from Mortgage No. 1. The Purchaser shall have the option to extend the maturity date to April 1, 2019 with a principal of reduction of five percent (5%) of the outstanding balance;

- (c) A note, a copy of which is attached hereto and incorporated herein, payable to the Seller in the current principal amount at closing of the Seller's note to Carolina First Bank, secured by a second mortgage to Carolina First Bank, or its successor and/or assigns (hereinafter referred to as "Mortgage No. 2") in the amount of \$193,665.68, under the payments to reflect the current or modified terms and conditions of the note and mortgage between the Seller and Carolina First Bank Mortgage No. 2 dated June 18, 2008. Said note shall be paid in monthly installments of \$1,842.00 directly to the holder of Mortgage No. 2, with the first payment of such installment due and payable on March 17, 2011, and a like amount thereafter every month until June 17, 2013, when on that date the

balance shall be due and payable. The Purchaser hereby acknowledges and agrees that the original terms and conditions of this note contain a prepayment penalty;

- (d) The payment of the Seller's lien to the United States Internal Revenue Service (hereinafter referred to as the "IRS") in the estimated amount of \$14,601.71. In the event that said estimated payoff amount is in excess of the actual payoff amount, any excess shall be held in escrow by the closing attorney and shall be paid to the Seller after recorded satisfaction of the lien.
- (e) The payment of the 2010 *ad valorem* (real property) taxes now due and payable to Spartanburg County in the amount of \$5,978.87;
- (f) The payment of 2010 assessments due and payable to Greenspace of Fairview, LLC, along with penalties in the amount of \$4,590.34 plus \$500.13 due for fire ant treatment of the property;
- (g) The payment of arrears, penalties and legal fees of the first mortgage held by Mortgage No. 1 in the amount of \$50,839.96;
- (h) Intentionally Deleted.
- (i) The payment to Seller in cash or certified funds estimated in the amount of \$43,076.84 after payment of Seller's pro-rata portion of 2011 taxes and assessments;
- (j) The remaining sum shall be payable with a note, a copy of which is

attached hereto and incorporated herein, to the Seller in the principal amount of \$13,000.00 with an interest rate of two and one-half percent (2.5%) per annum to be amortized over seven years with a balloon payment due and payable in four years. Said note shall be paid directly to the Seller with the first payment of such installment due and payable on April 1, 2011, and a like amount thereafter every month until April 1, 2015, when on that date the balance, if any, shall be due and payable. Monthly payments may be anticipated and more than the required amount can be paid without penalty. Additional payments to principal may also be made without penalty. Purchaser shall make the monthly payments to the Seller at set forth under Paragraph 17 herein, or any other place of designation agreed upon by Purchaser and Seller. If any monthly payment is made after the 10th day of the month, a late fee of five percent (5%) will be charged (hereinafter referred to the "Late Payment Fee"). The Late Payment Fee will be charged for each and every month that the Purchaser makes payment after the 10th day of such month. Upon default, including failure to pay upon final maturity, the interest rate on the amount due from Purchaser shall be Nine and 00/100 (9.00%) percent per annum.

2. Seller hereby represents and warrants that the Property is free and clear of all liens and encumbrances and other objections, except for those items set forth in the certified title opinion of Joshua O.C. Lonon, Esq. dated December 30, 2010, and updated as of the date of this instrument, attached hereto as Exhibit "B" and incorporated herein by reference. Purchaser hereby subordinates this Contract for Deed to first and second mortgages on the Property listed on Exhibit "B" under item(s) 16 and 17 and referenced herein as Mortgage No. 1 and Mortgage No. 2, respectively.
3. Upon Purchaser making all payments and performing all other covenants and agreements herein set forth to be performed by Purchaser, Seller shall convey the Property, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, to Purchaser free and clear of all liens, encumbrances and other objections by a good, fee simple general warranty deed. At the time of the conveyance of the Property by Seller to Purchaser, Purchaser shall be responsible for and pay (a) the cost of the preparation of the Deed and (b) the fees associated with the transfer and recording of the Deed and (c) the costs associated with or arising out of the transfer of the LLC shares.
4. Purchaser shall pay, when due, *ad valorem* (real property) taxes and other governmental charges for the tax year 2011, and thereafter for a full tax

year until the Contract for Deed is completed.. The tax map reference number for the property is: 1 03-00 003.00. Purchaser shall receive a pro-rata credit for 2011 taxes at the execution and closing of this Contract for Deed.

5. Neither party shall, as a result of an act or omission, cause the Property in any way to be further encumbered, either voluntarily or involuntarily, without the written consent of the other party and to immediately, after notice thereof, remove, or cause to be removed, any encumbrances placed against the Property. In the event that said encumbrances are not removed, the non-encumbering party, after thirty (30) days notice of intent, may institute whatever proceeding may be necessary or required in order to have said encumbrances removed or the Property released therefrom. For so removing said encumbrances or releasing said Property, the encumbering party shall be responsible for the payment of the non-encumbering party's costs, and expenses including, but not limited to reasonable attorney's fees. In the event the encumbering party, after demand, fails or refuses to pay said expenses, costs, or attorney's fees, the non-encumbering party may bring an action against the encumbering party for the costs and expenses of collection, including, but not limited to reasonable attorney's fees. Should a judgment be filed against the Seller affecting the Property, or should an encumbrance be placed against the

Property as a result of Seller's acts or omissions, Purchaser after actual notice thereof, may in addition, cease to make payments to Seller under the note directly payable to Seller as called for set forth under Paragraph 1(j) and shall have the right of setoff against any amounts due for any such liens or encumbrances including costs arising therefrom and reasonable attorney fees. Should a judgment be filed against the Purchaser affecting the Property, or should an encumbrance be placed against the Property as a result of Purchaser's acts or omissions, Seller after actual notice thereof, may in addition, add to the principal balance of the promissory note under Paragraph 1(j) any amounts due for any such lien or encumbrances including costs arising therefrom and reasonable attorney fees.

6. Purchaser shall receive possession of the Property upon the execution of this Contract for Deed, and thereafter Purchaser shall be entitled to use and enjoy the Property to the same extent as if Purchaser had full and complete legal and equitable title thereto, subject to the terms, conditions, rules and regulations of the Conservation Easement and Greenspace of Fairview, LLC, as fully disclosed to the Purchaser prior to execution of this Contract for Deed.
7. Purchaser shall pay when due all charges for utility services, including, but not limited to, water, heating, gas, electricity, telephone and sewer

service furnished to the Property.

8. Purchaser shall pay when due all fees and assessments associated with Greenspace of Fairview, LLC, in accordance with the restrictive covenants and/or operating agreement. Seller shall consult with Purchaser regarding any votes cast and exercising any voting rights under the Property's membership interest in Greenspace of Fairview, LLC.
9. In the event of a disallowance by the IRS and/or the South Carolina Tax Commission, which prevents both parties from the benefits of a deduction for interest or depreciation or capital gain on the Property, then it is hereby agreed by and between the parties hereto that those deductions disallowed by both parties resulting from transactions occurring after the date hereof shall accrue to the benefit of the Purchaser. As a result, upon receipt of the governmental agencies reports, commonly known as IRS Form 1098, for payment of interest of the respective first and second mortgages as set forth herein, issued by Mortgage No. 1 and Mortgage No. 2 to Seller, Seller shall issue the same governmental agencies reports for all interest payments paid by Purchaser on behalf of and directly to Seller. Seller may assign this task to Purchaser's obligations with Seller's verification of information reported.
10. Seller shall report to all credit reporting agencies the payment history of the Purchaser for each payment obligation hereunder. Seller may assign

this task to Purchaser's obligations with Seller's verification of information reported.

11. Purchaser shall keep all improvements upon the Property in good repair and shall not commit waste or permit impairment or deterioration of said improvements. Purchaser accepts possession of the property in its present "AS-IS" condition as of the date of this Contract for Deed. It is understood and agreed that Purchaser accepts and assumes any and all risk of loss to all trees, shrubs, or other damage to the property due to fire or other casualty, acts of God and the elements from the date hereof. It is understood and agreed between the Seller and Purchaser that Purchaser will maintain a policy of hazard insurance on the Property in an amount not less than \$1,400,000.00 and will name Seller on such policy as a loss payee and provide Seller annual notice of same.
12. The following shall constitute events of default of Purchaser hereunder:
 - (a) The Purchaser's failure to pay an installment of principal or interest, or any other sum, within thirty (30) days of the date when it is due under this instrument. Any default by Purchaser under any one of the notes referred to hereinabove in Paragraph 1 shall be deemed a default under all of the notes.
 - (b) The Purchaser's assignment of any or all of Purchaser's interest in the Property, without the Seller's prior written consent.

- (c) The Purchaser's failure to maintain the Property in good condition and in compliance with all restrictive covenants and in compliance with the Conservation Easement and the rules and regulations promulgated by Greenspace of Fairview, LLC and the restrictive covenants, as fully disclosed to the Purchaser prior to execution of this Contract for Deed.
- (d) The commencement of any proceeding under the Federal Bankruptcy Code or any law of the United States or of any state relating to insolvency, receivership or debt adjustment by the Purchaser, or the commencement of any such proceeding against the Purchaser which results in the institution of any such proceedings against the Purchaser and is consented to by the Purchaser or remains undismissed for sixty (60) days, or the Purchaser is adjudicated a bankrupt, or a trustee or receiver is appointed for any substantial part of the Purchaser's property, or the Purchaser makes an assignment for the benefit of creditors, admits in writing an inability to pay debts generally as they become due or becomes insolvent.
- (e) The Purchaser's failure to pay when due and payable all *ad valorem* (real property) taxes against the Property.
- (f) The Purchaser's failure to maintain a policy of hazard insurance on

the Property in an amount not less than \$1,400,000.00 and to name Seller on such policy as a loss payee, and to provide Seller annual notice of same.

- (g) The Purchaser's failure to pay, when due, all fees and assessments associated with Greenspace of Fairview, LLC in accordance with the restrictive covenants and/or operating agreement.

13. Upon the occurrence of any event of default or other nonperformance or noncompliance by Purchaser of any term or condition herein, Seller shall give Purchaser written notice of same and Purchaser shall cure such default, non-performance or non-compliance within thirty (30) days after the Purchaser's receipt of written notice thereof from Seller. In the event that Purchaser fails to cure such default, nonperformance or noncompliance, then the Seller at its option, may seek to divest the Purchaser of its interest under the terms of this Contract for Deed. The Seller's interest in the Property shall be treated as the interest of the holder of a third mortgage on the Property and the remedy of the Seller shall be to foreclose the interest of the Purchaser in the same manner as the Seller would foreclose the interest of the Purchaser as if the Seller were the Mortgagee under a third mortgage and the Purchaser were the Mortgagor, and the Purchaser shall be liable for all costs arising therefrom including reasonable attorney fees. The remedies set forth herein in all

instances are not exclusive, but cumulative and in addition to all other remedies which may exist under the law.

14. In the event Seller fails, neglects, or refuses to perform, in whole or part, any of the covenants, agreements, or obligations herein provided upon the part of the Seller to be performed, Purchaser shall give Seller written notice of same and Seller shall cure such default, non-performance or non-compliance within thirty (30) days after the Seller's receipt of written notice thereof from Purchaser. In the event that Seller fails to cure such default, nonperformance or noncompliance, then the Purchaser, at its option, is hereby authorized and empowered, at the cost of the Seller, to perform or cause to be performed, any or all of said covenants, agreements and obligations, and expend such sums of money as may be reasonable therefore, or for any other purpose which is, in the opinion of the Purchaser, reasonably necessary for the protection of the Property. All such sums of money so expended by Purchaser, together with interest thereon, at the rate of five percent (5%) from the several dates of expenditure thereof until paid, shall become indebtedness under this agreement and shall be repaid by Seller to the Purchaser, immediately upon demand, at the address of the Purchaser as set forth in Paragraph 17 herein. Any failure, neglect, or refusal by Seller to repay the sums as herein provided shall constitute a default hereunder and the Seller shall be

liable for any and all costs arising therefrom including reasonable attorney fees. Purchaser, at its option, may deduct from any payments due directly to Seller under the terms and conditions of this agreement as set forth under Paragraph 1(j). In the event Purchaser fails, neglects, or refuses to perform, in whole or part, any of the covenants, agreements, or obligations herein provided upon the part of the Purchaser to be performed, Seller shall give Purchaser written notice of same and Purchaser shall cure such default, non-performance or non-compliance within thirty (30) days after the Purchaser's receipt of written notice thereof from Seller. In the event that Purchaser fails to cure such default, nonperformance or noncompliance, then the Seller, at its option, is hereby authorized and empowered, at the cost of the Purchaser, to perform or cause to be performed, any or all of said covenants, agreements and obligations, and expend such sums of money as may be reasonable therefore, or for any other purpose which is, in the opinion of the Seller, reasonably necessary for the protection of the Property. All such sums of money so expended by Purchaser, together with interest thereon, at the rate of five percent (5%) from the several dates of expenditure thereof until paid, shall become indebtedness under this agreement and shall be repaid by Purchaser to the Seller, immediately upon demand, at the address of the Seller as set forth in Paragraph 17

herein. Any failure, neglect, or refusal by Purchaser to repay the sums as herein provided shall constitute a default hereunder and the Purchaser shall be liable for any and all costs arising therefrom including reasonable attorney fees.

