

THE STATE OF SOUTH CAROLINA  
In The Court of Appeal

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Appeal From Berkeley County  
Court of Common Pleas

---

Dale E. Van Slambrook Master of Equity

Case No. 2010 CP-08-3514

---

Appellate Case No. 2016-000292

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RECEIVED  
OCT 19 2017  
SC Court of Appeals

Branch Banking and Trust Company, Respondent,  
v.

Wilton H. Cain; Cassandra M. Durrah-Cain; Liberty Hall Residential Property  
Owners Association, Inc., Defendants,

Of whom Wilton H. Cain and Cassandra M. Durrah-Cain are Appellants.

**Appellants Third Amended Record On Appeal**

Wilton & Cassandra Cain (Appellants)  
8111 Jareds Landing Road  
Adams Run, SC 29426  
8439913198

Erica G. Lybrand Attorney for Respondent  
Post Office Box 100200  
Columbia, SC 29202

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company;

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendants.

(504335-02111 EL1)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2010-CP-08-03514

ORDER

FILED  
CLERK OF COURT  
BERKELEY COUNTY, SC

DEC - 1 PM 4:35  
FILED

This matter came before me on October 29, 2015, for a status conference relating to the Defendant Wilton H. Cain's Petition for Appraisal originally filed on September 29, 2011. This matter was remitted to this court from the South Carolina Court of Appeals on October 17, 2014.

Based upon the arguments of counsel for the Plaintiff and Mr. Cain, it is hereby ordered that:

1. Mr. Cain is entitled to pursue his rights to the appraisal process pursuant to § 29-3-710, South Carolina Code of Laws;
2. Plaintiff is ordered to obtain an appraisal of the property and submit to the court within 30 days of the date of this order;
3. The Parties may submit any additional information to the Court for the use in determining the value of the property at the time of the foreclosure sale;
4. The Court shall render a decision regarding the deficiency judgment entered in this matter upon receipt of Plaintiff's appraisal.
5. Parties agreed to proceed with two (2) appraisers. *DN*

IT IS SO ORDERED.



The Honorable Dale Van Slambrook  
Master in Equity for Berkeley County

12/1, 2015

*MSE*



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

October 17, 2014

The Honorable Mary P. Brown  
PO Box 219  
Moncks Corner SC 29461-0219

## REMITTITUR

Re: Branch Banking v. Cain, Wilton  
Lower Court Case No. 2010CP0803514  
Appellate Case No. 2011-205089

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny Abbott Kitchings".

CLERK

cc: Wilton Cain and Cassandra Cain  
Samuel C. Waters, Esquire  
Jason David Wyman, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-08-3514

ORDER FOR DEFICIENCY JUDGMENT  
AGAINST

Wilton H. Cain and Cassandra M. Durrah  
Cain

in favor of  
Federal Home Loan Mortgage  
Corporation  
for  
\$83,893.82

2011 SEP 19 PM 1:14  
HARRY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

COPY

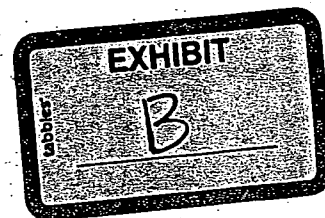
(004335-02111)

1. Pursuant to Order of Court and after due notice and advertisement, the undersigned sold the subject property to the Plaintiff for the sum of \$121,500.00, that amount being the highest bid made on Sales Day August 3, 2011, which according to statute became final on September 2, 2011; subsequently the Plaintiff assigned its bid as well as all of its rights in and to the Deficiency Judgment unto Federal Home Loan Mortgage Corporation.

2. Pursuant to the Judgment of Foreclosure and Sale filed in this action, Plaintiff was awarded a judgment against Wilton H. Cain and Cassandra M. Durrah-Cain in the amount of \$201,660.89, together with interest thereon at the rate of 6.25% per annum; subject, to Plaintiff's right to a deficiency judgment pursuant to S.C. Code Ann. § 29-3-660.

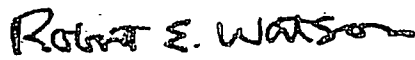
3. The Plaintiff has submitted its Affidavit of Additional Costs in the amount of \$3,732.93, which I find to constitute proper expenses to be added to the aforesaid judgment amount.

4. I find that, as of September 2, 2011, the sum of Plaintiff's additional costs \$3,732.93 and the judgment amount \$201,660.89 total \$205,393.82. After crediting the proceeds of sale (\$121,500.00), I find that there is a difference due Plaintiff in the amount of \$83,893.82, which amount constitutes the deficiency as provided by the Judgment of Foreclosure and Sale and S.C. Code Ann. § 29-3-660.



NOW THEREFORE, IT IS ORDERED that the total deficiency judgment in the amount of \$83,893.82 shall be entered against the Defendant(s) Wilton H. Cain and Cassandra M. Durrah-Cain, with interest accruing from September 2, 2011 at the rate of 6.25%, in favor of Federal Home Loan Mortgage Corporation.

Judgment of Foreclosure	\$201,660.89
Additional Costs After Judgment	<u>\$3,732.93</u>
Total Judgment	\$205,393.82
Less Proceeds of Sale	<u>\$121,500.00</u>
Total Deficiency Judgment	\$83,893.82

  
\_\_\_\_\_  
Robert E. Watson  
Master in Equity for Berkeley County

9/16, 2011.  
Moncks Corner, South Carolina

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Branch Banking and Trust Company, Respondent,

v.

Wilton H. Cain and Cassandra Durrah-Cain, Appellants.

Appellate Case No. 2011-205089

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Appeal From Berkeley County  
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2014-UP-333  
Submitted July 1, 2014 – Filed September 24, 2014

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**VACATED AND REMANDED**

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Wilton H. Cain and Cassandra Durrah-Cain, of  
Charleston, pro se.

Samuel C. Waters and Jason David Wyman, both of  
Rogers Townsend & Thomas, PC, of Columbia, for  
Respondent.

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**PER CURIAM:** Wilton H. Cain and Cassandra Durrah-Cain appeal the circuit court's denial of their petition for an order of appraisal following a foreclosure and entry of a deficiency judgment against them. Because the circuit court's order did

not provide an explanation for its decision to rescind its earlier order granting the appraisal, we vacate and remand for an order containing specific factual findings and conclusions of law regarding whether Appellants are entitled to an appraisal. *See In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002) ("[Appellate courts] do not require a lower court to set out findings on all the myriad factual questions arising in a particular case. But the findings must be sufficient to allow this [c]ourt, sitting in its appellate capacity, to ensure the law is faithfully executed below." (citation omitted)); *id.* at 133-34, 568 S.E.2d at 343-44 (vacating and remanding because the order on appeal provided no findings of fact to support the ultimate legal conclusion).

**VACATED AND REMANDED.<sup>1</sup>**

**FEW, C.J., and SHORT and GEATHERS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

BRANCH BANKING AND TRUST  
COMPANY,

Plaintiff

-versus-

WILTON H. CAIN, ET AL.

Defendant(s).

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NUMBER: 2010-CP-08-3514

ORDER REDUCING  
DEFICIENCY JUDGMENT

CLERK OF COURT  
BERKELEY COUNTY, S.C.

DEC -14 PM 1:59

This matter came before me to determine a deficiency judgment amount, if any, following Defendants Wilton H. Cain and Cassandra M. Durrah-Cain exercise of their rights to the appraisal process pursuant to S.C. Code §29-3-710 (1976). This Court would make the following findings of fact and conclusions of law:

1. This Court issued a Judgment of Foreclosure in the amount of \$205,393.82 as of September 2, 2011. Judgment was entered on September 19, 2011.
2. Pursuant to proper notice following the Order of Foreclosure the subject property was sold to the Plaintiff for \$121,000.00. Such sale was final as of September 2, 2011 resulting in a Deficiency Judgment in the amount of \$83,893.82 dated September 16, 2011.
3. Defendants properly exercised their rights to the appraisal process pursuant to S.C. Code §29-3-710 (1976) and submitted an appraisal performed by a duly licensed South Carolina Appraiser asserting the indicated value by Sales Comparison Approach of the subject property as of September 2, 2011 was \$168,000.00. This appraisal included an assessment of the interior of the subject property.

*Handwritten signature*

4. Plaintiff also submitted an appraisal performed by a duly licensed South Carolina Appraiser asserting the indicated value by Sales Comparison Approach of the subject property was \$167,000.00. However, such appraisal was based upon an examination of the exterior of the subject property.
5. The parties waived the necessity of a third appraiser and agreed to allow this Court to determine the value based upon the two appraisals referenced above.
6. Based upon a thorough and careful review of the referenced appraisals this Court determines the value of the subject property as of September 2, 2011 was \$168,000.00.
7. Defendants deficiency is established as follows:

Final Judgment Amount	\$205,393.82
Less-Value	<u>\$168,000.00</u>
Deficiency Judgment as of 9/2/11 with interest thereon at the rate of 6.25% per annum	\$ 37,393.82

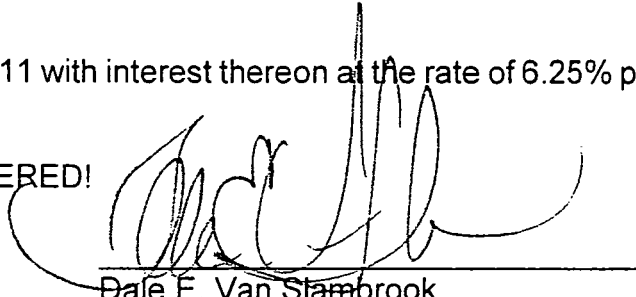
It is therefore Ordered, Adjudged and Decreed that the Deficiency Judgment rendered against Defendants Wilton H. Cain and Cassandra M. Durrah-Cain in the amount of \$83,893.82 entered on September 16, 2011 be reduced to \$37,393.82.

It is further Ordered, Adjudged and Decreed that the Plaintiff have judgment against Defendants Wilton H. Cain and Cassandra M. Durrah-Cain in the amount of

*Don*

\$37,393.82 as of September 2, 2011 with interest thereon at the rate of 6.25% per annum.

AND IT IS SO ORDERED!



Dale E. Van Stambrook  
Master-in-Equity, Berkeley County

2<sup>ND</sup> day of DECEMBER 2015  
Moncks Corner, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company;

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendants.

(504335-02111 EL1)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2010-CP-08-03514

**ORDER CONFIRMING  
DEFICIENCY JUDGMENT AND  
DENYING DEFENDANTS  
MOTION TO ALTER, AMEND  
OR RECONSIDER**

FILED  
JAN 26 PM 3:49  
CLERK OF COURT  
BERKELEY COUNTY, S.C.  
K. P. BROWN

FILED

This matter came before me on January 14, 2016, for a status conference and hearing as to Defendants Wilton H. Cain and Cassandra M. Durrah-Cain's ("Defendants") Motion to Dismiss Deficiency Judgment filed on December 29, 2015. Pursuant to discussion at the hearing, the Court is treating Defendants motion as a Motion to Alter, Amend, or Reconsider the Order Reducing Deficiency Judgment filed on December 4, 2015, pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure*.

**FACTS/ PROCEDURAL HISTORY**

1. Plaintiff filed its foreclosure action against Defendants on October 4, 2010, regarding a Mortgage on real property located in Berkeley County, South Carolina, more fully described as follows ("Subject Property"):

All that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "Subdivision Plat Showing Phase 10A, (39.298 AC), Mulberry Park, A Portion of Tract E1 of The Liberty Hall Tract, Property of Centex Homes, A Nevada General Partnership, located in the City of Goose Creek, Berkeley County, South Carolina" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear. Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record. This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and

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recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

TMS # 244-03-04-016

Property Address: 259 Clayburne Drive  
Goose Creek, SC 29445

2. The Mortgage includes a provision regarding Mortgage Insurance which reads, in part:

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.

3. Defendants were served with the Lis Pendens, Summons, and Complaint, and an Order of Default was entered on December 8, 2010, holding the Defendants in default in the action<sup>1</sup>.

4. The matter was referred to the Master in Equity on the same date, December 8, 2010.

5. A hearing was set for March 22, 2011, and Defendant Wilton H. Cain appeared at the hearing. The hearing was continued by Judge Watson at that time on order to allow Plaintiff to produce a live witness for cross-examination.

6. Defendants then filed a late answer on March 28, 2011, although already in default.

7. A second hearing was held on June 16, 2011, and Plaintiff produced Richard Miller ("Mr. Miller") from BB&T as a witness. Mr. Miller testified as to the loan documents, the payment history, the default of the loan by the Defendants, and the debt amount. Mr. Miller also

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<sup>1</sup> An Amended Affidavit of Default and Non-Military Service was filed on December 29, 2010, to withdraw the order of default as to Liberty Hall Residential Property Owners Association, Inc. as that entity was inadvertently held in default after filing an answer.

testified regarding the mortgage insurance policy between BB&T and the mortgage insurance carrier.<sup>2</sup>

8. A Judgment of Foreclosure and Sale was entered on June 30, 2011, with a judgment amount of \$201,660.89.

9. The judicial sale of the property was finalized on September 2, 2011, and the Subject Property sold to the Plaintiff for the sum of \$121,500.00.

10. Subsequently, a deficiency judgment was entered on September 19, 2011, in the amount of \$83,893.82, representing the difference between the judgment amount plus post-judgment interest and supplemental costs and the final sales price, pursuant to S.C. Code Ann. § 29-3-660.

11. Thereafter, Defendants filed a Petition and Proposed Order for Appraisal, and on September 28, 2011, The Honorable Kristi Lea Harrington signed the Order. It was filed the next day, September 29, 2011.

12. On October 21, 2011, Judge Harrington *sua sponte* issued a Form 4 Order rescinding her prior Order for Appraisal.

13. Defendants filed a Motion to Reconsider on November 1, 2011, which was denied by Judge Harrington on November 9, 2011, without hearing or participation from Plaintiff or its counsel.

14. Defendants filed a Notice of Appeal on December 8, 2011. Following a lengthy appeals process, the South Carolina Court of Appeals vacated the Order of Judge Harrington and remanded the case for an order containing the specific factual findings and conclusions of law as

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<sup>2</sup> While it is believed that the topic of mortgage insurance was discussed at the time of the hearing, the transcript of the hearing is no longer available from the court reporter and, thus, Plaintiff cannot accurately report the extent of the discussion at hearing.

to whether the Defendants were entitled to exercise their appraisal rights. The Order was entered on September 24, 2014. A Remittitur was issued on October 17, 2014.

15. On May 29, 2015, a Form 4 Order was entered, reinstating the September 28, 2011, Order for Appraisal.

16. On December 4, 2015, after the appraisal process was completed, this Court entered an Order Reducing Deficiency Judgment.

17. The Court determined the value of the Subject Property as of the date of the judicial sale to be \$168,000.00 and therefore reduced the deficiency judgment to \$37,393.82, which reflected the total after final judgment amount (including post-judgment interest and additional costs) less the newly determined value of the Subject Property.

18. Defendants objected to the entry of the deficiency judgment on the basis of alleged mortgage insurance and alleged payment of said insurance to Plaintiff. *Defendants did not object to this court's valuation of the subject property.*

19. Defendants' Motion to Dismiss Deficiency Judgment was filed on December 29, 2015.

20. Defendants did not present any evidence or affidavits regarding his position prior to or at the hearing.

21. Plaintiff's Brief Regarding Deficiency Judgment was filed on January 7, 2016, containing the arguments and evidence presented by the Plaintiff.

### CONCLUSIONS OF LAW

1. I find that "[T]he general rule is that "if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the

remaining deficiency.” *Am. Gen. Fin. Servs., Inc. v. Brown*, 376 S.C. 580, 583, 658 S.E.2d 99, 100 (2008), citing *Perpetual Bldg. and Loan Ass'n of Anderson v. Braun*, 270 S.C. 338, 340, 242 S.E.2d 407, 408 (1978).

2. The law regarding deficiency judgments and the appraisal process in South Carolina is governed by statute. *S.C. Code Ann.* § 29-3-660 states:

In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage ...

3. Further:

In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.

*S.C. Code Ann.* § 29-3-680.

4. Once the appraisal process has been completed and the return of the appraisers made, the deficiency judgment is to be confirmed, altered, or extinguished based upon the Court's finding after review of the return:

If the value returned after deduction therefrom of the amount of the price at which the property was sold under direction of the court be equal to or exceed the amount of the deficiency remaining upon the judgment after application of the net proceeds of sale the judgment shall be thereupon extinguished and cancelled of record by the clerk and if such returned value, after deduction of the amount of the sale price, be less than the deficiency the latter shall be abated and deemed paid, pro tanto, and be thereafter enforceable for only the remainder, the amount of which will be determined by the clerk and stated in a proper order from which any party may appeal within ten days after notice of filing thereof to the court or any judge thereof in accord with the procedure prescribed in § 29-3-750.

*S.C. Code Ann.* § 29-3-740.

5. The statute does not contemplate any other considerations in the confirmation, reduction, or cancellation of a deficiency judgment entered, other than the value as returned by the appraisers.

6. I find that, pursuant to the law outlined above, the Plaintiff is entitled to a deficiency judgment unless it is waived. Plaintiff in this case specifically demanded deficiency from the filing of the complaint and has made no waiver of this right.

7. Further, the statute governing deficiency judgments and the appraisal rights of the borrower provides for specific considerations in the setting of the deficiency judgment entered against the borrower or the reduction of such a judgment following the appraisal process; third party insurance payments or other sources of recovery by the Plaintiff are not contemplated by the statute and, therefore, will not be considered by this Court in entering an award in favor of Plaintiff.

