

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Lisa Lee Smith, Special Referee

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Appellate Case No. 2017-002608  
Case No. 2014-CP-32-02795

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**RECEIVED**  
APR 05 2018  
SC Court of Appeals

Federal National Mortgage Association("Fannie Mae"), a corporation organized and existing under the laws of the United States of America, Respondent,  
v.

D. Randolph Whitt and Pearce W. Fleming, Defendants.

Of whom D. Randolph Whitt is the Appellant.

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APPELLANT'S RETURN TO MOTION TO DISMISS

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April 5, 2018

D. Randolph Whitt  
Fleming & Whitt, P.A.  
S.C. Bar No. 13068  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176 Tel  
dwhitt2001@aol.com  
Attorney for Appellant

Other counsel of Record:

Magalie A. Creech, Esq.  
PO Box 41489  
Charleston, SC 29423

Pearce W. Fleming  
3723 Linwood Rd.  
Columbia, SC 29205-2545

Attorney for Respondent

## Memorandum and Authorities

Respondent's motion to dismiss relies on two theories, beginning with the assertion that Judge Keesley's Order signed June 11, 2015 is a final appealable order. This Order is attached as Exhibit B to the motion to dismiss.

The Order contained the following language: "Should the Special Referee determine that there is a valid claim that requires a jury trial, she may notify the circuit court, as provided in the South Carolina Rules of Civil Procedure." (see Order p. 1) It is axiomatic that the order should be construed in a way that avoids rendering these words meaningless.

The Order further provided that the Court "did not hear the motion for an order striking Defendant's jury demand." (see Order p.1) This language also supports the conclusion that the order referring the case was not a final determination of the jury trial question.

Pursuant to Rule 53, SCRCF, a master or special referee has no power or authority except that which is provided in the order of reference. *Smith v. Ocean Lakes Family Campground*, 315 S.C. 379, 381, 433 S.E.2d 909, 910 (S.C. App.1993). In this case, the Special Referee had a clear mandate to make an assessment of the jury trial issue after the facts had been developed as the litigation progressed.

### A Final Order?

An analysis of various preclusive doctrines is relevant in this matter. Regardless of which of these doctrines is considered, they all fail at the same point. The Order of Reference in this case is not a final order under South Carolina Law.

A final order is one which requires no additional action before the rights of the parties are fixed. See e.g., *Lewis v. State* 368 S.C. 630, 630 SE 2d 464 (2006) ("a conditional order of dismissal is not the final judgment in a post-conviction relief case since there is another act to be done before the rights of the parties are finally determined") Likewise, the Order of Reference in this case is conditional and

not a final order, based on the language cited in this motion.

An order is also not final if it is subject to revision. See e.g. *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 698 SE 2d 856 (SC App. 2010). The quoted language in the Order of Reference can only be read to mandate the revision of the order based on the Special Referee's determination.

The language of the order means there is both a further act to be done (the Special Referee making a determination) and the June 11, 2015 Order was subject to revision based on the result of that determination.

#### SC Code § 14-3-330(1)

Rather than subsection 330(2), which was cited by Respondent, the applicable statutory provision is subsection 330(1) for this intermediate order. This subsection provides in part “*provided*, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from”.

None of the authorities cited by Respondent address the question of finality. An order which is not final, is not immediately appealable regardless of its subject matter.

The final order on the mode of trial was the Special Referee's Order that is the subject of this appeal. None of the preclusive doctrines extant under South Carolina Law should have constrained the Special Referee's consideration of this motion.

#### The Question of Consent

Respondent's second theory is a new one, which was not raised in the trial court, that there was a waiver of a jury trial by consent. The consent is to be inferred from Appellant's “appearing and litigating the merits of the Counterclaims for well over two years following the reference”.

What has actually been going on for these two years is Appellant seeking, and being granted, an order vacating summary judgment in favor of Respondent and then a series of other hearings in which Respondent has failed, in spectacular fashion, to provide sufficient evidence of its total debt or to

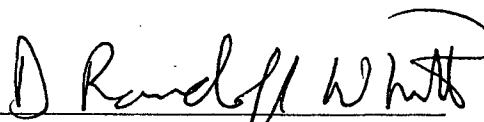
total debt or to obtain full summary judgment on any of the Counterclaims.

It is entirely reasonable to construe Judge Keesley's June 11, 2015 Order as providing for the Referee to explore the facts and dispose of the Counterclaims summarily, if possible, but to return the case to a jury if any of the Counterclaims survived. The conduct which survived as a basis for the Counterclaims dates from after October 15, 2015. ( See Page 7, Item Number 13, Special Referee Order dated April 7, 2017 attached as Exhibit C to the motion to dismiss.) This means the conduct was also after Judge Keesley's June 11, 2015 Order.

Such conduct includes submitting numerous documents to the Special Referee that were marked "ACTIVE LOSS MITIGTAION" in clear violation of the South Carolina Foreclosure Intervention Program. Further examples of Respondent's bad faith and two year efforts to obtain summary judgment are outlined in the attached affidavits.

The fact that the summary judgemnt process has taken so long is a direct result of respondents failures. Respondent should not be rewarded for ineptitude by a finding that this length of time has ripened into a waiver by consent. The authorities cited by Respondent are distinguishable from the instant case which has never progressed beyond consideration of summary disposition of the case and because of the particular language of the order of reference in this matter

Respectfully submitted,



D. Randolph Whitt  
Fleming & Whitt, P.A.  
S.C. Bar No. 13068  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176 Tel  
dwhitt2001@aol.com  
Attorney for Appellant

January 19, 2018

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Lisa Lee Smith, Special Referee

---

Appellate Case No. 2017-002608  
Case No. 2014-CP-32-02795

---

Federal National Mortgage Association("Fannie Mae"), a corporation organized and existing under the laws of the United States of America, Respondent,  
v.

D. Randolph Whitt and Pearce W. Fleming, Defendants.

Of whom D. Randolph Whitt is the Appellant.

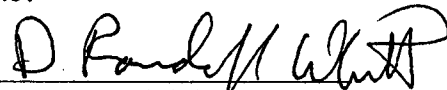
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PROOF OF SERVICE

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RECEIVED  
APR 05 2018  
SC Court of Appeals

I certify that I have served the Appellant's Return to Motion to Dismiss on Respondents listed above by depositing a copy of it in the United States Mail, postage prepaid, on January 19, 2016, addressed to their attorney of record, Magalie A. Creech, Esq., PO Box 41489, Charleston, SC 29423. A copy was also mailed on January 19, 2016 to Pearce W. Fleming at 3723 Linwood Rd., Columbia, SC 29205-2545.