15. Failure or delay of either party hereto to enforce any right or to exercise any option available because of any default hereunder shall not constitute a waiver of the right to exercise same in the event of any subsequent default.
16. At all times while this Contract for Deed is in effect or while said Property is occupied by Purchaser, Seller shall not be liable or responsible for any activities or accidents that may occur on or in connection with Purchaser's use of said Property. Purchaser shall be solely responsible for any damage, injury or other loss, to persons or property that may occur upon the property as a result of the negligent, unlawful or willful act or omission of the Purchaser or their visitors and shall defend, indemnify and hold the Seller harmless for any damage, loss or expense resulting therefrom.
17. All notices, requests and other communications between the parties under or in connection with this Contract for Deed shall be in writing and mailed by registered or certified mail, return receipt requested, at the below address, until written notice to the contrary:

Seller: 101 E. Rutherford Street
Landrum, SC 29356
Purchaser: 405 East Springs Road
Columbia, SC 29223

18. This Contract for Deed represents the entire agreement between the parties, and no warranties, representations, promises or statements have been made by either party unless endorsed hereon in writing and duly executed by the parties.
19. This Contract for Deed shall be construed according to the laws of South Carolina.
20. This Contract for Deed shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. All rights and remedies given to either party herein, or by law, shall be cumulative and alternative. If any provision of this Contract for Deed is held invalid or unenforceable, the remainder of it shall not be affected thereby and to this end the provisions hereof are declared severable.
21. The Seller represents that there is no real estate commission due to any real estate broker as a result of the execution of this contract for deed or for the future transfer of legal title to the subject property.
22. The parties acknowledge that the Property is currently encumbered by mortgages which give the mortgagee(s) the right to demand immediate

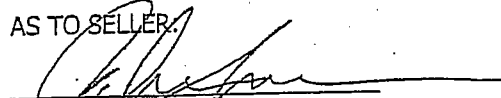
payment in full from the mortgagor in the event of any full or partial transfer of legal or equitable title by the mortgagor (the "Due on Sale Clause"). This Contract for Deed may be construed to be in violation of the Due on Sale Clause and may cause the Mortgagee(s) to demand full payment on its/their respective note(s). The mortgage(s) also allow(s) for the mortgagee(s) to bring a foreclosure action upon the subject property for failure to make payments when due, failure to insure the property or other violations of the terms of mortgage(s), which could result in a loss of the Purchaser's equitable interest in the subject property and other damages to the Purchaser. The Seller expressly agrees to hold the Purchaser harmless and to indemnify the Purchaser for proximate damages resulting from enforcement of the Due on Sale Clause of the mortgage(s). The Seller also expressly agrees to hold the Purchaser harmless and to indemnify the Purchaser for proximate damages or for any violation of the terms of the mortgage(s) that is/are not the fault of the Purchaser.

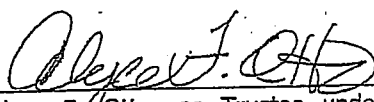
[SIGNATURES ON FOLLOWING PAGES]

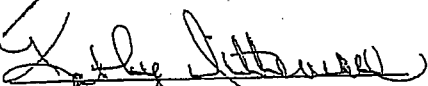
IN WITNESS WHEREOF, the undersigned party hereto has caused this Contract
for Deed to be executed the day and year first above written.

WITNESSES:

AS TO SELLER:

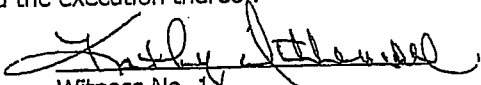

Witness No. 1


Alyce F. Otto, as Trustee under the
Declaration of Trust of Alyce F. Otto
dated November 17, 2009, Seller

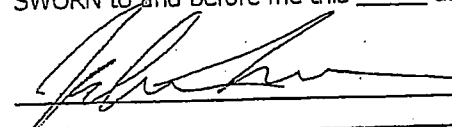

Witness No. 2/Notary

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that
she saw the within named Alyce F. Otto, as Trustee under the Declaration of Trust of
Alyce F. Otto dated November 17, 2009, Seller, sign, seal and as its act and deed,
deliver the within written Contract for Deed and that she with the other witness whose
name is subscribed above witnessed the execution thereof.


Witness No. 1

SWORN to and before me this ____ day of March, 2011.

 (SEAL)

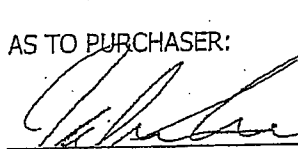
Notary Public for South Carolina

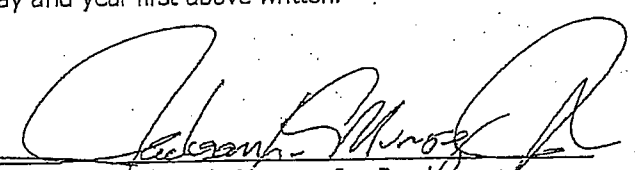
My commission expires: 4/16/2012

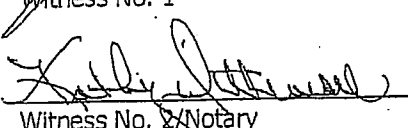
PAGE 18 OF 20

IN WITNESS WHEREOF, the undersigned parties hereto has caused this Contract
for Deed to be executed the day and year first above written.

AS TO PURCHASER:


Witness No. 1

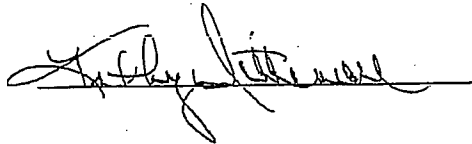

Jackson L. Munsey, Jr., Purchaser


Witness No. 2/Notary

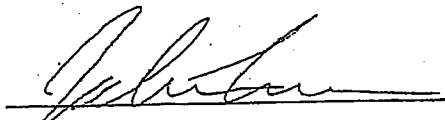
STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that
she saw the within named Jackson L. Munsey, Jr., Purchaser, sign, seal and as his act
and deed, deliver the within written Contract for Deed and that he with the other
witness whose name is subscribed above witnessed the execution thereof.



SWORN to and before me this 4th day of March, 2011.

 (SEAL)

Notary Public for South Carolina
My commission expires: 4/6/2011

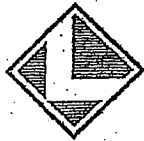
EXHIBIT A

PROPERTY DESCRIPTION
1825/1841/1835 Fairview Farms Road
Tax Map No. 1 03-00 003.00

All that certain piece, parcel or tract of land lying, situate and being in the State of South Carolina, County of Spartanburg containing 25.08 acres, more or less, and being shown as Distribution Tract G on a plat of survey for Greenspace of Fairview, LLC, dated August 2, 2001 by Mitchell Surveying and recorded in Plat Book 151 at page 523. Reference is made to said plat and the record thereof for a more complete and accurate description.

This being a portion of the same property conveyed to Alyce F. Otto; Trustee under Declaration of Trust of Alyce F. Otto dated the 17th Day of November, 2009 by Deed of Alyce F. Otto recorded November 24, 2009 in Deed Book 95 A at page 439. Also, being a portion of the same property conveyed to Rudrick George Otto, Trustee under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009 by Deed of Rudrick G. Otto recorded November 24, 2009 in Deed Book 95 A at page 435. Reference is also made to the deed from Alyce F. Otto, Successor Trustee under Declaration of Trust of Rudrick George Otto dated the 17th day of November, 2009 to Alyce F. Otto, Trustee under Declaration of Trust of Alyce F. Otto dated the 17th day of November, 2009, said deed being dated February 9, 2011 and recorded February 10, 2011 in Deed Book 97-V, Page 181.

All referenced recordings are in the Register of Deeds Office for Spartanburg County, South Carolina unless otherwise noted herein.



LONON
Law Firm LLC

P.O. Box 1984
Spartanburg, SC 29304

134 Oakland Avenue
Spartanburg, SC 29302

(864) 327-1764
Fax: (864) 327-1762
contact@lononlawfirm.com

March 3, 2011

Mrs. Stephanie Munsey

Sent via email to sbmunsey@gmail.com

Re: Tract G, 25.08 Acres
Greenspace of Fairview
1825 Fairview Farms Road
Tax Map No. 1 03-00 003.00

Dear Stephanie:

This is to certify that we have examined the records of the Spartanburg County Register of Deeds Office regarding the above-referenced property for a period of at least forty years from September 11, 1956 through March 1, 2011. Title is currently vested in the name of Alyce F. Otto, Trustee under Declaration of Trust of Alyce F. Otto dated the 17th Day of November, 2009. According to our examination, we find the property subject to the following exceptions:

1. Rights or claims of parties in possession not shown by the public record.
2. Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey and inspection of the premises.
3. Easements, or claims of easements, not shown by the public records, including unrecorded claims for labor or material.
4. Taxes or special assessments not shown as existing liens by the public records.
5. Zoning ordinances, regulations or restrictions for use of property.
6. Rights of way for underground utilities, if any.
7. Existing easements for public roads and public utilities now in use, if any.
8. Any lien, or right to a lien for services, labor or material heretofore or hereafter furnished, imposed by law and shown on public record.
9. Roads, streams, ways or easements or claims of easements not shown by the public records, riparian rights and title to any filled-in-land.

10. Past due water bills, while not liens, prohibit transfer of meters to new owners until past due bills are paid.
11. Matters filed only in the federal courts or only at the district office of the Internal Revenue Service.
12. Taxes for the year 2011 and subsequent years, a lien not yet due or payable.
13. The number of acres notes in the legal description is not guaranteed.
14. Matters as disclosed on plat of survey referenced in legal description.
15. Taxes for the year 2010, a lien now due and payable in the amount of \$5,435.34.
16. Mortgage given by Rudrick George Otto and Alyce F. Otto to Chevy Chase Bank, FSB dated August 18, 2004 and recorded August 24, 2004 in Book 3290 at page 70 in the principal amount of \$999,500.00.
17. Mortgage given by Rudrick George Otto and Alyce F. Otto to Carolina First Bank dated June 18, 2008 and recorded June 20, 2008 in Book 4100 at page 708 in the principal amount of \$218,807.82.
18. Estate of Rudrick Otto shown in Spartanburg County Probate Court File No. 2010-ES-42-0016.
19. Usual right of way and easement to Thermal Belt Telephone Company recorded in Deed Book 28 G at page 194.
20. Conservation Easement recorded in Deed Book 74 Z at page 265 and amended in Deed Book 87 D at page 213.
21. Lake and Dam Maintenance Agreement recorded in Book 75 P at page 886.
22. Pending foreclosure filed in the Spartanburg County Court of Common Pleas referencing Case No. 2010-CP-42-5750.
23. Pending Condemnation Notice filed in the Spartanburg County Court of Common Pleas referencing Case No. 2010-CP-42-4803.
24. Right of Way Agreement to Duke Energy Corporation recorded in Deed Book 89 X at page 364.
25. Golden Hills Subdivision Protective Covenants and Easements recorded in Deed Book 60 K at page 926 and revised in Deed Book 67 Q at page 883.
26. Golden Hills Road Maintenance Agreement recorded in Deed Book 61 L at page 441.

27. Golden Hills Subdivision, Section 2 Protective Covenants and Easements recorded in Deed Book 62 X at page 155 and amended in Deed Book 79 E at page 762.
28. Assignment of Protective Covenants and Easements recorded in Book 72 R at page 560.
29. Restrictions shown in Deed Book 72 R at page 554.
30. Amended and Restated Conservation Easement recorded in Deed Book 87 D at page 213.
31. Judgment filed against Patty Otto in favor of Lauren Halbkat on January 26, 2011 in the amount of \$4,398.74.
32. Judgment filed against Alyce F. Otto in favor of Greenspace of Fairview LLC on February 21, 2011 in the amount of \$4,590.34.
33. Federal Tax lien filed against Alyce F. Otto in favor of the Internal Revenue Service on February 11, 2010 in the amount of \$16,273.04 in Book 13 page 43.

Sincerely,

LONON LAW FIRM, LLC

Joshua O.C. Lonon

/kd-2992 (Munsey)

Exhibit B

Jackson L. Munsey, Jr.
1841 Fairview Farms Road
Campobello, South Carolina 29322
Telephone: 803-318-7277

May 15, 2012

Alyce F. Otto
101 E. Rutherford Street
Landrum, South Carolina 29356

RE: Contract for Deed dated March 4, 2011 by and between Alyce F. Otto, as Trustee under the Declaration of Trust of Alyce F. Otto dated November 17, 2009, as Seller and Jackson L. Munsey, Jr., as Purchaser ("Contract for Deed")

Dear Patty:

It has come to my attention after routine search of the public records for Spartanburg County that two (2) separate judgments have been levied against you since entering into the Contract for Deed. Please find enclosed copies of the following judgments:

- 1) Judgment against Shamrock Realty Investments, LLC, Alyce F. Otto a/k/a Patty Otto in favor of Laura Kerhulas Geise and Mark Warner Kerhulas, Co-Trustees of the Therodore Earnest Kerhulas Trust w/t/d May 25, 2005 dated December 27, 2011 with Greenville County Judgment Roll Number 2009-CP-23-10866 and filed with the Spartanburg County Clerk of Court with Case Action Number 2012-CP-42-0014 on January 3, 2012 in the amount of \$571,327.90; and
- 2) Judgment against Alyce F. Otto dated and filed on May 2, 2012 with Case Action Number 2012-CP-42-0234 in favor of Citibank, N.A. in the amount of \$12,396.66.

Also, please find attached the Notice of a Federal Tax Lien dated September 26, 2011 and recorded October 12, 2011 in Book 14, at Page 932, Spartanburg County public records, in the amount of \$6,577.50. It is my understanding that Lonon Law Firm, LLC recently released escrowed funds made payable to the IRS for settlement of the Federal Tax Lien in Book 13, at Page 43. It is my further understanding that you have contacted the law firm to request the excess held in escrow, however, the lien has not been satisfied of record yet and thus cannot be released. Regardless of the satisfaction of that IRS lien, I object to any excess funds being released to you in light of the additional IRS lien. Any excess escrowed funds should go towards to the payment of the new liens.

May 15, 2012
Page 2

Additionally, while I have been forced to write this letter of notice to you, I need to address other outstanding matters under the Contract for Deed. Under Paragraph 9, we agreed that any benefits of a deduction for interest on the Property would accrue to my benefit. Despite our phone conversation, and our meeting last month wherein I provided you the required documentation, I have yet to receive the Form 1098 for any of the mortgages. Therefore, I was unable to file my 2011 taxes and forced to file an extension. As a result, I am in need of this information immediately so I may prepare my taxes.

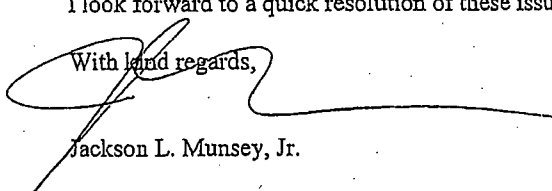
Moreover, despite numerous requests, I have yet to receive access to the first and second mortgage records so I can confirm receipt of payments. Since you are obviously unwilling to provide me internet access to the accounts as requested, I demand that monthly statement of accounts are provided for my accounting. I have also not received the invoices for the annual real estate taxes or for the quarterly fees of Greenspace of Fairview, LLC.