8. Additionally, I find that South Carolina also recognizes the "collateral source rule" as to an award of damages. While the collateral source rule is typically used in tort actions, the theory can be translated to the context of a deficiency judgment and payment of mortgage insurance by a third party insurance company.

9. The collateral source rule provides that compensation received by an injured party from a source wholly independent of the wrongdoer will not reduce the amount of damages owed by the wrongdoer. *Rattenni v. Grainger*, 298 S.C. 276, 379 S.E.2d 890 (1989); *Young v. Warr*, 252 S.C. 179, 165 S.E.2d 797 (1969); *Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967).

10. "A source is wholly independent of the wrongdoer 'when the wrongdoer has not contributed to it and when payments to the injured party were not made on behalf of the

wrongdoer.” *Mount v. Sea Pines Co.*, 337 S.C. 355, 357, 523 S.E.2d 464, 465 (Ct. App. 1999), citing *Citizens & S. Nat'l Bank v. Gregory*, 320 S.C. 90, 92, 463 S.E.2d 317, 318 (1995).

11. This rule has been liberally applied in South Carolina to preclude the reduction of damages. See *Otis Elevator v. Hardin Construction Co.*, 316 S.C. 292, 450 S.E.2d 41 (1994) (holding that a contractual right to indemnification is not defeated by fact that loss was actually paid by an insurance company).

12. A wrongdoer should not be able to take advantage of a contract between an injured party and a third person, no matter what the source of the funds received. *Johnston v. Aiken Auto Parts*, 311 S.C. 285, 287, 428 S.E.2d 737, 738 (Ct.App.1993).

13. “A benefit that is directed to the injured party should not be shifted to result in a windfall for the [wrongdoer]... It is the [wrongdoer]'s responsibility to compensate the injured party for all the harm that he causes, not the net loss the injured party receives.” *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 182, 463 S.E.2d 636, 640 (Ct. App. 1995), see also 22 *Am.Jur.2d Damages* § 566 (1988).

14. I find that, as a matter of equity, the tenets of the collateral source rule should be applied in this scenario, and that the rule as applied does not contemplate a reduction in the award to Plaintiff.

15. Defendants are responsible for the debt they incurred and the judgment entered against them. Payment of a third party insurance contract does not obviate their responsibility for the debt.

16. Defendants argue that they paid mortgage insurance premiums as part of their mortgage payments and therefore the insurance should be considered in a reduction of the award entered against them. However, in the mortgage contract, it is made clear that the Defendants are

Dow

not party to the insurance and are not the beneficiaries of such a policy. The payment of the mortgage insurance was a condition precedent to the Defendants obtaining the loan with the terms as outlined, but any payments made by the third party mortgage insurance company were not made on behalf of the Defendants.

17. Defendants further argued that if the award to Plaintiff was not reduced or extinguished, Defendants would be subject to an attempt at double recover from the Plaintiff and the mortgage insurance company due to the contract between the two entities. However, Plaintiff and the mortgage insurance company at issue have a subrogation agreement whereby the mortgage insurance company is subrogated to the recovery rights of the Plaintiff with regard to the deficiency judgment. Even if a claim is paid pursuant to the insurance policy, that payment does not absolve the Defendants of their responsibility for the debt as the Plaintiff or the mortgage insurance company can seek to collect on that deficiency judgment pursuant to the agreement.

18. A copy of the Mortgage Insurance Policy (without endorsements) is attached to this Order as Exhibit A, for reference.

Based upon the foregoing and the arguments of counsel for the Plaintiff and Mr. Cain, it is hereby ordered that:

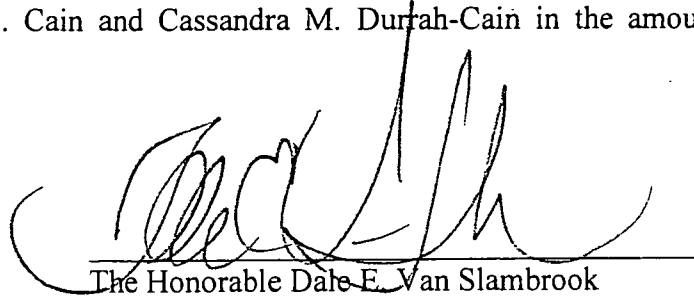
1. Defendants' Motion to Dismiss Deficiency Judgment filed on December 29, 2015, and treated as a Rule 59(e) Motion to Alter, Amend or Reconsider, is denied.

2. The Order Reducing Deficiency Judgment filed on December 4, 2015, is confirmed.

*{continued on next page}*

3. Subject to the Order Reducing Deficiency Judgment, Plaintiff is entitled to a personal judgment against Wilton H. Cain and Cassandra M. Durfah-Cain in the amount of \$37,393.82.

**IT IS SO ORDERED.**



The Honorable Dale E. Van Slambrook  
Master in Equity for Berkeley County

1/25, 2016  
Moncks Corner, South Carolina

18 DM



REPUBLIC MORTGAGE INSURANCE COMPANY  
REPUBLIC MORTGAGE INSURANCE COMPANY OF FLORIDA  
REPUBLIC MORTGAGE INSURANCE COMPANY OF NORTH CAROLINA

P.O. Box 2514 (27102)  
101 North Cherry Street  
Winston-Salem, North Carolina 27101  
Toll Free: (800) 999-7642

## MASTER POLICY

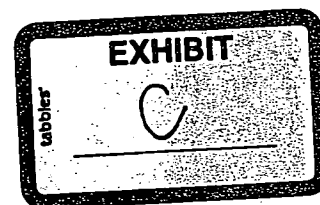
The Company, as indicated by both the applicable Commitment/Certificate and the Policy as either Republic Mortgage Insurance Company, Republic Mortgage Insurance Company of Florida, or Republic Mortgage Insurance Company of North Carolina, agrees to pay to the Insured identified below, in consideration of the premium or premiums to be paid as hereinafter specified and in reliance upon the Insured's representations and statements made in any Application for coverage under this Policy and in any documents and writings, including any data transferred by electronic media related thereto, any Loss due to the Default by a Borrower on a Loan, subject to the terms and conditions contained herein.

Insured's Name and Mailing Address

- CTX MORTGAGE COMPANY
- 1603 LBJ FWY, STE 500
- DALLAS, TX 75234
- 

Policy Number: 48025 (REVISED)

Effective Date of Policy: 02/08/1991



In Witness Whereof, the Company has caused its Corporate Seal to be hereto affixed and these presents to be signed by its duly authorized officers in facsimile to become effective as its original seal and signatures and binding on the Company.

*Christopher S. Hard*  
President

*Elizabeth C. Dixon*  
Secretary

*Quane L. Wall*  
Authorized Representative



## TERMS AND CONDITIONS

### 1. Definitions

- 1.1 **Application** means a request for coverage, including assumption of coverage, under this Policy for a loan on a form or in a format provided by the Company, and all other statements, documents, or information furnished to the Company by the Insured or any other Person in connection with the insuring of the loan. An Application will include information, if so furnished to the Company, contained in the Borrower's loan application, appraisal, verifications of income and deposit, plans and specifications for the Property, and all other exhibits and documents, and will include all data and information so furnished by electronic means.
- 1.2 **Appropriate Proceedings** means any legal or administrative action by the Insured affecting either a loan or title to a Property, including:
- a. Preserving a deficiency recovery by making a bid at the foreclosure sale and pursuing a deficiency judgment until the end of the Settlement Period, where appropriate and permissible and where directed by the Company; or
  - b. Enforcing the terms of the loan as allowed by the law where the Property is located; or
  - c. Acquiring Borrower's Title or Good and Marketable Title to the Property, as either may be required under this Policy, but excluding such title as may be acquired by a voluntary conveyance from the Borrower; or
  - d. Asserting the Insured's interest in the Property in a Borrower's bankruptcy.
- 1.3 **Borrower** means any Person legally obligated to repay the debt obligation created by a loan, including any co-signer or guarantor of the loan.
- 1.4 **Borrower's Title** means such title to a Property as was vested in the Borrower at the time of a conveyance to the Insured arising out of or pursuant to a foreclosure of the loan; provided, however, if the Insured so elects, the redemption period need not have expired. Borrower's Title in the Insured may be, but need not be, the equivalent of Good and Marketable Title, and the deed evidencing Borrower's Title need not be recorded unless required by applicable law.
- 1.5 **Certificate** means the document, which may be on the same form as the Commitment, issued by the Company pursuant to this Policy and extending the coverage indicated therein to a specified loan.
- 1.6 **Certificate Effective Date** means, as specified in the Certificate, (a) the closing date of a loan, or (b) the later date requested by the Insured and accepted by the Company.
- 1.7 **Claim** means the timely filed written request, made on a form or in a format provided or approved by the Company, to receive the benefits of this Policy.
- 1.8 **Claim Amount** means the amount calculated in accordance with Section 6.2 of this Policy.
- 1.9 **Commitment** means the document, which may be on the same form as the Certificate, issued by the Company evidencing the Company's offer to insure the loan identified therein, subject to the terms and conditions therein and in this Policy.

1.10 **Default** means the failure by a Borrower (a) to pay when due an amount equal to or greater than one (1) periodic monthly payment due under the terms of a Loan, or (b) to comply with any other term or condition of the Loan, if failure to comply is a basis for the acceleration of the principal balance of the Loan and the institution of Appropriate Proceedings.

A Loan is deemed to be in Default for that month as of the close of business on the installment due date for which a scheduled monthly payment has not been made or as of the close of business on the date the Borrower fails to comply with any such other term or condition of the Loan. The Loan will be considered to remain in Default until filing of a Claim so long as such periodic payment has not been made or basis for acceleration and Appropriate Proceedings remains. For example, a Loan is "four (4) months in Default" if the monthly installments due on January 1 through April 1 remain unpaid as of the close of business on April 1 or if a basis for acceleration and Appropriate Proceedings exists.

1.11 **Deficiency Expenses** means reasonable attorney's fees and necessary court costs incurred by the Insured for those Appropriate Proceedings necessary to pursue or establish a deficiency against the Borrower and which are in addition to those incurred in standard and customary foreclosure proceedings, plus additional interest accruing on the Loan, real estate taxes, casualty insurance premiums, and Property preservation expenses incurred during such Appropriate Proceedings and any additional related redemption period as necessitated by such deficiency pursuit.

1.12 **Environmental Condition** means the presence, on or under a Property, of any "Hazardous Substance" as that term is defined by the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq., as amended from time to time) or as defined by any similar state law; or any "Hazardous Waste" or "Regulated Substance" as those terms are defined by the federal Resource Conservation and Recovery Act (42 U.S.C. sec. 6901, et seq., as amended from time to time) or as defined by any similar state law, but does not mean the presence of radon, lead paint, or asbestos.

1.13 **Fair Market Value** means, with regard to the amount bid for any Property at a foreclosure sale, the Property's value at the approximate time of the foreclosure sale as determined by appraisal if available or in accordance with customary servicing practices (which may include reliance on information provided by a local real estate broker), subject to applicable law governing foreclosure.

1.14 **Good and Merchantable Title** means title to a Property free and clear of all liens, encumbrances, covenants, conditions, restrictions, encroachments, impediments, easements and rights of redemption, and other rights and claims of a Borrower or third parties except for:

- a. A lien of any public bond, assessment, or tax, when no installment, call, or payment of or under such bond, assessment, or tax is delinquent;
- b. Outstanding mineral, oil, or timber rights, rights of way, easements, rights of support, sewer rights, zoning ordinances, building restrictions or other restrictions, covenants, regulations of use, or applicable laws, provided the Property conforms to, and its intended and normal use and occupancy is not adversely affected by, such covenants, rights, restrictions, regulations, or ordinances; and
- c. Any conditions or defects which will not have a materially adverse effect on either the transferability of the Property or the sale thereof to a bona fide purchaser.

Good and Merchantable Title does not exist if convenient means of ingress and egress are not conveyed as well as freely alienable rights to the use and enjoyment of municipal or private sources of water and means of sewage disposal, whether such rights are by easement or covenant running with the Property are reflected in the public records relating to the Property.

In addition, Good and Merchantable Title does not exist if notice has been given of the commencement of proceedings that could result in the imposition of a lien upon the Property pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601, et seq., or any other statute, law, or regulation of any governmental authority providing for the imposition of a lien in connection with the cleanup of Environmental Conditions.

**1.15 Insured** means:

- a. The Person designated on the face of this Policy; or
- b. Any Person to whom coverage has been assigned resulting in a change in the Insured named on a Certificate in accordance with this Policy.

The Insured must be the Servicer of a Loan or, if there is no Servicer, the Owner of the Loan.

**1.16 Loan** means any note, bond, or other evidence of indebtedness secured by a mortgage, deed of trust, or other similar instrument, which constitutes or is equivalent to a first lien or charge on a Property and which the Company has approved for insurance and to which coverage under this Policy has been extended.

**1.17 Loss** means the liability of the Company with respect to a Loan for payment of a Perfected Claim which is calculated in accordance with Section 6.3. A loss will be deemed to have occurred when a Default on a Loan occurs, even though the amount of loss is not then either presently ascertainable or due and payable.

**1.18 Owner or Owner of the Loan** means the Person who owns a Loan and of whom the Company is notified in accordance with this Policy.

**1.19 Perfected Claim** means a Claim received by the Company which contains all information or proof required by the Company and for which all requirements of this Policy applicable to payment of a Claim are satisfied.

**1.20 Person** means any individual, corporation, partnership, association, or other entity.

**1.21 Physical Damage** means any tangible injury to a Property or any Environmental Condition, whether caused by accident, natural occurrence, or any other reason.

**1.22 Policy** means this contract of insurance and all Applications, Commitments, endorsements, schedules, and Certificates, which are incorporated in this Policy, related to Loans insured under this Policy.

**1.23 Possession of the Property** means, if the Company elects to acquire the Property, physical and undisputed occupancy and control of the Property at the time of acquisition.

**1.24 Property** means a Residential real property and all improvements thereon which secure a loan, together with all easements and appurtenances, all rights of access, all rights to use common areas, recreational and other facilities, and all of their replacements or additions.

- 1.25 **Recovery Rights** means all rights of recovery against the Borrower and any other Person relating to the Loan or to the Property.
- 1.26 **Residential** means a type of building or a portion thereof which is designed for occupancy by not more than four (4) families, a single-family condominium, or a unit in a planned unit development.
- 1.27 **Servicer** means that Person acting on behalf of the Owner of a Loan (or on behalf of the Owner's designee, if any) to service the Loan and of whom the Company has been notified. The Servicer acts as a representative of the Owner of the Loan (and the Owner's designee, if any) and will bind the Owner and its designee for all purposes of this Policy, including providing information to the Company, receiving any notices, paying premiums, accepting Loss payments, and performing any other acts under this Policy. References in this Policy to a Servicer's obligations will not be construed as relieving the Owner or its designee of responsibility for the Servicer's performance.
- 1.28 **Settlement Period** means the sixty (60) day period as determined under Section 6.4, at the end of which a Loss is payable by the Company; provided that if the Company pays a Loss prior to expiration of such sixty (60) day period, the Settlement Period ends with such payment.
- 1.29 **Uninsured Loan Balance** means, at any time, with respect to a Loan, the estimated Claim Amount less the Loss as estimated pursuant to a percentage option settlement.
- 1.30 Any pronouns, when used in this Policy, will mean the singular or plural, masculine or feminine, as the case may be.

## 2. Obtaining Coverage and Payment of Premiums

- 2.1 **Application and Certificate** - In order to insure a Loan under this Policy, the Insured or a Person acting on behalf of the Insured must submit to the Company a properly completed Application. Approval of any Application will be at the discretion of the Company and will be in the form of a Commitment or a Certificate which offers to extend, or extends, coverage under the terms and conditions of both this Policy and the Commitment or Certificate, as the case may be.

In lieu of such an Application and supporting statements, documents, and information submitted to the Company in connection with insuring a Loan, the Company may accept an alternative form of Application, containing more limited information, including certifications by or on behalf of the Insured as to characteristics of a Loan in lieu of supporting statements, documents, and information. The Company shall be entitled to rely fully on such alternative Application as submitted. Use of an alternative form of Application shall not waive or change the other terms and conditions of this Policy under which a Loan is insured or the responsibility of the Insured for the accuracy of statements, documents, and information submitted by it or other Persons to the Company as provided in this Policy.

If the Company declines to insure a Loan, it will not issue a Commitment or Certificate, and it will notify the Insured in writing of such declination. If the Insured or the Person acting on its behalf subsequently denies the Loan application which it received from the applicant, the Insured or such Person will be responsible for notifying the applicant that the Company declined to insure the Loan. Such notification will be made in compliance with any applicable state or federal laws or regulations, including the Equal Credit Opportunity Act and any other similar law or regulation.

2.2

**Representations of the Insured** - The Insured represents that:

- a. All statements made and information provided to the Company in an Application or in any Commitment or Certificate (including any that is related to continuation of coverage upon assumption of a Loan), whether by it, the Borrower, or any other Person, have been made and presented for and on behalf of the Insured; and
- b. Such statements and information are not false or misleading in any material respect as of the date(s) on which they are made or provided and do not omit any fact necessary in order to make such statements and information not false or misleading in any material respects as of such date(s).

It is understood and agreed that such statements and information in the aggregate are, and in certain instances individually may be, material to the Company's decision to offer, provide, or so continue coverage of the related Loan; the Company issues the related Commitment and Certificate or continues coverage in reliance upon the accuracy and completeness of such statements and information and without any obligation to verify independently the statements and information submitted to it; and the Company's reliance upon the representations in Section 2.2(a) and (b) above survive the issuance of a Commitment and Certificate or such continuation of coverage.