D. Randolph Whitt  
Fleming & Whitt, P.A.  
S.C. Bar No. 13068  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176 Tel  
dwhitt2001@aol.com  
Attorney for Appellant

April 5, 2018

MB

FILED

IN THE COURT OF COMMON PLEAS

2016 AUG -3 AM 9:08

C/A NO: 2014-CP-32-02795

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America,

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

ORDER TO VACATE AND RESCHEDULE

RE: Defendant Whitt's Motion to Vacate Order and Judgment of Foreclosure

COPY

THIS MATTER came before the Special Referee upon the filing of a Motion pursuant to Rule 59(e) and Rule 60, SCRPC, by the Defendant D. Randolph Whitt on June 2, 2016. Defendant Whitt's Motion seeks to vacate the Special Referee's Order and Judgment of Foreclosure and Sale dated April 29, 2016, which was issued after a hearing on the Plaintiff's Motion for Summary Judgment, in this contested foreclosure proceeding. Plaintiff filed a Return to Defendant's Motion for Relief from Entry of Judgment and a hearing on the Motion was held on June 9, 2016, with all parties present or represented. The previously scheduled sale pursuant to the April 29<sup>th</sup> Order was cancelled and postponed, pending the resolution of the Defendant Whitt's Motion.

After consideration of the Motion and Return, the information and arguments presented at the motion hearing by the Defendant Whitt and by counsel for the Plaintiff, and after further review of the Clerk of Court's file, the Special Referee finds as follows:

- (1) Defendant Whitt's Motion was timely filed and promptly presented.
- (2) Defendant Whitt's Motion does not seek to "alter or amend" the Judgment, but seeks to "vacate" the Judgment and therefore Rule 59(e), SCRPC is not the appropriate basis for the relief sought.
- (3) Defendant Whitt's Motion should be granted pursuant to Rule 60(b)(1), SCRPC, on the basis of "mistake, inadvertence, surprise, or excusable neglect".

Plaintiff responds that notice of the hearing was properly served by regular mail to the Post Office Box listed as the Defendant Whitt's mailing address on his Answer and Amended Answer in the Clerk of Court's file, and which was listed as the Defendant Whitt's address with the South Carolina Bar at the time of the notice and hearing. Both the Plaintiff's Motion for Summary Judgment and Affidavit in Support of the Motion for Summary Judgment were also served by regular mail to the same Post Office Box.

Defendant Whitt claims that the Post Office Box used was a previous address for him, but that it was cancelled a long time ago (not specified at the hearing), and that the Clerk of Court's Public Index for the case listed the Defendant's Whitt's address as the property address since the beginning of the litigation. The Clerk's file also reflects that the Defendant Whitt was personally served with the original Summons and Complaint, Lis Pendens, and Notice of Foreclosure Intervention at the property address and not the Post Office Box.

The Special Referee is persuaded that when conflicting information about the address to use for service of process is available, the best practice would be for notice to be sent to both addresses. Alternatively, the Plaintiff could have tried to confirm with the Defendant the proper address for service, especially given the prior communications where the Defendant did respond to e-mail. The Special Referee does not find that Plaintiff was wrong in using the Post Office Box address, but that it was an inadvertent mistake to only serve the notice of hearing at the Post Office Box address, in light of the circumstances now before the Court. This inadvertent problem with the service of the hearing notice created the situation where the Defendant was not aware of the summary judgment hearing, did not participate in the hearing, and was surprised to learn after the fact that the case was ended by the granting of the summary judgment motion.

Additionally, the Special Referee finds that the Defendant Whitt presented arguments raising the existence of a meritorious defense to at least some part of the issues covered by the Plaintiff's Motion for Summary Judgment and resulting Order and Judgment of Foreclosure. The Order from which the Defendant seeks relief is not a default order, but an Order granting summary judgment in a contested foreclosure, which extended to all facets of the case, including the right to foreclosure, the calculation of elements of the debt, and counterclaims raised by the Defendant. In consideration of a motion for summary judgment, the Court must consider whether any triable issues of fact exist, with all of the evidence, and all inferences which can be reasonably drawn from the evidence, viewed in the light most favorable to the nonmoving party.

Strother v. Lexington County Recreation Comm'n, 504 S.E.2d 117, 121 (1998). The Special Referee is persuaded that the Defendant Whitt raised enough questions concerning the clarity and accuracy of Exhibit 5 presented at the hearing, to raise a meritorious defense to the Plaintiff's assertion that there were no triable issues of fact, especially concerning the calculation of portions of the debt over and above the principal and interest calculations.

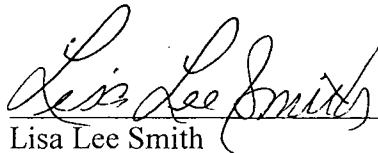
While the meritorious defense to summary judgment recognized by the Special Referee, raised by Defendant Whitt in argument for his motion to vacate, only applied to a portion of the matters before the Court at the summary judgment stage, the entire Order is vacated pursuant to Rule 60(b)(1) because the problems with the service of the notice of hearing prevented the Defendant Whitt from having the opportunity to be heard on all issues before the Court at the hearing.

The Special Referee further finds the resulting prejudice to the Plaintiff upon the granting of the Defendant Whitt's Motion to vacate pursuant to Rule 60(b)(1) is minor, especially considering the timeliness of the Defendant Whitt's motion.

In sum, the Special Referee hereby vacates the Order of Judgment of Foreclosure and Sale dated April 29, 2016, and a separate Notice of Hearing shall follow for the scheduling of the re-hearing of the Plaintiff's Motion for Summary Judgment and/or for a final merits hearing, if necessary.