As for Greenspace of Fairview, LLC, in Paragraph 8 of the Contract for Deed, you are required to consult with me regarding any votes cast and exercising any voting rights under the Property's membership interest. This has not occurred since taken possession of the Property. I am entitled to the use and enjoyment of the Property to the same extent as if I had full and complete legal and equitable title, subject to the terms, conditions, rules and regulations of Greenspace of Fairview, LLC. However, it is very difficult to remain compliant when I am not informed of activities affecting the Property. It is your obligation to maintain the communication with Greenspace of Fairview, LLC for the benefit of the Property and my use and enjoyment. As a potential solution to this matter, please inquiry to see if the by-laws allow for a proxy of your vote to be given to me. As of yet, I have not received copies of the by-laws and the rules of Greenspace of Fairview, LLC. All I want is to be a good neighbor and protect the community.

As result of your failure, neglect and refusal to perform, in whole or part, of the covenants, agreements and obligations as outlined herein and, in accordance with Paragraph 5 and Paragraph 14 of the Contract for Deed, you are hereby given thirty (30) days to remove the above encumbrances placed against the Property, and to cure the default, nonperformance and noncompliance outlined herein. Additionally, as my option under the same paragraphs, payments to you under the Note described under Paragraph 1(j) will cease to be set aside for the right of setoff against the amounts due for the above-referenced encumbrances. Once the public records show that the liens have been satisfied, or otherwise dismissed, and the other obligations have been met, then payments under said Note will resume.

I look forward to a quick resolution of these issues.

With kind regards,



Jackson L. Munsey, Jr.

Enclosures

2012-CP-42-0014

Greenville County JR# 2009-CP-23-10866
C.A. No. 2009-CP-23-10866

Spartanburg County JR# _____

NAMES OF PARTIES AGAINST WHOM JUDGMENT HAVE BEEN OBTAINED ATTORNEYS

Shamrock Realty Investments, LLC 101 E. Rutherford St. Landrum, SC 29356	Alyce F. Otto 1841 Fairview Farms Rd. Campobello, SC 29322 Patty Otto 1841 Fairview Farms Rd. Campobello, SC 29322	Kenneth W. Nettles, Jr. Lyles, Darr & Clark, LLP Attorneys At Law P.O. Box 5726 Spartanburg, SC 29304

NAMES OF PARTIES IN WHOSE FAVOR JUDGMENTS HAVE BEEN OBTAINED ATTORNEYS

Laura Kerhulas Giese and Mark Warner Kerhulas,
Co-Trustees of the Theodore Ernest Kerhulas Trust
U/T/D May 25, 2004
Attn: Mark W. Kerhulas, Trustee
1620 Butter Street
Landrum, SC 29356

David L. Walsh
Gaines & Walsh, Attorneys At Law
P. O. Box 5156
Spartanburg, SC 29304
(864) 583-6363

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JAN -3 AM 11:46
M. HOPE BLACKLEY

DAMAGES AND COSTS

Amount of Judgment	\$571,329.90	Amount Brought Forward	329.90
Clerk's Costs including this transcript [file S&C and motion]	Included	Attorney Fees	Included
Cost of Service	Included	Total Amount of Judgment & Costs	\$571,329.90
Interest	Included	Interest at 8.00% per annum [\$125.22/day] from 12/10/2011	
Total	\$571,329.90		

Judgment filed and recorded in the Office of the Clerk of Court for Greenville County, S.C. on the 14th day of December, 2011.

Greenville, S.C. December 27, 2011

I CERTIFY that the foregoing is a correct transcript from the Docket of Judgment kept in my office.

Paul B. Wickensimer
PAUL B. WICKENSIMER
CLERK OF COURT
Greenville County, SC

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

FORM 4
JUDGMENT IN A CIVIL CASE
CIVIL ACTION NO. 2012-CP-42-0234

CITIBANK, N.A.
PLAINTIFF(S)

ALYCE F OTTO
DEFENDANT(S)

Submitted By: Trevor M. Hughey Address: P. O. Box 26268, Raleigh, NC 27611	Attorney for: ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
CITIBANK, N.A.	ALYCE F OTTO	\$12,396.66
		\$
		\$

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

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

Circuit Court Judge

Judge Code

Date

SCRPC Form 4C (12/2011)

Page 1 of 2

For Clerk of Court Office Use Only

This judgment was entered on the 2 day of May, 2012 and a copy first class or placed in the appropriate attorney's box on this 2 day of May, 2012 to attorneys of record or to parties (when appearing pro se) as follow:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

11. Hoge Blackley
CLERK OF COURT Pat DeTouche

Court Reporter: _____

2
11:48
BLACKLEY

Form 668 (Y)(c)
(Rev. February 2004)

3477

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:
SMALL BUSINESS/SELF EMPLOYED AREA #3
Lien Unit Phone: (800) 913-6050

Serial Number
816926111

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

FEDERAL TAX LIEN
BOOK 14 PAGE 932

Name of Taxpayer ALYCE F. OTTO

Residence 101 E RUTHERFORD ST
LANDRUM, SC 29356-1523

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refilled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
941	12/31/2009	65-1304870	04/12/2010	05/12/2020	6577.50

FED-2011-35696
Recorded 1 Pages on 10/12/2011 11:03:36 AM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Registrar of Deeds, Spartanburg, S.C.
Dorothy Earle, Registrar



Place of Filing

REGISTER OF DEEDS
SPARTANBURG COUNTY
SPARTANBURG, SC 29303

Total \$ 6577.50

This notice was prepared and signed at BALTIMORE, MD, on this,

the 26th day of September, 2011.

Signature

for C. D. PEOPLES

Title
REVENUE OFFICER
(919) 402-0334

23-02-1222

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien
Rev. Rul. 71-466, 1971-2 C.B. 409)

PART 1 - kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO 80025X

Exhibit C



stephanie munsey< sbmunsey@gmail.com>

1841 Fairview Farms Road (Otto/ Munsey)

stephanie munsey< sbmunsey@gmail.com>
To: kanthony@anthonylaw.com

Fri, Aug 3, 2012 at 11:14 AM

Ken:

Thank you for accepting my call today to briefly discuss the recent litigation filed by Patty. Please find attached a copy of the letter dated May 15, 2012, that Jack mailed to Patty outlining the issues that still require resolution. It is believed that this letter sets forth all of the information that is required by her, but do ask for copies of any demands made as alleged in the Complaint along with current statements of account of all three (3) notes. Jack is gathering the entire payment history from the bank and will have that information hopefully by Monday. Like you, it is believed that this matter can be resolved very quickly, and greatly appreciate the efforts to do so.

Additionally, Landrum being a small community, it is our understanding that Patty is openly discussing her actions against Jack with others and using derogatory inferences. Patty's privacy has been maintained during the course of this business relationship, and the same courtesy in turn is respectfully requested.

Thank you for time and look forward to a quick resolution to this matter. Please do not hesitate to contact me with any questions.

Stephanie Blanton Munsey, Esq.
SC Bar #11122
Phone: 803-603-8775
Email: sbmunsey@gmail.com

Otto Letter 051512.pdf
591K

Exhibit D



stephanie munsey< sbmunsey@gmail.com>

1841 Fairview Farms Road (Otto/ Munsey)

stephanie munsey< sbmunsey@gmail.com>
To: kanthony@anthonylaw.com

Thu, Aug 9, 2012 at 12:02 PM

Ken:

I wanted to give you an update on the bank statements. In May, Jack moved his Bank of America account from a Florida account where he was previously employed to a local account. BofA requires that the accounts be closed and reopened rather than transferred. Therefore, he no longer has online access to his accounts prior to June 1st. The past account information has been requested as of Tuesday with a 3 to 5 day turn around time, but have not yet received the information. In the meantime, please find attached evidence of recent payments as follows:

1st Mortgage:

Paid \$5,306.00 (Capital One) on 6/01/2012; and
Paid \$5,306.00 (Capital One) on 7/12/2012

2nd Mortgage:

Paid \$1,875.00 (TD Bank) on 6/29/2012; and
Paid \$1,875.00 (TD Bank) on 7/31/2012.

Again, Jack is not able to see any payments being properly credited to the mortgage accounts even though request to the online access or copies of the statement of accounts have been made numerous times. I will provide the entire history of payments as soon as received from Bank of America.

Has there been any progress on the information requested in the May 15, 2012 letter?

Thank you and look forward to quick resolution.

Stephanie Blanton Munsey
SC Bar #11122
803-603-8775
sbmunsey@gmail.com
[Quoted text hidden]

2 attachments

Otto Letter 051512.pdf
591K

June July 2012 Payments.pdf
220K

7/9/12

Bank of America | Online Banking | Accounts | Account Details | Account Activity

Bank of America 

Online Banking

Regular Checking - 5067 Transaction Details

Posting date: 07/12/2012

Amount: -5,306.00

Type: Bill pay

Description: capital one Bill Payment

9/12

Annotate Your Screenshot

07/12/2012 capital one Bill Payment 5,306.00 3,058.06

[Edit description](#)

Type: Bill pay
Description: capital one Bill Payment

[Print transaction details](#) | [Inquire about this transaction](#)

07/11/2012 1-1420879451 : Internal Transfer 12.03 8,364.06

6/9/12

Bank of America | Online Banking | Accounts | Account Details | Account Activity

Bank of America 

Online Banking

Regular Checking - 5067 Transaction Details

Posting date: 06/01/2012

Amount: -5,306.00

Type: Bill pay

Description: capital one Bill Payment

19/12

Annotate Your Screenshot

☐ 06/01/2012	capital one Bill Payment		☐	5,306.00	5,467.13

[Edit description](#)

Type: Bill pay
Description: capital one Bill Payment

[Print transaction details](#) | [Inquire about this transaction](#)

☐ 06/01/2012	Counter Credit		☐	4,800.00	10,773.13

rome-extension://elehdabbhepgpmgidjdcjakblofmcce/edit.html

9/12

Bank of America | Online Banking | Accounts | Account Details | Account Activity

Bank of America

Online Banking

Business Economy Chk - 8508 Transaction Details

Check number: 00000001078

Posting date: 06/29/2012

Amount: -1,875.00

Type: Check

Description: Check

SOUTHEASTERN TITLE SOLUTIONS LLC
104 N DANIEL MORGAN AVE STE 220
SPARTANBURG SC 29308-2203

6/29/12 1078
11-14330 502
1178

TO Bank
Eighteen Hundred Seventy Five & 00/100 \$ 1875.00

Bank of America

ADN NT 00000114
1841

10530001961 2370 208 18508 1078

917301051084 093243 20120629 000000237020818508
TRN_DEBIT KEDWARD4 187500
Tryon 0917 94004 9173 4 0020

For Deposit Only

7/9/12

Bank of America | Online Banking | Accounts | Account Details | Account Activity



Online Banking

Business Economy Chk - 8508 Transaction Details

Check number: 00000001092

Posting date: 07/31/2012

Amount: -1,875.00

Type: Check

Description: Check

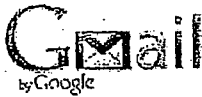
SOUTHEASTERN TITLE SOLUTIONS LLC
104 N DANIEL MORRAN AVE STE 220
SPARTANBURG SC 29306-2365

1092
66-114032 RD
10711

7/31/12
1875.00
Bank of America
ACH INT 0000001092
1841 Farnham - Home & Land
0530001961 237020818508 1092

917303082381 091455 20120731 000000237020818508
TRN_DEBIT KEDWARD4 187500
Tryon 0917 94004 9173 4 0013

Deposit Only



stephanie munsey<sbmunsey@gmail.com>

1841 Fairview Farms Road (Otto/ Munsey)

stephanie munsey<sbmunsey@gmail.com>
To: kanthony@anthonylaw.com

Mon, Aug 20, 2012 at 11:19 AM

Ken:

Please find attach print outs from Bank of America for payments for the first mortgage from January 2012 to current with all payments cleared except for one payment made on August 17, 2012 that remains pending. According to Jack's records, all payments to the first and second mortgages have been made, placing the accounts current. However, as explained previously, Jack is unable to verify that the payments have been properly applied to the accounts. Once again, statements of account for the mortgages are respectfully requested. In addition, the information demanded in the May 15, 2012 letter is respectfully requested. Since the Answer is due this week, please contact me at 803-603-8775 for discussion, since it was our belief during our conversation on August 3, 2012 that this matter could be resolved quickly. Thank you.

Stephanie Blanton Munsey
SC Bar #11122
803-603-8775
sbmunsey@gmail.com

[Quoted text hidden]

3 attachments

Otto Letter 051512.pdf
591K

June July 2012 Payments.pdf
220K

Fairview Farms paymentrs 2012.pdf
258K

Date	Amount	status
1/13/2012	\$ 5,800.00	cleared
2/23/2012	\$ 5,300.00	cleared
3/13/2012	\$ 5,300.00	cleared
3/14/2012	\$ 5,301.00	cleared
4/11/2012	\$ 5,300.02	cleared
6/1/2012	\$ 5,306.00	cleared
7/12/2012	\$ 5,306.00	cleared
8/17/2012	\$ 5,208.00	cleared
8/17/2012	\$ 5,209.00	pending

2012

Bank of America | Online Banking | Accounts | Account Details | Account Activity



All Transactions

Date	Description	Status	\$ Amount
Showing results for "capital one", All Types, All available dates (12 months)		[Show all transactions]	
	CAPITAL ONE BILL PAYMENT	P	-5,209.00
08/17/2012	capital one Bill Payment	C	-5,208.00
07/23/2012	TRIANGLE STOP 07/22 #000234786 PURCHASE 1484 OZONE ROAD SALUDA NC	C	-10.05
	Get In the Zone - AutoZone - Shop in-store or online & earn 5% cash back!		
07/23/2012	CHECKCARD 0721 CPR CELL PHONE REPAIR GREENVILLE SC 24755422203262034186779	C	-68.89
07/19/2012	CHECKCARD 0717 STONE SOUP MARKET & CA LANDRUM SC 24254772200463811860183	C	-115.75
07/12/2012	capital one Bill Payment	C	-5,306.00
06/01/2012	capital one Bill Payment	C	-5,306.00



Online Banking

Regular Checking - 5067 Transaction Details



BANK OF AMERICA, N.A. (THE "BANK")

Transaction
History

JACKSON MUNSEY

REGULAR CHECKING

**** * 4332

Last Posting Date 08/17/2012

Date/Time Printed 8/20/2012 8:28 AM EST

Since Last Statement Summary

Last Statement Date 07/27/2012

Balance Last Statement (\$)

Deposits/Credits (+) # 2

\$1,187.97 Holds (-)

Withdrawals/Debits (-) # 2

\$600.00 Pending Credits (+)

Available Balance (\$)

\$0.00

Some of the information was not available when this page was printed. Please ask your Bank of America banker to assist you

Balance Last Statement, Deposits/Credits, Withdrawals/Debits may not total to Available Balance.