Without otherwise limiting the scope of this Section 2.2, a breach of Section 4.8 relating to down payment will be deemed a material misrepresentation for purposes of this Section 2.2. The down payment representation shall be effective whether or not it is made by the Insured or other Person with the intent to deceive or mislead, or with the knowledge that it is not true and correct.

2.3

**Certificate Cancellation or Rescission by the Company for Misrepresentation** - Subject to Section 2.4, if any of the Insured's representations as described in Section 2.2 are materially false or misleading with respect to a Loan, the Company will have the right, at its option and to the extent permitted by applicable law, to cancel or rescind coverage under any Certificate retroactively to commencement of coverage (or if the misrepresentation occurs with respect to continuation of coverage upon assumption of a Loan, retroactively to the date of such continuation) and to return at that time all paid premiums retroactively to such applicable date.

2.4

**Incontestability for Certain Misrepresentations** - Notwithstanding Sections 2.2 and 2.3, no Claim for Loss will be denied or adjusted, nor will the Certificate's coverage be rescinded or canceled, by reason of any misrepresentations (whether by statements made or omitted) contained in an Application, provided that all of the following requirements, conditions, and circumstances, to the extent not waived in writing at the option of the Company, are satisfied:

- a. The misrepresentation must not have been knowingly made, or knowingly participated in, by:
  - 1. The Insured or any other Person which originated the Loan; or
  - 2. Any other of the following Persons:
    - i. Correspondent lender, mortgage loan broker, or other intermediary underwriting or processing the Loan on behalf of the Insured or any other Person which originated the Loan; or

- ii. Escrow or closing agents, or any other agent of, or broker for, the Insured or any other Person which originated the Loan acting with respect to the Loan or the related Property transaction.
- b. The Borrower must have made twelve (12) consecutive full installment payments of principal, interest, and impound or escrow amounts in the amounts as called for by the Loan, and all of those payments must have been made from the Borrower's own funds.

A payment will be considered to be "consecutive" only if it is made prior to the date the next scheduled installment becomes due. The "Borrower's own funds" will include any funds used by the Borrower for the purpose of making installment payments, but will not include funds provided directly or indirectly by any Person (other than the Borrower) who is or was a party to the Loan or to the related Property transaction, unless expressly set forth in the Application.

- c. This Section 2.4 will not apply to a Certificate if within twelve (12) months before or after a material misrepresentation by a Borrower or other Person (other than those Persons identified in Section 2.4(a)), there are one or more material misrepresentations in an Application (i) with respect to three or more other mortgage loans insured at any time by the Company for the Insured or any other lender and (ii) which result from the direct or indirect acts or omissions of the same Borrower or same other Person (including any other Person acting directly or indirectly in concert).
- d. The Company's payment of a Claim will not limit any rights which the Company has against the Borrower or any other Person (other than the Insured) for any misrepresentation.

## 2.5

**Initial Premium** - Within fifteen (15) days from the Certificate Effective Date, or such other date as the Company and the Insured may agree to in writing, the Insured must forward to the Company the appropriate initial premium. Tender of the initial premium will constitute a representation for purposes of Section 2.2 by the Insured that any special conditions included by the Company in the related Commitment have been satisfied and that no payment which is then due under the Loan is more than thirty (30) days past due. The Company will not rescind or cancel coverage, or deny or adjust a Claim for Loss, with respect to a Loan on the basis of a failure to satisfy a special condition (other than a special condition relating to completion of construction, rehabilitation, or repairs) if the Borrower has made twenty-four (24) consecutive full installment payments from the Borrower's own funds. The terms "installment payments," "consecutive," and "Borrower's own funds" shall have the meanings provided in Section 2.4(b).

## 2.6

### **Renewal of Certificate and Termination for Nonpayment of Renewal Premium; Reinstatement of Terminated Coverage**

- a. **Timing; Responsibility for Payment** - In order to continue coverage beyond the initial term, the Insured shall, at its option, pay renewal premiums to the Company for each Loan insured under this Policy, calculated at the rate specified in the related Certificate and in accordance with Section 2.6(c) below.

The Company shall give thirty (30) days notice of the renewal due date to the Servicer, if a Servicer is shown on the records of the Company, and otherwise to the Owner, and renewal premiums shall be due and payable on or before the last day of the period covered by the previous premium payment.

If a Default occurs prior to the date through which the applicable premium has been paid, and if such Default is not cured and results in a Claim being filed, such Default shall remain covered and no further premium shall be due in order to maintain coverage of such Default.

With respect to a Loan with renewal premiums due on an annual basis, if the annual renewal premium is not paid within a sixty (60) day grace period after the premium due date (but subject to the Owner's right to cure nonpayment as provided in Section 2.6(b)), the coverage of the Certificate and the Company's liability will terminate effective as of 12:01 a.m. on the first day following the date through which the applicable premium has been paid and as a result, any Default occurring after the date through which the applicable premium has been paid will not be covered.

With respect to a Loan with renewal premiums due on a monthly basis, if the monthly renewal premium is not paid within such sixty (60) day grace period (but subject to the Owner's right to cure nonpayment as provided in Section 2.6(b)), the coverage of the Certificate and Company's liability will terminate at the end of such sixty (60) day grace period. However, if a Default on the Loan occurs during such sixty (60) day grace period, the Insured shall not be required to pay renewal premiums while such Default exists. If such Default is cured, all monthly renewal premiums not paid during the period of Default shall be payable within sixty (60) days after notice from the Company. If such Default is not cured and results in a Claim, the unpaid monthly renewal premiums through the renewal month in which such Default occurred shall be paid as provided in Section 6.3 by deduction from the Loss.

- b. **Transfer or Seizure of Servicing** - Notwithstanding paragraph (a) above, in the event that the Owner establishes to the reasonable satisfaction of the Company that the failure to pay renewal premiums on or before the renewal premium due date, or during the applicable grace period, was due to an error or omission that occurred in connection with the transfer, surrender, or seizure of servicing rights associated with a group of Loans, the Company shall permit the Owner or its new Servicer to reinstate coverage of the Loans contained in the group that are insured under this Policy provided that the following conditions are met:
1. The Owner or its new Servicer shall reinstate coverage with respect to all Loans insured under this Policy affected by such transfer, surrender, or seizure;
  2. The renewal premiums are paid, in all events, on or before one hundred twenty (120) days after the applicable premium due date; and
  3. Interest is paid on the renewal premiums due from the renewal premium due date until the date that such renewal premiums are paid at the three month Treasury Bill rate established at the first Treasury auction occurring during the month in which the renewal premium becomes due as published in the *Wall Street Journal*, or if not so published, in any other comparable publication.
- c. **Calculation** - Renewal premiums due with respect to a Loan shall be payable in accordance with the method and at the rate specified on the related Certificate. Renewal premiums payable under the "outstanding unpaid principal balance" or "outstanding balance renewal" method shall be calculated by applying the applicable premium rate to the then unpaid principal balance of the Loan as of the date such premium is due and payable. Renewal premiums payable under the "level original insured principal balance" or "level renewal" method shall be calculated by applying the applicable premium rate to the original insured principal balance of the Loan.

2.7

**Special Procedures for Certificates of Coverage; Payment of Initial and Renewal Premiums**

- a. The Company may permit coverage of a loan to be certified and become effective without the Insured's return of an executed Commitment or Certificate, but coverage will only become effective if, within fifteen (15) days after the Certificate Effective Date (or other date the Company and the Insured may agree to in writing), the Insured provides the Company with the Certificate Effective Date and other information required by the Company, and pays the required premium. If signature and return of an executed Commitment or Certificate is not required, the Insured will nevertheless be automatically deemed to have made all certifications, representations, and statements attributable to it in the form of the Commitment or Certificate, as though, and to the same extent as if, the Insured had executed and returned the Commitment or Certificate.
- b. The Insured acknowledges that the Company deposits initial and renewal premium checks immediately upon receipt and agrees that the receipt and deposit of premium checks by the Company after the time specified in this Policy for receipt, does not constitute a waiver of the requirements of this Policy for timely receipt or an acceptance of premium by the Company. The Company will have the right to return such late premium payment, but only within sixty (60) days after receipt, in which case coverage will be canceled retroactively to the Certificate Effective Date for a late initial premium, or to the last day of the period covered by the previous premium payment for a late renewal premium. Receipt, deposit, and retention of a premium check will not constitute a waiver of any defenses with respect to any other matters which the Company may have under this Policy.

2.8

**Cancellation by the Insured of a Certificate** - The Insured may obtain cancellation of a Certificate by returning the Certificate to the Company or by making a written request to the Company for cancellation. Upon receipt, the Company will refund, where applicable, a portion of the premium paid in accordance with the appropriate cancellation schedule which is either attached to this Policy or which will be provided by the Company to the Insured upon request. However, no refund on a Certificate will be paid if the Loan is in Default at the time the Company receives the request. Cancellation of a Certificate will not cancel this Policy.

2.9

**Cancellation of Policy** - Either the Insured or the Company may cancel their respective right or obligation to receive or issue new Commitments or Certificates under this Policy by providing thirty (30) days written notice of cancellation of this Policy. However, Commitments and Certificates issued prior to such cancellation of this Policy will continue in force so long as all premiums are paid and all other terms and conditions of this Policy for coverage are complied with by the Insured.

2.10

**Relationship Among the Company, the Owner of a Loan, and the Servicer of a Loan** - The Company will be entitled to assume that the Insured identified on this Policy and under a Certificate is the Owner of the Loan. If the Company receives written notice acceptable to it that there is an Owner of the Loan who is not the Insured, the Company shall identify that Owner in its internal records and for purposes of this Policy. The Company shall be required to identify only one Owner for a loan at any one time.

The Company will provide the Owner of a loan so identified in its records with an opportunity to cure nonpayments of renewal premium, as provided under Section 2.6(b); will notify such Owner of the Loan of a non-approved Servicer and allow replacement with a new Servicer, as provided under Section 4.5; will allow the Owner (or its designee, if any) to replace a Servicer and allow the replacement Servicer to become the Insured under Section 1.15; and will allow the Owner to

become the Insured under Section 1.15 if the Owner services the Loan itself. Any Person becoming an Insured under this Policy shall be subject to all of the terms and conditions of this Policy, to the same extent as any previous Insured hereunder and without regard to the extent of the knowledge or responsibility of such Person, relating to matters occurring before such Person became an Insured.

- 2.11 **Refund of Premium for Denial of Claim in Full** - If, because of a provision in Sections 3 or 4 (other than Sections 4.3, 4.6, or 4.7), no Loss is payable to the Insured, the Company shall return to the Insured all paid premiums retroactively and pro rata to the date when the event or circumstance occurred which resulted in no Loss being payable.

### 3. Changes in Various Loan Terms, Servicing; Coordination and Duplication of Insurance Benefits

- 3.1 **Loan Modifications** - Unless advance written approval is provided by, or obtained from, the Company, the Insured may not make any change in the terms of a Loan, including the borrowed amount, interest rate, term, or amortization schedule of the Loan, except as permitted by terms of the Loan; nor make any change in the Property; nor release the Borrower from liability on a Loan.

- 3.2 **Open End Provisions** - The Insured may increase the principal balance of a Loan, provided that the written approval of the Company has been obtained. The Insured will pay the Company the additional premium due at the then prevailing premium rate.

- 3.3 **Assumptions** - If a Loan is assumed with the Insured's approval, the Company's liability for coverage under its Certificate will terminate as of the date of such assumption, unless the Company approves the assumption in writing. The Company will not unreasonably withhold approval of an assumption. It is understood that coverage will continue, and that the restriction of this Section 3.3 will not apply, if under the Loan or applicable law, the Insured cannot exercise a "due-on-sale" clause or is obligated to consent to such assumption under the Loan or applicable law. Notwithstanding anything to the contrary in this Section 3.3, the Company will be deemed to have approved the assumption of any Loan where no release is requested and, under Section 11-406.02 of the Federal National Mortgage Association's Servicing Guide or any successor provision approved by the Company thereof or any similar provision of the Federal Home Loan Mortgage Corporation's Sellers' & Servicers' Guide, the assumption is an "exempt transaction" that the Servicer is to approve without review of the terms of the transaction.

- 3.4 **Change of Servicing** - If the servicing rights for a Loan are sold, assigned, or transferred by the Insured or the Owner, coverage of the Loan hereunder will continue, provided that written notice of the new Servicer is given to the Company and the new Servicer is approved in writing by the Company.

- 3.5 **Change of Owner** - If a Loan or a participation in a Loan is sold, assigned, or transferred by its Owner, coverage of the Loan will continue, subject to all of the terms and conditions contained in this Policy. The new Owner of the Loan will be identified in the Company's records from the date that the Company receives written notice thereof. In the case of the sale of a participation in a Loan, the Company shall be notified of only one new Owner. If there is a new Owner, the Loan must continue to be serviced by a Person approved by the Company as a Servicer.

3.6 **Coordination and Duplication of Insurance Benefits** - The Insured shall not carry duplicate mortgage guaranty insurance on any Loan, other than mortgage guaranty pool insurance or supplemental mortgage guaranty insurance, and if duplicate insurance is carried, coverage under this Policy shall be null and void.

4. **Exclusions From Coverage**

The Company will not be liable for, and this Policy will not apply to, extend to, or cover the following:

- 4.1 **Balloon Payment** - Any Claim arising out of or in connection with the failure of the Borrower to make any payment of principal and/or interest due under a Loan, (a) as a result of the Insured exercising its right to call the Loan (other than when the Loan is in Default) or because the term of the Loan is shorter than the amortization period, and (b) which is for an amount more than twice the regular periodic payments of principal and interest that are set forth in the Loan (commonly referred to as a "balloon payment"). This exclusion will not apply if the Insured, the Owner of the Loan, or other Person acting on either's behalf offers the Borrower, in writing, a renewal or extension of the Loan or a new loan which (i) constitutes a first lien, (ii) is at rates and terms generally prevailing in the marketplace (but otherwise subject to Section 3.1), (iii) is in an amount not less than the then outstanding principal balance, (iv) has no decrease in the amortization period, and (v) is offered regardless of whether the Borrower is then qualified under the Insured's or Owner's underwriting standards. This exclusion also will not apply if the Borrower is notified of the availability of such renewal or extension of the Loan or new loan and does not accept the renewal, extension, or new loan.
- 4.2 **Effective Date** - Any Claim resulting from a Default existing at the Certificate Effective Date or occurring after lapse or cancellation of a Certificate.
- 4.3 **Incomplete Construction** - Any Claim when, as of the date of such Claim, construction of a Property is not completed in accordance with the construction plans and specifications.
- 4.4 **Fraud, Misrepresentation, and Negligence** - Any Claim not otherwise within the scope of Section 2.3 where there was fraud, misrepresentation, or negligence by the Insured with respect to the Loan, and the fraud, misrepresentation, or negligence (a) materially contributed to the Default resulting in such Claim; or (b) increased the Loss, except that if the Company can reasonably determine the amount of such increase, such Claim will not be excluded, but the loss will be reduced to the extent of such amount.
- 4.5 **Non-Approved Servicer** - Any Claim occurring when the Servicer, at time of Default or thereafter, is not approved in writing or in a list published by the Company; provided that this exclusion shall only apply if the Company notifies the Owner of the Loan in writing that a Servicer is no longer approved and if within ninety (90) days thereafter the Owner does not complete a transfer of servicing to a new Servicer approved by the Company.
- 4.6 **Physical Damage (Other Than Relating to Pre-Existing Environmental Conditions)** - Any Claim where, at any time after the Certificate Effective Date, Physical Damage occurs to a Property of a type other than as described in Section 4.7 and other than reasonable wear and tear, subject to the following provisions:
- a. This exclusion will not apply if the Company in good faith determines that the aggregate cost of restoring all such Physical Damage is less than fifteen hundred dollars (\$1,500), or such higher amount as the Company may provide from time to time.

- b. The exclusion will apply only if: (i) the Company elects to acquire the related Property in settlement of a Claim and the damage occurred prior to expiration of the Settlement Period; or (ii) the damage occurred prior to the Default and such damage was the most important cause of the Default and the Property was either uninsured for loss arising from such Physical Damage or was insured for an amount which, net of any applicable deductibles, was insufficient to restore the Property as provided in paragraph (c) below.
- c. The exclusion resulting from paragraph (b) will not apply if the Property is restored in a timely and diligent manner to its condition (except reasonable wear and tear) as of the Certificate Effective Date.

In lieu of requiring restoration of the Property, as required by this subsection, the Company may, at its option, reduce the Claim Amount by an amount equal to the cost of such restoration.

- d. For purposes of this Section 4.6, the Property subject to restoration will consist only of the land, improvements, or personal property deemed part of the real property under applicable law and chattel items affixed to the real property and identified in the appraisal of the Property at the time the loan was made, whether or not they are deemed part of the real property.
- e. Cost estimates relied upon by the Company in connection with this Section 4.6 shall be provided in writing by an independent party selected by the Company. The Company will furnish the Insured with any such written cost estimates, if requested by the Insured.

#### 4.7

**Pre-Existing Environmental Conditions** - Any Claim where there is an Environmental Condition which existed on the Property (whether or not known by the Person submitting an Application for coverage of the loan) as of the Certificate Effective Date, subject to the following provisions:

- a. This exclusion will not apply if the existence of such Environmental Condition, or the suspected existence of such Environmental Condition, was specifically disclosed to the Company in the Application relating to the Property.
- b. This exclusion will apply only if such Environmental Condition (i) was a principal cause of the Default, and (ii) has made the principal Residential structure on the Property uninhabitable. A structure will be considered "uninhabitable" if generally recognized standards for Residential occupancy are violated or if, in the absence of such standards, a fully informed and reasonable person would conclude that such structure was not safe to live in without fear of injury to health or safety.
- c. This exclusion will not apply if the Environmental Condition is removed or remedied in a timely and diligent manner in accordance with applicable governmental standards for safe Residential occupancy.