Furthermore and henceforth, all documents to be served upon the Defendant Whitt shall be served, if served by mailing address, only at the property address (344 Blossom View Ct., West Columbia, SC 29170), unless or until the Defendant Whitt files a formal Notice of Change of Address with the Clerk of Court's Office for Lexington County and serves such notice on all parties to the litigation, or on counsel of record for such parties as appropriate.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Lisa Lee Smith

Special Referee for Lexington County

Lexington, South Carolina

Aug. 1, 2016

FILED  
2016 AUG -3 AM 9:09  
CLERK OF COURT  
LEXINGTON COUNTY

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 CUSTOMER SERVICE INV 205/001 02/17/16 19:16:49  
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 344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2397 W 803-95  
 LMSLRU < IM OFFICER LAST REVIEW UPDATE >: 02/17/16

-----\* LOAN HISTORY ----- (MORE)

| PROC-DT  | DUE-DT | TRAN | TRAN-DESCRIPTION             | PRINCIPAL | INTEREST | ESCROW | AMOUNT/CD/DESCRIPTION | TRAN-EFFECTIVE-DATE  |
|----------|--------|------|------------------------------|-----------|----------|--------|-----------------------|----------------------|
| 04-02-15 | 00-00  | 631  | PROPERTY PRESERVATION        | 15.00     | 0.00     | 0.00   | 15.00                 | MTGR REC CORR ADV BA |
| 03-01-15 | 00-00  | 745  | CORPORATE ADVANCE ADJUSTMENT | 5.00      | 0.00     | 0.00   | 5.00                  | 3RD REC CORR ADV     |
| 03-01-15 | 00-00  | 745  | CORPORATE ADVANCE ADJUSTMENT | 25.00     | 0.00     | 0.00   | 25.00                 | 3RD REC CORR ADV     |
| 03-01-15 | 00-00  | 745  | CORPORATE ADVANCE ADJUSTMENT | 225.00    | 0.00     | 0.00   | 225.00                | MTGR REC CORR ADV BA |
| 03-01-15 | 00-00  | 745  | CORPORATE ADVANCE ADJUSTMENT | 290.00    | 0.00     | 0.00   | 290.00                | MTGR REC CORR ADV BA |
| 03-01-15 | 00-00  | 745  | CORPORATE ADVANCE ADJUSTMENT | 150.00    | 0.00     | 0.00   | 150.00                | MTGR REC CORR ADV BA |

-----\* PF2 FOR ADDL MESSAGES -----

--SFOC--  
 LIFE-OF-LOAN: 13FEB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14  
 ACTIVE LOSS MITIGATION LOSS MIT IND = 1 LOSS MIT.RETENTION

**COPY**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-02795

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

**Rule 59(e) and 60 Motion**

BETH A. CARRIG  
CLERK OF COURT  
LEXINGTON SC

2016 JUN -2 AM 9:26

**FILED**

Defendants D. Randolph Whitt (“Defendant”) offer this motion pursuant to Rule 59(e) and 60 SCRCP regarding the order filed May 6, 2016. Defendant learned of the possible existence of an order when he received a letter from a third party advising him of same on May 23, 2016. The Order should be altered or amended for the following reasons.

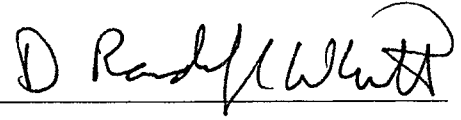
- 1) There were irregularities in the scheduling of the hearing that resulted in the order that is the subject of this motion. As the primary defendant, who had answered in this action, Defendant was entitled to be involved in the scheduling of this matter. Defendants should have been involved in any telephone calls that were a part of the scheduling process and should have been included in any email communications regarding scheduling. A prior email from Plaintiff's counsel indicated that the Plaintiff was then not ready to proceed, but also acknowledged that Defendant should be copied when the Plaintiff was ready to move forward. No communication

of this change in status was ever given to Defendant. Defendant should also have been able to give equal input on the details of scheduling.

- 2) Defendant did not receive any notice of the hearing in this matter. As shown in the attached printout from the Lexington County Clerk's Office Defendant's address is listed as 344 Blossom View Ct., West Columbia, SC 29170. However, a single notice was sent to a post office box which had previously been used by Defendant, but is now closed. The address reflected in the Lexington County Clerk's records is also the property address of the property that is the subject of this action. Failure to send a notice to the property address in addition to any other address is a departure from the standard policy of Plaintiff's Counsel's law firm.
- 3) The order was the result of impermissible dual tracking by Plaintiff. Plaintiff's servicer Seterus offered a Loan Modification on February 18, 2016. During the pendency of the Loan Modification offer from Seterus, the Plaintiff, FNMA, took the following actions (i) scheduled a Foreclosure Hearing (ii) attended a Foreclosure Hearing and presented evidence (iii) submitted a Judgment of Foreclosure (iv) filed this Judgment after signature by the Judge and (v) scheduled a Foreclosure sale. A denial letter from the Seterus, as to the Loan Modification, was not dated until May 9, 2016, and received by Defendant considerably after that time. All of the events referred to above, took place before the Notice concerning the Loan Modification was dated, or received.

CONCLUSION

Therefore, Defendant requests that the court hold a hearing on this motion, inquire into these matters, vacate the judgment and cancel the scheduled foreclosure sale.



D. Randolph Whitt  
Fleming & Whitt, P.A.  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176 Tel

6/1, 2016

**COPY**

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

**FILED**  
2016 JUN -2 AM 9:26  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

**Affidavit**

Personally appeared before me, D. Randolph Whitt. who on oath says, deposes and says that he is over the age of eighteen years and makes this Affidavit based on his personal knowledge, Affiant is competent to testify as to the matters stated herein, and he hereby declares under the penalties of perjury, and states as follows:.

I have reviewed the factual allegations in the motion dated June 1, 2016 and they are each accurate statements based on my personal knowledge.

If testifying before the Court, I would so testify as above and my statements are true and correct.

Further Affiant sayeth not.