Date	Description	Type	Amount	Available Balance
04/11/2012	CAPITAL ONE Bill Payment	Bill Pay	\$5,300.02	
04/03/2012	Counter Credit	Deposit	\$6,000.00	
Statement Period as of 03/29/2012				
03/14/2012	CAPITAL ONE CREDIT CARDS Bill Payment	Bill Pay	\$5,301.00	
03/13/2012	Capital One Credit Cards Bill Payment	Bill Pay	\$5,300.00	
03/02/2012	RETURN OF POSTED CHECK / ITEM (RECEIVED ON 03-01) ELECTRONIC TRANSACTION	Credit	\$5,300.00	
03/01/2012	CAPITAL ONE Bill Payment	Bill Pay	\$5,300.00	

For additional information or service, please contact the Customer Service Center at 1-800-432-1000

* = Item(s) included in Previous Statement(s).

**** * 4332

00-14-9036M 11-2010

NFL

Page 1

Date	Description	Type	Amount	Available Balance
02/29/2012	RETURN OF POSTED CHECK / ITEM (RECEIVED ON 02-28) ELECTRONIC TRANSACTION	Credit	\$5,300.00	
02/28/2012	CAPITAL ONE Bill Payment	Bill Pay	-\$5,300.00	

Statement Period as of 02/28/2012

02/23/2012	CAPITAL ONE Bill Payment	Bill Pay	-\$5,300.00	
02/22/2012	Deposit	Deposit	\$6,000.00	

Statement Period as of 01/28/2012

01/27/2012	Counter Credit	Deposit	\$5,600.00	
01/26/2012	CAPITAL ONE Bill Payment	Bill Pay	-\$5,600.00	

Statement Period as of 12/29/2011

12/07/2011	Counter Credit	Deposit	\$5,500.00	
12/02/2011	CAPITAL ONE Bill Payment	Bill Pay	-\$5,300.00	
12/01/2011	RETURN OF POSTED CHECK / ITEM (RECEIVED ON 11-30) ELECTRONIC TRANSACTION	Credit	\$5,300.00	
11/30/2011	CAPITAL ONE Bill Payment	Bill Pay	-\$5,300.00	
11/29/2011	RETURN OF POSTED CHECK / ITEM (RECEIVED ON 11-28) ELECTRONIC TRANSACTION	Credit	\$5,300.00	

Statement Period as of 11/29/2011

For additional information or service, please contact the Customer Service Center at 1-800-432-1000

* = Item(s) included in Previous Statement(s).

NFL

**** 4332

Page 2

8/20/12

Bank of America | Online Banking | Accounts | Account Details | Account Activity



Online Banking

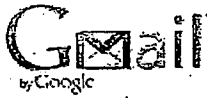
Regular Checking - 5067 Transaction Details

Posting date: 08/17/2012

Amount: -5,208.00

Type: Bill pay

Description: capital one Bill Payment



stephanie munsey< sbmunsey@gmail.com>

1841 Fairview Farms Road (Otto/ Munsey)

SBM Gmail< sbmunsey@gmail.com>
To: Jack Munsey <jack.munsey@setitlesolutions.com>

Tue, Sep 18, 2012 at 10:51 AM

Stephanie Blanton Munsey, Esq.
803-603-8775

Begin forwarded message:

From: "Cindy Hogan" <chogan@anthonylaw.com>
Date: September 18, 2012 10:38:09 AM EDT
To: <sbmunsey@gmail.com>
Cc: "Kenneth Anthony" <kanthony@anthonylaw.com>
[Quoted text hidden]

[Quoted text hidden]

2 attachments

 Letter to Powers.pdf
133K

 filed Answer of Otto.PDF
402K

THE ANTHONY
LAW FIRM, P.A.

September 7, 2012

Mary R. Powers, Esq.
ROGERS TOWNSEND & THOMAS, PC
Attorneys for Plaintiff
P.O. Box 100200
Columbia, SC 29202

Re: U.S. Bank, NA v. Alyce F. Otto, et al
Case No. 2012-CP-42-3549

Dear Mary:

Enclosed you will find an Answer and Counterclaim in this case. As your Complaint sets forth, there is an outstanding Contract for Deed on this property. The purchaser under the Contract had been making payments directly to your client. Inexplicably, your client would deposit these checks and then turn around and write a check back out to my client, the owner of the fee simple. As a result, we are holding a substantial amount of money, which we would like to apply to a reinstatement. If you can give me a reinstatement figure, I believe we can accomplish that. Because this problem was created by your client returning the funds, we would not expect to pay late fees, costs or attorneys fees. We would also like to know that we have a system going forward that will not cause this to recur.

I look forward to hearing from you.

Very truly yours,

Kenneth C. Anthony, Jr.

Kenneth C. Anthony, Jr.

KCAjr:cmh
Enclosure

cc: Alyce P. Otto
Stephanic Munsey, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
) IN THE COURT OF COMMON PLEAS
) CASE NO. 2012-CP-42-3549
)

U.S. Bank, NA as trustee relating to the
Chevy Chase Funding, LLC Mortgage
Backed Certificates, Series 2004-B,

Plaintiff,

v.

Alyce F. Otto, Individually; Alyce F. Otto
Trustee Under Declaration of Trust of
Alyce F. Otto dated the 17th of November,
2009; TD Bank, NA; The United States
of America, acting by and through its
agency, the Internal Revenue Service;
Laura Kerhulas Giese, as Co-Trustee of the
Theodore Ernest Kerhulas Trust Under
Declaration of Trust dated May 25, 2004;
Mark Warner Kerhulas, as Co-Trustee of
the Theodore Ernest Kerhulas Trust Under
Declaration of Trust dated May 25, 2004;
Jackson L. Munsey, Jr.; Citibank, N.A.;

Defendants.

) ANSWER OF ALYCE F. OTTO, Individually
) and ALYCE F. OTTO, Trustee
) Under Declaration of Trust of Alyce F. Otto
) dated the 17th day of November, 2009
)

Defendants Alyce F. Otto, Individually and Alyce F. Otto, Trustee Under Declaration of
Trust of Alyce F. Otto dated the 17th of November, 2009, answering the Complaint herein, would
respectfully allege:

FOR A FIRST DEFENSE

1. They deny each and every allegation of the Complaint not hereinafter specifically
admitted, qualified or explained and demand strict proof thereof.
2. They admit the allegations contained in Paragraphs 1 and 2 of the Complaint.

FILED
CLERK OF COURT
SPARTANBURG
2012 SEP 10 PM 4:31
HOE BLACKLEY

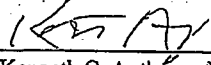
3. They lack sufficient information to form a belief as to the allegations contained in Paragraphs 3 and 4 of the Complaint and therefore deny same.
4. They admit the allegations contained in Paragraphs 5 through 11 of the Complaint.
5. They deny the allegations contained in Paragraph 12 of the Complaint.
6. They admit the allegations contained in Paragraph 13 of the Complaint.
7. They admit so much of Paragraph 14 of the Complaint as alleges that the Plaintiff has apparently employed counsel, but deny that same is necessary or that the Defendant should be responsible for any such cost.
8. They deny the allegations contained in Paragraph 15 of the Complaint.
9. They admit so much of Paragraph 16 of the Complaint as alleges that the Plaintiff requests the mortgage be foreclosed, but deny that such is proper.
10. They admit the allegations contained in Paragraph 17 A of the Complaint.
11. They deny the allegations contained in Paragraphs 17 B and C of the Complaint.
12. They admit the allegations contained in Paragraphs 17 D, E, and F of the Complaint.
13. They deny the allegations contained in Paragraph 17 G of the Complaint.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

14. A number of payments have been made on this loan which, inexplicably have been returned to these Defendants and not applied against the loan.
15. Defendants have made numerous attempts to resolve this discrepancy with the Plaintiff, to no avail.
16. Defendants are entitled to have payments credited against this loan and the loan reinstated, with no penalties, late fees, interest or attorneys fees.

FILED
CLERK OF COURT
2012 SEP 10 PM 4:31
HOLLYWOOD FLAVIDEY

WHEREFORE, these Defendants, answering the Complaint herein, pray that same be dismissed and be awarded the relief sought in their Counterclaim.


Kenneth C. Anthony, Jr., Attorney for
Defendants Alyce F. Otto, Individually and Alyce F.
Otto, Trustee Under Declaration of Trust of Alyce
F. Otto dated the 17th of November, 2009
P.O. Box 3565 (29304) 250 Magnolia St. (29306)
Spartanburg, South Carolina
(864) 582-2355 phone (864) 583-9772 fax
kanthonv@anthonylaw.com

September 7, 2012
Spartanburg, SC

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 SEP 10 PM 4:31
H. HOPE BLACKLEY



stephanie munsey< sbmunsey@gmail.com>

1841 Fairview Farms Road (Otto/ Munsey)

stephanie munsey< sbmunsey@gmail.com>
To: Kenneth Anthony <kanthony@anthonylaw.com>

Wed, Sep 19, 2012 at 9:50 AM

Thank you for agreeing to hold the funds. We are leaving town for my sister's wedding in Massachusetts tomorrow and will back on Monday evening. I will have the accounting prepared and have the funds wired to your escrow next week upon our return.

Stephanie Blanton Munsey, Esq.
SC Bar #11122
803-603-8775

On Wed, Sep 19, 2012 at 8:46 AM, Kenneth Anthony <kanthony@anthonylaw.com> wrote:

I will be glad to hold the funds. Please forward whatever you are holding with an accounting explaining the amount. Thanks.

From: stephanie munsey [mailto:sbmunsey@gmail.com]
Sent: Tuesday, September 18, 2012 9:14 PM

To: Kenneth Anthony
Subject: Re: 1841 Fairview Farms Road (Otto/ Munsey)

Thank you for the copy of the Answer and letter; I will copy you on any Answer that is filed as well. Your assistance with the 1098s is greatly appreciated. As agreed, there is no issue with having a third party escrow hold the funds due under the third Note payable to Patty; moreover, there is no objection of that being your law firm if you are so incline. However, the Agreement does allow for an off-set of the third Note for any encumbrances placed against the property by Patty. Therefore, all monies paid to the third Note should be set aside for this purpose with no funds being disbursed to Patty directly until all encumbrances are satisfied and released of record. Please let me know if this is agreeable.

Stephanie Blanton Munsey, Esq.
SC Bar # 11222
(803) 603-8775

On Tue, Sep 18, 2012 at 10:32 AM, Kenneth Anthony <kanthony@anthonylaw.com> wrote:

Cindy will send you the Answer and letter; thought we sent earlier. I'm working on the 1098s. we also need to set up the account somewhere to hold the funds due Patty.

11/19/12 10:32 AM - 01-517840-Stephanie Blanton Munsey%40anthonylaw.com 12/12/2012

From: stephanie munsey [mailto:sbmunsey@gmail.com]
Sent: Tuesday, September 18, 2012 10:27 AM
To: Kenneth Anthony
Cc: Cindy Hogan

Subject: Re: 1841 Fairview Farms Road (Otto/ Munsey)

Ken:

Good morning. I am writing to advise you that funds were wired into your account yesterday afternoon in the amount of \$5,200.00 for payment of the September mortgage for the Chase first mortgage on the above-referenced property. The second mortgage will be paid to TD Bank prior to its due date as usual.

I understand from your last transmittal that you have written to lender's counsel for Chase, but I have yet to receive a copy of same. If such has been completed, please forward to my attention.

Has there been any progress in regards to the 1098s for the first and second mortgages. As you are aware the lapse of the IRS extension is rapidly approaching, any assistance you are able to provide is greatly appreciated.

Thank you for attention.

Stephanie Blanton Munsey, Esq.

SC Bar #11122

803-603-8775 mobile number

On Tue, Sep 11, 2012 at 3:51 PM, Kenneth Anthony <kanthony@anthonylaw.com> wrote:

I have written lender's counsel. Copy coming to you. Cindy will send you wiring instructions.

From: stephanie munsey [mailto:sbmunsey@gmail.com]
Sent: Tuesday, September 11, 2012 1:25 PM
To: Kenneth Anthony

Subject: Fwd: 1841 Fairview Farms Road (Otto/ Munsey)

Ken:

Last week I posed the below question regarding September's and subsequent mortgage payments until the loan is returned to good standing. Please let me now how you would prefer payment via check made payable to your law firm or wire transfer.

Also, have you been able to make any contact with lender or lender's counsel as of yet?

Thank you.

Stephanie Blanton Munsey, Esq.

803-603-8775 (mobile)

----- Forwarded message -----

From: **stephanie munsey** <sbmunsey@gmail.com>
Date: Thu, Sep 6, 2012 at 9:00 AM
Subject: Fwd: 1841 Fairview Farms Road (Otto/ Munsey)
To: Kenneth Anthony <kanthony@anthonylaw.com>

Ken:

Thank you for meeting with me yesterday to work through these issues. One item we did not discuss was September's payment to Chase. Since you will be maintaining the funds that have been returned from Chase in your escrow account, please confirm that this month and subsequent mortgage payments will be made to your escrow account as well until the loan is placed back into good standing. Of course, with any additional interest and late fees, if not waived by the bank, also to be absorbed by Jack. If this is acceptable, do you prefer a wire transfer or physical check? If the wire transfer, please provide wiring instructions. Thank you.

Stephanie Blanton Munsey, Esq.

803-603-8775

----- Forwarded message -----

From: **SBM Gmail** <sbmunsey@gmail.com>
Date: Tue, Sep 4, 2012 at 5:59 PM
Subject: Re: 1841 Fairview Farms Road (Otto/ Munsey)

To: Kenneth Anthony <kanthony@anthonylaw.com>

Yes. Thank you for the flexibility.

Stephanie Blanton Munsey, Esq.

803-603-8775

On Sep 4, 2012, at 4:45 PM, "Kenneth Anthony" <kanthony@anthonylaw.com> wrote:

Will 10:30 work?

From: stephanie munsey [mailto:sbmunsey@gmail.com]
Sent: Tuesday, September 04, 2012 4:32 PM
To: Kenneth Anthony
Subject: Re: 1841 Fairview Farms Road (Otto/ Munsey)

Ken:

Is there any chance that you would be able to meet tomorrow morning rather than 4pm? If not, I understand at this late notice, just trying to work schedules of others as well....thank you for the consideration.