#### 4.8

**Down Payment** - Any Claim involving a loan which is for the purchase of the Property, and for which the Borrower did not make a down payment as described in the Application.

#### 4.9

**First Lien Status** - Any Claim, if the mortgage, deed of trust, or other similar instrument executed by the Borrower and Insured hereunder did not provide the Insured at origination with a first lien on the Property.

4.10

**Breach of Insured's Obligations or Failure to Comply with Terms** - Any Claim involving or arising out of any breach by the Insured of its obligations under, or its failure to comply with the terms of, this Policy or of its obligations as imposed by operation of law, if the breach or failure:

- a. Materially contributed to the Default resulting in such Claim; or
- b. Increased the Loss, except that if the Company can reasonably determine the amount of such increase, such Claim will not be excluded, but the related Loss will be reduced to the extent of such amount.

4.11

**Release of Borrower; Defenses of Borrower** - The Insured's execution of a release or waiver of the right to collect any portion of the unpaid principal balance of a Loan or other amounts due under the Loan will release the Company from its obligation under its Certificate to the extent and amount of said release. If, under applicable law, the Borrower successfully asserts defenses which have the effect of releasing, in whole or in part, the Borrower's obligation to repay the Loan, or if for any other reason the Borrower is released from such obligation, the Company will be released to the same extent and amount from its liability under this Policy, except as provided by Section 7.5.

5. **Conditions Precedent to Payment of Claim**

It is a condition precedent to the Company's obligation to pay a Loss that the Insured comply with all of the following requirements:

5.1

**Notice of Default** - The Insured must give the Company written notice:

- a. Within forty-five (45) days of the Default, if it occurs when the first payment is due under the Loan; or
- b. Within ten (10) days of either:
  1. The date when the Borrower becomes four (4) months in Default on the Loan; or
  2. The date when any Appropriate Proceedings which affect the Loan or the Property or the Insured's or Borrower's interest therein have been started;

whichever occurs first.

5.2

**Monthly Reports** - Following a notice of Default on the Loan, the Insured must give the Company monthly reports on forms or in a format furnished or approved by the Company on the status of the Loan and on the servicing efforts undertaken to remedy the Default. These monthly reports may be furnished less frequently if allowed in writing by the Company and must continue until the Borrower is no longer in Default, the Appropriate Proceedings terminate, or until the Insured has acquired the Property.

5.3

**Company's Option to Accelerate Filing of a Claim** - If the Company so directs, at any time after receiving the Insured's Notice of Default, the Insured must file a Claim within twenty (20) days after notice from the Company. The Company will then make a payment of Loss in accordance with the percentage guaranty option in Section 6.3(b). Thereafter, following the acquisition of Borrower's Title by the Insured, the Insured will be entitled to file a supplemental Claim at the time prescribed in Section 6.1 in an amount equal to the sum of its advances, less the deductions, all as

specified in Section 6.2, to the extent not included in the payment of the initial Claim. Such supplemental Claim must be paid by the Company in accordance with Section 6.3(b). If the Company exercises its option under this Section 5.3, the Company shall not have the right to direct or participate in a deficiency recovery under Section 7.2.

**5.4 Voluntary Conveyance** - The Insured may only accept a conveyance of the Property from the Borrower in lieu of foreclosure or other proceedings if the prior written approval of the Company has been obtained.

**5.5 Appropriate Proceedings** - The Insured must begin Appropriate Proceedings no later than when the loan becomes six (6) months in Default, unless the Company provides written instructions that some other action be taken. Such instructions may be general or applicable only to specific loans. The Company reserves the right to direct the Insured to institute Appropriate Proceedings at any time after Default. When either defending against or bringing Appropriate Proceedings, the Insured must report its status to the Company as reasonably and expeditiously as possible.

In conducting Appropriate Proceedings, the Insured must:

- a. Diligently pursue the Appropriate Proceedings once they have begun;
- b. Apply for the appointment of a receiver and assignment of rents, if permitted by law and requested by the Company;
- c. Furnish the Company with copies of all notices and pleadings filed or required in the Appropriate Proceedings, except as the Company may waive such requirements in writing;
- d. Act and bid at the foreclosure sale in accordance with Section 5.11 so that its ability to preserve, transfer, and assign to the Company its rights against the Borrower are not impaired, and so that the rights of the Company under this Policy against the Borrower are fully protected. Such rights include any rights to obtain a deficiency judgment, subject to the Company's compliance with Sections 7.2 and 7.3 relating to establishing a deficiency; and
- e. When requested by the Company, furnish the Company with a written statement indicating the estimated potential Claim Amount (as computed under Section 6.2) at least fifteen (15) days before the foreclosure sale.

**5.6 Mitigation of Loss** - The Insured shall, or shall cause its Servicer to, actively cooperate with the Company to prevent and mitigate the Loss and to assist the Company in the Company's attempts to prevent and mitigate the Loss, including but not limited to, taking reasonable and good faith efforts to cure the Default and, if such attempts are unsuccessful, to effectuate the early disposition of the Property.

The Insured shall report to the Company any pre-foreclosure sale offers received by the Borrower and known to the Insured. If a pre-foreclosure sale is approved by both the Insured and the Company, but the sale does not close for any reason, the Company shall continue to administer the Policy as if no sale had been attempted.

The Company agrees to administer the Policy in good faith.

5.7

**Advances** - The Insured shall advance:

- a. Normal and customary hazard insurance premiums (in calculating the Claim Amount pursuant to Section 6.2, such premiums shall be prorated to the date that the Claim is paid);
- b. Real estate property taxes that become due and payable on or after the date of Default (but not including penalties or late fees);
- c. The costs of engaging in foreclosure and eviction proceedings (including court costs and moving costs where required by law to be paid by the evicting party), reasonable or customary attorney's fees not exceeding three percent (3%) of the sum of the outstanding principal balance and accumulated interest due under the Loan; and
- d. Reasonable expenses necessary for the protection and preservation of the Property as approved by the Company. Although advance approval is not required, the Company reserves the right to disallow advances reflecting such expenses upon payment of the Claim if, in the Company's reasonable judgment, such advances were not reasonable or necessary. Insureds are therefore encouraged to seek the Company's prior consent.

5.8

**Claim Information and Other Requirements** - The Insured must provide the Company with:

- a. All information reasonably requested by the Company;
- b. A completed form furnished by or acceptable to the Company for payment of a Claim;
- c. If the Property is not being acquired by the Company: a copy of an executed trustee's or sheriff's deed (which may be unrecorded) conveying Borrower's Title to this Property to the Insured (or satisfactory evidence that the foreclosure sale has been completed if the Borrower's right of redemption has not expired); or a deed from the Borrower (which may be unrecorded) if a voluntary conveyance has been approved by the Company, conveying to the Insured the title that was required by the Company in the approval of the conveyance.

In the event the most important cause of Default was a circumstance or event which would prevent the Insured from obtaining Good and Merchantable Title, the Insured shall instead provide the Company with evidence described in Section 5.8(d)(2) that it has acquired Good and Merchantable Title to the Property;

- d. If the Property is being acquired by the Company:
  1. A recordable deed in normal and customary form containing the customary warranties and covenants conveying to the Company or its designee Good and Merchantable Title to the Property;
  2. A title insurance policy acceptable to the Company or an attorney's opinion of title acceptable to the Company, confirming that the Insured has and can convey to the Company Good and Merchantable Title to the Property;
  3. Possession of the Property, but only if the Company has required such Possession in writing; and
- e. Access to the Property, if requested by the Company pursuant to Section 6.4(b).

5.9

**Acquisition of Borrower's Title Not Required** - The Insured will not be required to acquire Borrower's Title to a Property if (a) the Company approves a sale of the Property prior to a foreclosure sale and such sale is closed; (b) the Company requires an early Claim filing pursuant to section 5.3, except that such acquisition will be required as a condition to the Insured's filing of a supplemental Claim; or (c) the Property is acquired by someone other than the Insured at a foreclosure sale, as provided in Section 5.11, or thereafter pursuant to exercise of rights of redemption.

5.10

**Sale of a Property by the Insured Before End of Settlement Period**

- a. The Insured must submit to the Company any offer to purchase a Property which would mitigate the Company's Loss and which it receives after the Company has notified the Insured that it will acquire the Property and before the end of the Settlement Period. The Company must then promptly notify the Insured that it will either (i) not approve of such offer, in which case the Company's notice to acquire the Property will remain in effect, or (ii) approve such offer, in which case the Company's notice of acquisition will remain in effect, if the approved offer does not close as scheduled. The Insured shall promptly notify the Company if the approved offer does not close as scheduled.
- b. If the Company has not notified the Insured that it will acquire the Property, and if the Company's right to acquire the Property has not expired pursuant to Section 6.5 or has not been waived, the Insured must submit to the Company for approval any offer to purchase the Property which would be acceptable to the Insured and which would mitigate the Company's Loss. The Company shall then promptly either approve or not approve such offer. If an approved sale does not close, the Company may settle under either of the settlement options set forth in Section 6.3, provided that if the Settlement Period has expired, (i) interest as provided for in Section 6.5 shall be payable, and (ii) if the Company wishes to settle under Section 6.3(a), the Insured's obligations in connection with the transfer of the Property to the Company shall be as required by this Policy subject to the limitation that they shall not be more burdensome to the Insured than its obligations (including, but not limited to, its obligations as to the condition of the Property) as seller in the approved sale that failed to close.
- c. The following provisions shall apply to offers submitted to the Company under this Section 5.10:
  1. The Insured shall provide the Company with a good faith estimate of gross proceeds and expenses in sufficient detail for the Company to calculate the estimated net proceeds described below. The Company may not require any changes to the offer or direct the marketing of the Property or expenditures by the Insured for restoration of the Property as a condition to its approval.
  2. If the Company approves the offer submitted by the Insured, it must also advise the Insured of the estimated net proceeds which it has calculated. The estimated net proceeds calculated by the Company will be the estimated gross sales proceeds to be received by the Insured less all reasonable estimated expenses submitted by the Insured and approved by the Company in its approval of the offer which have been or are expected to be paid by the Insured in obtaining and closing the sale of the Property. If the estimated net proceeds as calculated by the Company is acceptable to the Insured, the Loss payable shall be computed as determined in Section 5.10(c)(3) below. If such estimated net proceeds is not acceptable to the Insured, the offer shall be deemed to have not been approved by the Company.

3. If the Company approves the offer, the loss payable by the Company under this Section 5.10 will be the lesser of (i) the actual net amount as calculated below, or (ii) the percentage guaranty option under Section 6.3(b) calculated without regard to a sale of the Property. The actual net amount will be the Claim Amount calculated under Section 6.2, except that (a) delinquent interest will be computed through the closing date for sale of the Property and (b) the Claim Amount shall be reduced by the actual net proceeds realized by the Insured from sale of the Property. The actual net proceeds will be determined in the same manner as the estimated net proceeds, but on the basis of the actual sales proceeds and actual expenses, such expenses not to exceed the amounts approved by the Company either at the time the Company approved the offer or thereafter.
4. The Company shall not unreasonably withhold its approval of expenses submitted to it after its approval of an offer. Expenses paid to Persons employed or controlled by the Insured or the Owner of the Loan or their internal costs will not be allowed in calculation of either the estimated or actual net proceeds.
5. If requested by the Company, the Insured or the Owner shall advise the Company of the name of the real estate broker or other Person marketing the Property for the Insured or the Owner and authorize such broker or other Person to release marketing information about the Property to the Company.

#### 5.11

**Foreclosure Bidding Instructions** - Bid an amount at the foreclosure sale which is not less than the minimum amount nor more than the maximum amount set forth below, unless the Company notifies the Insured of other instructions or waives its right to give bidding instructions, in writing.

- a. If the Fair Market Value of a Property is less than the Uninsured Loan Balance, the Insured shall start bidding at not less than the Fair Market Value of the Property and may continue bidding up to a maximum of the Uninsured Loan Balance.
- b. If the Fair Market Value of a Property is greater than the Uninsured Loan Balance, the Insured shall start bidding at not less than the Uninsured Loan Balance up to a maximum amount equal to the Claim Amount.

If other bidding instructions are provided, those instructions will not specify a maximum bid that is less than the Uninsured Loan Balance, and, if the Property is subject to redemption for less than the outstanding amount of the Loan, then such other bidding instructions will not specify an opening bid of less than the Uninsured Loan Balance.

The Insured is not required to acquire Borrower's Title if it has bid in accordance with paragraphs (a) and (b), whether or not pursuant to directions from the Company.

#### 5.12

**Effect of Unexpired Redemption Period on Payment of a Claim** - If the Insured files a Claim prior to expiration of an applicable redemption period, the loss payable shall only be computed through the date of filing of the Claim, and if the Company elects to acquire the Property, the Insured will remain responsible for management and control of the Property until the Company's acquisition thereof, which may be after expiration of the redemption period, but not later than as required by Section 6.4.

**6. Loss Payment Procedure**

**6.1 Filing of Claim** - The Insured shall file a Claim after, but no later than sixty (60) days following, the conveyance to the Insured of Borrower's Title to the Property. If the Insured is not required to have Borrower's Title to file a Claim for a reason described in Section 5.9, then the Claim must be filed (a) within sixty (60) days after the Property is conveyed in a pre-foreclosure sale, at the foreclosure sale, or by exercise of the rights of redemption, or (b) at the time specified by Section 5.3. If the Insured fails to file a Claim within the applicable time, the Insured will not be entitled to, and the Company will not be obligated for, any payment under this Policy for amounts, including additional interest and expenses, which would otherwise be claimable, but which accrue or are incurred after the sixty (60) day period for filing of a Claim.

If the Insured fails to file a Perfected Claim within one hundred eighty (180) days after the filing of the Claim (or within such longer period of time as the Company may allow in writing), the Insured will no longer be entitled to payment of a Loss and the Company will not be obligated to make any payment under this Policy.

**6.2 Calculation of Claim Amount** - Subject to Section 7.5, the Claim Amount will be an amount equal to the sum of:

- a. The amount of unpaid principal balance due under the Loan as of the date of Default without capitalization of delinquent interest, penalties, or advances;
- b. The amount of accrued and unpaid interest due on the Loan computed at the contract rate stated in the Loan through the date that the Claim is filed with the Company, but excluding applicable late charges, penalty interest, or other changes to the interest rate by reason of Default; and
- c. The amount of advances incurred by the Insured under Section 5.7 prior to filing of the Claim (except to Persons employed or controlled by the Insured or the Owner of the Loan or their other internal costs) provided that:
  1. Attorney's fees advanced for completion of Appropriate Proceedings and obtaining Possession of the Property will not be allowed to the extent they exceed three percent (3%) of the sum of the unpaid principal balance plus the accrued and accumulated interest due; and
  2. Such advances, other than attorney's fees, must have first become due and payable after the Default, and payment of such advances must be pro-rated through the date the Claim is filed with the Company;

less:

- i. The amount of all rents and other payments (excluding proceeds of a sale of the Property and the proceeds of fire and extended coverage insurance) collected or received by the Insured, which are derived from or in any way related to the Property;
- ii. The amount of cash remaining in any escrow account as of the last payment date;
- iii. The amount of cash to which the Insured has retained the right of possession as security for the Loan;

- iv. The amounts paid under applicable fire and extended coverage policies which are in excess of the cost of restoring and repairing the Property, if the Property is damaged, and which have not been paid to the Borrower or applied to the payment of the Loan as required by the terms of the Loan; and
- v. Any other amounts claimed by the Insured to the extent they are excluded by reason of Section 4.10.

**6.3**

**Payment of Loss; Company's Options** - Within the Settlement Period, but only if the Insured has satisfied all requirements for a payment of Loss and if the Company has received a Perfected Claim, the Company shall at its sole option exercise its:

- a. Property acquisition settlement option. Pay to the Insured as the Loss the Claim Amount calculated in accordance with Section 6.2 for the Company's acquisition of the Property; or
- b. Percentage guaranty option. Allow the Insured to retain all rights in and title to the Property, and pay to the Insured as the Loss the Claim Amount calculated in accordance with Section 6.2 of this Policy multiplied by the percentage of coverage or as otherwise calculated as specified in the Certificate; or
- c. Pre-Claim sale option. If the terms and conditions of Section 5.10 are met, pay to the Insured as the Loss the amount calculated in accordance with Section 5.10; and if the terms and conditions of Sections 5.9(c) and 5.11 are met, then the Company will pay the lesser of (i) the percentage guaranty option amount and (ii) the Claim Amount less the amount realized by the Insured at the foreclosure sale or from the redemption of the Property as required by law.

In addition to the sum due pursuant to the option described above which the Company selects, the Loss payable by the Company will include the other amounts provided for under Sections 5.3, 6.5, or 7.2 when such Sections are applicable. The Company will deduct from its payment of Loss the aggregate amounts of any payments of Loss which it had previously made. In the event of a Loss on a Loan with renewal premiums due monthly, which results from a Default covered under Section 2.6(a), the Company shall deduct from the payment of Loss an amount equal to any unpaid renewal premiums for the subject Loan through the end of the monthly renewal period in which such Default occurred.