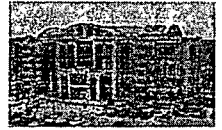
*D Randolph Whitt*  
D. Randolph Whitt

June 1  
~~May~~ \_\_, 2016

*Cari J. Schues*  
SWORN to and subscribed before me  
this 1st day of June, 2016  
Exp. April 1, 2021



# Lexington County Eleventh Judicial Circuit Public Index



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[South Carolina Judicial Department Home Page](#)
[SC.GOV Home Page](#)

Switch View

## Federal National Mortgage Associatiion , plaintiff, et al VS D Randolph Whitt , defendant, et al

|                      |               |                   |   |                    |                 |
|----------------------|---------------|-------------------|---|--------------------|-----------------|
| Case Number:         | 2014CP3202795 | Court Agency:     | Common Pleas                              | Filed Date:        | 08/01/2014      |
| Case Type:           | Common Pleas  | Case Sub Type:    | Foreclosure 420                           | File Type:         | Non-Jury        |
| Status:              | Judgment      | Assigned Judge:   | Clerk Of Court C P, G S, And Family Court |                    |                 |
| Disposition:         | Judgment      | Disposition Date: | 05/06/2016                                | Disposition Judge: | Spence, James O |
| Original Source Doc: |               | Original Case #:  |   |                    |                 |
| Judgment Number:     |               | Court Roster:     |   |                    |                 |

[Case Parties](#)
[Judgments](#)
[Tax Map Information](#)
[Associated Cases](#)
[Actions](#)
[Financials](#)

Click the  icon to show associated parties.

| Name   | Address  | Race | Sex | Year Of Birth | Party Type             | Party Status | Last Updated |
|--|--|------|-----|---------------|------------------------|--------------|--------------|
| <input checked="" type="checkbox"/> Creech, Magalie Arcure                 | PO Box 41489 Charleston SC 29423                         |      |     |               | Plaintiff Attorney     |              | 12/15/2015   |
| <input checked="" type="checkbox"/> Fannie Mae                             |  |      |     |               | Plaintiff              |              | 08/01/2014   |
| <input checked="" type="checkbox"/> Federal National Mortgage Associatiion |  |      |     |               | Plaintiff              |              | 05/06/2016   |
| <input checked="" type="checkbox"/> Fleming, Pearce W                      |  |      |     |               | Defendant              |              | 08/01/2014   |
| <input checked="" type="checkbox"/> Fleming, Pearce W                      | 3723 Linwood Road Columbia SC 292052545                  |      |     |               | Defendant Pro Se       |              | 06/18/2015   |
| Smith, Lisa Lee  | 271 Columbia Avenue Suite A Chapin SC 290360489          |      |     |               | Special Referee/Master |              | 06/17/2015   |
| <input checked="" type="checkbox"/> Van Vlake, Teresa DeToma               | 4000 Faber Place Dr. Suite 450 North Charleston SC 29405 |      |     |               | Plaintiff Attorney     |              | 08/01/2014   |
| Whitt, D Randolph  | 344 Blossom View Ct West Columbia SC 29170               |      |     |               | Defendant              |              | 08/14/2014   |

**From:** Magalie Creech <mcreech@finkellaw.com>

**To:** 'Lisa Smith' <Lisa@smithsullivanlaw.com>; dwhitt2001 <dwhitt2001@aol.com>; pfleming3 <pfleming3@att.net>;  
Dominique Biggers <dbiggers@FinkelLaw.com>

**Cc:** Real estate <realestate@smithsullivanlaw.com>

**Subject:** RE: FNMA vs. D. Randolph Whitt & Pearce Fleming (2014-CP-32-744)

**Date:** Tue, Dec 8, 2015 6:09 pm

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Good evening, Ms. Smith:

We are not prepared to move forward with the final hearing at this time. We will contact your office and copy counsel when we are ready to schedule the hearing.

Thanks very much,

Magalie A. Creech, Esquire  
Finkel Law Firm LLC  
P.O. Box 41489  
Charleston, SC 29423  
Tel: (843) 577-5460  
Direct: (843) 576-6311  
Fax: (866) 800-7948  
[mcreech@finkellaw.com](mailto:mcreech@finkellaw.com)

*\* If you cannot reach me and require immediate assistance, please contact Dominique Biggers at [dbiggers@finkellaw.com](mailto:dbiggers@finkellaw.com). If you cannot reach me and require immediate assistance from an attorney, please contact Andy Shook at [ashook@finkellaw.com](mailto:ashook@finkellaw.com).*



Please consider your environmental responsibility before printing this e-mail. Stay Green.

*NOTICE REQUIRED BY FEDERAL FAIR DEBT COLLECTION PRACTICES ACT: This firm collects debts for mortgage lenders and other creditors, and any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.*

---

**From:** Lisa Smith [<mailto:Lisa@smithsullivanlaw.com>]

**Sent:** Tuesday, December 8, 2015 11:21 AM

**To:** Magalie Creech; [dwhitt2001@aol.com](mailto:dwhitt2001@aol.com); [pfleming3@att.net](mailto:pfleming3@att.net)

**Cc:** Real estate

**Subject:** FNMA vs. D. Randolph Whitt & Pearce Fleming (2014-CP-32-744)

Please advise my office if this case is ready for a hearing to be scheduled. My Paralegal Shelby Sullivan will schedule the Courtroom in Lexington for the hearing and if you need to contact her, our office number is 803-941-7256 or her e-mail address is [realestate@smithsullivanlaw.com](mailto:realestate@smithsullivanlaw.com).

Please also be aware that for Special Referee cases involving contested foreclosures, multiple hearings, multiple causes of action, or complex issues, I charge an hourly rate of \$200.00 per hour + a Sale Fee, if

COPY

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
Case No. 2014-CP-32-02795

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

2016 JUN -2 AM 9:26

FILED

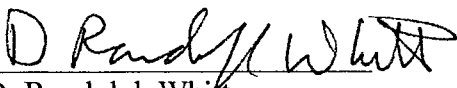
Certificate of service

The undersigned hereby certifies that I served the Motion of Defendant D. Randolph Whitt on June 1, 2016 by causing a copy of said document to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with a return address clearly shown and addressed to :

Magalie A. Creech, Esq.  
PO Box 41489  
Charleston, SC 29423

Pearce W. Fleming  
3723 Linwood Rd.  
Columbia, SC 29205-2545

Copies were also emailed to Ms Creech at [mcreech@finkellaw.com](mailto:mcreech@finkellaw.com)  
and Mr Fleming at [pflaming3@att.net](mailto:pflaming3@att.net)



D. Randolph Whitt  
Fleming & Whitt, P.A.  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176 Tel

June 1, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

**FILED** COURT OF COMMON PLEAS  
Case No. 2014-CP-32-02795

2016 NOV 16 PM 1:47

BETH A. CARRIGO  
CLERK OF COURT  
LEXINGTON SC

**COPY**

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

**Affidavit**

Personally appeared before me, D. Randolph Whitt, who on oath says, deposes and says that he is over the age of eighteen years and makes this Affidavit based on his personal knowledge, Affiant is competent to testify as to the matters stated herein, and he hereby declares under the penalties of perjury, and states as follows:

I reiterate the factual allegations of my previous affidavit in this matter, and my pleadings herein.