Stephanie Blanton Munsey, Esq.
803-603-8775

On Thu, Aug 30, 2012 at 9:57 AM, SBM Gmail <sbmunsey@gmail.com> wrote:

That will be fine on both accounts. I will see you Wednesday, September 5th at 4pm at your office. Have a wonderful holiday weekend.

Stephanie Blanton Munsey, Esq.
803-603-8775

On Aug 30, 2012, at 8:46 AM, "Kenneth Anthony" <kanthony@anthonylaw.com> wrote:

How about Wednesday September 5 at 4? Suit you to come here?

From: SBM Gmail [mailto:sbmunsey@gmail.com]
Sent: Tuesday, August 28, 2012 5:05 PM
To: Kenneth Anthony
Subject: Re: 1841 Fairview Farms Road (Otto/ Munsey)

Tuesdays and Thursdays I am Columbia working with Companion Life Insurance Company. I am available Mondays Wednesdays and Fridays at your convenience.

Stephanie Blanton Munsey, Esq.

803-603-8775

On Aug 28, 2012, at 4:12 PM, "Kenneth Anthony"
<kanthony@anthonylaw.com> wrote:

I now have some information Patty has brought me. I would like to get together with you to review what we have. I could do next Tuesday afternoon before 4. Would this suit?

From: stephanie munsey [mailto:sbmunsey@gmail.com]
Sent: Friday, August 24, 2012 9:01 AM
To: Kenneth Anthony
Subject: Re: 1841 Fairview Farms Road (Otto/ Munsey)

Okay. Thank you. Please let me know if there is anything else you need from Jack at this time.

On Fri, Aug 24, 2012 at 8:52 AM, Kenneth Anthony
<kanthony@anthonylaw.com> wrote:

-she is coming the first of the week. I am not going to call time on you.

From: stephanie munsey [mailto:sbmunsey@gmail.com]
Sent: Fri 8/24/2012 8:23 AM
To: Kenneth Anthony
Subject: Re: 1841 Fairview Farms Road (Otto/ Munsey)

Ken:

Good morning. I was checking in to see if Patty was able to provide any of the information that has been requested. Also, it is my understanding that you are agreeable to an extension since we are still working toward a resolution in this matter. If this is

still the case, please provide a consent to a thirty (30) day extension for filing an Answer in this action. Thank you very much.

Stephanie Blanton Munsey

SC Bar #11122

803-603-8775

sbmunsey@gmail.com

On Mon, Aug 20, 2012 at 11:56 AM, stephanie munsey <sbmunsey@gmail.com> wrote:

Whew!!! I had no idea what tm was....

I will review the information immediately upon receipt. Thank you.

On Mon, Aug 20, 2012 at 11:55 AM, Kenneth Anthony <kanthony@anthonylaw.com> wrote:

Sorry, that was supposed to go to one of my staff. Nothing you need to do. I just spoke with Patty and she is sending me some info I will forward.

From: stephanie munsey [mailto:sbmunsey@gmail.com]
Sent: Monday, August 20, 2012 11:52 AM

To: Kenneth Anthony
Subject: Re: 1841 Fairview Farms Road (Otto/ Munsey)

I attached in pdf and I will try to convert but I do not know what tm is?

Stephanie

On Mon, Aug 20, 2012 at 11:38 AM, Kenneth Anthony <kanthony@anthonylaw.com> wrote:

Please save attachments in tm

From: stephanie munsey [mailto:sbmunsey@gmail.com]
Sent: Monday, August 20, 2012 11:19 AM
To: Kenneth Anthony
Subject: Re: 1841 Fairview Farms Road (Otto/ Munsey)

Ken:

Please find attach print outs from Bank of America for payments for the first mortgage from January 2012 to current with all payments cleared except for one payment made on August 17, 2012 that remains pending. According to Jack's records, all payments to the first and second mortgages have been made, placing the accounts current. However, as explained previously, Jack is unable to verify that the payments have been properly applied to the accounts. Once again, statements of account for the mortgages are respectfully requested. In addition, the information demanded in the May 15, 2012 letter is respectfully requested. Since the Answer is due this week, please contact me at 803-603-8775 for discussion, since it was our belief during our conversation on August 3, 2012 that this matter could be resolved quickly. Thank you.

Stephanie Blanton Munsey
SC Bar #11122
803-603-8775
sbmunsey@gmail.com

On Thu, Aug 9, 2012 at 12:02 PM, stephanie munsey
<sbmunsey@gmail.com> wrote:

Ken:

I wanted to give you an update on the bank statements. In May, Jack moved his Bank of America account from a Florida account where he was previously employed to a local account. BofA requires that the accounts be closed and reopened rather than transferred. Therefore, he no longer has online access to his accounts prior to June 1st. The past account information has been requested as of Tuesday with a 3 to 5 day turn around time, but have not yet received the information. In the

meantime, please find attached evidence of recent payments as follows:

1st Mortgage:

Paid \$5,306.00 (Capital One) on 6/01/2012; and

Paid \$5,306.00 (Capital One) on 7/12/2012

2nd Mortgage:

Paid \$1,875.00 (TD Bank) on 6/29/2012; and

Paid \$1,875.00 (TD Bank) on 7/31/2012.

Again, Jack is not able to see any payments being properly credited to the mortgage accounts even though request to the online access or copies of the statement of accounts have been made numerous times. I will provide the entire history of payments as soon as received from Bank of America.

Has there been any progress on the information requested in the May 15, 2012 letter?

Thank you and look forward to quick resolution.

Stephanie Blanton Munsey

SC Bar #11122

803-603-8775

sbmunsey@gmail.com

----- Forwarded message -----
From: **stephanie munsey** <sbmunsey@gmail.com>
Date: Fri, Aug 3, 2012 at 11:14 AM
Subject: 1841 Fairview Farms Road (Otto/ Munsey)
To: kanthony@anthonylaw.com

Ken:

Thank you for accepting my call today to briefly discuss the recent litigation filed by Patty. Please find attached a copy of the letter dated May 15, 2012, that Jack mailed to Patty outlining the issues that still require resolution. It is believed that this letter sets forth all of the information that is required by her, but do ask for copies of any demands made as alleged in the Complaint along with current statements of account of all three (3) notes. Jack is gathering the entire payment history from the bank and will have that information hopefully by Monday. Like you, it is believed that this matter can be resolved very quickly, and greatly appreciate the efforts to do so.

Additionally, Landrum being a small community, it is our understanding that Patty is openly discussing her actions against Jack with others and using derogatory inferences. Patty's privacy has been maintained during the course of this business relationship, and the same courtesy in turn is respectfully requested.

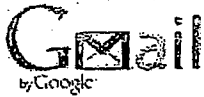
Thank you for time and look forward to a quick resolution to this matter. Please do not hesitate to contact me with any questions.

Stephanie Blanton Munsey, Esq.

SC Bar #11122

Phone: 803-603-8775

Email: sbmunsey@gmail.com



stephanie munsey<sbmunsey@gmail.com>

1841 Fairview Farms Rd (Otto/Munsey)

Cindy Hogan<chogan@anthonylaw.com>
To: SBM Gmail <sbmunsey@gmail.com>

Thu, Oct 11, 2012 at 11:01 AM

She is meeting with her accountant to obtain her 2011 1098 statements from the banks. The amort schedule for the Contract for Deed indicates 2011 interest was \$230.88 so that is what we plan to put on the 1098 for that one.

Cynthia M. Hogan, Paralegal
The Anthony Law Firm, P.A.
250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 699-6218 direct dial
(864) 583-9772 fax

From: SBM Gmail [mailto:sbmunsey@gmail.com]
Sent: Thursday, October 11, 2012 10:49 AM
To: Cindy Hogan
Subject: Re: 1841 Fairview Farms Rd (Otto/Munsey)

Cindy:

Will you please verify if you have received the wire.

Also, as to the 1098s, the first 2 mortgages should be able to obtain from the lenders for an exact amount rather than our estimate.

Thank you.

Stephanie Blanton Munsey, Esq.
803-603-8775

On Oct 10, 2012, at 9:36 AM, "Cindy Hogan" <chogan@anthonylaw.com> wrote:

I checked with Arthur State Bank but they have not received a wire for \$830. As to the 1098, what amount of interest do you think you have paid?

Cynthia M. Hogan, Paralegal
The Anthony Law Firm, P.A.
250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 699-6218 direct dial
(864) 583-9772 fax

From: SBM Gmail [mailto:sbmunsey@gmail.com]
Sent: Tuesday, October 09, 2012 4:22 PM
To: Cindy Hogan
Subject: Fwd: 1841 Fairview Farms Rd (Otto/Munsey)

Thank you.

Stephanie Blanton Munsey, Esq.
803-603-8775

Begin forwarded message:

From: SBM Gmail <sbmunsey@gmail.com>
Date: October 9, 2012, 1:01:59 PM EDT
To: Kenneth Anthony <kanthony@anthonylaw.com>
Subject: Re: 1841 Fairview Farms Rd (Otto/Munsey)

Will you please confirm the wire of the 3rd mortgage offset and advise on the status on the 1098s. The issue with the 1098s are crucial. Thank you.

Stephanie Blanton Munsey, Esq.
803-603-8775

On Oct 7, 2012, at 4:05 PM, stephanie munsey <sbmunsey@gmail.com> wrote:

Ken:

This is transmittal is a further update of the email from last week. As to Item 4 below, please confirm receipt of the wire transfer from of \$830.00. Also, please find attached an accounting of funds transferred per your request.

As to Item 6 below, Patty dropped off information related to Greenspace which was greatly appreciated.

As to Item 8 below, the coggins were emailed to Madelon on Thursday and resent to sent on Saturday with an acknowledgment of receipt, noting that there is one horse that vet did not send the updated coggins and have asked him to send; this will be forwarded to Madelon immediately upon receipt. If you would like copies, please let me know.

At your earliest convenience, please provide an update of the other issues below noting the extreme urgency of Item 2 below related to the 1098s. Please understand that the interest deduction is quite significant and if not able to taken by October 15th then a check will have to be issued to the IRS which will result in financial hardship. Any and all efforts to expedite this issue is required and greatly appreciated.

If you have any other questions, please let me know. Please be aware that I will be in conferences all week in Columbia and will not have ready access to voicemail or email, but I have estimated drive time in the morning hours from 6:30am to 8:30am and in the afternoon hours from 4:30pm to 6:30pm. I will also have a lunch break, but am unaware of the time and length.

As always, thank you for your prompt attention and assistance with this matter.

Stephanie Blanton Munsey
Bar #11122
803-603-8775

----- Forwarded message -----
From: **stephanie munsey** <sbmunsey@gmail.com>
Date: Mon, Oct 1, 2012 at 2:03 PM
Subject: 1841 Fairview Farms Road (Otto/Munsey)
To: Kenneth Anthony <kanthony@anthonylaw.com>

Ken:

As to outstanding issues:

- 1) Has there been any reply from counsel for the lender of Chase?
 - 2) Has the 1098s been completed for 2011 interest payments? (noting that only have until October 15th for filing based on the filed extension)
 - 3) Has the mortgage statements since March 1, 2011 for both Chase and TD Bank been obtained?
 - 4) The last payment of the third mortgage was May 2012, which coincides with the notice of off-set for the liens placed against the property. The monthly third mortgage is \$166 per month with five (5) months, including October 2012, for a total of \$830.00 with a current spreadsheet per your request will be provided and deposited with your escrow account by Friday, October 5, 2012.
 - 5) The Greenspace dues, including the 4th quarter, will be paid this month with the understanding of the restrictions of the trails until all dues are paid current.
 - 6) In the email chain commenced by Patty this weekend concerning the horses, Patty indicated that she would provide us a copy of the Greenspace Bylaws since Madelon Wallace did not and will not provide directly, noting that any question we pose to Madelon she states that we must go through Patty. We would greatly appreciate the copy through either of you.
 - 7) Has there been any further consideration given to whether a POA can be given related to interest in Greenspace? Since I have not seen the Bylaws or the Trust documents, I am unable to formulate an opinion as to whether this is a possibility. Most, if not all, the issues with Greenspace would be eliminated if there was direct communication with Madelon.
 - 8) As to the horse issue that was raised this weekend, Jeff Schutz, DVM, vetted all horses on the property on Saturday, September 29, 2012. I expected the coggins to be ready today, but Dr. Schutz said it would be Wednesday before he would be able to fax to me. The coggins will be provided to Patty and Madelon immediately upon receipt.
 - 9) Once again an apology is extended for the misunderstanding as to the number of horses on the property. The number is now in compliance with two (2) additional horses being relocated in the next few weeks once the alternative location is able to receive them. Additionally, in order to be certain and provide assurances that the remaining horses are being well maintained and are healthy, Spartanburg County Animal Control conducted an inspection of the property at our request today and found all in good condition.
- If there are any issues that I did not address, please let me know.
Thank you.

Gmail - 1841 Fairview Farms Rd (Otto/Munsey)

Page 4 of 4

Stephanie Blanton Munsey, Esq.
Bar #11122
803-603-8775

<3rd Mortgage Offset thru Oct 2012.docx>

1841 Fairview Farms Road, Campobello, South Carolina
Third Mortgage given by Jackson L. Munsey, Jr. (subject to offset in accordance with Contract for Deed)

DATE	AMOUNT
June, 2012	\$166.00
July, 2012	\$166.00
August, 2012	\$166.00
September, 2012	\$166.00
October, 2012	\$166.00
TOTAL:	<u>\$830.00</u>



stephanie munsey< sbmunsey@gmail.com>

Still no 1098's

Jackson Munsey< jack.munsey@gmail.com>

Mon, Oct 15, 2012 at 5:14 PM

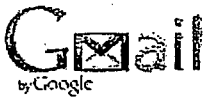
To: kanthony@anthonylaw.com, "patty@thehareandhound.com Patty Otto" <patty@thehareandhound.com>

Cc: sbmunsey@gmail.com

It is after 5 pm on Oct 15th. The 1098's were due January 31st. I can not file my return or if I do I will not be able to claim mortgage interest deduction. What do I have to do to get these documents filed?

Jack Munsey
803-450-0001
904-212-1282 efax

jack.munsey@gmail.com



stephanie munsey <sbmunsey@gmail.com>

1841 Fairview Farms Rd (Otto/Munsey)

Cindy Hogan <chogan@anthonylaw.com>

Mon, Oct 15, 2012 at 3:39 PM

To: SBM Gmail <sbmunsey@gmail.com>

Cc: Kenneth Anthony <kanthony@anthonylaw.com>

Here is a copy. Want me to mail the "original" Copy B?