**6.4**

**Calculation of Settlement Period** - The Settlement Period will be a sixty (60) day period after the Company's receipt of a Claim, calculated as follows:

- a. No later than the twentieth (20) day after the filing of a Claim, the Company may notify the Insured of additional documents or information which it requires for processing the Claim. The sixty (60) day period will be suspended until the Company receives such additional documents and information. The Company may request additional documents and information after such twenty (20) day period, and the Insured must use reasonable efforts to satisfy such request.
- b. No later than the twentieth (20) day after filing of a Claim, the Company may notify the Insured that it will require access to the Property sufficient to inspect, appraise, and evaluate the Property. If the Company does not notify the Insured by that date, its right to such access will be deemed waived. If such notice is given, the Insured will use its best efforts to provide access to the Company and, if access is not then available, the sixty (60) day period will be suspended from the date such notice was given until the Company receives notice from the Insured that access is available to it. If access is in fact

not available when sought by the Company after such notice from the Insured; the Company will promptly notify the Insured of such unavailability, and the passage of the sixty (60) day period will remain suspended as if the Insured's notice of availability had not been given to the Company.

- c. If the Company has elected to acquire the Property in settlement of a Claim, the sixty (60) day period also will be suspended, if necessary, for there to be a period of ten (10) days after the date on which the Insured satisfies all conditions to acquisition, including any required restoration of the Property, the Insured's delivery of a recordable deed and title policy or opinion evidencing Good and Merchantable Title (not subject to any rights of redemption, unless the Company waives such requirement) and, if applicable, delivery of Possession of the Property.
- d. If the sixty (60) day period is suspended for more than one reason, the resulting suspended periods will only be cumulative if in fact they occur at different times; to the extent they occur simultaneously, they will not be cumulative.

**6.5 - Payment by the Company After the Settlement Period** - If the Company has not paid a Loss during the Settlement Period, then (a) the Company will include in its payment of Loss, if a Loss is ultimately payable, simple interest on the amount payable accruing after the Settlement Period to the date of payment of Loss at the applicable interest rate or rates which would have been payable on the loan during such period, and (b) the Company will no longer be entitled to acquire the Property as an option for payment of the Loss. The Company must either pay the amount of applicable Loss (including any additional applicable interest as computed above) or deny the Claim in its entirety within (a) one hundred twenty (120) days after expiration of the Settlement Period, or (b) if the Settlement Period has not expired, no later than one hundred eighty (180) days after filing of the Claim. If at a later date it is finally determined by agreement between the Insured and the Company (or by completion of legal or other proceedings to which the Insured and the Company are parties) that the Company was not entitled to deny all or a portion of the Claim, the Company will include in any resulting subsequent payment of Loss interest as calculated above through the date of such payment on the amount of loss which the Company was not entitled to deny.

**6.6 Discharge of Obligation** - payment by the Company of the full amount of Loss required to be paid in accordance with this Policy will be a full and final discharge of its obligation with respect to such Loss under this Policy.

## **7. Additional Conditions**

**7.1 Proceedings of Eminent Domain** - In the event that part or all of a Property is taken by eminent domain, condemnation, or by any other proceedings by federal, state or local governmental unit or agency, the Insured must require that the Borrower apply the maximum permissible amount of any compensation awarded in such proceedings to reduce the principal balance of the loan, in accordance with the law of the jurisdiction where the Property is located.

### **7.2 Pursuit of Deficiencies**

- a. To facilitate the independent decisions of both the Insured and the Company of whether to pursue or establish a deficiency against a Borrower, the Insured shall provide the Company with any information it may have relevant to collecting on a deficiency judgment for that case. The Company will discuss all such information it may have with the Insured so that the parties can decide whether any Appropriate Proceedings necessary to establishing or

pursuing a deficiency are to be pursued for the benefit of both parties or whether one of the parties will elect not to participate in any recovery.

The Insured will be entitled to pursue Appropriate Proceedings, or shall, at the direction of the Company, pursue Appropriate Proceedings through the end of the Settlement Period, which may result in the Borrower becoming liable for a deficiency after completion of the Insured's acquisition of a Property. Such pursuit may not be directed by the Company unless the Company notifies the Insured at least thirty (30) days before the foreclosure sale that it will pursue a deficiency judgment, in whole or in part for its account. If the Company does not so notify the Insured, the deficiency judgment, if established by the Insured, will be solely for the account of the Insured, and the Company will not be subrogated to any rights to pursue the deficiency judgment.

The Insured will be deemed to be participating in Appropriate Proceedings solely at the request of the Company when such proceedings are not a condition precedent to obtaining Borrower's Title to or Possession of a Property and, after the parties have exchanged information on the Loan, the Insured has advised the Company in writing that the Insured does not wish to participate in such proceedings.

- b. Notwithstanding the provisions of Section 6 (Loss Payment Procedure) above, in the case where a deficiency against the Borrower is being pursued solely at the request of the Company, then any Deficiency Expenses shall be added to the amount of the Loss. If a deficiency against a Borrower is being pursued as part of Appropriate Proceedings for the benefit of both the Insured and the Company, then at the time such deficiency rights are established or a deficiency judgment is obtained, whichever shall occur first, the Deficiency Expenses plus any similar expenses incurred by the Company in connection with such deficiency shall be settled between the parties on the same pro rata basis set forth in Section 7.3 (Subrogation) for the settlement of deficiency recoveries. Expenses and costs arising after that point shall be treated as collection expenses to be netted against the deficiency recovery, if any (and, if none, to be shared between the parties on the same pro rata basis when it becomes clear that nothing will be recovered).

### 7.3

**Subrogation** - Subject to Section 7.2(a), and only to the extent that the Company is entitled under applicable law to pursue such deficiency rights, the Company shall be subrogated pro rata, to the full extent permitted by law, to all of the Insured's Recovery Rights with respect to a Loan, upon payment of a Claim hereunder. The Company's pro rata share of the net deficiency recovered (i.e., amounts recovered less reasonable costs and expenses) with respect to any Loan shall be the amount of the Loss divided by the amount of the deficiency judgment. Internal staff costs and overhead expenses shall not be deducted in determining the amount of a net deficiency recovery unless specifically agreed to in writing by the parties. The Insured hereby designates the Company as its exclusive agent (a) to pursue all of the Insured's Recovery Rights to which the Company has not become subrogated by payment of a Claim (i.e., the Insured's share of the Recovery Rights), (b) to file any action in the Company's name as assignee of the Insured, to collect on the Insured's Recovery Rights, and (c) to settle and compromise any such Recovery Rights on behalf of the Insured, it being understood and agreed that the Company shall have the exclusive rights to pursue and settle all Recovery Rights for any Loan on which a Claim payment is made hereunder, unless waived in writing by the Company. If the Company decides not to pursue Recovery Rights with respect to a Loan, then the Company shall issue a written waiver of its subrogation and management rights to the Insured. The Insured shall execute and deliver at the request of the Company such instruments and documents, and undertake such actions as may be necessary to transfer, assign, and secure such Recovery Rights to the Company. The Insured shall refrain from any action, either before or after payment of a Claim hereunder, that shall prejudice such Recovery Rights.

Notwithstanding any provision in the foregoing paragraph to the contrary, in the event the Insured has, in addition to Recovery Rights against a Borrower or any other Person, a claim or claims against such Borrower or other Person not related to the Recovery Rights, then the Insured shall have the right to pursue in its own name all the Recovery Rights in conjunction with the Insured's other claim or claims, and the Company will waive its right to manage the pursuit of the Recovery Rights (but not the Company's pro rata subrogation rights).

**7.4 Policy for Exclusive Benefit of the Insured and the Owner** - A Commitment and Certificate issued as the result of any Application submitted hereunder and the coverage provided under this Policy will be for the sole and exclusive benefit of the Insured and the Owner of the related Loan, and in no event will any Borrower or other Person be deemed a party to, or an intended beneficiary of, this Policy or any Commitment or Certificate.

**7.5 Effect of Borrower Insolvency or Bankruptcy on Principal Balance** - If under applicable insolvency or bankruptcy law, a Loan's principal balance secured by a Property is reduced (after all appeals of such reduction are final or the time for such appeals has lapsed without appeal), the portion of such principal balance of the Loan not secured by the Property, and related interest, will be includable in the Claim Amount, as provided in this Section 7.5.

If a Default occurs on the Loan, the Insured has acquired Borrower's Title or Good and Merchantable Title to the Property if required by this Policy, and all other requirements for filing of a Claim are complied with, the Insured will be entitled to include in the Claim Amount (a) the amount of the principal balance of the Loan which was deemed unsecured under applicable insolvency or bankruptcy law, less any collections or payments on such unsecured principal balance received by the Insured, and (b) interest thereon at the rate and as computed in Section 6.2, from the date of Default giving rise to the Claim (but for no prior period). In no event will any expenses or other amounts associated with the amount by which the principal balance of the Loan became unsecured be includable in the Claim Amount, directly or by an addition to the principal balance includable in the Claim Amount.

**7.6 Arbitration of Disputes; Suits and Actions Brought by the Insured**

a. Unless prohibited by applicable law, the Insured, at its option, may elect to settle by arbitration a controversy, dispute, or other assertion of liability or rights which it initiates arising out of or relating to this Policy, including the breach, interpretation, or construction thereof. Such arbitration shall be conducted in accordance with the Title Insurance Arbitration Rules of the American Arbitration Association in effect on the date the demand for arbitration is made, or if such Rules are not then in effect, such other Rules of the American Arbitration Association as the Company may designate as its replacement.

The arbitrator(s) shall be neutral person(s) selected from the American Arbitration Association's National Panel of Arbitrators familiar with the mortgage lending or mortgage guaranty insurance business. Any proposed arbitrator may be disqualified during the selection process, at the option of either party, if such individual is, or during the previous two years has been, an employee, officer, or director of any mortgage guaranty insurer, or of any entity engaged in the origination, purchase, sale, or servicing of mortgage loans or mortgage-backed securities.

b. No suit or action (including arbitration hereunder) brought by the Insured against the Company with respect to the Company's liability for a Claim under this Policy shall be sustained in any court of law or equity or by arbitration unless the Insured has substantially complied with the terms and conditions of this Policy, and unless the

suit or action is commenced within three (3) years (five (5) years in Florida or Kansas) after the Insured has acquired Borrower's Title to the Property or sale of the Property approved by the Company is completed, whichever is applicable to a Loan. No such suit or action with respect to a Claim may be brought by the Insured against the Company until sixty (60) days after such acquisition of Borrower's Title or sale, as applicable to a Loan.

- c. If a dispute arises concerning the Loan which involves either the Property or the Insured, the Company has the right to protect its interest by defending the suit, even if the allegations contained in such suit are groundless, false, or fraudulent. The Company is not required to defend any lawsuit involving the Insured, the Property, or the Loan.

7.7

**Amendments; No Waiver; Rights and Remedies; Use of Term "Including"**

- a. The Company reserves the right to amend the terms and conditions of this Policy from time to time; provided, however, that any such amendment will be effective only after the Company has given the Insured written notice thereof by endorsement setting forth the amendment. Such amendment will only be applicable to those Certificates where the related Commitment was issued on or after the effective date of the amendment.
- b. No condition or requirement of this Policy will be deemed waived, modified, or otherwise compromised unless that waiver, modification, or compromise is stated in writing properly executed on behalf of the Company. Each of the conditions and requirements of this Policy is severable, and a waiver, modification, or compromise of one will not be construed as a waiver, modification, or compromise of any other.
- c. No right or remedy of the Company provided for by this Policy will be exclusive of, or limit, any other rights or remedies set forth in this Policy or otherwise available to the Company by law or equity.
- d. As used in this Policy, the term "include" or "including" will mean "include or including, without limitation."

7.8

**No Agency** - Neither the Insured, any Servicer, or Owner, nor any of their employees or agents, will be deemed for any reason to be agents of the Company. Neither the Company, nor any of its employees or agents, will be deemed for any reason to be agents of any Insured, Servicer, or Owner.

7.9

**Successors and Assigns** - This Policy will inure to the benefit of and shall be binding upon the Company and the Insured and their respective successors and permitted assigns.

7.10

**Applicable Law and Conformity to Law** - All matters under this Policy will be governed by and construed in accordance with the laws of the jurisdiction in which the office of the original Insured on a Certificate is located. Any provision of this Policy which is in conflict with any provision of the law of such jurisdiction is hereby amended to conform to the provisions required by that law.

7.11

**Notice** - Premium payments are to be paid as provided in Section 2 and sent to the Company at the address listed on the Commitment, or as otherwise instructed by the Company in writing. All other notices, Claims, tenders, reports, and other data required to be submitted to the Company

by the Insured shall be either (a) mailed postpaid, (b) sent by overnight courier, (c) transmitted electronically or via magnetic tape or other media in a manner approved by the Company, or (d) sent by telephonic facsimile transmission, to the Company's home office at the following address and facsimile number:

For Claim matters:

P.O. Box 2514  
Winston-Salem, NC 27102  
Attention: Claims Department  
Facsimile Number: (336) 661-9413

For Customer Service matters:

P.O. Box 2514  
Winston-Salem, NC 27102  
Attention: Policy Servicing Department  
Facsimile Number: (800) 849-7642

All notices given by the Company to the Insured or the Owner shall be either (a) mailed postpaid, (b) sent by overnight courier, (c) transmitted electronically or magnetically in a manner approved by the Insured, or (d) sent by telephonic facsimile transmission, at the address and facsimile number for that Person, as reflected in the records of the Company, except that for facsimile transmissions, the Company shall confirm telephonically or otherwise the accuracy of the facsimile number used. Nonpayment notices under Section 2.6 (Renewal of Certificate and Termination for Nonpayment of Renewal Premium) and notices required under Section 4.5 (Non-Approved Servicer) shall be sent to both the Insured and the Owner whenever the Company has been notified that the Insured is a Person other than the Owner.

Either party may notify the other of a change in address in the same manner as provided for giving notice. All notices, Claims, tenders, reports, and other data required to be submitted to the Company or to the Insured shall be deemed to have been given five (5) days after the same is deposited in the U.S. Mail, delivered to an overnight courier, or transmitted in a manner approved above, unless actually received earlier. If the Insured requests that notices be sent to a third party other than the Insured, the Company agrees to use its best efforts to give such notices, but the Company shall not incur any liability for failure to send any notice to any third parties.

**7.12 Reports and Examinations** - The Company may request, and the Insured must provide, such reports or information as the Company may deem necessary pertaining to any loan, and the Company will be entitled to inspect the books and records of the Insured or any of its representatives pertaining to such loan.

**7.13 Electronic Media** - The Company and the Insured may agree, from time to time, that information, documents, or other data may be transferred between the Insured and the Company by electronic media acceptable to the Insured and to the Company. In addition, the Company and the Insured may maintain information, documents, or other data on electronic media or other media generally accepted for business records, including microfiche. Such electronic or other media will be as equally acceptable for all purposes between the Insured and the Company as information, documents, or other data maintained in printed or written form.

400152443  
MIN#100159969913899368  
699-138 9936

# NOTE

SEPTEMBER 19, 2007  
{Date}

NORTH CHARLESTON  
{City}

SOUTH CAROLINA  
{State}

259 CLAYBURNE DRIVE  
GOOSE CREEK, SC 29445  
{Property Address}

FredMac# 476596726

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 174,988.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is

CITX MORTGAGE COMPANY, LLC

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

## 2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.250 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

## 3. PAYMENTS

### (A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on 11/01/2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on 10/01/2037, 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 650269

DALLAS, TX 75265-0269 or at a different place if required by the Note Holder.

### (B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,077.44

## 4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

MULTISTATE FIXED RATE NOTE - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

UHP-5N (0207)

Form 3200 1/01

VMP MORTGAGE FORMS - (800)521-7291

Page 1 of 3

Initials: *MM*  
*cmde*



43

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED****(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.



**10. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Wilton H. Cain (Seal)  
WILTON H. CAIN -Borrower

Cassandra M. Durrah Cain (Seal)  
CASSANDRA M. DURRAH-CAIN -Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

Pay To The Order Of -  
Branch Banking & Trust Company  
Without Recourse

Amanda J. Williams  
CTX Mortgage Company  
Amanda J. Williams  
Division Vice President

[Sign Original Only]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendant(s).

(004335-02111)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2010 CP-08-3514

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE  
MORTGAGE  
Deficiency Judgment Demanded

FILED  
2010 OCT -4 AM 11:02  
CLERK OF COURT  
BERKELEY COUNTY, SC

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Berkeley County, South Carolina.

2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.

3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the HMP modification process has been completed without a modification.

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

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

7. Heretofore, on or about September 19, 2007, Wilton H. Cain and Cassandra M.

Durrah-Cain made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$174,988.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Wilton H. Cain and Cassandra M. Durrah-Cain made, executed and delivered unto CTX Mortgage Company, LLC 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 County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "Subdivision Plat Showing Phase 10A, (39.298 AC), Mulberry Park, A Portion of Tract E1 of The Liberty Hall Tract, Property of Centex Homes, A Nevada General Partnership, located in the City of Goose Creek, Berkeley County, South Carolina" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

Property Address: 259 Clayburne Drive  
Goose Creek, SC 29445

TMS# 244-03-04-016

9. The Mortgage was signed, witnessed and probated September 19, 2007; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Berkeley County on September 20, 2007, in Mortgage Book 6868 at Page 165. This Mortgage was subsequently assigned to Mortgage Electronic Registration Systems, Inc., its successors and assigns (MIN# 100159969913899368) by assignment dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 186.

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

11. Rogers Townsend & Thomas, PC sent a notice pursuant to 15 U.S.C. Section 1692(g) to the Notemaker(s), dated AUGUST 23, 2010, and a copy of the contents of the notice is attached hereto.

12. Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable Defendant(s) prior to the commencement of this action.

13. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for November 1, 2009, 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 November 1, 2009, the principal sum of \$170,733.63, with interest from October 1, 2009, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

14. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly demanded against Wilton H. Cain and Cassandra M. Durrah-Cain.