The Plaintiff has not remedied any of the deficiencies identified in the evidence submitted previously, and has chosen rather to adopt the position that the evidence to support the amounts claimed are "secret" because the note signer is not a party to this action.

The factual assertion in the affidavit submitted by the Plaintiff's servicer is incorrect as to the modification opportunities which are available to Defendant, which is shown on the Plaintiff's website that makes the Plaintiff's servicing guide available. Exhibit A is a page from the servicing guide which provides that the "borrowers identified in the security instrument "(emphasis added), do not need to sign the note in all cases. The rest of the servicing guide is replete with provisions that provide for modifications to benefit "borrowers". Defendant therefore has the status of a borrower.

Plaintiff's new affidavit makes it clear that the Denial of foreclosure relief dated January 12, 2015 is

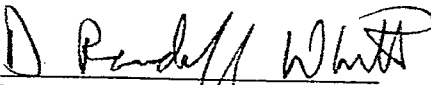
factually incorrect. The stated basis of "default on the trial payment plan" is disproved by the Plaintiff's assertion that they never offered any modification to the Defendant. This document is attached as Exhibit B. Defendant has no doubt that Plaintiff's attorneys were misled by the plaintiff, but there would have been no opportunity to be misled if Plaintiff's attorneys had followed the mandate of the Foreclosure intervention order that "Throughout the foreclosure intervention process and the foreclosure action the Mortgagee shall communicate with and otherwise deal with the Mortgagor through the Mortgagee's attorney"(emphasis added).

The Plaintiff's new affidavit is dated 10/21/16 and shows an increase in escrow advances of over \$2,000.00 dollars few months since the affidavit supplied for the previous hearing. Both the poor quality of the previous data provided and the amount relative to the approximately \$6,000.00 in escrow advances from the inception of the case to then, call into question the accuracy of this amount.

The affidavit contains \$9,366.51 dollars if corporate advances, which are totally unsubstantiated and likely contain attorney's fees, as did the previous affidavit.


If testifying before the Court, I would so testify as above and my statements are true and correct.

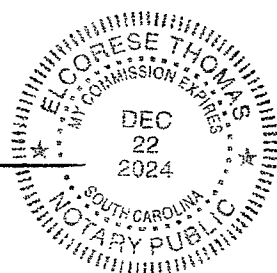
Further Affiant sayeth not.

  
D. Randolph Whitt

November 14, 2016

SWORN to and subscribed before me  
this 14<sup>th</sup> day of Nov, 2016

  
Elcorese Thomas



## **Exhibit A**

# Selling Guide

Published October 24, 2018

Guide Table of Contents

Search guide content

[BACK TO PART B >](#)

## B8-3-03: Signature Requirements for Notes (10/22/2013)

This topic contains information on borrowers' signatures on notes, including:

Borrowers' Signatures on Notes

Signature Requirements: Powers of Attorney and Guardianship

### Borrowers' Signatures on Notes

In most instances, all borrowers who are named in the security instrument must sign the note. Special situations are listed below:

- A person whose income is not used in qualifying for the mortgage but who does have an ownership interest in the property must be named in and sign the security instrument, but is not required to sign the note.
- A person who is a co-signer or guarantor and who has an ownership interest in the property must sign both the note and the security instrument.
- A person who is a co-signer or guarantor and who does not have an ownership interest in the property must sign the note, but is not named in (or required to sign) the security instrument.

A borrower's signature should not contradict the name typed below the signature line on the note. Slight variations are acceptable—a missing initial, the omission of a "Jr" or "Sr," or an over- or under-signing (such as a borrower signing as William Thomas Smith when the typed name is William T. Smith, or vice versa). Significant variations—such as William Smith signing as "Skip" Smith, signing with an "X," or signing under an "also known as" name—are not acceptable unless the lender obtains a name affidavit from the borrower stating that he or she commonly uses the alternative signature.

When an *inter vivos* revocable trust is the borrower, the trustees must execute the note. See [B8-5-02, Inter Vivos Revocable Trust Mortgage Documentation and Signature Requirements](#), for more information about the documentation requirements for mortgages made to *inter vivos* revocable trust borrowers, including appropriate forms of signature for the note.

### Signature Requirements: Powers of Attorney and Guardianship

The following persons also may be eligible to sign the note on a borrower's behalf in accordance with the guidelines below.

- An attorney-in-fact may sign the note. See [B8-5-06, Requirements for Use of a Power of Attorney](#), for further requirements governing the use of a power of attorney.
- A court-appointed guardian may sign the note if the borrower is not legally competent, provided that he or she has unlimited power over the ward's affairs, including the power to hold, convey, and give a lien against real property owned by the ward, to make payments from the ward's assets, and to permit inquiries concerning the ward's credit. The lender should obtain a copy of the documents making the appointment. If the guardian in some other capacity is a party to the loan or sale transaction—for example, the seller of the property—the lender should ascertain that there are no material conflicts of interest.

### Related Announcements

The table below provides references to the Announcements that have been issued that are related to this topic.

| Announcements                            | Issue Date       |
|--|------------------|
| <a href="#">Announcement SEL-2013-08</a> | October 22, 2013 |
| <a href="#">Announcement SEL-2013-01</a> | January 17, 2013 |

## **Exhibit B**



Reply to Charleston Foreclosure Office

January 12, 2015

**DENIAL OF FORECLOSURE RELIEF**  
(after review)

FILED  
2015 JAN 26 A 11:51 AM  
BETH A. CARRIG  
BERKINSON  
BERKINSON  
BERKINSON

D. Randolph Whitt  
344 Blossom View Ct.  
West Columbia, SC 29170

RE: Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America vs. D. Randolph Whitt; and Pearce W. Fleming  
Civil Action No.: 14-CP-32-2795  
Our File No.: F44356

Dear Sir:

Your loan has been reviewed for the foreclosure intervention options you requested pursuant to the Notice of Foreclosure Intervention you returned to us. Unfortunately, you are ineligible for the following reasons:

|                                     | YOU REQUESTED         | REASON FOR INELIGIBILITY                          |
|-------------------------------------|-----------------------|---|
| <input type="checkbox"/>            | Reinstatement         |   |
| <input type="checkbox"/>            | Payoff                |   |
| <input type="checkbox"/>            | Payment Plan          |   |
| <input type="checkbox"/>            | Forbearance Agreement |   |
| <input checked="" type="checkbox"/> | Loan Modification     | The borrower defaulted on the trial payment plan. |
| <input type="checkbox"/>            | Deed in Lien          |   |
| <input type="checkbox"/>            | Short Sale            |   |
| <input type="checkbox"/>            | Other:                |   |

Accordingly, this letter shall serve as Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America's denial of your eligibility for foreclosure intervention pursuant to the May 2, 2011, Administrative Order 2011-05-02-01 of the South Carolina Supreme Court. Please be advised that you have thirty (30) days from the mailing of this letter to file and serve an answer or other response.