Cynthia M. Hogan, Paralegal
The Anthony Law Firm, P.A.
250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 699-6218 direct dial
(864) 583-9772 fax

From: SBM Gmail [mailto:sbmunsey@gmail.com]

Sent: Monday, October 15, 2012 3:10 PM

[Quoted text hidden]

[Quoted text hidden]

 1098 Otto-Munsey Contract for Deed interest.pdf
69K

☐ CORRECTED (if checked)

RECIPIENT'S/LENDER'S name, address, and telephone number Alyce F. Otto, Trustee of the Declaration of Trust of Alyce F. Otto 101 E. Rutherford Street Landrum, SC 29356		* Caution: The amount shown may not be fully deductible by you. Limits based on the loan amount and the cost and value of the secured property may apply. Also, you may only deduct interest to the extent it was incurred by you, actually paid by you, and not reimbursed by another person.	OMB No. 1545-0901 2011 Form 1098	Mortgage Interest Statement
RECIPIENT'S federal identification no. 407-76-7672	PAYER'S social security number 217-54-4073	1 Mortgage interest received from payer(s)/borrower(s) \$ 230.88	Copy B For Payer/Borrower 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 overstated a deduction for this mortgage interest or for these points or because you did not report this refund of interest on your return.	
PAYER'S/BORROWER'S name Jackson L. Munsey, Jr.		2 Points paid on purchase of principal residence \$		
Street address (including apt. no.) 1841 Fairview Farms Road		3 Refund of overpaid interest \$		
City, state, and ZIP code Campobello, SC 29322		4 Mortgage insurance premiums \$		
Account number (see instructions)		5		

Form 1098

(keep for your records)

Department of the Treasury - Internal Revenue Service

☐ CORRECTED (if checked)

RECIPIENT'S/LENDER'S name, address, and telephone number		* Caution: The amount shown may not be fully deductible by you. Limits based on the loan amount and the cost and value of the secured property may apply. Also, you may only deduct interest to the extent it was incurred by you, actually paid by you, and not reimbursed by another person.	OMB No. 1545-0901 2011 Form 1098	Mortgage Interest Statement
RECIPIENT'S federal identification no.	PAYER'S social security number	1 Mortgage interest received from payer(s)/borrower(s) \$	Copy B For Payer/Borrower 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 overstated a deduction for this mortgage interest or for these points or because you did not report this refund of interest on your return.	
PAYER'S/BORROWER'S name		2 Points paid on purchase of principal residence \$		
Street address (including apt. no.)		3 Refund of overpaid interest \$		
City, state, and ZIP code		4 Mortgage insurance premiums \$		
Account number (see instructions)		5		

Form 1098

(keep for your records)

Department of the Treasury - Internal Revenue Service

☐ CORRECTED (if checked)

RECIPIENT'S/LENDER'S name, address, and telephone number		* Caution: The amount shown may not be fully deductible by you. Limits based on the loan amount and the cost and value of the secured property may apply. Also, you may only deduct interest to the extent it was incurred by you, actually paid by you, and not reimbursed by another person.	OMB No. 1545-0901 2011 Form 1098	Mortgage Interest Statement
RECIPIENT'S federal identification no.	PAYER'S social security number	1 Mortgage interest received from payer(s)/borrower(s) \$	Copy B For Payer/Borrower 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 overstated a deduction for this mortgage interest or for these points or because you did not report this refund of interest on your return.	
PAYER'S/BORROWER'S name		2 Points paid on purchase of principal residence \$		
Street address (including apt. no.)		3 Refund of overpaid interest \$		
City, state, and ZIP code		4 Mortgage insurance premiums \$		
Account number (see instructions)		5		

Form 1098

(keep for your records)

Department of the Treasury - Internal Revenue Service



stephanie munsey <sbmunsey@gmail.com>

Otto v Munsey

9 messages

Cindy Hogan <chogan@anthonylaw.com>
To: SBM Gmail <sbmunsey@gmail.com>
Cc: Kenneth Anthony <kanthony@anthonylaw.com>

Wed, Oct 17, 2012 at 3:02 PM

Cynthia M. Hogan, Paralegal
The Anthony Law Firm, P.A.
250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 699-6218 direct dial
(864) 583-9772 fax

2 attachments

 Otto-Capital One Reinstatement Letter.pdf
65K

 Letter to Stephanie Munsey.pdf
77K

SBM Gmail <sbmunsey@gmail.com>
To: Cindy Hogan <chogan@anthonylaw.com>
Cc: Kenneth Anthony <kanthony@anthonylaw.com>

Wed, Oct 17, 2012 at 3:18 PM

Thank you. Will you please confirm the amount that you have in your escrow account (ie, the funds returned from the bank to Patty).

Stephanie Blanton Munsey, Esq.
803-603-8775

On Oct 17, 2012, at 3:02 PM, "Cindy Hogan" <chogan@anthonylaw.com> wrote:

Cynthia M. Hogan, Paralegal
The Anthony Law Firm, P.A.
250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 699-6218 direct dial
(864) 583-9772 fax

<Otto-Capital One Reinstatement Letter.pdf>

<Letter to Stephanie Munsey.pdf>

Cindy Hogan <chogan@anthonylaw.com>
To: SBM Gmail <sbmunsey@gmail.com>
Cc: Kenneth Anthony <kanthony@anthonylaw.com>

Wed, Oct 17, 2012 at 3:24 PM

We have two wires from you, one for \$5200 and one for \$844.10. What do these payments represent?

Cynthia M. Hogan, Paralegal
The Anthony Law Firm, P.A.
250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 699-6218 direct dial
(864) 583-9772 fax

From: SBM Gmail [mailto:sbmunsey@gmail.com]
Sent: Wednesday, October 17, 2012 3:19 PM
To: Cindy Hogan
Cc: Kenneth Anthony
Subject: Re: Otto v Munsey

Thank you. Will you please confirm the amount that you have in your escrow account (ie, the funds returned from the bank to Patty).

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803-603-8775

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(864) 583-9772 fax

<Otto-Capital One Reinstatement Letter.pdf>

<Letter to Stephanie Munsey.pdf>

SBM Gmail <sbmunsey@gmail.com>
To: Cindy Hogan <chogan@anthonylaw.com>
Cc: Kenneth Anthony <kanthony@anthonylaw.com>

Wed, Oct 17, 2012 at 3:55 PM

The payment of \$5200 is the 1st mortgage payment (chase) for September. The payment of \$844.10 is the payment for 3rd mortgage payment (contract for deed to Patty) which reflects the payments from June thru October as set forth on the spreadsheet that was sent.

I need to confirm the mortgage payments that were made but then returned payable to Patty. When we met Ken had 3 checks that has not been cashed that he was going to deposit into escrow. Also my understanding is that Patty had the other funds that were returned and she was going to deposit with your escrow account as well. I am not certain exactly how much was returned to Patty but all mortgage payments through September have been made. The issue of additional funds should only be related to the late fees and penalties. So we need to calculate the difference.

Thank you.

Stephanie Blanton Munsey, Esq.
803-603-8775

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(864) 699-6218 direct dial
(864) 583-9772 fax

From: SBM Gmail [mailto:sbmunsey@gmail.com]
Sent: Wednesday, October 17, 2012 3:19 PM
To: Cindy Hogan
Cc: Kenneth Anthony
Subject: Re: Otto v Munsey

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Stephanie Blanton Munsey, Esq.
803-603-8775

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250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 699-6218 direct dial
(864) 583-9772 fax

<Otto-Capital One Reinstatement Letter.pdf>

<Letter to Stephanie Munsey.pdf>

stephanie munsey< sbmunsey@gmail.com> Fri, Oct 19, 2012 at 10:41 AM
To: Cindy Hogan <chogan@anthonylaw.com>, Kenneth Anthony <kanthony@anthonylaw.com>

Have you been able to confirm the amount of the return payments (see previous email below)?

Thank you.

Stephanie

----- Forwarded message -----

From: **SBM Gmail** <sbmunsey@gmail.com>
Date: Wed, Oct 17, 2012 at 3:55 PM
Subject: Re: Otto v Munsey
To: Cindy Hogan <chogan@anthonylaw.com>
Cc: Kenneth Anthony <kanthony@anthonylaw.com>

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803-603-8775

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From: SBM Gmail [mailto:sbmunsey@gmail.com]
Sent: Wednesday, October 17, 2012 3:19 PM
To: Cindy Hogan
Cc: Kenneth Anthony
Subject: Re: Otto v Munsey

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<Otto-Capital One Reinstatement Letter.pdf>

<Letter to Stephanie Munsey.pdf>

stephanie munsey< sbmunsey@gmail.com>
To: Cindy Hogan <chogan@anthonylaw.com>
Cc: Kenneth Anthony <kanthony@anthonylaw.com>

Mon, Oct 22, 2012 at 2:22 PM

Ken:

Please advise how many payments were returned to Patty by obtaining a loan history statement in order to confirm the number of payments returned and the amount of payments Chase claims are due. It was our belief that six (6) or seven (7) payments were returned to Patty with copies of three (3) checks provided to me that were to be deposited directly into your escrow account and then an additional three (3) or four (4) payments that Patty deposited that were to be transferred into your escrow account. Also, we understand that payment of the September amount was paid to your escrow account, which obviously was not sent, and the month of October is now due so that would be eight (8) or nine (9) payments due. However, Chase claims ten (10) payments are due. We need this confirmed ASAP since reinstate of the loan is provided only through October 31, 2012. We believe that you should hold enough in escrow to cover the payment amount due.

Also, there is a \$7,907.95 amount on the reinstatement letter which states as a corp advance. Please confirm what this amount represents. If it is real property taxes, those were paid on August 27, 2012 in the amount of \$6,311.74. A copy of the paid receipt was provided to you, however, if you need another copy, please let me know and I will scan and forward to you.

Once we understand these major issues, then we will be able to calculate the remaining amount to be paid. Thank you for your prompt attention to this matter.

On Wed, Oct 17, 2012 at 3:02 PM, Cindy Hogan <chogan@anthonylaw.com> wrote:

Cynthia M. Hogan, Paralegal
The Anthony Law Firm, P.A.
250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 699-6218 direct dial
(864) 583-9772 fax

stephanie munsey <sbmunsey@gmail.com>
To: Cindy Hogan <chogan@anthonylaw.com>
Cc: Kenneth Anthony <kanthony@anthonylaw.com>

Fri, Oct 26, 2012 at 3:59 PM

Please provide the requested information ASAP. Thank you.

On Mon, Oct 22, 2012 at 2:22 PM, stephanie munsey <sbmunsey@gmail.com> wrote:
Ken:

Please advise how many payments were returned to Patty by obtaining a loan history statement in order to confirm the number of payments returned and the amount of payments Chase claims are due. It was our belief that six (6) or seven (7) payments were returned to Patty with copies of three (3) checks provided to me that were to be deposited directly into your escrow account and then an additional three (3) or four (4) payments that Patty deposited that were to be transferred into your escrow account. Also, we understand that payment of the September amount was paid to your escrow account, which obviously was not sent, and the month of October is now due so that would be eight (8) or nine (9) payments due. However, Chase claims ten (10) payments are due. We need this confirmed ASAP since reinstate of the loan is provided only through October 31, 2012. We believe that you should hold enough in escrow to cover the payment amount due.

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250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 699-6218 direct dial
(864) 583-9772 fax

stephanie munsey< sbmunsey@gmail.com>
To: Kenneth Anthony <kanthony@anthonylaw.com>
Cc: Cindy Hogan <chogan@anthonylaw.com>

Mon, Oct 29, 2012 at 12:18 PM

Ken:

Funds are not able to be wired to your account until the information below is provided so a calculation can be obtained. I have been asking for the below information since October 17th within minutes of receipt of the reinstatement letter via email. Please provide this information ASAP. If you are unable to provide this information, please explain. We must work together to resolve this matter. Thank you.

Stephanie Blanton Munsey
803-603-8775

On Fri, Oct 26, 2012 at 3:59 PM, stephanie munsey <sbmunsey@gmail.com> wrote:
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Spartanburg, South Carolina
(864) 699-6218 direct dial
(864) 583-9772 fax

stephanie munsey< sbmunsey@gmail.com>

Wed, Oct 31, 2012 at 10:09 AM

To: Kenneth Anthony <kanthony@anthonylaw.com>
Cc: Cindy Hogan <chogan@anthonylaw.com>

Please advise the amount of returned funds that you hold in escrow. Thank you.
Stephanie Blanton Munsey
803-603-8775

On Mon, Oct 29, 2012 at 12:18 PM, stephanie munsey <sbmunsey@gmail.com> wrote:
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P.O. Box 3565 (29304)
Spartanburg, South Carolina
(864) 699-6218 direct dial
(864) 583-9772 fax

THE ANTHONY
LAW FIRM, P.A.

2100 Magnolia Street
Suite 200
Columbia, SC 29204
Phone: 803.733.1111
Fax: 803.733.1112
Web: www.theanthony.com

October 17, 2012

Via email to sbmunsev@gmail.com

Stephanie Munsey, Esq.
1841 Fairview Farms Road
Campobello, SC 29322

Re: Alyce F. Otto v. Jackson L. Munsey, Jr.

Dear Stephanie:

Enclosed is the reinstatement amount from Capital One. I presume we will want to wire these funds from my account, so I will need to obtain these from you.

Very truly yours,



Kenneth C. Anthony, Jr.