15. 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.

16. 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.

17. 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.

18. 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. Liberty Hall Residential Property Owners Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto.

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

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

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

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

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

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

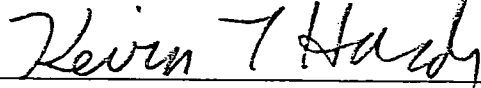
First, to the costs and expenses of the within action and sale;

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

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

(6) Issue an order directing the Sheriff of Berkeley 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) Cheryl H. Fisher (SC Bar #15213)  
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)  
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)  
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)  
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar# 74935)  
Shawn R. Willis (SC Bar # 71155) Kevin T. Hardy (SC Bar #76015) ✓  
Benjamin J. Powell (SC Bar #77205) John P. Feter (SC Bar # 77460)  
Kelsey K. Brockbank (SC Bar # 77519)  
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)  
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina  
October 1, 2010

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust company,

Plaintiff,

V.

Wilton H. Cain, Cassandra M. Durrah-Cain

Defendant(s)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-08-3514

ANSWER

JUDGMENT OF FORECLOSURE AND SALE

Deficiency Judgment Demanded

FILED  
2011 MAR 28 AM 9:49  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

Defendant(s) ANSWER

A hearing was held March 22, 2011 at 9.30 AM. Before the Master of Equity, hearing was postponed.

Admit 1-6

Deny 7, Defendant(s) applied for loan modification under Home Affordable Modification Program in June 2009. In May and June 2010 Plaintiff offered a Loan Modification. The May offer was the same payment. The June offer increased the escrow payment by 10.00 dollars, and both offers added 10 years to note a total of 480 months. Adding an additional 120,000.00 Dollars cost for the home. Costing nearly 500,000.00 for 174,988.00. Offer had no reductions in monthly payments or interest rate. The June offer stated 5 percent but payment remained the same plus adding 10 years extension on note. See exhibits A and B. Modification was untimely and Defendant(s) believe Plaintiff did not meet the guide line as set forth in Home Affordable Modification Program, and failed to meet Chief Justice Jean H. Toal Administrative Order dated march 22,2009. NO HELP. If as Plaintiff stated loan was not eligible for modification under HAMP then Defendant(s) request proof be supplied.

Admit 10 BUT Defendant(s) also put 10,000.00 dollars down.

Admit 15 Offered foreclosure only.

Deny 16 The sum is unreasonable for Plaintiff counsel, Because Plaintiff unnecessarily chose to

proceed to foreclosure, from as early as June 2010 Defendant(s) requested Deed in lieu of foreclosure, short sale or any other method directly to Mortgagee and Counsel. On a number of occasion, see exhibit , Defendant(s) question reason, was it to protect PMI insurer. Defendant(s) request would have saved counsel work and time. Defendant(s) request denial of attorney fee as unreasonable any delay of was fault of Plaintiff and not Defendant(s).

Deny 17 But, (a) admit, (b) interest was paid through November 1, 2009 and property was under Mortgagee control and possession from July 1, 2010 until present, therefore no accruing of interest against the Defendant, © Mortgagee is requesting Defendant(s) pay full alleged debt, while their agent LPS FIELD SERVICE. INC had control of property with lockout box on door. Property was secure prior to LPS breaking into house. Plaintiff seized property without Court Order. Total Debt should be adjusted and not 195,693.48 which Defendant(s) disagree with anyway.

Defendant contend Mortgagee violated Defendant(s) ownership rights without Court authority by entering and seizing control of mortgage property therefore it is unreasonable to expect Defendant(s) to honor contract, under SOUTH CAROLINA CODE OF LAW ANN. 29-3-10 **NO MORTGAGEE SHALL BE ENTITLED TO MAINTAIN ANY POSSESSORY ACTION FOR REAL ESTATE MORTGAGED.** The Defendant(s) seek relief from Mortgagee possession.

RELIEF Waiver, and withdraw demand for Deficiency judgment.

Deny 18 Deficiency Judgment should be denied, In PERPTUAL BLDG. AND LOAN ASSOCIATION OF ANDERSON V. BRAUN 270 S.C.338, 340 DECLARES MORTGAGE REPRESENTS SECURITY FOR A OBLIGATION BUT NOT FULL PAYMENT.

Defendant request denial of Deficiency Judgment further, It came to Defendant(s) knowledge through Plaintiff foreclosure officer YOLANDA YOUNG on March 22, 2011 that Mortgagee and RMI Republic Mortgage Insurance the PMI insurer on Defendant(s) loan has an agreement, which adversely affects Defendant(s). That agreement being that the Mortgagee shall on every foreclosure which has PMI from (RMI) Republic Mortgage Insurance Co. Grant no waiver and demand a Deficiency Judgment. This agreement effectively removes all risk from RMI as an insurance agent. PROFIT NO RISK through demanded litigation.

FURTHER Defendant(s) are adversely affected by said agreement, therefore We request a copy of agreement.

FURTHER PRIVATE MORTGAGE INSURANCE IS FOR DEFAULT A RISK INSURANCE.SAID AGREEMENT WOULD PROTECT INSURER FROM ANY LOSS, AND GUARANTEE ALL PREMIUM WERE PROFIT.

FURTHER AGENT OF INSURANCE ARE PROHIBITED FOR MAKING AGREEMENT FOR PERSONAL GAIN. S.C. CODE OF LAW TITLE 38, 38-12-70

FURTHER Plaintiff chose to seek foreclosure rather than any other path to more specifically increase profit and protect RMI the insurer.

FURTHER Defendant(s) Request copy of notice to RMI the PMI insurer on the default with date time and amount.

FURTHER THE DEFENDANTS BELIEVE SAID AGREEMENT VIOLATE LEGISLATIVE INTENT OF THE LAW. ALL THAT APPLY.

FURTHER DEFENDANT(S) ARE GOOD STEWARDS OF PROPERTY AND INSTALLED HARDWOOD FLOORS, A PRIVACY FENCE, AND LANDSCAPE WHICH INCREASED VALUE OF PROPERTY.

DENY 20 THAT SOUTH CAROLINA SUPREME COURT ADMIM. ORDER DATED MARCH 22, 2009 WAS NOT COMPLIED WITH.

DENY 21 NOT PROPER.

REQUEST 22 PLAINTIFF WAIVE RIGHTS AND WITHDRAW DEMAND FOR DEFICIENCY JUDGMENT.

DENY 23, 24 ,25

DENY PERSONAL OR DEFICIENCY JUDGMENT 27.

PRAY PLAINTIFF WAIVE RIGHTS 28

29 THROUGH 38 AS COURT DEEMS DEFENDANTS ARE NOT WAVING APPRAISAL RIGHTS AFTER SALE, REQUEST WAIVER BEFORE SALE AND DENIAL OF DEFICIENCY JUDGMENT

FOR PROPERTY AT 259 CLAYBURNE DR. GOOSE CREEK SC 29445

DEFENDANT(s) Wilton H. Cain and Cassandra M. Durrah-Cain

Wilton H. Cain  
Cassandra M. Durrah-Cain

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendants.

(504335-02111 HPW)

Harriet Pollitt Wallace, Esquire  
Attorney for the Plaintiff

Joseph E. DaPore, Esquire  
Attorney for Liberty Hall Residential Property Owners Association, Inc.

Wilton H. Cain  
Pro Se Defendant

Cassandra M. Durrah-Cain  
Pro Se Defendant

A hearing was held June 16, 2011 at 9:30 a.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 October 4, 2010.
2. The Summons and Complaint were filed on October 4, 2010.
3. Service was made upon all Defendants as shown by the proofs of service filed herein.
4. The Defendants Wilton H. Cain, Cassandra M. Durrah-Cain are in default as shown by affidavit filed herein.
5. The Defendants Wilton H. Cain and Cassandra M. Durrah-Cain are not in the

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-08-3514

JUDGMENT OF FORECLOSURE AND SALE  
Deficiency Judgment Demanded against Wilton H.  
Cain and Cassandra M. Durrah-Cain

FILED  
2011 JUN 30 AM 9:53  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

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.

6. No Defendant raised any issues related to Plaintiff's standing to prosecute this action.

7. Pursuant to the South Carolina Supreme Court Administrative Order 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.

8. Liberty Hall Residential Property Owners Association, Inc. filed an answer through its attorney, Joseph E. DaPore.

9. 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.

10. Wilton H. Cain and Cassandra M. Durrah-Cain for value received, made, executed and delivered a Fixed Rate Note dated September 19, 2007, promising thereby to pay to Plaintiff's predecessor the sum of \$174,988.00 with interest at a fixed rate of 6.25% per annum. Other terms and conditions are stated in the Fixed Rate Note, of record herein.

11. To better secure the payment of the Fixed Rate Note described above, Wilton H. Cain and Cassandra M. Durrah-Cain made, executed, and delivered to CTX Mortgage Company, LLC a certain real estate Mortgage in writing, dated September 19, 2007 covering real property in Berkeley County, which is the same as that described in the Complaint. This Mortgage was filed on September 20, 2007, and is of record in the Office of RMC/ROD in Book 6868 at Page 165. This Mortgage was subsequently assigned to Mortgage Electronic Registration Systems, Inc., its successors and assigns (MIN# 100159969913899368) by assignment dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 186. Subsequently, it was assigned to Branch Banking and Trust Company by assignment dated June 13, 2011 and subsequently recorded.

12. This Mortgage constitutes a purchase money first priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

13. 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.

14. Any notice required by the terms of the Mortgage or by state or federal statutes was given to the applicable Defendants prior to the commencement of this action.

15. Payment due on the Fixed Rate Note was not made as provided for therein, and Plaintiff, as the holder or nominee for the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Fixed Rate Note and Mortgage in the hands of the attorney herein for remedy by foreclosure.

5629.00 REW

16. The sum of ~~\$6,929.00~~ 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 Fixed 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 contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

17. 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 Fixed Rate Note, with interest at the rate provided in the Fixed Rate Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Fixed Rate Note and Mortgage, is as follows:

- (a) Principal due November 1, 2009..... \$170,733.63
- (b) Interest from October 1, 2009 through  
June 16, 2011 at 6.25% per annum ..... \$18,223.33
- (c) Allowable Escrow Advances ..... \$3,348.18

Private Mortgage Insurance - \$1,856.30  
19 Payments of \$97.70

Property Tax - \$718.88  
11/13/09 - \$142.58  
11/01/10 - \$576.30

Hazard Insurance - \$773.00

(d)	Allowable Corporate Advances .....	\$3,327.00	
	Paid Attorney Fees - \$1,325.00		
	BPO/Photos - \$224.00		
	Property Preservation - \$1,778.00		
(e)	Costs of collection prior to hearing (service, filing, etc.).....	\$705.00	
	Service - \$405.00		
	Master Fee - \$125.00		
	Motion Fee - \$25.00		
	Filing Fee - \$150.00		
(f)	Abstract or Title Search .....	\$550.00	
	Title Search - \$425.00		
	Title Search - \$125.00		
(g)	Late Charges .....	\$269.35	
(h)	Private Mortgage Insurance Due but not yet advances .....	\$195.40	
(i)	Attorney fee (awarded herein, but unpaid, through 6-15-11) .....	\$4,304.00	
(j)	Anticipated attorney fee for hearing and post judgment work.....	<del>\$1,300.00</del>	REN
	TOTAL debt secured by Fixed Rate Note and Mortgage, including interest to date shown.....	<del>\$202,960.89</del>	REN
		\$ 201,660.89	

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 6.25% per annum (pursuant to the terms of the Fixed Rate Note and purchase money first Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the purchase money first Mortgage through the date to which such interest is computed.

18. Plaintiff is seeking the usual foreclosure of the purchase money first mortgage and has expressly demanded the right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-660 demanded against Wilton H. Cain and Cassandra M. Durrah-Cain. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

19. The following Defendants 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 Defendants 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 Defendants and such liens or legal interests are as follows:

a. Liberty Hall Residential Property Owners Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions and any amendments thereto.

---

IT IS THEREFORE ORDERED:

20. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Order dated May 22, 2009, and the foreclosure action may proceed.

21. The property is not owner-occupied, and therefore, does not qualify for Foreclosure Intervention pursuant to the South Carolina Supreme Court Administrative Order dated May 11, 2011. A Certificate of Non-Owner Occupancy has been filed herein.

22. There is due on the Fixed Rate Note and purchase money first Mortgage set forth in the Complaint the principal sum of \$170,733.63 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 and other allowable advances.

23. Plaintiff shall have judgment demanded against Wilton H. Cain and Cassandra M. Durrah-Cain. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment at any time prior to the foreclosure sale.

24. 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 per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

25. 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.

26. The Defendants liable for the aforesaid judgment debt of the Fixed Rate Note and Mortgage including interest at the rate of 6.25% 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.

27. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold at public auction at the Berkeley County

Courthouse, in the City of Moncks Corner, 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 30 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. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

c. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

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

e. 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.

28. Personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

29. 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.

30. 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 30 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.

31. 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.

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

FIRST: To the payment of the amount of the costs and expenses of this sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including a reasonable attorney fee) or so much thereof as the purchase money will pay on the same; After crediting the proceeds of sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

NEXT: Any surplus should be held pending further Order of this court.

33. In the event the successful bidder is someone other than the Defendants in possession of the subject property, the Sheriff of Berkeley County, upon receipt of a Writ of Assistance or other order of ejectment, is authorized and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession.

34. In the event the successful bidder is other than the Defendants 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.

35. The Defendants named herein, and all persons whatsoever claiming under Defendants, is 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.

36. 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.

37. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendants, and the Defendants 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.

38. 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.

39. 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 County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "SUBDIVISION PLAT SHOWING PHASE 10A, (39.298 AC), MULBERRY PARK, A PORTION OF TRACT E1 OF THE LIBERTY HALL TRACT, PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE CITY OF GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

Property Address: 259 Clayburne Drive  
Goose Creek, SC 29445

TMS# 244-03-04-016

Robert E. Watson

Robert E. Watson  
Master in Equity for Berkeley County

6/28, 2011  
Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company;

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2010-CP-08-3514

Motion to Dismiss Deficiency Judgment

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

2015 DEC 29 AM 11:25

FILED

### Motion to DISMISS DEFICIENCY JUDGMENT

PLANTIFF UNDER THE CODE OF LAW HAS SUFFERED NO LOSS AND RECEIVED FULL EQUITABLE AND LEGAL RELIEF.

The Plaintiffs in this action of deficiency Judgment against defendants are Federal Home Loan Mortgage Corp. (lender) with Branch Banking and Trust Company as service representative being represented by Roger Townsend Law firm and Liberty Hall HOA which has chosen not to appear. No other party has appeared or served any notice on Defendants in the over four years of this case that also include PMI insurer known as RMIC. Insurance (cert.#0726007538). The Loan originator and first party will be identified as BB&T.

Further neither Plaintiff nor any other party has ever notified Defendant or this Court that they have any contractual responsibility or obligation to represent any other party specifically Insurer of PMI in this action as of this date Dec 26, 2015 over four years. BB&T are not insurer of loan and insurer are not represented by BB&T.

Further Lender sold said home 10/03/12 for the sum of 15400.00 to the Bakers, which is 14000.00 below appraisal value under of Law. Thereby when 25% is added to sale price total comes to 197747 when deficit of 14000 is added total becomes 211747.00 again leaving an excess6353.18 an enrichment for Plaintiff over and above debt. Defendants note that Plaintiffs has yet to mention home was sold.

Defendant request Court order Deficiency Judgment paid in full to Lender and Dismiss Deficiency Judgment that Lender has suffered no loss received full equitable and legal relief. And is not third party with Equitable Subrogation right.

*Wilton H. Cain*

THANK YOU:

Wilton H. Cain and Cassandra M. Durrah-Cain  
Defendants

6476 North Highway 17  
Awendaw, SC  
29429

8439913198

*Dec 20, 2015*

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company;

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendants.

(504335-02111 EL1)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2010-CP-08-03514

**PLAINTIFF'S BRIEF REGARDING  
DEFICIENCY JUDGMENT**

FILED  
2016 JAN 7 AM 11:07  
MARCO BROWN  
CLERK OF COURT

Plaintiff Branch Banking and Trust Company ("BB&T" or "Plaintiff") hereby submits this brief to the Court regarding Defendants Wilton H. Cain and Cassandra M. Durrah-Cain's ("Cains" or "Defendants") objection to the this Court's Order Reducing Deficiency Judgment of December 4, 2015:

**FACTS/ PROCEDURAL HISTORY**

Plaintiff filed its foreclosure action against Defendants on October 4, 2010, regarding a Mortgage on real property located in Berkeley County, South Carolina, more fully described as follows ("Subject Property"):

All that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "Subdivision Plat Showing Phase 10A, (39.298 AC), Mulberry Park, A Portion of Tract E1 of The Liberty Hall Tract, Property of Centex Homes, A Nevada General Partnership, located in the City of Goose Creek, Berkeley County, South Carolina" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear. Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

TMS # 244-03-04-016

Bl.

KDC 64

SCANNED KDC

Property Address: 259 Clayburne Drive  
Goose Creek, SC 29445

The Mortgage includes a provision regarding Mortgage Insurance which reads, in part:

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.

A copy of the Mortgage is attached hereto as Exhibit A, for reference.

Defendants were served with the Lis Pendens, Summons, and Complaint, and an Order of Default was entered on December 8, 2010, holding the Defendants in default in the action<sup>1</sup>. The matter was referred to the Master in Equity on the same date, December 8, 2010. A hearing was set for March 22, 2011, and Defendant Wilton H. Cain appeared at the hearing. The hearing was continued by Judge Watson at that time on order to allow Plaintiff to produce a live witness for cross-examination. Defendants then filed a late answer on March 28, 2011, although already in default.