Sincerely,

By:

- Thomas A. Shook, SC Bar # 68340
- Susan S. White, SC Bar # 5453
- Elizabeth S. Moore, SC Bar # 69236
- Teresa D. Van Vlacke, SC Bar # 11118
- Joanne A. Tomasini-Muniz, SC Bar #100438

Attorneys for Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America

COLUMBIA  
1201 Main Street, Suite 1800  
Post Office Box 1799 (29202)  
Columbia, SC 29201  
Tel: (803) 765-2935

CHARLESTON  
Litigation, Real Estate & REO  
4000 Faber Place Drive, Suite 450  
Post Office Box 41489 (29423)  
North Charleston, SC 29405  
Tel: (843) 577-5460

CHARLESTON  
Foreclosure  
4000 Faber Place Drive, Suite 450  
Post Office Box 71727 (29415)  
North Charleston, SC 29405  
Tel: (843) 577-5460

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

FILED IN THE COURT OF COMMON PLEAS  
Case No. 2014-CP-32-02795

Federal National Mortgage Association

2016 NOV 16 PM 1:47

COPY

Plaintiff,

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

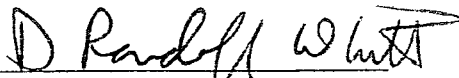
Certificate of service

The undersigned hereby certifies that I served the Affidavit of Defendant D. Randolph Whitt on November 14, 2016 by causing a copy of said document to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with a return address clearly shown and addressed to :

Magalie A. Creech, Esq.  
PO Box 41489  
Charleston, SC 29423

Pearce W. Fleming  
3723 Linwood Rd.  
Columbia, SC 29205-2545

Copies were also emailed to Ms Creech at [mcreech@finkellaw.com](mailto:mcreech@finkellaw.com)  
and Mr Fleming at [pfleming3@att.net](mailto:pfleming3@att.net)



D. Randolph Whitt  
Fleming & Whitt, P.A.  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176 Tel

November 14, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
Case No. 2014-CP-32-02795

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

### **Supplemental Affidavit**

Personally appeared before me, D. Randolph Whitt, who on oath says, deposes and says that he is over the age of eighteen years and makes this Affidavit based on his personal knowledge, Affiant is competent to testify as to the matters stated herein, and he hereby declares under the penalties of perjury, and states as follows:

I reiterate the factual allegations of my previous affidavit in this matter, and my pleadings herein.

The Plaintiff has not remedied any of the deficiencies identified in the evidence submitted previously, and has chosen rather to adopt the position that the evidence to support the amounts claimed are "secret" because the note signer is not a party to this action.

### **Attorney's fees and costs**

At the latest hearing on November 16, 2016, Plaintiff submitted it's second affidavit of attorney's fees and costs. Regrettably the news affidavit does not correct any of the inconsistencies of the prior affidavit and in fact introduces new problems. Without any explanation, the new affidavit states that the hourly attorney fee in this matter is \$215.00 per hour. Unfortunately the prior affidavit from the original hearing says the hourly rate is \$200. per hour. Somewhere there is a fee contract that would establish whether the true rate is either of these figures or some other amount entirely. Given that there have now

been two prior sworn statements that are factually inconsistent, the Plaintiff should be required to produce this contract before any award of fees is made. Since no explanation has been offered, the only conclusion is that the Plaintiff doesn't know it has made two conflicting factual assertions or that that it doesn't care.

Both affidavits are consistent in asserting that flat fee of \$2,200.00 is provided for in the relevant fee agreement. However, both affidavits appear to be wrong based on Exhibit A, which is a part of the documentation submitted by the Plaintiff at the first hearing. This document contains two entries that are differentiated from the contested fees identified in other line items. These two entries are for \$385.00 and for \$1,165.00, which total \$1,550.00, not \$2,200.00. Again, the lack of an explanation suggests that the Plaintiff either doesn't know, or doesn't care about the discrepancies in the sworn testimony offered on its behalf. Production of the applicable fee contract would also shed light on what the appropriate number is in this regard.

The costs sought are also completely unascertainable. From the evidence before the court. Both affidavits identify only a \$135.00 court reporter fee. However the fourth affidavit of debt contains the figure of a \$485.00 as a "legal posting fee", a term which has no basis in South Carolina Law. The fourth debt affidavit also refers to undifferentiated attorney fees and cost in the amount of \$9,038.51 for a total of \$9,523.51. The second attorney's fee affidavit gives a total fee of \$10,735.23, with a paid fee of \$7,913.21. Neither of these figures matches the fourth debt affidavit and it is a mystery as to how any of the numbers can be reconciled.

The basis for the total fee award is also completely opaque. The original affidavit identified 25.80 hours and a fee based on these efforts of \$3,467.75. The second fee affidavit identifies 44.7 hours and increase by a factor of approximately 1.7 times. However, the new fee jumps to \$10,735.23 an increase by a factor of over 3 times. Although the affidavits pay lip service to the factors for an award of attorney's fees the record is bereft of any evidence to assess these factors. The raw numbers of hours do not allow any assessment of which attorneys paralegals or other staff may have been involved.

There is no way to tell whether some of these hours should have been included in the Standard fee of either \$1,550.00 or \$2,200.00. No judgment can be made on how many of these hours are duplicative because the Plaintiff is on their fourth affidavit of debt and their second affidavit of fees and costs. The Plaintiff should not be rewarded with extra fees and costs because it has failed to do on the fourth try what it should have done on the first.