KCAjr:cmh
Enclosure
cc: Patty Otto

PG ② of ③

7933 Preston Rd
Plano, TX 75024

10/12/12

RUDRICK G OTTO
ALYCE F OTTO
101 E RUTHERFORD ST
LANDRUM, SC 29356

RE: Loan # 0554185801
Property Address: 1841 FAIRVIEW FARMS
CAMPOBELLO, SC 29322

Dear Mortgagor,

* In response to your request for a pay plan option, the total needed to reinstate your loan and have current is \$62,581.47 this amount is good through 10/31/12

Payments:	10 @	\$5195.28	=	\$51,952.80
Escrow Advance:				\$ 0.00
Late Fees:				\$2836.45
NSF Fees:				\$0.00
Other Fees:				\$258.43
Corp Advances:				\$7,907.95
Unbilled Legal Fees:				\$1331.00
Less Suspense				\$1705.16
Total Amount Due:				<u>\$62,581.47</u>

If you choose to send the payments via Western Union Quick Collect, the correct city code is Chevy, MD. Please reference the loan number and put it to my attention. Should you have any further questions concerning this matter, please feel free to contact us 1-877-230-8516

Sincerely,
Loss Mitigation Department
Mortgage Loan Servicing Division

Sadej

Date 9/18

2012-10-12 13:56

THE HARE & HOUND 8644574218>> 8645839772

P 3/3
VVV VVV

PG (3) of (3)

7933 Preston Rd.
Plano TX 75024
877-290-4516 X
877-419-8918-Fax

4437122



Fax

To: <u>Otto</u>	From: <u>Master Express</u>	
Fax:	Pages:	
Phone:	Date:	
Re:	Co:	
☐ Urgent	☐ For Review	☒ Please Reply

Comments:

WIRE TRANSFER INSTRUCTIONS

ABA: 255071981-CHEVY CHASE MORTGAGE
ATTENTION: PAYMENT PROCESSING
ACCOUNT TO BE CREDITED: GL#2854214033185
BENEFICIARY: MORTGAGOR LAST NAME / LOAN NUMBER

BE ADVISED THERE IS A WIRE TRANSFER FEE OF 25.00 MUST BE INCLUDED WITH YOUR PAYMENT
WIRE TRANSFER MUST BE RECEIVED BY 2:00PM E.S.T.

SHOULD HAVE ANY QUESTIONS PLEASE CONTACT OUR OFFICES AT 1877-290-8516

Note: The documents accompanying this facsimile may include confidential or privileged information.
This information being transmitted is intended only for the use of the above-named recipient. If this facsimile
has been sent to you incorrectly please call immediately. Thank You.

(864) 457-4218



PG ① of ③

**** Fax Cover Sheet ****

To: MR & MRS OTTO
Phone:
Fax:

Date: 10/12/12
Re:
CC:

From: Hector Espinoza
Phone:
Fax:

Comments: P/S see Attached

* Reinstatement quote and
WIRE INSTRUCTIONS

Toll Free 877-230-8818 / FAX (866) 247-6402



stephanie munsey<sbmunsey@gmail.com>

Fwd: Otto v. Munsey

stephanie munsey<sbmunsey@gmail.com>
 To: Kenneth Anthony <kanthony@anthonylaw.com>
 Cc: Cindy Hogan <chogan@anthonylaw.com>

Mon, Oct 29, 2012 at 12:53 PM

Ken:

Regarding the line item on the Restatement Letter noted as Corp Advance, if this is related to taxes, please find below the email from Spartanburg County showing that the taxes were paid by Jackson Munsey. I contacted the Treasurer's Office to determine if the lender attempted to pay the taxes and they do not show any notations on the account. If payment for taxes was received, it would have been returned with the same screen shot below demonstrating that the taxes were paid. If the Corp Advance is not related to taxes, then further explanation is needed. Thank you.

Stephanie Blanton Munsey
 803-603-8775

----- Forwarded message -----

From: Johnson, Kay <kjohnson@spartanburgcounty.org>
 Date: Mon, Oct 29, 2012 at 12:24 PM
 Subject:
 To: sbmunsey@gmail.com

KAYE JOHNSON 10/29/2012 12:24 PM									
File: Macros: Function Keys: View: Options: Help									
A B C D E F G H I J K L M N O P Q R S T U V W X Y Z									
F100 Scanning OFF		DELINQUENT OFFICE - WALKIN				10/29/2012			
Enter Function.		116270-11-3		Code: P-PAID		Date: 08/27/12		CMS Prt. P	
						Date:		LYR. 11	
OTTO ALYCE E TRUSTEE		CORREL. JACKSON MUNSEY		VISA					
MUNSEY JACKSON A JR (CS)		1 03 00 003.00		R					
1841 FAIRVIEW FARM RD		1825 FAIRVIEW FARM AD#12-15988				Issue Dt.			
EMPLOYED SET 25.000		TOWN.. 100		Town..		Code..			
		100.0		1.0		Certfy.			
County 10,329.85		10,329.85		.00		Replaced By..			
City .00		.00		.00		Replaces....			
Fee 141.00						Asst Abated..			
Rent 5,030.21						Asst Added..			
LOST CP .00									
Total 15,490.06									
Relative 110.16		15.000		Per Dt...					
				Cost		Total Cost			
				55.00					

start [Icons] 12:23 PM Monday

Kaye Johnson

Tax Collector's Office

Spartanburg SC 29304

kjohnson@spartanburgcounty.org

864-596-2597

864-562-4299



stephanie munsey <sbmunsey@gmail.com>

Otto v Munsey

stephanie munsey <sbmunsey@gmail.com>

Wed, Oct 31, 2012 at 10:09 AM

To: Kenneth Anthony <kanthony@anthonylaw.com>

Cc: Cindy Hogan <chogan@anthonylaw.com>

Please advise the amount of returned funds that you hold in escrow. Thank you.

Stephanie Blanton Munsey

803-603-8775

[Quoted text hidden]



stephanie munsey<sbmunsey@gmail.com>

1841 Fairview Farms Road (Otto v. Munsey)

1 message

stephanie munsey<sbmunsey@gmail.com>

Fri, Nov 9, 2012 at 8:42 AM

To: Kenneth Anthony <kanthony@anthonylaw.com>

Cc: Cindy Hogan <chogan@anthonylaw.com>

Ken:

I am at a loss as to lack of response from you regarding my numerous inquiries (both via email and telephone messages) so we may resolve this matter. However, once again, I am requesting that you please advise as to the total funds that you currently hold in escrow for this matter. When we met, you provided me copies of three (3) returned checks that were to be deposited directly into your escrow account and with your statement that an additional three (3) or four (4) returned payments that Patty deposited were to be transferred into your escrow account. Additionally, Jack made the September payment directly to your escrow account and should still be held in escrow by your firm. Further payments for the months of October and now November have not been forwarded to your escrow account since you have been unable to confirm the total amount you currently hold in escrow for this account.

Moreover, please confirm how many payments were returned to Patty by obtaining a loan history statement so a confirmation the amount of payments Chase claims are due can be calculated. Also, please inquire with Chase the amount of \$7,907.95 listed on the Reinstatement Letter as Corp Advance. As earlier stated, if this represents real property taxes, those were paid on August 27, 2012 in the amount of \$6,311.74 by Jack. A copy of the paid receipt was provided to you when we met. Once there is an understanding of these major issues, then we will be able to calculate the remaining amount to be paid in order to reinstate to the loan which is the first priority. Unless a response is received from you by Wednesday, November 14, 2012, we will be required to file an Answer with Counterclaims in both litigations. This is not what is desired; a resolution to this matter is in the best interest of all involved and what we believe we were working toward.

Thank you for your prompt attention and assistance to resolution in this matter.

Stephanie Blanton Munsey, Esq.
Bar #11122
803-603-8775

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

C. A. NO.: 2012-CP-42-3549

U.S. Bank, NA as Trustee relating to)
The Chevy Chase Funding, LLC)
Mortgage Backed Certificates,)
Series 2004-B,)

Plaintiff,)

-vs-)

Alyce F. Otto, individually;)
Alyce F. Otto, Trustee Under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09; TD Bank, NA;)
The United States of America,)
Acting by and through its agency,)
The Internal Revenue Service;)
Laura Kerhulas Giese, as co-)
Trustee of the Theodore Ernest)
Kerhulas Trust Under Declaration)
Of Trust dated 5/25/04; Mark)
Warner Kerhulas, as co-Trustee of)
The Theodore Ernest Kerhulas)
Trust Under Declaration of Trust)
Dated 5/25/04; Jackson L. Munsey,)
Jr.; and Citibank, NA,)

Defendants.)

And)

Jackson L. Munsey, Jr.)

Cross-Claim Plaintiff,)

-vs-)

Alyce F. Otto, Individually; and)
Alyce F. Otto, Trustee under)
Declaration of Trust of Alyce F.)
Otto, dated 11/17/09,)

Cross-Claim Defendants.)

**MOTION TO ALTER OR
AMEND ORDER**

2016 JAN -7 AM 9:23
M. HOPE BLANCHETT

YOU WILL PLEASE TAKE NOTICE that Defendant and Cross-Claim Plaintiff Jackson L. Munsey, Jr. ("Munsey"), by and through his undersigned attorney, hereby moves for an Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to alter or amend the Order of the Court that followed from the hearing held on November 24, 2015, styled as Order As To Otto vs Munsey (the "Order"). The Order was dated December 14, 2015, and filed on December 15, 2015; however, Munsey has received no written notice of the entry of the Order. On January 4, 2016, Munsey's counsel was served with two different orders issued by the Court pursuant to the November 24th hearing, which prompted counsel to consult the Spartanburg County Clerk of Court regarding the Order at issue in the within Motion. On its own initiative, Munsey's counsel discovered that the Order had been entered and obtained a copy of same on January 4, 2016.

The grounds for this Motion are as follows: (1) at the hearing on November 24th, the Court issued a ruling from the bench as to Munsey's rights of equity in and to the subject property; (2) the Order does not contain the specific language regarding Munsey's equitable rights as issued from the bench; (3) Munsey wishes to obtain a specific ruling from the Court as to his equitable rights; and (4) the Order does not contain an "Exhibit A" itemizing the damages, which Exhibit is referenced in the body of the Order. The Court should amend the Order to reflect its ruling from the bench, to include a specific finding of fact that Munsey has no equitable interest in the subject property and therefore no right to notice of any surplus funds derived from the foreclosure sale. Munsey's counsel forwarded revisions to the proposed Order addressing the Court's findings to counsel for Otto on December 16, 2015; however, Munsey's counsel is uncertain whether the requested revisions were forwarded to the Court. Further, the

Court should amend the Order to include an amount of damages comprising the judgment awarded therein.

This Motion is based upon Rules 59(c) and 60(b)(1), South Carolina Rules of Civil Procedure, common and statutory laws, and the pleadings in this case, along with any affidavits, documents, evidence or memoranda which may properly be filed with the Court at or in advance of the hearing in this matter. Further, this Motion is timely made and consultation with opposing counsel would serve no useful purpose.

Respectfully submitted,



Erin Culbertson (SC Bar # 68271)
KEHL CULBERTSON ANDRIGHETTI, LLC
114 Manly St. (29601)
Post Office Box 1904
Greenville, SC 29602
864/370-8222 864/370-8227 (fax)
erin@palmettolawfirm.com

Counsel for Defendant and Cross-Claim Plaintiff
Jackson L. Munsey, Jr.

January 6, 2016
Greenville, SC

2016 JAN -7 AM 9:23
H. DOPE ELASLEY

Affidavit of Service



DOCKET NUMBER: 12-cv-42-3549

FILE NUMBER: 005071-00160

COURT OF COMMON PLEAS FOR SPARTANBURG COUNTY, SC
CASE STYLE:

PLAINTIFF U.S. BANK, NA AS TRUSTEE RELATING TO THE CHEVY CHASE FUNDING, LLC MORTGAGE BACKED CERTIFICATES, SERIES 2004-B; et seq.

vs.

DEFENDANT RUDRICK & ALYCE OTTO; et al.

SERVICE OF PROCESS ON: JACKSON L. MUNSEY, JR.

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

☒ (PERSONAL) By personally delivering a copy into the hands of the person to be served.

PLACE OF SERVICE: 366 N. Church Street
Spartanburg, SC 29303

Is the place of service the dwelling house or usual place of abode for the party being served? () Yes (x) No

DATE OF SERVICE: 08/31/2012 TIME OF SERVICE: 1:35 PM

TYPE OF DOCUMENTS: (x) SUMMONS & COMPLAINT (x) LIS PENDENS
(x) OTHER: NOTICE OF FORECLOSURE INTERVENTION

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:

Sex MALE; Race WHITE; Facial Hair none;
Age(prox.) 51-55; Height(prox.) 6'-0"; Weight(prox.) 215

MARITAL STATUS: () Single ☒ Married () Separated () Unknown

MILITARY STATUS: PER MY INVESTIGATION, SAID PERSON
() WAS ☒ WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE () UNKNOWN
MILITARY BRANCH, IF APPLICABLE:

IS THE SUBJECT PROPERTY () YES ☒ NO () MOBILE HOME VIN NOT VISIBLE
A MOBILE HOME? VIN #:

COMMENTS: Defendant lives at 1841 Fairview Farms, Campobell, SC but was served at a neutral location.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 SEP -8 PM 1:29
M. HOPE BLACKLEY

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: Jeff Cooke

Signature of Process Server

Date

9/4/2012

STATE OF S.C.
COUNTY OF GREENVILLE

Sworn and subscribed before me this 4th day of SEPTEMBER, in the year of 2012

☒ Personally known to me or ☐ identified by the following document:

Type: _____ Number/Reference: _____

[Signature] Notary Public for South Carolina
Notary Public (Legal Signature)
Commission Expiration 12/03/17

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the Chevy Chase
Funding, LLC Mortgage Backed Certificates, Series 2004-B,

Plaintiff,

v.

Alyce F. Otto, individually; Alyce F. Otto, Trustee Under
Declaration of Trust of Alyce F. Otto dated the 17th day of
November 2009; TD Bank, NA; The United States of
America, acting by and through its agency, the Internal
Revenue Service; Laura Kerhulas Giese, as Co-Trustee of the
Theodore Ernest Kerhulas Trust Under Declaration of Trust
dated May 25, 2004 ; Mark Warner Kerhulas, as Co-Trustee
of the Theodore Ernest Kerhulas Trust Under Declaration of
Trust dated May 25, 2004 ; Jackson L. Munsey, Jr.; Citibank,
NA;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 12-CP-42-3549

CERTIFICATE OF DEFAULT AND NON-MILITARY
SERVICE
Deficiency Judgment Waived

(005071-00160)

The undersigned attorney for Plaintiff asserts that more than thirty (30) days have elapsed since the service of the Summons and Complaint upon the Defendant(s). The following Defendant(s) has/have not answered, plead, or otherwise defended this action, pursuant to Rule 55(a), SCRCP: TD Bank, NA, Jackson L. Munsey, Jr., and Citibank, NA. Therefore, the Defendant(s) TD Bank, NA, Jackson L. Munsey, Jr., and Citibank, NA, are in default.