A second hearing was held on June 16, 2011, and Plaintiff produced Richard Miller ("Mr. Miller") from BB&T as a witness. Mr. Miller testified as to the loan documents, the payment history, the default of the loan by the Defendants, and the debt amount. Mr. Miller also testified regarding the mortgage insurance policy between BB&T and the mortgage insurance carrier.<sup>2</sup>

A Judgment of Foreclosure and Sale was entered on June 30, 2011, with a judgment amount of \$201,660.89. The judicial sale of the property was finalized on September 2, 2011, and the Subject Property sold to the Plaintiff for the sum of \$121,500.00. Subsequently, a deficiency judgment was entered on September 19, 2011, in the amount of \$83,893.82,

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<sup>1</sup> An Amended Affidavit of Default and Non-Military Service was filed on December 29, 2010, to withdraw the order of default as to Liberty Hall Residential Property Owners Association, Inc. as that entity was inadvertently held in default after filing an answer.

<sup>2</sup> While it is believed that the topic of mortgage insurance was discussed at the time of the hearing, the transcript of the hearing is no longer available from the court reporter and, thus, Plaintiff cannot accurately report the extent of the discussion at hearing.

representing the difference between the judgment amount plus post-judgment interest and supplemental costs and the final sales price, pursuant to S.C. Code Ann. § 29-3-660. A copy of the Order for Deficiency Judgment is attached hereto as Exhibit B, for reference.

Thereafter, Defendants filed a Petition and Proposed Order for Appraisal, and on September 28, 2011, The Honorable Kristi Lea Harrington signed the Order. It was filed the next day, September 29, 2011. On October 21, 2011, Judge Harrington *sua sponte* issued a Form 4 Order rescinding her prior Order for Appraisal. Defendants filed a Motion to Reconsider on November 1, 2011, which was denied by Judge Harrington on November 9, 2011, without hearing or participation from Plaintiff or its counsel.

Defendants filed a Notice of Appeal on December 8, 2011. Following a lengthy appeals process, the South Carolina Court of Appeals vacated the Order of Judge Harrington and remanded the case for an order containing the specific factual findings and conclusions of law as to whether the Defendants were entitled to exercise their appraisal rights. The Order was entered on September 24, 2014. A Remittitur was issued on October 17, 2014.

On May 29, 2015, a Form 4 Order was entered, reinstating the September 28, 2011, Order for Appraisal. On December 4, 2015, after the appraisal process was completed, this Court entered an Order Reducing Deficiency Judgment. The Court determined the value of the Subject Property as of the date of the judicial sale to be \$168,000.00 and therefore reduced the deficiency judgment to \$37,393.82, which reflected the total after final judgment amount (including post-judgment interest and additional costs) less the newly determined value of the Subject Property.

Defendants objected to the entry of the deficiency judgment on the basis of alleged mortgage insurance and alleged payment of said insurance to Plaintiff. A Motion to Dismiss Deficiency Judgment was filed on December 29, 2015.

## LAW AND ANALYSIS

### A. Deficiency Judgments and Appraisal Rights

“[T]he general rule is that “if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency.” *Am. Gen. Fin. Servs., Inc. v. Brown*, 376 S.C. 580, 583, 658 S.E.2d 99, 100 (2008), citing *Perpetual Bldg. and Loan Ass'n of Anderson v. Braun*, 270 S.C. 338, 340, 242 S.E.2d 407, 408 (1978). The law regarding deficiency judgments and the appraisal process in South Carolina is governed by statute. *S.C. Code Ann.* § 29-3-660 states:

In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage ...

Further:

In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.

*S.C. Code Ann.* § 29-3-680. Finally, once the appraisal process has been completed and the return of the appraisers made, the deficiency judgment is to be confirmed, altered, or extinguished based upon the Court's finding after review of the return:

If the value returned after deduction therefrom of the amount of the price at which the property was sold under direction of the court be equal to or exceed the amount of the deficiency remaining upon the judgment after application of the net proceeds of sale the judgment shall be thereupon extinguished and cancelled of record by the clerk and if such returned value, after deduction of the amount of the sale price, be less than the deficiency the latter shall be abated and deemed paid, pro tanto, and be thereafter enforceable for only the remainder, the amount of which will be determined by the clerk and stated in a proper order from which

any party may appeal within ten days after notice of filing thereof to the court or any judge thereof in accord with the procedure prescribed in § 29-3-750.

*S.C. Code Ann.* § 29-3-740. The statute does not contemplate any other considerations in the confirmation, reduction, or cancellation of a deficiency judgment entered, other than the value as returned by the appraisers.

As outlined above, a mortgagee is entitled to a deficiency judgment unless it is waived. Plaintiff in this case specifically demanded deficiency from the filing of the complaint and has made no waiver of this right. Further, the statute governing deficiency judgments and the appraisal rights of the borrower provides for specific considerations in the setting of the deficiency judgment entered against the borrower or the reduction of such a judgment following the appraisal process; third party insurance payments or other sources of recovery by the Plaintiff are not contemplated by the statute and should not be considered by the court in entering an award in favor of Plaintiff.

Therefore, the entry of the deficiency judgment, as reduced by the Court's December 4, 2015, order should be confirmed and stand as an award in favor of Plaintiff against Defendants.

**B. Collateral Source Rule**

South Carolina also recognizes the "collateral source rule" as to an award of damages. While the collateral source rule is typically used in tort actions, the theory can be translated to the context of a deficiency judgment and payment of mortgage insurance by a third party insurance company.

The collateral source rule provides that compensation received by an injured party from a source wholly independent of the wrongdoer will not reduce the amount of damages owed by the wrongdoer. *Rattenni v. Grainger*, 298 S.C. 276, 379 S.E.2d 890 (1989); *Young v. Warr*, 252 S.C.

179, 165 S.E.2d 797 (1969); *Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967). "A source is wholly independent of the wrongdoer 'when the wrongdoer has not contributed to it and when payments to the injured party were not made on behalf of the wrongdoer.'" *Mount v. Sea Pines Co.*, 337 S.C. 355, 357, 523 S.E.2d 464, 465 (Ct. App. 1999), citing *Citizens & S. Nat'l Bank v. Gregory*, 320 S.C. 90, 92, 463 S.E.2d 317, 318 (1995).

This rule has been liberally applied in South Carolina to preclude the reduction of damages. See *Otis Elevator v. Hardin Construction Co.*, 316 S.C. 292, 450 S.E.2d 41 (1994) (holding that a contractual right to indemnification is not defeated by fact that loss was actually paid by an insurance company). A wrongdoer should not be able to take advantage of a contract between an injured party and a third person, no matter what the source of the funds received. *Johnston v. Aiken Auto Parts*, 311 S.C. 285, 287, 428 S.E.2d 737, 738 (Ct.App.1993).

"A benefit that is directed to the injured party should not be shifted to result in a windfall for the [wrongdoer]... It is the [wrongdoer]'s responsibility to compensate the injured party for all the harm that he causes, not the net loss the injured party receives." *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 182, 463 S.E.2d 636, 640 (Ct. App. 1995), see also 22 *Am.Jur.2d Damages* § 566 (1988).

The collateral source rule as applied in this scenario does not contemplate a reduction in the award to Plaintiff. Defendants are responsible for the debt they incurred and the judgment entered against them. Payment of a third party insurance contract does not obviate their responsibility for the debt. Defendants argue that they paid mortgage insurance premiums as part of their mortgage payments and therefore the insurance should be considered in a reduction of the award entered against them. However, in the mortgage contract, it is made clear that the Defendants are not party to the insurance and are not the beneficiaries of such a policy. The

payment of the mortgage insurance was a condition precedent to the Defendants obtaining the loan with the terms as outlined, but any payments made by the third party mortgage insurance company were not made on behalf of the Defendants.

Further, Plaintiff and the mortgage insurance company at issue have a subrogation agreement<sup>3</sup> whereby the mortgage insurance company is subrogated to the recovery rights of the Plaintiff with regard to the deficiency judgment. Even if a claim is paid pursuant to the insurance policy, that payment does not absolve the Defendants of their responsibility for the debt as the Plaintiff or the mortgage insurance company can seek to collect on that deficiency judgment pursuant to the agreement. A copy of the Mortgage Insurance Policy (without endorsements) is attached hereto as Exhibit C, for reference.

As such, the alleged payment of mortgage insurance to Plaintiff should not cause the reduction of a deficiency judgment personally owed by Defendants in this matter and the Court's December 4, 2015, order should stand.

Respectfully submitted,



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Erica G. Lybrand (SC Bar #79052)  
Rogers Townsend & Thomas, PC  
P.O. Box 100200  
Columbia, SC 29202  
(803) 744-5289  
Erica.Lybrand@rtt-law.com  
*Rogers Townsend & Thomas, PC and its staff are debt collectors*

January 4, 2015

---

<sup>3</sup> Pursuant to section 7.3 of the policy.

State of South Carolina	)	
	)	
County of Berkeley	)	
	)	
Branch Banking and Trust	)	10-CP-08-03514
Company,	)	
	)	Transcript
Plaintiff,	)	
v.	)	of
	)	
Wilton H. Cain, et al,	)	Hearing
	)	
Defendants.	)	

Date: January 14, 2016

Time: 11:04 a.m.

Location: Berkeley County Courthouse, Courtroom B  
300-B California Avenue, Moncks Corner, South Carolina  
29461

Reported by  
Diane M. Hendricks

71

APPEARANCES

Presiding: The Honorable Dale E. Van Slambrook,  
Master-in-Equity for Berkeley County

For the Plaintiff:

Erica G. Lybrand, Esq.  
Rogers Townsend & Thomas, PC  
220 Executive Center Drive  
Columbia, South Carolina 29210

Pro-se Defendant:

Wilton H. Cain  
6476 North Highway 17  
Awendaw, South Carolina 29429

INDEX

Proceeding:

3

EXHIBITS

(There were no exhibits proffered.)

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1

PROCEEDINGS:

2

THE COURT: All right. And we are here -- it's the

3

BB&T and Wilton Cain. And Mr. Cain is here

4

with us.

5

Good morning, Mr. Cain.

6

MR. CAIN: Good morning, Your Honor.

7

THE COURT: 2010-CP-08-03514. And this is relative

8

to an objection, I believe. I'm not sure

9

the -- the -- I want to make sure I -- I frame

10

it properly, relative to the valuation on the

11

property; is that correct?

12

MS. LYBRAND: I believe so, Your Honor. You had

13

entered an order reducing the deficiency

14

judgment based on the appraisal process that

15

was completed in this case. And I objected. I

16

think Mr. Cain objected to the deficiency order

17

that was entered, and I said, well, I would

18

rather this not be conducted via email. Any

19

kind of objections need to be made in writing

20

or by motion.

21

And then you asked us to go ahead and brief the

22

issue. Mr. Cain then filed a motion to dismiss

23

the deficiency, late 2015, so I think it was

24

like July 29th -- I mean, December 29th or 30th

25

of 2015, and I then -- I'm submitting my brief

1 in opposition to a reduction in the deficiency  
2 judgment based upon his objections.

3 THE COURT: Okay. Yeah. That -- that tracks my  
4 understanding that, pursuant to the statute we  
5 went through, there were the appraisals that  
6 were obtained, I issued an order setting the  
7 value, I think it was \$168,000 ---

8 MR. CAIN: Sixty-eight.

9 THE COURT: And then -- then there's some  
10 entitlement under the statute to allow for some  
11 objection to that. There's the objection by  
12 Mr. Cain ---

13 MR. CAIN: No. No, Your Honor.

14 THE COURT: Well, okay. If -- if -- if you don't  
15 object, then we're done.

16 MR. CAIN: I never objected to the 168,000 ---

17 THE COURT: Okay. Well, you -- you -- you objected  
18 to the deficiency amount that resulted from  
19 that determination ---

20 MR. CAIN: Yes ---

21 THE COURT: --- right?

22 MR. CAIN: --- that.

23 THE COURT: And then you entered an objection as to  
24 the ultimate order, that after the subtraction  
25 in the numbers, and yours was as to an

1 application of mortgage insurance; is that  
2 right?

3 MR. CAIN: Absolutely, sir.

4 THE COURT: Okay. So no objection as to the  
5 168,000?

6 MR. CAIN: No.

7 THE COURT: Merely the objection or issue that  
8 you've taken and -- and want to bring to my  
9 attention relative to the mortgage insurance?

10 MR. CAIN: PMI. Yes, sir.

11 THE COURT: Okay.

12 MR. CAIN: Yes, Your Honor.

13 THE COURT: Okay. I just want to make sure I  
14 framed it, framed it properly.

15 MR. CAIN: Yes. Yes, Your Honor.

16 THE COURT: I thought for some reason you were  
17 telling me that -- that we were all okay ---

18 MS. LYBRAND: Uh-uh.

19 THE COURT: --- and we're all in agreement. I just  
20 want to make sure that -- that -- that I didn't  
21 misunderstand.

22 MR. CAIN: Okay.

23 THE COURT: I don't want to put words in anybody's  
24 mouth. I just want to make sure I've got it  
25 straight in my head.

1 MR. CAIN: Yes, sir.

2 THE COURT: So, my position or my -- I guess  
3 the -- the way we're dealing with it is, is  
4 that -- that this calculation is a continuation  
5 of the appraisal process bringing it to its  
6 conclusion as to a final determination; is that  
7 correct?

8 MR. CAIN: I -- I guess that's fair.

9 THE COURT: Okay. Okay.

10 MS. LYBRAND: My -- my position on that would be  
11 your order reducing the deficiency would have  
12 been your final order, and that this is some  
13 kind of motion to alter, amend, or otherwise  
14 alter your final order, because he filed a  
15 motion to dismiss your deficient -- your -- the  
16 deficiency judgment.

17 THE COURT: Okay. Is there any -- is there any  
18 objection from the plaintiff as to  
19 the -- either the appropriateness of the filing  
20 of -- of -- of that or the treatment as a  
21 motion to alter or amend that order?

22 MS. LYBRAND: I'm happy to have the Court treat it  
23 however you see ---

24 THE COURT: Okay.

25 MS. LYBRAND: --- fit. I -- I think, you know, you

1 filed the order reducing the deficiency  
2 judgment. And then he filed his motion to  
3 dismiss the deficiency judgment. I -- I'm not  
4 sure in terms of like this -- you know,  
5 post-foreclosure, post-sale motions, how that  
6 should be treated, but I was kind of thinking  
7 along the lines of a motion to alter or amend  
8 your order entering the reduced deficiency  
9 judgment.

10 THE COURT: All right. So, I -- I think what we'll  
11 probably do, and -- and I think it's a valid  
12 point. I want to make sure that procedurally  
13 it's -- it's properly explained, so that if  
14 there's an issue after today with the results,  
15 that it's appropriate, that y'all can take  
16 whatever steps following that. I don't want to  
17 create any confusion that would inhibit either  
18 one or both from -- from -- from continuing to  
19 exercise your -- your rights. So, I'll hear,  
20 relative to the positions that I think that  
21 we'll treat today as exactly that: A motion to  
22 alter or amend, or, in the alternative, a  
23 conclusion relative to the appraisal process,  
24 to envelope all of it, so that there isn't any  
25 question that -- and that's it's timely -- that

1           it was timely filed, it's appropriately heard,  
2           no procedural objection, so that the issuance  
3           resulting from today would be the final order  
4           after the motion to alter or amend, so that  
5           there wouldn't have to be any other motions or  
6           wouldn't necessarily require any additional  
7           motions, not that there wouldn't be any. That  
8           would be up to y'all. So -- all right. Sorry  
9           for boring and confusing y'all on that. I just  
10          wanted to make sure that that was -- that  
11          was -- that we're all on the same page relative  
12          to the positions.

13        Mr. Cain, you've -- you've -- you're in essence the  
14          moving party on this.

15        MR. CAIN: Yes.

16        THE COURT: And you've provided me some written  
17          explanation of -- of -- of your position. Tell  
18          me again what you want me to do and why you  
19          want me to do it.

20        MR. CAIN: Yes, Your Honor. Well, here's my  
21          concern, Your Honor: And I'm not an attorney.  
22          But, as I read the code of law, I find that the  
23          insurance company, RMI, under equitable  
24          subrogation, can possibly come back with  
25          respect to the deficiency judgment. Any money

1           that they paid BB&T as a result of the default,  
2           for the foreclosure, they can come back, under  
3           the code of law, and sue me for what they paid,  
4           what the insurance company paid BB&T or the  
5           financing company, which was Freddie Mac. I've  
6           seen a number of cases in South Carolina where  
7           they are the third party, they may have that  
8           right if they timely or whatever, you know,  
9           situation is. But they would have that  
10          specific right. So, here's my concern: My  
11          concern is, is that if Freddie Mac, and when I  
12          talked to Freddie Mac for the last two weeks,  
13          they said the case is closed; BB&T tells me the  
14          case is closed. Freddie Mac sold the house and  
15          was paying the insurance, the -- as a result of  
16          the default. So, if I'm going to have a  
17          default with BB&T, that means twice. That  
18          means the insurance company can come back on  
19          that equitable subrogation, and sue me.  
20          Whether they are successful or not, they do  
21          have that right under the code of the law, and  
22          then now, I'm faced with two deficiency  
23          judgments: One with BB&T and one with them.  
24          And my meaning of it is that BB&T  
25          received -- not BB&T. The financing, their

1 service company. That Freddie Mac done  
2 received what they lost. So they're not faced  
3 with a loss. BB&T has been fully paid. In  
4 fact, I think they've been paid more than what  
5 the foreclosure required. They indicated to  
6 Judge Watson that it was 25 percent insurance  
7 on that; that comes to \$43,000. If the  
8 deficiency judgment that is remaining, this  
9 \$37,000, that leaves an additional \$6,000.  
10 And, in all the cases I've read, if they  
11 received more than what the judgment was, those  
12 funds should be turned over to the Court for  
13 the Court's discretion. And my concern is, is  
14 that BB&T has been paid, then -- then they do  
15 not have a right to be a part of the deficiency  
16 judgment against them. It needs to be  
17 dismissed as far as them. If the insurance  
18 company wants to come back at me, fine. We'll  
19 deal with that if they do. That's what I'm --  
20 where I'm at.