### **The Fourth Affidavit of Debt**

Plaintiff is now on its fourth affidavit of debt. The first affidavit from the original hearing was tested and found wanting in this Court's prior Order. The second was the one that was originally attached to current motion and can be disposed of simply because it appears to assert that the debt breakdown is secret, without citing any state or federal statute that prohibits a creditor from providing proof of its debt in a court proceeding regardless of who the parties are. The third affidavit was submitted for the first time shortly before the November 16 hearing and has now been superseded by the fourth which was served on December 7.

Neither the third affidavit nor the fourth establish a proper basis for the admissions on several computer screen printouts that were discussed at the November 16 hearing and this Defendant renews his objection to their consideration based on this ground.

Rather than addressing the defects in the payment history attached to the first affidavit, such as it not covering the entire life of the loan and starting at a wholly arbitrary point with beginning balances that had to be taken purely on faith, the fourth affidavits provides no payment history at all. Therefore, the principal balance stated therein has not been established and the production of a full payment history beginning at a zero balance and showing all credits and charges should be required. Such a payment history would disclosure errors such as improper charges for PMI coverage and other fees which cannot be validated in the absence of a transparent statement of the inputs that have resulted in the unsupported number stated.

The interest figure stated is also subject to a material dispute in that a substantial amount of this

interest has accrued during the Plaintiff's four attempts to come up with an appropriate affidavit of debt. As noted before Plaintiff should not be rewarded with extra interest because it has failed to do on the fourth try what it should have done on the first.

The Plaintiff's fourth affidavit reintroduces an error which was not present in the third affidavit by including a \$5.00 reconveyance fee. There is no basis in South Carolina Law for awarding such an amount in a foreclosure judgment. Although the amount of this charge is small, given that such an illegal claim has likely passed unnoticed by the 99.9% of defendants who have not practiced foreclosure law for 20 years, this is still an abuse that should be stopped.

The Plaintiff's fourth affidavit provides no basis for determining whether the claimed late charges are post acceleration and therefore not allowable.

The Escrow items sought also provide no basis for assessing their propriety. Perhaps this is because the figures stated can be demonstrated to be invalid despite Plaintiff's efforts to hide the ball. In a frantic bid to pad their figures to the maximum extent possible, Plaintiff's even paid the taxes and delinquent taxes on a small adjacent lot owned by defendant, on which they had never made a tax payment before, as shown in the receipt attached as Exhibit B. Moreover, this receipt and the receipt for the taxes on the "main" lot for which Plaintiff had always paid the taxes disclose that the payments were made on December 5, substantially in advance of their mid January due date. The statement in the fourth affidavit that the charges listed had been incurred to the date of the hearing is false. The fact that this discrepancy was caught was pure happenstance based on the arrival of the property tax receipts. In the absence of full documentation there is no way to know what other errors and overcharges may exist. The due date and date of these payments should have been disclosed. Nondisclosure robs the Defendant of an opportunity to challenge these amounts and deprives the court of the opportunity of ruling on this issue.

The insurance charges are also problematic in light of the Plaintiff's having contrived to have Defendant's hazard insurance canceled by unilaterally, and falsely, informing the insurer that the

property was vacant, when in fact it was not and never has been vacant. A reference to “force placed insurance” at the hearing heightens this concern in the absence of documentation of the insurance charges, their dates, amounts, and to whom they were paid.

The inclusion in the fourth affidavit of both subtotals and the various components of the subtotals in a single undifferentiated column have the effect of making the document as obscure as possible. For example the subtotal for recoverable balance of \$10,031,51 is included, followed immediately by the \$485.00 legal posting charge, the \$508.00 in phantom property inspections and the \$9,038.51 in legal fees and cost (which cannot be reconciled with the fee affidavit). Similar double entry occurs for the escrow items. A layman looking at this document is apparently meant to just give up under the weight of the obfuscation.

#### **FIP Solicitation**

The Plaintiff's *ex post facto* rationalization that Defendant was not eligible for any foreclosure intervention is belied by the Notice of Foreclosure Intervention served with the complaint and of record herein. This notice advised the Defendant to contact the Plaintiff's counsel to be considered for foreclosure intervention. This was done resulting in a request for voluminous documentation from this Defendant. This documentation was provided to Plaintiff's counsel and no additional documentation was ever requested by plaintiff's counsel. However, once Plaintiff's compliance with FIP was challenged the Plaintiff asserts that this Defendant was never eligible. If that was the case then the notice should have been substantially in the form attached as Exhibit C. The notice attached as exhibit C was actually filed in in May of 2016 in a case where Defendant represents a Plaintiff that does not offer mortgage modifications.

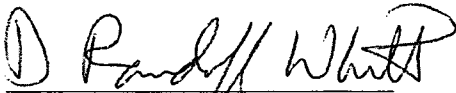
Plaintiff should be estopped from disavowing the notice served with the complaint. This is yet another example of Plaintiff's disdain for the idea that any factual assertion cannot just be discarded when it becomes inconvenient to be substituted with the new reality that is most expedient in hindsight.

**Unclean Hands and Bad Faith**

There is unlikely to be a more clear record of both the Plaintiff's unclean hands and breach of their contractual duty of good faith. A vanishingly small portion of the defendants foreclosed on by Plaintiff have any chance of cutting through the thicket of diversions and noise that makes up the Plaintiff's evidence in this matter. The Plaintiff should be dissuaded from the idea that this conduct is acceptable, or was acceptable in any of the other cases where they got away with it.

If testifying before the Court, I would so testify as above and my statements are true and correct.

Further Affiant sayeth not.



D. Randolph Whitt

December 21, 2016

SWORN to and subscribed before me  
this 21<sup>st</sup> day of December, 2016

State of South Carolina  
County of Lexington  
Notary Public Mary Katherine Jacobo  
My Commission Expires October 1, 2022

## **Exhibit A**

DDCH

CORPORATE ADVANCE HISTORY SCREEN 205/001 02/17/16 19:15:45

RF WHITT

L:A F:A B: R: 11/01/13 TYPE CONV. RES.