According to Plaintiff's business records, affidavit(s) of service, search(es) of the Department of Defense or any other obtained information, the Defendant(s) Alyce F. Otto, individually, Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November 2009, Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004, Mark Warner Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004, and Jackson L. Munsey, Jr., are not in the Military Service of the United States as contemplated by the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.
Executed on 10/19/10


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Elliott C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893)

Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
William S. Koehler (SC Bar #74935)
Jaclynn B. Goings (SC Bar #77501)
Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive
Columbia, SC 29210
(005071-00160)

Post Office Box 100208 (29202)
(803) 744-4444

Columbia, South Carolina

FILED
CLERK OF COURT
2012 OCT 15 AM 10:10

IN THE COURT OF COMMON PLEAS

Alyce F. Otto, Trustee,

Plaintiff,

vs.

Jackson L. Munsey, Jr.,

Defendant.

AFFIDAVIT OF DEFAULT
Case No.: 2012-CP-42-2874

PERSONALLY appeared before me Kenneth C. Anthony, Jr., who, being duly sworn, deposes and says that he is the attorney for the Plaintiff in the above-styled cause of action; that the Summons and Complaint in this action were duly served on the Defendant Jackson L. Munsey, Jr. on the 27th day of July, 2012; and that more than thirty (30) days have elapsed since the service of said Summons and Complaint and that no Answer, Demurrer, Notice of Appearance or other pleading has been served or received in response thereto; that said Defendant is now in default; that said Defendant is not member of the Armed Services of the United States as is contemplated under the Soldiers and Sailors Relief Act, as amended.

SWORN to before me this
May 7, 2013, _____

Notary Public for SC

My Commission Expires: 1-11-20

THE ANTHONY LAW FIRM, P.A.

Kenneth C. Anthony, Jr.
Attorney for Plaintiff
 250 Magnolia Street (29306)
 Post Office Box 3565 (29304)
 Spartanburg, South Carolina
 (864) 582-2355 phone
 (864) 583-9772 fax
 kanthony@anthonylaw.com

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -8 AM 11:48
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the
Chevy Chase Funding, LLC Mortgage
Backed Certificates, Series 2004-B,

Plaintiff,

vs.

Alyce F. Otto, individually; Alyce F. Otto,
Trustee Under Declaration of Trust of Alyce
F. Otto dated the 17th day of November
2009; TD Bank, NA; The United States of
America, acting by and through its agency,
the Internal Revenue Service; Laura
Kerhulas Giese, as Co-Trustee of the
Theodore Ernest Kerhulas Trust Under
Declaration of Trust dated May 25, 2004;
Mark Warner Kerhulas, as Co-Trustee of the
Theodore Ernest Kerhulas Trust Under
Declaration of Trust dated May 25, 2004;
Jackson L. Munsey, Jr.; Citibank, NA;

Defendants.

AND

Jackson L. Munsey, Jr.

vs.

Alyce F. Otto, Individually; and Alyce F.
Otto, Trustee under Declaration of Trust of
Alyce F. Otto, dated 11/17/09

IN THE COURT OF COMMON PLEAS
OF THE SEVENTH JUDICIAL CIRCUIT

Docket No.: 2012-CP-42-3549
AND 2012-CP-42-2874

AFFIDAVIT OF UNDERTAKING OF
JACKSON L. MUNSEY

2016 JAN 29 AM 9:42
M. HOPE BLACKLEY

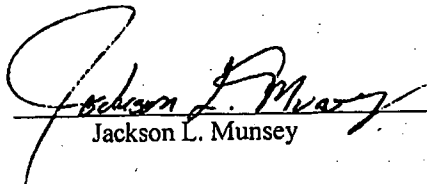
Personally appeared before me Jackson L. Munsey, who, first being duly sworn, deposes
and says as follows:

1. I am a defendant in the above-captioned action.
2. This undertaking is made for the purpose of staying the judicial sale of the property
subject of the above-captioned action during the pendency of appellate proceedings

(including proceedings involving rehearing and certiorari, if applicable) arising out of the Judgment of Foreclosure and Sale filed December 22, 2015.

3. During my possession of the property subject of this action during such appellate proceedings and until the judicial sale thereof in this action, if any, I will not commit or suffer to be committed any waste on or of such property.
4. If judgment in this action directing the sale of the said property be ultimately affirmed and the said property be sold for less than the judgment debt and costs in this action, then I shall pay for any waste committed or suffered to be committed thereon and shall pay a reasonable rental value for the use and occupation of the said property from the time of the execution of this undertaking to the time of the sale, but not exceeding the sum fixed by the court as \$243,000.00 pursuant to the Order on Posting Bond Staying the Foreclosure Sale, filed January 13, 2016, or the amount of such deficiency, whichever is less, which sum shall be duly entered as a payment on the judgment.
5. As security for this undertaking I am depositing \$243,000.00 with the Court pursuant to S.C. Code § 15-1-250.

FURTHER AFFIANT SAYETH NOT.


Jackson L. Munsey

SWORN to and subscribed before me this
28th day of January, 2016.

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

Carolyn B. Couch
NOTARY PUBLIC
State of South Carolina
My Commission Expires 7/24/2024



ROGERS TOWNSEND
ATTORNEYS AT LAW

ROGERS TOWNSEND & THOMAS, PC
DEFAULT SERVICES DEPARTMENT

POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210
P 803.744.4444 F 803.343.7013
WWW.RTT-LAW.COM

January 14, 2013

M. Hope Blackley
Clerk of Court for County of Spartanburg
P.O. Box 3483
Spartanburg, SC 29304-3483

Re: U.S. Bank, NA as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed
Certificates, Series 2004-B vs. Rudrick & Alyce Otto
Case No. 12-CP-42-3549; Spartanburg County
Our File No. 005071-00160

Dear Sir/Madam:

Our office received an Answer in reference to the above case from Jackson L. Munsey, Jr. Mr. Munsey was served with the Summon and Complaint on August 31, 2012. Pursuant to Rule 12(a) of the SCRCF, "A defendant shall serve his answer within 30 days after the service of the complaint upon him." This would mean that this Mr. Munsey would have been required to file and serve his Answer by September 30, 2012. Mr. Munsey did not serve Plaintiff with his Answer until December 21, 2012 (please see attached Exhibit A). Mr. Munsey did not request an additional extension of time in which to file an Answer. This Defendant is therefore in default. At this time, we must notify you that the Plaintiff is not prepared to accept this late Answer.

By copy of this letter, we are notifying Mr. Munsey of his default as set forth above and, accordingly, Plaintiff will not be responding to the Answer unless directed to do so by the court.

Sincerely yours,

Jennifer W. Rubin
Robert P. Davis
Vance L. Brabham
Attorneys for Plaintiff

DSS/kh
Enclosure

cc: Erin Culbertson, Esq.
114 Manly Street
Greenville, SC 29601

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed Certificates, Series 2004-B,

Plaintiff,

vs.

Alyce F. Otto, individually; Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated the 17th day of November 2009; TD Bank, NA; The United States of America, acting by and through its agency, the Internal Revenue Service; Laura Kerhulas Giese, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004; Mark Warner Kerhulas, as Co-Trustee of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004 ; Jackson L. Munsey, Jr.; Citibank, NA,

Defendant(s).

(505071-00160 EL1)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-42-3549

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT
JACKSON L. MUNSEY, JR.'S MOTION
TO SET ASIDE DEFAULT AND LEAVE
TO FILE ANSWER OUTSIDE OF TIME**

Plaintiff U.S. Bank, NA, as trustee relating to the Chevy Chase Funding, LLC Mortgage Backed Certificates, Series 2004-B ("Plaintiff") hereby responds and objects to Defendant Jackson L. Munsey, Jr.'s ("Mr. Munsey's") Motion to Set Aside Default and Leave to File Answer Outside of Time ("Motion to Set Aside") and asks the Court to deny said motion on the following grounds:

I. INTRODUCTION

Mr. Munsey acknowledges being served the Summons and Complaint on August 31, 2012. (See Mr. Munsey's Motion to Set Aside, Munsey Aff., ¶ 4). No notice, appearance, answer or other pleading was served upon Plaintiff or its counsel by Mr. Munsey or any attorney

on his behalf by the October 1, 2012 deadline pursuant to South Carolina Rule of Civil Procedure 12(a).

As a result of Mr. Munsey failing to timely file a response, Plaintiff filed a Certificate of Default on October 15, 2012. (See Certificate of Default and Non-Military Service, filed on October 15, 2012). Mr. Munsey did not object or otherwise respond to Certificate of Default for more than two months after it was filed.

Thereafter, on December 21, 2012, despite being in default, Mr. Munsey filed an Answer, Counterclaims, and Cross-Claims against Defendant Alyce F. Otto (the "Answer"). Plaintiff, in response, rejected the Answer by letter on January 14, 2013, noting the Answer was not received in a timely manner and no extension of time was requested by Mr. Munsey or his counsel. This letter was filed with the Clerk of Court on January 25, 2013. (A true and correct copy of the January 14, 2013 Letter is attached hereto as Exhibit A).

Two weeks thereafter, on January 29, 2013, Mr. Munsey moved to set aside the default pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure.

In sum, Mr. Munsey was properly served on August 31, 2012, but failed to respond to the Complaint for approximately four (4) months, well after he was declared in default. Precedent makes clear that Mr. Munsey cannot show "good cause" for his untimely response, and therefore, his Motion to Set Aside Default and Leave to File Answer Outside of Time is due to be denied.

II. STANDARD OF REVIEW

Rule 55(c) of the South Carolina Rules of Civil Procedure provides that the court may set aside an entry of default "for good cause shown." South Carolina Courts have used three factors to determine whether "good cause" has been shown to set aside the default: (1) the timing of motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of

prejudice to the party not in default if relief is granted. *Wham v. Shearson Lehman Brothers*, 298 S.C. 462, 465, 381 S.E. 2d 499 (S.C. Ct. App. 1989). However, a court need only consider the *Wham* factors “[o]nce a party has put forth a satisfactory explanation for the default.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (S.C. 2009). See also *Dixon v. Besco Eng’g, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (S.C. Ct. App., 1995) (holding the trial court is not required to make specific findings of fact on the record for each *Wham* factor if the record contains sufficient evidentiary support for the finding of lack of good cause). Regardless of how these factors are applied, “[a] motion under Rule 55(c) is addressed to the sound discretion of the trial court.” *Sundown Operating*, 383 S.C. at 607-08, 681 S.E.2d at 888.

III. ARGUMENT

It is undisputed that Mr. Munsey was served with the Summons and Complaint on August 31, 2012 and that he failed to timely respond. (See Mr. Munsey's Motion to Set Aside, Munsey Aff., ¶ 4).

Mr. Munsey seeks to show “good cause” to set aside the default by arguing that he believed that co-defendant Alyce F. Otto’s attorney was attempting to resolve the matter with Plaintiff. (*Id.*, ¶ 5). Established authority, however, makes clear that such “belief” is not sufficient to establish “good cause.”

In particular, an analogous situation was recently considered by the Court of Appeals of South Carolina in *Regions Bank v. Owens*, Appellate Case No. 2011-193586, 2013 WL 1450961 (S.C. Ct. App., Apr. 10, 2013), a copy of which is attached as Exhibit B. In *Owens*, the South Carolina Court of Appeals held that no good cause was shown where a defendant in default stated that his failure to respond was due to his belief that a co-defendant would answer the complaint on his behalf. More precisely, in *Owens*, the defendant argued that his co-defendant

“misled him into believing [co-defendant] had hired an attorney to answer the complaint on [defendant’s] behalf” and that “he reasonably relied on [co-defendant’s] representations because [co-defendant] had his power of attorney, which allowed him to act on [defendant’s] behalf regarding the property.” *Id.* at *3. The defendant further argued that he “immediately hired an attorney when he learned [co-defendant] did not file an answer on his behalf.” *Id.*

The South Carolina Court of Appeals, however, denied defendant’s motion to set aside the default, finding the defendant presented no evidence that he took any steps to protect himself by contacting either co-defendant or co-defendant’s counsel to confirm an answer would be filed on his behalf. *Id.*, at *4 (citing *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (S.C. Ct. App. 2001) (holding “a party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.”)).

Similar to the *Owens* matter, Mr. Munsey made no effort to protect himself or inquire as to the status of the foreclosure for over four months. Not only that, but Mr. Munsey’s rationale for his conduct is less defensible than that of the conduct at issue in *Owens*. Here, Mr. Munsey thought co-defendant Alyce F. Otto’s attorney was attempting to negotiate a settlement. Mr. Munsey does not even allege that Alyce F. Otto’s attorney ever advised he would file an answer on Mr. Munsey’s behalf or protect his interest in the matter, as was the case in *Owens*.

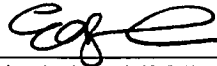
As noted by the *Owens* Court, “[i]f reliance on one’s own attorney is insufficient to show ‘good cause,’ then reliance on another defendant and *his* attorney is equally insufficient.” *Id.* (citing *Pilgrim v. Miller*, 350 S.C. 637, 567 S.E.2d 527 (S.C. Ct. App. 2002) (vacated on other grounds by *Bage, LLC v. Se. Roofing Co. of Spartanburg, Inc.*, 383 S.C. 489, 490, 681 S.E.2d 867 (2009) (noting the parties in *Pilgrim* settled while the petition for certiorari was pending before our supreme court; therefore, the decision was vacated))).

Consequently, based on the *Owens* case, Mr. Munsey cannot use the alleged statements of co-defendant Alyce F. Otto's counsel regarding possible settlement to show "good cause" as to why the default should be set aside. Therefore, Mr. Munsey has failed to provide any satisfactory explanation for his default and the Court need not consider the *Wham* factors.

IV. CONCLUSION

For these reasons, Plaintiff requests that this Honorable Court deny defendant Jackson L. Munsey, Jr.'s Motion to Set Aside Default and Leave to File Answer Outside of Time as Mr. Munsey has failed to show that there is the requisite good cause.

Respectfully submitted,



Erica Lybrand (SC Bar #79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900

Edward D. Cotter (SC Bar #72430)
BURR & FORMAN, LLP
420 20th Street North
Suite 3400
Birmingham, AL 35203
(205) 458-5130

ATTORNEYS FOR THE PLAINTIFF

May 1, 2013

RECEIVED

DEC 05 2016

SC Court of Appeals

Certificate of Counsel

RECEIVED

DEC 05 2016

SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 22, 2016



David R. Price, Jr. (S.C. Bar # 75140)
Samuel B. Tooker (S.C. Bar # 78999)
DAVID R. PRICE, JR., P.A.
318 West Stone Avenue (29609)
Post Office Box 2446
Greenville, South Carolina 29602-2446
(864) 271-2636 office
(864) 271-2637 fax
Attorneys for the Appellant