21 THE COURT: Okay. All right. Thank you.

22 Yes, ma'am.

23 MS. LYBRAND: Your Honor, the insurance company has  
24 an agreement with BB&T, as the mortgage  
25 insurance company, by a subrogation agreement.

1 In order for the insurance company or BB&T to  
2 seek to collect the -- the debt owed by  
3 Mr. Cain, there would have to be a judgment in  
4 order to collect. And that's what we're trying  
5 to establish here, that there's a \$37,000  
6 judgment that is owed by Mr. Cain as a result  
7 of his default, as a result of the fact that  
8 the property was sold for less than the  
9 judgment amount, and that resulted after  
10 the -- the -- the appraisal process and the  
11 \$37,000 judgment. BB&T can seek to collect  
12 that judgment or it can assign its right to  
13 collection of that judgment to the mortgage  
14 insurance company based upon any payments that  
15 were made by the mortgage insurance company.  
16 But, in order for that to happen, a judgment  
17 has to exist. And that's what we're trying to  
18 establish for the record today, Your Honor, is,  
19 is that this judgment is owed by Mr. Cain; this  
20 amount, this \$37,000, is the result of his  
21 default on this mortgage loan. We went through  
22 the appraisal process, he was given his rights  
23 to the appraisal process, the appraisal process  
24 did result in a reduction of the deficiency  
25 judgment to the -- I think it was originally

1           like eighty -- \$83,000, and now it's \$37,000  
2           based upon that appraisal process. But, we  
3           have to establish that judgment amount in order  
4           for anyone to have the rights to come back and  
5           seek to collect that from Mr. Cain. In my  
6           brief, you'll see, and I don't know if you've  
7           had a chance to review it yet, that -- and  
8           there's two points on this matter: One is the  
9           statute itself, the appraisal statute, which  
10          doesn't provide for any reduction of the  
11          deficiency judgment other than by and through  
12          the appraisal process, the value of the -- of  
13          the property. It doesn't say that the -- the  
14          deficiency judgment can subsequently be -- be  
15          reduced by other considerations like mortgage  
16          insurance or other payments made by third  
17          parties. It strictly gives this process for a  
18          reduction of the deficiency judgment in the  
19          event that the appraisal comes back at an  
20          amount higher than what's bid in at the  
21          foreclosure sale.

22         Secondarily, I use the collateral source rule here  
23           in South Carolina as a means to illustrate the  
24           equitable position that plaintiff is taking in  
25           this matter. There's no point -- you know,

1 collateral source rules are used mostly in tort  
2 actions here in South Carolina where, after a  
3 party, insurance carrier pays out a benefit to  
4 the insured, and oftentimes, the third party  
5 who caused the accident or whatever tort that's  
6 being sued upon, seeks to have that judgment  
7 reduced by the amount that the insurance  
8 company pays for. The law's pretty clear in  
9 South Carolina that you can't reduce a debt  
10 that's owed or an amount that's owed by that  
11 party due to the payment of insurance funds in  
12 a situation where that payment's made by a  
13 source wholly independent of the wrongdoer. In  
14 this -- and it's for the specific reason, the  
15 subrogation reason, in those cases, which is,  
16 that that insurance carrier should be able to  
17 go after that party for the judgment amount,  
18 just like the -- the original person who's  
19 injured. And so what -- what we have here  
20 today, Your Honor, is a situation where  
21 plaintiff is simply trying to establish that  
22 this is the judgment amount, this is the amount  
23 due by Mr. Cain. Mr. Cain should not get the  
24 benefit of insurance being paid to reduce the  
25 debt that he legitimately owes, and that's been

1 established by both the foreclosure and now the  
2 appraisal process post foreclosure. And that  
3 we need to be able to establish this debt for  
4 it to be able to be collected from Mr. Cain in  
5 the -- in the event that that happens down the  
6 road.

7 MR. CAIN: (Rises.)

8 THE COURT: And I'll -- I'll -- I'll come back to  
9 you, Mr. Cain. I just want to make sure I  
10 understand.

11 And -- and I've -- and you've given me a different  
12 way to look at it, and thank you. In essence,  
13 you -- the argument, the first argument or  
14 position is none of this stuff that -- that Mr.  
15 Cain has raised matters. I've calculated the  
16 amount based upon the appraisal, entered a  
17 judgment figure, and what he is essentially  
18 arguing is some sort of a credit or offset that  
19 is not relevant to or not a part of the -- the  
20 appraisal statute process. Is that right?

21 MS. LYBRAND: Correct.

22 THE COURT: How would you anticipate that, if there  
23 was some other source, if there was some matter  
24 outside the realm of -- of mortgage insurance  
25 that reduced this amount, how would he seek to

1 - have that -- how would he seek to have that  
2 judgment figure changed?

3 MS. LYBRAND: Well, to be honest, Your Honor, I  
4 think at the point that we're at in -- in this  
5 particular process, that there is not -- unless  
6 he pays some portion of that judgment, once  
7 the ---

8 THE COURT: Well ---

9 MS. LYBRAND: --- judgment is -- is determined that  
10 that amount is what he owes, and unless he pays  
11 it, there shouldn't be anything that reduces  
12 it.

13 THE COURT: Let's say -- let's say he pays it, he  
14 pays \$10,000?

15 MS. LYBRAND: Then, I would think, in the event  
16 that the amount, the full amount, the 37. So  
17 let's say he pays \$10,000, and the full amount  
18 of the 37, if it's sought -- if the plaintiff  
19 or the mortgage insurance carrier seeks to  
20 collect the entire 37 down the road, he would  
21 have a challenge at that point saying, "Listen,  
22 I paid you \$10,000 in 2015 ---

23 THE COURT: Okay.

24 MS. LYBRAND: --- at the -- you know, I don't owe  
25 you the full 37." Of course, then he'd still

1 be subject to post-judgment interest, so  
2 it -- the -- all of these amounts, you know,  
3 come into play at that point. But, in -- in  
4 the event that he pays something towards that  
5 judgment and they try to collect more than what  
6 he owes, at that point when they try to collect  
7 it would be where he would have this ability  
8 to -- to argue that he doesn't owe that amount.  
9 I don't think that it's appropriate at this  
10 stage, once the order is entered providing the  
11 amount that he owes pursuant to this judgment,  
12 that unless he makes some kind of payment, that  
13 there be any other considerations in the amount  
14 that he owes.

15 THE COURT: If he -- if he had paid money in the  
16 meantime, if last year before this thing had  
17 finalized, he paid the \$10,000, wouldn't it be  
18 appropriate for me to consider that?

19 MS. LYBRAND: You mean like if the judgment  
20 amount -- because there was a judgment that was  
21 entered in the amount of \$83,000. If he had  
22 paid \$10,000, certainly at that point his  
23 payment would be considered a reduction of that  
24 original \$83,000, which you would have had to  
25 take into consideration in the amount that you

1           would finally enter. But, I think it would be  
2           a separate consideration. I don't think you'd  
3           say, "I'm going to reduce the judgment in whole  
4           by these amounts and here's the final judgment  
5           amount." I think you'd say, "Here's the final  
6           judgment amount. But he's also paid \$10,000,  
7           so the actual amount owed at this time is 27."

8           THE COURT: Okay.

9           MS. LYBRAND: I think that a payment by Mr. Cain  
10          would have to be a separate consideration in  
11          this process, and not, according to statute,  
12          not part of the actual determination of the  
13          debt owed.

14          THE COURT: Okay. Thank you.

15          Mr. Cain?

16          MR. CAIN: You Honor, bear with me, Your Honor.

17          With reference -- first, with reference to the  
18          statutes in the State of South Carolina, in all  
19          foreclosure actions, the plaintiff is only  
20          allowed to collect that which is due. In other  
21          words, a foreclosure value. That's all they're  
22          allowed to collect. Anything over that comes  
23          into the Court's jurisdiction. That's number  
24          one.

25          Number two, the insurance company is a third party.

1           This foreclosure deal is with no one but  
2           Freddie Mac who -- who is the lender, and BB&T  
3           who is the servicer. Freddie Mac is the one  
4           who my responsibility to pay back is through  
5           them, not BB&T. Freddie Mac. If Freddie Mac  
6           has received the income or the money that was  
7           due, they no longer have a claim. So we need  
8           to separate them. The insurance company  
9           themselves is a third party. They're only  
10          involved in this if they pay money as a result  
11          of a default. That's where the -- the  
12          subrogation comes in at, okay? They can -- and  
13          they don't need them and their authorization to  
14          sue. According to their own paperwork that  
15          they sent me, and the loan papers itself, it  
16          separates the insurance company on the PMI  
17          authority to sue. And it says specifically  
18          that they have the right to sue for the money  
19          that they paid in -- in regards to any default,  
20          not authorization from the plaintiff, then they  
21          can sue. They have a specific right under  
22          their agreement to sue. It's on Page 123 of  
23          their paperwork.

24         That also, to get back to the collateral source,  
25         it's totally irrelevant for the simple reason,

1 every case on collateral source in the State of  
2 South Carolina has a clause in it. And that  
3 clause says that it is independent of the  
4 plaintiff -- I mean, the defendant. Mortgage  
5 insurance is not independent of me. Number  
6 one, it's based on my contract with the lender.

7 Number two, I paid for the mortgage insurance.

8 Number three, the mortgage insurance, I could have

9 it canceled if certain conditions aren't met.

10 It's not totally independent of me.

11 So it has nothing to do with collateral source.

12 Collateral source is involving personal

13 injuries as well. There was an attempt

14 to -- to relate them in some of their cases,

15 but they've never been related in South

16 Carolina. These are two different things.

17 BB&T and the -- I mean, the lender is one

18 thing, and the insurance is another thing. We

19 should not be putting them together.

20 BB&T -- the insurance company does not need an

21 order from BB&T saying the default exists.

22 They can come back and sue under equitable

23 subrogation with the money that they paid

24 strictly to the mortgage company.

25 THE COURT: Isn't the -- the mortgage insurance

1           company subrogated to the rights of the  
2           original lender?

3   MR. CAIN:  I -- you -- you lost me.  Let me say  
4           what -- what I think you're trying to say to  
5           me.  Their agreement with the PMI, Republic  
6           Mortgage, is that if there's a default, they  
7           have in their agreement that Republic Mortgage  
8           has a right to sue.  Is that what you're  
9           saying?

10  THE COURT:  I'm asking you.  If -- under the  
11           language of the -- of the agreement between the  
12           mortgage insurance company and the -- and the  
13           lender, doesn't the mortgage insurance company,  
14           aren't they subrogated to the rights of the  
15           lender?

16  MR. CAIN:  If there's a default.

17  THE COURT:  No.  It -- I mean, if -- are -- are  
18           they or aren't they?

19  MR. CAIN:  I -- I'm -- I'm not understanding what  
20           you're -- what you're trying to get me to say.  
21           When you say are they subrogated to them, you  
22           mean are they dependent upon them?

23  THE COURT:  Are they subrogated.

24  MR. CAIN:  No.  I would say no, then.  If ---

25  THE COURT:  Okay.

1 MR. CAIN: If that's what you're asking me.

2 THE COURT: Okay.

3 MS. LYBRAND: Your -- Your Honor, if I might  
4 respond. Mr. Cain is making my point for me in  
5 that there has to be a judgment in order for  
6 the mortgage insurance company to be able to  
7 come back and collect against Mr. Cain. In  
8 this case, as a third party, the mortgage  
9 insurance company can't step in and enter a  
10 judgment in this case. BB&T is the original  
11 plaintiff, the one who was originally  
12 the -- the loss payee essentially, the -- the  
13 one who made -- who had originally had the loss  
14 in this case, and has established this debt  
15 owed by Mr. Cain; it has to establish that  
16 amount. And then, pursuant to the subrogation  
17 rights, yes, the mortgage insurance carrier  
18 subrogated to the rights of -- of BB&T to this  
19 judgment amount. And so, in the event that  
20 there is an ability to collect this amount,  
21 this judgment has to be established to do so.  
22 The mortgage insurance carrier can't just  
23 willy-nilly sue Mr. Cain, especially if this  
24 deficiency is extinguished, can't just come in  
25 to court and say, "Mr. Cain owes us this

1 money," when there's been no debt -- debt  
2 established by the Court. And so that's what  
3 I'm trying to say in -- in this -- in this  
4 case, Your Honor, is that there has to be a  
5 debt established in order for anyone to have a  
6 right to sue Mr. Cain to collect it. And so  
7 that's where we're -- we are in this case. And  
8 that -- and that -- I would also mention for  
9 the record that there's been no official  
10 testimony or evidence presented or anything of  
11 that nature as part of any prior proceedings  
12 with regard to the actual amount of deficiency,  
13 whether or not deficient -- or mortgage  
14 insurance, and whether or not mortgage  
15 insurance was actually paid in this case. And  
16 so we're talking about a whole lot of what-ifs,  
17 and that is normally not even a problem,  
18 because, like I said, the deficiency judgment  
19 is entered in favor of the original plaintiff,  
20 then the mortgage insurance company has that  
21 right of subrogation to collect that judgment  
22 pursuant to its rights under the mortgage  
23 insurance contract, which I have attached to my  
24 brief for your -- for your review as well.  
25 And -- and the subrogation rights are explained

1 as part of .7.3 in that contract, which  
2 specifically says that the company shall be  
3 subrogated pro rata to the full extent  
4 permitted by law to all the insurance recovery  
5 rights with respect to a loan upon a payment of  
6 a claim.

7 So -- and this -- this contract requires the  
8 plaintiff, the mortgage -- the company  
9 to -- mortgage company to pursue its deficiency  
10 rights in the event that they can in order to  
11 obtain a judgment that can later be collected  
12 upon pursuant to the subrogation rights of the  
13 company. So I would just ask Your Honor that  
14 you confirm the entry of your order reducing  
15 the deficiency judgment to an amount of I  
16 believe it was \$37,393.82 pursuant to -- to  
17 that. And I could -- I could speak on the  
18 issues of the collateral source rule that he  
19 was mentioning, if you want. If -- if you want  
20 me to.

21 THE COURT: No. No. You ---

22 MR. CAIN: Okay.

23 THE COURT: You've argued sufficiently on that.

24 MS. LYBRAND: Okay.

25 THE COURT: Mr. Cain, in support of your position

1           and -- and -- and motion, did you have any  
2           affidavits, any documents, or testimony, other  
3           than ---

4   MR. CAIN:   Well ---

5   THE COURT:  --- the arguments that you presented in  
6           those documents?

7   MR. CAIN:   Well, Your Honor, the only thing -- the  
8           only thing that I have with reference to  
9           Republic Mortgage is my personal conversation  
10          with Republic Mortgage, a representative.  And,  
11          in September in 2010, the question came up  
12          about the mortgage insurance.

13   THE COURT:  Uh-huh.

14   MR. CAIN:   And BB&T's representative notified the  
15          Court that it was 25 percent, okay?

16   THE COURT:  Okay.  But, as far -- as far as today,  
17          did you have any documentation, letters,  
18          affidavits, paperwork that you want to submit  
19          as -- that would be evidence or testimony  
20          today, other than your -- than your argument?

21   MR. CAIN:   Well, not -- not here.  No.  No, Your  
22          Honor.  I would only ask that -- well, my  
23          question would be, is BB&T alleging that no  
24          default was paid, and ---

25   THE COURT:  Well, my -- my question is do you have

1 Just so -- and if -- if -- if I request that,  
2 that's not an invitation to discuss or continue  
3 the argument, okay? I know that's the ---

4 MR. CAIN: (Nods head.)

5 THE COURT: The natural tendency to it. I  
6 just -- I just want to clarify that because I  
7 don't want to get to the -- to the -- going  
8 back and forth on the -- on the email.

9 MR. CAIN: Yes, Your Honor.

10 THE COURT: Kind of, it started before. So, if I  
11 request that, then I'll --- we'll -- we'll do  
12 that. And then whatever or as a result of the  
13 issuance of any order, then y'all can take  
14 whatever steps you want to take. Okay?

15 MR. CAIN: Yes, Your Honor.

16 MS. LYBRAND: Thank you, Your Honor.

17 THERE BEING NOTHING FURTHER.

18 (WHEREUPON, the within hearing adjourned at 11:33 a.m.)

19 (\*This transcript may contain quoted material.

20 Such material is reproduced as read or quoted by the  
21 speaker.)

22 (\*\*Certificate accompanies sealed original only.)

**CERTIFICATE OF APPELLANTS**

**APPELLANTS HEREBY CERTIFY THAT THIS THIRD AMENDED  
RECORD ON APPEAL CONTAINS ALL OF THE MATERIAL PROPOSED  
TO BE INCLUDED BY ANY OTHER PARTIES; ALL THAT DEEM  
NEEDED AND NOT ANY OTHER MATERIAL**

*Wilton Cain Cassandra Cain*

**WILTON CAIN AND CASSANDRA CAIN**

**8111 JAREDS LANDING ROAD**

**ADAMS RUN , SOUTH CAROLINA**

**29426**

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