MAN F

344 BLOSSOM VIEW CT WEST COLUMBIA SC. 29170-2397

\_\_\_\_\_ C/A PAYEE    \_\_\_\_\_ TRAN    \_\_\_\_\_ RSN    \_\_\_\_\_ USR    \_\_\_\_\_ MORE  
 \_\_\_\_\_ SORT    \_\_\_\_\_ SORT    \_\_\_\_\_ SORT    \_\_\_\_\_ SORT    \_\_\_\_\_ ESC PAYEE  
 DATE RANGE:    \_\_\_\_\_ THRU    \_\_\_\_\_

| TRN  | USR | DATE     | TRAN AMT. | ESC PAYEE | C/A | PAYEE RSN | DESCRIPTION           | ORIG DSB |
|------|-----|----------|-----------|-----------|-----|-----------|-----------------------|----------|
| 630  | NIV | 05/05/15 | 380.00    | AT15604   |     | 35R50     | CCLF CONTESTEDLITFEE  |          |
| *630 | NIV | 04/06/15 | 385.00    | AT16604   |     | 39R57     | LEFC LEGAL FEES- FCL  | *        |
| 631  | NIV | 04/02/15 | 15.00     | EB11937   |     | 39R57     | FEIF PROP INSPECTION  |          |
| 745  | CNV | 03/01/15 | 5.00      |           |     | 35T57     | ESFF SUBMISSIONFEE-FC |          |
| 746  | CNV | 03/01/15 | 25.00     |           |     | 39T57     | ETSE TECH SUBMISSION  |          |
| 745  | CNV | 03/01/15 | 225.00    |           |     | 39R57     | LISC TITLESEARCHATTY  |          |
| 745  | CNV | 03/01/15 | 290.00    |           |     | 39R57     | LPNC PUBLICAIN NOTICE |          |
| 745  | CNV | 03/01/15 | 150.00    |           |     | 39R57     | LEFC LEGALPOSTINGCOST |          |
| *745 | CNV | 03/01/15 | 1,155.00  |           |     | 39R57     | LEFC LEGAL FEES- FCL  | *        |
| 745  | CNV | 03/01/15 | 240.00    |           |     | 39R57     | FEIF PROP INSPECTION  |          |

## **Exhibit B**



PLACE  
STAMP  
HERE

JIM ECKSTROM, TREASURER  
COUNTY OF LEXINGTON  
212 SOUTH LAKE DR, SUITE 101  
LEXINGTON, SC 29072-3499



003800



Jim Eckstrom  
Treasurer

**PROPERTY TAX RECEIPT**

County of Lexington  
Office of the Treasurer  
212 South Lake Drive, Suite 101  
Lexington, SC 29072-3499

Tel. (803) 785-8217  
Fax (803) 785-0023

| <u>BILL NUMBER</u>                            | <u>TAX YEAR</u> | <u>DISTRICT</u> | <u>ASSESSMENT</u>    | <u>PROPERTY TYPE</u> |
|---|-----------------|-----------------|----------------------|----------------------|
| 2016-184800-107                               | 2016            | 1               | 30                   | REAL ESTATE          |
| <u>PROPERTY DESCRIPTION</u>                   |                 |                 | <u>SCHOOL TAX</u>    | 10.54                |
| TMS#: 005552-01-076                           |                 |                 | <u>COUNTY TAX</u>    | 3.54                 |
| BLOSSOM VIEW CT MAGNOLIA RIDGE SUBDIVISION LO |                 |                 | <u>MUNICIPAL TAX</u> | .00                  |
| WHITT, D RANDOLPH                             |                 |                 | <u>TOTAL PAID</u>    | 14.08                |
| 344 BLOSSOM VIEW CT                           |                 |                 | PAID 12/05/2016      |                      |
| WEST COLUMBIA SC 29170                        |                 |                 | 5-000034             |                      |

VISIT LEXINGTON COUNTY'S WEBSITE AT 'www.lex-co.com'

## **Exhibit C**

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
Case No. 2016-CP-32-

[REDACTED]  
Plaintiff,  
vs.  
[REDACTED]  
Defendant.

Notice of Possible Foreclosure Intervention

To the Defendant [REDACTED]

PLEASE TAKE NOTICE THAT pursuant to the South Carolina Supreme Court Administrative Order 2001-05-02-01, you may be eligible for foreclosure intervention for the purpose of resolving the above-referenced foreclosure action.

The only foreclosure intervention offered by the Plaintiff is a deed in lieu of foreclosure, which allows you to voluntarily deed your interest in the property that is the subject of this action to the Plaintiff to conclude this action. If you wish to exercise this option, you must advise the undersigned by mail at 344 Blossom View Ct., West Columbia, SC 29170, or by email at [dwhitt2001@aol.com](mailto:dwhitt2001@aol.com), within thirty (30) days of service of this notice on you.

PLEASE NOTE that with respect to foreclosure intervention you must communicate with the Plaintiff in writing by mail or email through its attorney, D. Randolph Whitt.

PLEASE ALSO NOTE that D. Randolph Whitt represents the Plaintiff in this action. D. Randolph Whitt does not represent you, and is prohibited from giving you legal advice

**PLEASE ALSO NOTE THAT IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION, THE FORECLOSURE ACTION WILL PROCEED.**

\_\_\_\_\_  
D. Randolph Whitt  
Fleming & Whitt, P.A.  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176  
[Dwhitt2001@aol.com](mailto:Dwhitt2001@aol.com)

\_\_\_\_\_, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
Case No. 2014-CP-32-02795

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

**RECEIVED**

APR 05 2018

SC Court of Appeals

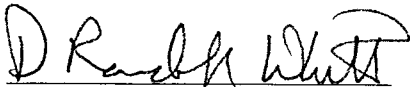
Certificate of service

The undersigned hereby certifies that I served the Supplemental Affidavit of Defendant D. Randolph Whitt on December 22, 2016 by causing a copy of said document to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with a return address clearly shown and addressed to :

Magalie A. Creech, Esq.  
PO Box 41489  
Charleston, SC 29423

Pearce W. Fleming  
3723 Linwood Rd.  
Columbia, SC 29205-2545

Copies were also emailed to Ms Creech at [mcreech@finkellaw.com](mailto:mcreech@finkellaw.com)  
and Mr Fleming at [pfleming3@att.net](mailto:pfleming3@att.net) on December 21, 2016



D. Randolph Whitt  
Fleming & Whitt, P.A.  
344 Blossom View Ct.  
West Columbia, SC 29170  
(803) 422-2176 Tel

December 22, 2016